

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF NEW BRAUNFELS, TEXAS, AUTHORIZING ANY LEGAL ACTION NECESSARY TO REMOVE THE CEMETERY DEDICATION BY MP NEW BRAUNFELS, LLC ENCUMBERING A 40.37 ACRE TRACT DESCRIBED IN A DEED FROM MARY ANN SCOTT, ET AL. TO MP NEW BRAUNFELS, LLC, RECORDED IN DOCUMENT NUMBER 202206025070, OFFICIAL PUBLIC RECORDS, COMAL COUNTY, TEXAS, AND SITUATED IN THE A. M. ESNAURIZAR SURVEY, ABSTRACT NUMBER 1, COMAL COUNTY, TEXAS.

WHEREAS, the Board of Trustees of New Braunfels Utilities (“NBU”) is charged with managing and operating the water, sanitary sewer, and electric systems of the City of New Braunfels (the “City”) pursuant to Chapter 130, Article II, Section 130-26 of the City Code of Ordinances; and

WHEREAS, as provided in Section 11.08 of the City’s Home Rule Charter, the City has reserved the right to exercise the power of eminent domain to acquire NBU utility property; and

WHEREAS, after unsuccessfully attempting to negotiate with MP New Braunfels, LLC, the Board of Trustees of NBU adopted a resolution on August 29, 2024, recommending that the City institute legal action as necessary to challenge and dissolve the Certificate of Perpetual Care Cemetery Dedication (“Dedication”) that MP New Braunfels, LLC recorded in the Real Property Records of Comal County, Texas presumably to impede NBU from using its eminent domain powers to expand an existing easement on the property (“Property”), which is described in **Exhibit A**; and

WHEREAS, the Dedication, which appears to have been recorded without obtaining the necessary permits or permission from the City, is in violation of Section 711 of the Texas Health and Safety Code and City of New Braunfels Ordinance No. 2011-71, and is obstructing NBU’s ability to acquire necessary property interests to complete the McKenzie Interceptor Upgrade Project, which is necessary to provide sewer services to the residents of New Braunfels; and

WHEREAS, the removal of the Dedication is in the best interest of the health, safety, and welfare of the public;

WHEREAS, NBU, acting as an agent of the City, has been unable to negotiate with MP New Braunfels, LLC to obtain the rights necessary for the McKenzie Interceptor Upgrade Project or the removal of the Dedication; and

WHEREAS, to remove the Dedication requires legal action by the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, THAT:

SECTION 1.

The above caption and recitals are incorporated herein for all purposes.

SECTION 2.

The City Council declares it a public necessity to institute any form of legal action necessary to remove the Dedication.

SECTION 3.

The City Council authorizes any legal action necessary to remove the Dedication.

SECTION 4.

The City Council authorizes NBU and its authorized officers or their designees and retained attorneys to perform all legal actions necessary to remove the Dedication and enable NBU to move forward with completing the McKenzie Interceptor Upgrade Project by acquiring necessary property interests on the Property.

SECTION 5.

All acts and proceedings done or initiated by the employees, agents, and attorneys of the City and NBU, acting as an agent for the City, to remove the Dedication are hereby authorized, ratified, approved, confirmed and validated and declared to be valid in all respects as of the respective dates of such acts and proceedings.

SECTION 6.

Severability: If any provision, section, subsection, sentence, clause, or phrase of this Resolution, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Resolution shall not be affected thereby, it being the intent of the City Council in adopting this Resolution that no portion hereof, or provisions, or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this Resolution are declared to be severable for that purpose.

SECTION 7.

This Resolution shall become effective from and after its passage.

PASSED AND APPROVED this the _____ day of _____, 2024.

Neal Linnartz, Mayor

ATTEST:

Gayle Wilkinson
City Secretary

EXHIBIT "A"

COMMENCING at a **1/2" iron rod found** for the west corner of a 5.041 acre tract called Lot 1A, Block 1, Resubdivision Plat of Lots 1A & 1B, Block 1 East Hansmann Subdivision, recorded in Volume 11, Page 181 of the Plat Records of Comal County, Texas, same being the north corner of a 53.044 acre tract called Lot 13, New Braunfels Town Center At Creekside, Phase 1, recorded in Document 200706028033 of the Official Records of Comal County, Texas, also being in the southeast right-of-way line of Interstate Highway 35 (variable width right-of-way);

THENCE with the northwest boundary of said Lot 1A, Block 1 and the southeast line of Interstate Highway 35, **N45°23'18"E**, passing a 1/2" iron rod found with cap stamped "RPLS 4233" at a distance of 261.96' and continuing for a total distance of **522.64'** to a **1/2" iron rod set with cap stamped "Tri-Tech"** for the west corner of herein described tract, and the north corner of Lot 1B, Block 1, of said Resubdivision Plat of Lots 1A & 1B, Block 1 East Hansmann Subdivision, for the **POINT OF BEGINNING** of the herein described tract from which a 1/2" iron rod found with cap stamped "RPLS 4233" bears N41°04'05"W a distance of 0.99';

THENCE with the northwest boundary of herein described tract and the southeast line of Interstate Highway 35 **N45°23'18"E** a distance of **1461.91'** to a **1/2" iron rod set with cap stamped "Tri-Tech"** for the north corner of the herein described tract, the west corner of a 125.00 acre tract called Lot 1, Block 1, Wal-Mart Subdivision, recorded in Volume 9, Page 119 of the Map and Plat Records of Comal County, Texas;

THENCE with northeast boundary of herein described tract and the southwest boundary of said Lot 1, Block 1 **S43°52'05"E** passing a 1/2" iron rod found at a distance of 0.43' and continuing for a total distance of **1445.34'** to a **1/2" iron rod found with cap stamped "C&B-S.A."** for the east corner of the herein described tract;

THENCE with the southeast boundary of herein described tract **S45°16'40"W** a distance of **601.15'** to a **1/2" iron rod found with cap stamped "C&B-S.A."** for an angle point in the southeast boundary of the herein described tract, being a west corner of said Lot 1, Block 1, same being in the northeast boundary of said Lot 13;

THENCE with the south boundary of the herein described tract and the northeast boundary of said Lot 13 the following 6 (six) courses and distances:

1. **N78°44'59"W** a distance of **677.63'** to a **1/2" iron rod found with cap stamped "C&B-S.A."**;
2. **S46°02'39"W** a distance of **177.06'** to a **1/2" iron rod found with cap stamped "C&B-S.A."**;
3. **S48°57'21"E** a distance of **67.00'** to a **1/2" iron rod found**;
4. **S46°23'41"W** a distance of **14.91'** to a **1/2" iron rod found**;
5. **N48°57'21"W** a distance of **67.00'** to a **1/2" iron rod found with cap stamped "C&B-S.A."**;
and
6. **S46°01'40"W** a distance of **324.26'** to a **1/2" iron rod found with cap stamped "RPLS 4233"** for the southwest corner of herein described tract, in the northeast boundary of said Lot 13, same being the east corner of said Lot 1B, Block 1;

THENCE with the southwest boundary of herein described tract, the northeast boundary of said Lot 1B, Block 1 **N41°04'05"W** a distance of **881.29'** to the **POINT OF BEGINNING** containing **40.37 acres**, more or less.

STATE OF TEXAS

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EXHIBIT "B"

COUNTY OF COMAL

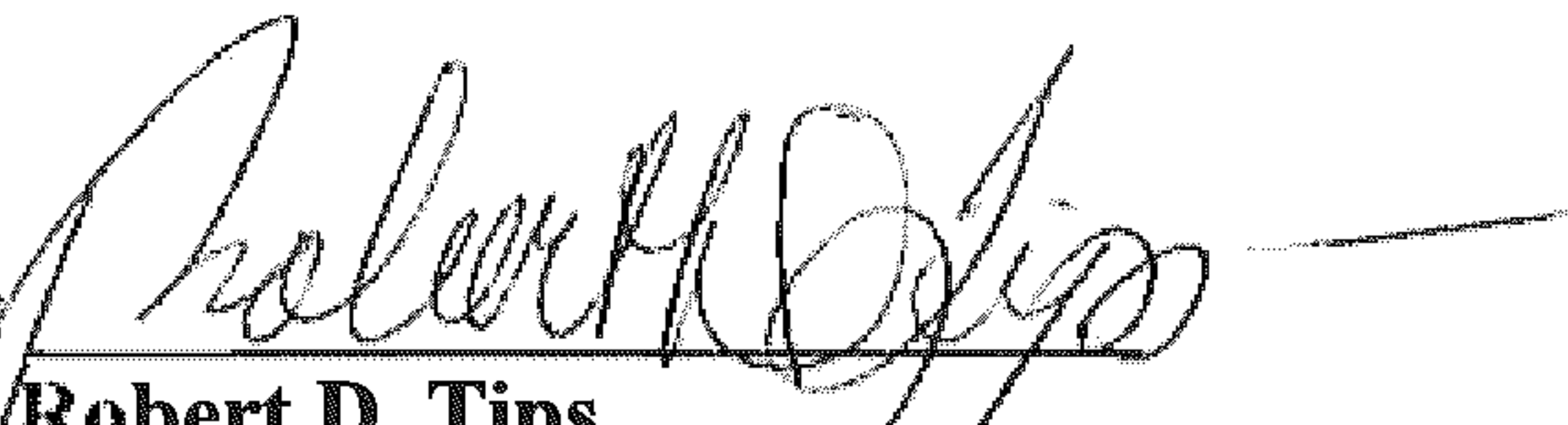
MISSION PARK – NEW BRAUNFELS

CERTIFICATE OF PERPETUAL CARE CEMETERY DEDICATION

Pursuant to Texas Health & Safety Code § 711.034, MP New Braunfels LLC, the undersigned Owner of the Property depicted on the map/plat attached hereto and identified as the **Mission Park New Braunfels – Cemetery and Mausoleum (Sections 1 through 8)**, hereby dedicates such Property exclusively to cemetery purposes including any and all purposes necessary or incidental to establishing, managing, operating and/or maintaining a perpetual care cemetery for the interment of human remains.

The undersigned Owner hereby reserve the right to resurvey and change the size and shape of the Property depicted and described herein, and to amend such depiction and description of the Property attached hereto as authorized by Texas Health & Safety Code § 711.034, and file an amended map, plat and/or description with the Bexar County Clerk unless exempt from such filing requirement in accordance with Texas Health and Safety Code § 711.034(e-1).

EXECUTED and EFFECTIVE this 28th day of February, 2024 by MP New Braunfels LLC, as the Owner of the Property described herein.

By: 
Robert D. Tips
Manager of MP New Braunfels LLC


ACKNOWLEDGEMENT

STATE OF TEXAS

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COUNTY OF BEXAR

Before me, the undersigned authority, a notary public for the State of Texas, on this day personally appeared **Robert D. Tips**, Manager of MP New Braunfels LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated. Given under my hand and seal of office, this the 28th day of February, 2024.


Notary Public, State of Texas

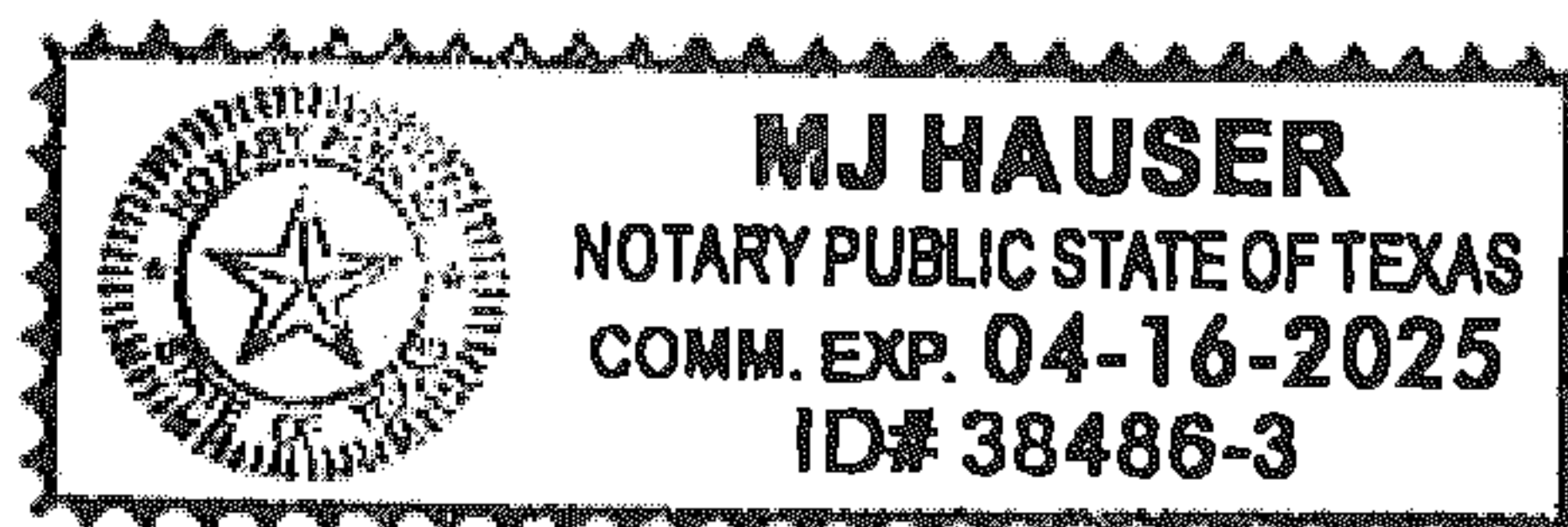
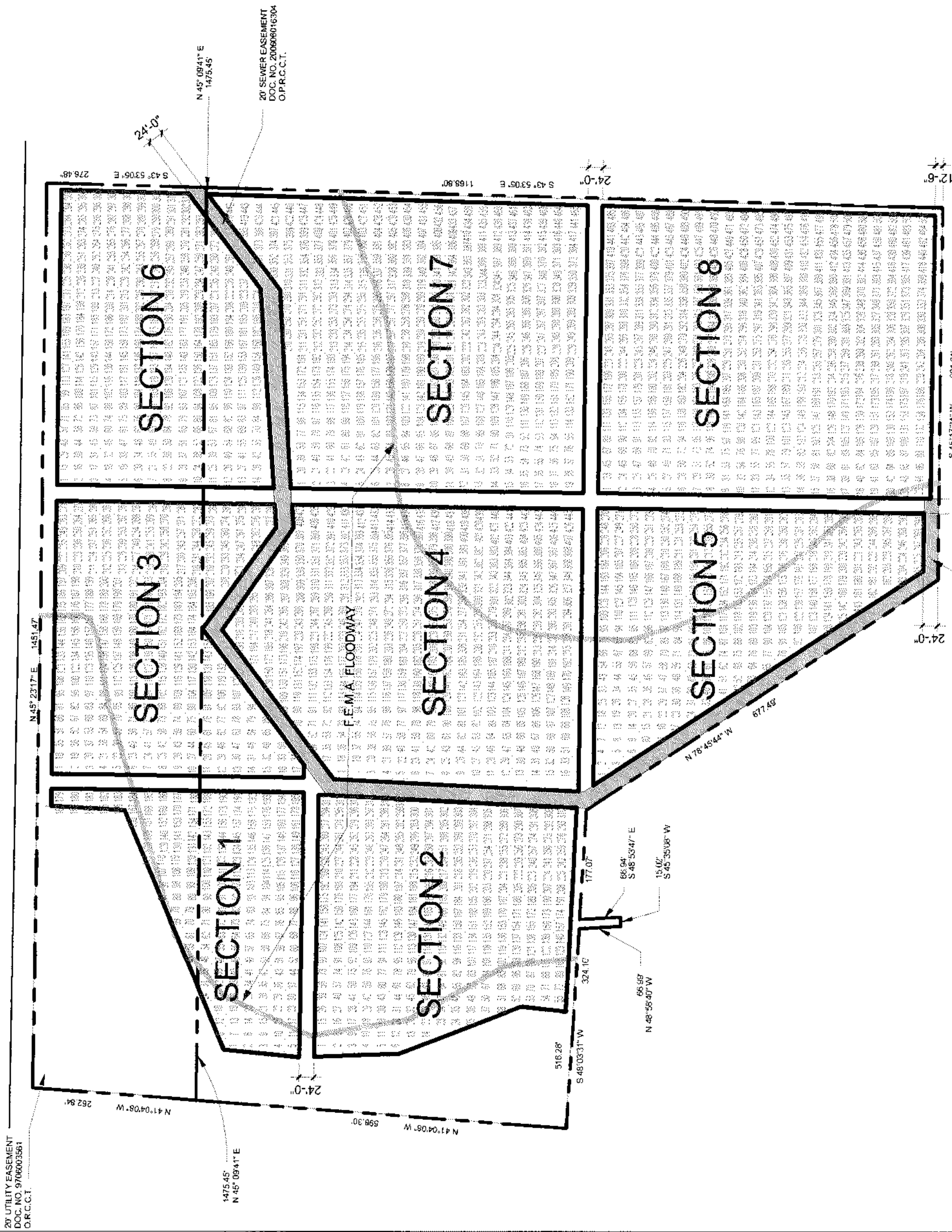
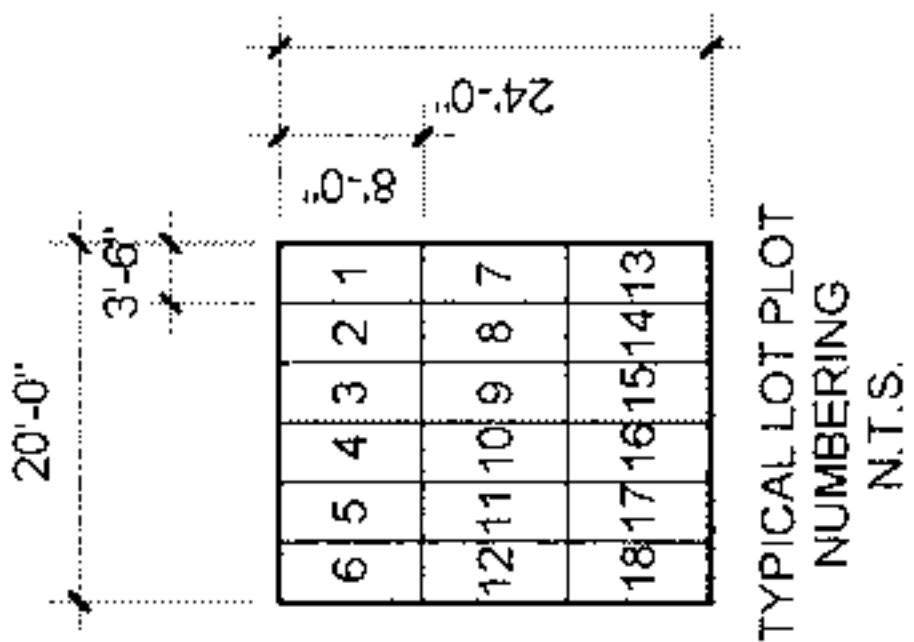
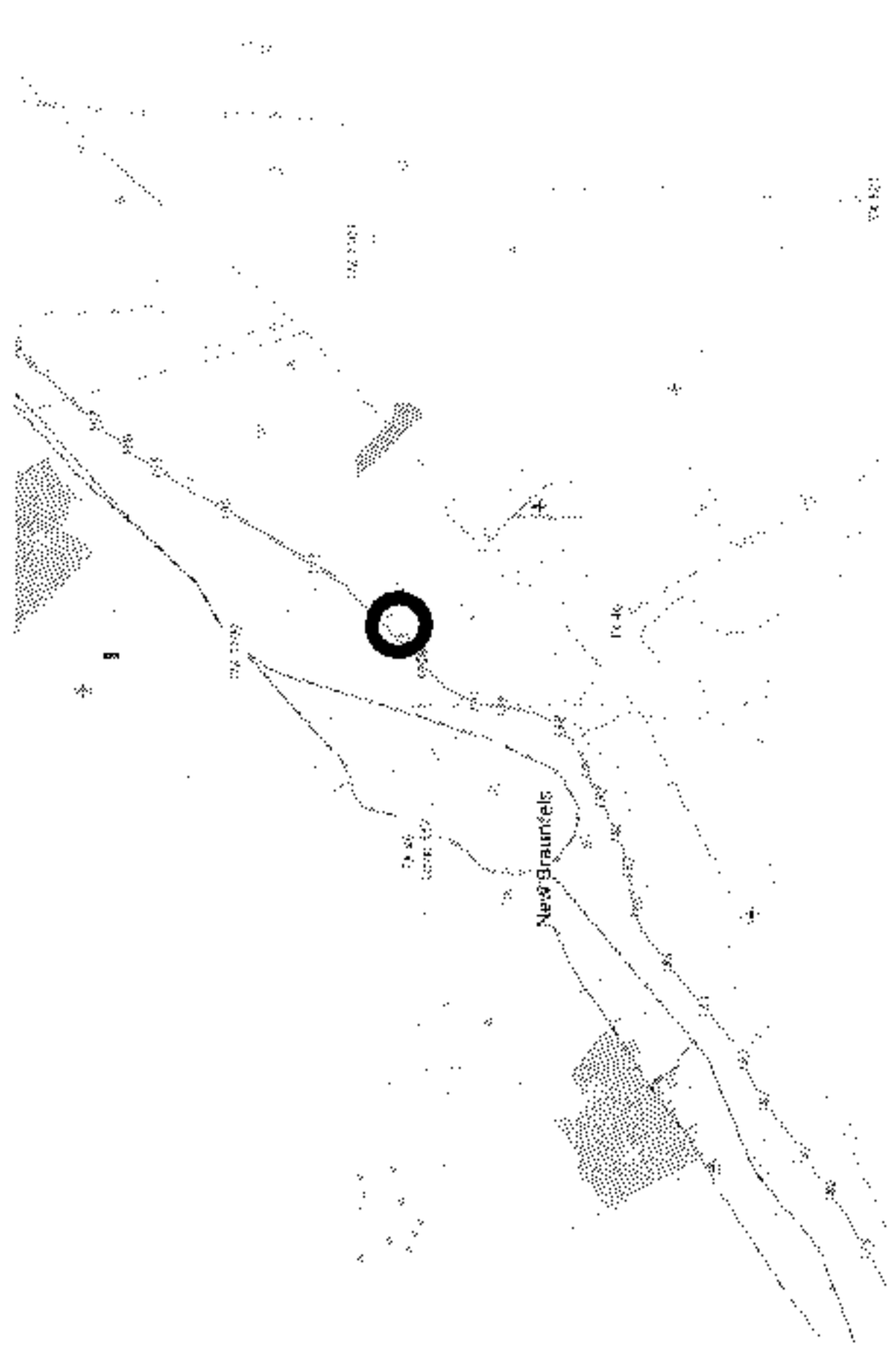


EXHIBIT "B"

INTERSTATE 35 NORTH

LOCATION MAP



Scale 1" = 150' - 0"
BEARINGS ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM GRID BEARINGS

THAT MP NEW BRAUNFELS, LLC, THE OWNER OF A 40.37 ACRE TRACT OF LAND, OUT OF THE A.M. ESNAURIZAR LEAGUE SURVEY ABSTRACT NO.98 COMAL COUNTY, TEXAS, CALLED 40.37 ACRES AS RECORDED IN DOCUMENT NO. 202206025070 OFFICIAL PUBLIC RECORDS, COMAL COUNTY, TEXAS, DOES HEREBY ADOPT THE FOREGOING PLAN FOR SUBDIVIDING, TO BE KNOWN AS SECTIONS 1 THRU 8, AND DOES HEREBY DEDICATE SAID ENUMERATED SECTIONS EXCLUSIVELY FOR CEMETERY PURPOSES IN ACCORDANCE WITH THE STATE OF TEXAS HEALTH AND SAFETY CODE SECTION 711.034. HEREBY RESERVES UNTO ITSELF THE RIGHT TO RE-SURVEY AND ALTER IN SHAPE OR SIZE ANY OR ALL OF SAID ENUMERATE SECTIONS ABOVE, MAPPED & DEDICATED BY ORDER OF ITS DIRECTORS THAT SAME MAY BE RE-SURVEYED AND AN AMENDED MAP THEREOF FILED, SO LONG AS SUCH ALTERATION DOES NOT DISTURB THE REMAINS OF ANY DECEASED BURIALS INTERRED IN ANY OF THE CEMETERY SECTIONS.

IN WITNESS WHEREOF, MP NEW BRAUNFELS, LLC, AFORESAID, HAS DULY AUTHORIZED AND CAUSED THESE PRESENT TO BE SIGNED BY ROBERT D. TIPS, ITS PRESIDENT.

THIS 28th DAY OF February, 2024 AD

Robert D. Tips
ROBERT D. TIPS
PRESIDENT

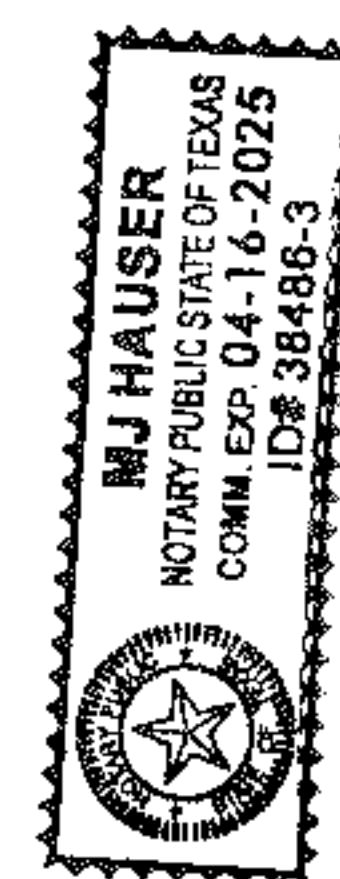
STATE OF TEXAS COUNTY OF BEXAR

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED ROBERT D. TIPS KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE

THIS 28th DAY February, 2024

MJ Hauser
NOTARY PUBLIC, STATE OF TEXAS

MY COMMISSION EXPIRES: 4-16-2025 NOTARY ID# 38486-3



MISSION PARK - NEW BRAUNFELS CEMETERY AND MAUSOLEUM

EXHIBIT "B"

Grantee Mailing Address:

Perpetual Care Cemetery Dedication Mission Park New Braunfels – Cemetery and Mausoleum

PO Box 14000

San Antonio, Texas 78214

Filed and Recorded
Official Public Records
Bobbie Koepf, County Clerk
Comal County, Texas
03/08/2024 08:31:28 AM
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Bobbie Koepf