

TCEQ Docket No. 2007-0395-SLG

In the Matter of the Application of
Gustavo Hernandez Ortega
For Registration No. 701896

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Before the
Texas Commission On
Environmental Quality

Executive Director's Supplemental Information in Response to Motions to Overturn the Issuance of Registration No. 710896 to Gustavo Hernandez Ortega to Land Apply Domestic Septage

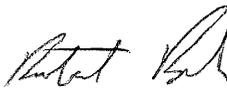
At the request of TCEQ's Office of General Counsel, the Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files the attached supplemental information in the matter of the Motions to Overturn (MTOs) the Executive Director's decision to issue registration no. 701896 to Gustavo Hernandez Ortega (Applicant) for land application of domestic septage.

The attached documents are TCEQ's investigation report of April 13, 2006 of the proposed land application site, and two TCEQ inter-office memorandums dated October 5, 2006 and February 19, 2007, respectively, entitled "Additional Agronomic Management Plan Recommendations for Gustavo Ortega, New Registration No. 710896, Hunt County."

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division

by 
Robert D. Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772

CHIEF CLERKS OFFICE

2007 MAY -3 PM 4:11

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Texas Commission on Environmental Quality
Investigation Report
GUSTAVO ORTEGA
CN602999963

ORTEGA DOMESTIC SEPTAGE SLUDGE SITE

RN104916820

Investigation # 456019

Incident #

Investigator: SHANE ISBELL

Site Classification

Conducted: 04/13/2006 -- 04/13/2006

No Industry Code Assigned

Program(s): SLUDGE

Investigation Type : Compliance Investigation

Location : SITE IS LOCATED SOUTH OF CR 3204 APPROX 3500 FT SE OF THE INTERSECTION OF FM 513 AND CR 3209 AND APPROX 5.2 MI NORTH OF THE INTERSECTION OF FM 513 AND US HWY 69 IN HUNT COUNTY

Additional ID(s) : 710896

Address: ; ,

Activity Type: REGION 04 - DFW METROPLEX
SGSTEASSE - SGE Site Assessment

Principal(s) :

Role	Name
RESPONDENT	GUSTAVO ORTEGA

Contact(s) :

Role	Title	Name	Phone
Regulated Entity Contact	OWNER	GUSTAVO ORTEGA	Work (903) 513-0811

Other Staff Member(s) :

Role	Name
QA Reviewer	JEFF TATE
Supervisor	JEFF TATE

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
SLUDGE BENEFICIAL USE SITE ASSESSMENT CHEC	Ortega

Investigation Comments :

On April 13, 2006, Mr. Shane Isbell, Environmental Investigator of the Texas Commission on Environmental Quality (TCEQ), accompanied by Jeff Tate, TCEQ Water Quality Team Leader, conducted a site assessment of the beneficial land use site for Mr. Gustavo Ortega, (proposed TCEQ Permit #710896). Mr. Gustavo, Owner and Operator, was contacted on April 11, 2006, to schedule the site assessment. Mr. Gustavo and Mr. Fred Wethers were present during the site assessment.

The registration application indicates a request to permit 45.3 acres within an approximate 55.1 acre tract (page 3 of the application). The application packet that the TCEQ DFW regional office received did not contain the USDA Natural Resources Conservation Service (NRCS) Soil Map, the required FEMA map, and the USGS Topographic Map. The USGS topographic map was provided to the investigator at the time of the site assessment by Mr. Ortega. The FEMA map was faxed to the investigator on April 14, 2006 by Mr. Ortega.

The proposed application site is located on the eastern side of County Road 3209. During the site assessment, a measuring wheel was used to measure the proposed buffer zones. The buffer zones were checked to ensure they were within the rules and regulations of 30 TAC 312. According to the diagram in the application, the required 50' buffer zone from the property boundary is properly labeled for all four sides of the property. Two stock ponds are located on the property of the adjacent landowner to the north of the application area, the nearest one being approximately 80 feet to the property line. There is also a stock pond located on the adjacent property to the west of the northwestern portion of the site approximately 40 feet from the western property line. A 200' buffer zone is required for each of the stock ponds located on the adjacent properties. Also, a 200' buffer zone is required for the creek located on the eastern side of the property. The creek runs parallel to the eastern property line and appears to run approximately 205 to 235 feet from the property line, throughout the perimeter of the eastern property line. By using the USGS topographic map to approximate the slope, there appears to be approximately a 4% gradient slope, sloping to the east. The slope begins approximately 300 feet from the western property line. There were also two drainage channels located on the southern property line. The one located in the southeastern portion of the site was approximately 130 feet long and varied in width, approximately 12 to 30 feet wide (Attachment 1 -- See Attached Photos 3-6). The second channel or drainage conveyance observed on the southwestern portion of the site was approximately 100 feet long and 30 feet wide (Attachment 1 -- See Attached Photos 9-11). During the site assessment the drainage channel located in the southeastern portion of the site did have water standing in it. However, the one in the southwestern portion of the site did not have standing water present. During the site assessment an adjacent land owner pointed out a concrete pad located on the property, and indicated that this was an abandoned well (Attachment 1 -- See Attached Photo 8). There is not any evidence of an active water, oil, or gas well onsite. It could not be determined if this was a previous well or just debris. This is not identified on the USGS map provided by Mr. Ortega. There were not any residences observed located within 750 feet of the proposed site.

The soil type was evaluated during the assessment. One hole was dug to a depth of > 30 inches (Attachment 1 -- See Attached Photo 1). The soil types noted during the site assessment were consistent to what was indicated on the packet. The landowner stated that he plans on seeding the site with Coastal Bermuda grass.

In summary, the following items were noted:

1. Two drainage channels located on the southern property line.
2. Concrete pad and debris pile alleged to be an abandoned well.
3. USDA NRCS soil map was not included in the BLU application packet.
4. Currently the site consists of native vegetation, the BLU application indicates that the application rates were calculated using Coastal Bermuda. The landowner indicated he plans to seed the site with Coastal Bermuda grass if the proposed site is approved.
5. The following items were not correctly identified on the USGS Topographical map: 3 offsite stock ponds and 2 drainage channels noted on the proposed BLU site.

No Violations Associated to this Investigation

Signed Shane Shell
Environmental Investigator

Date 4-28-06

Signed [Signature]
Supervisor

Date 4-28-06

Attachments: (in order of final report submittal)

Enforcement Action Request (EAR)

Maps, Plans, Sketches

Letter to Facility (specify type) : _____

Photographs

Investigation Report

Correspondence from the facility

Sample Analysis Results

Other (specify) : _____

Manifests

NOR

TCEQ

Region 4 - DFW Office



Attachment 2 of 4

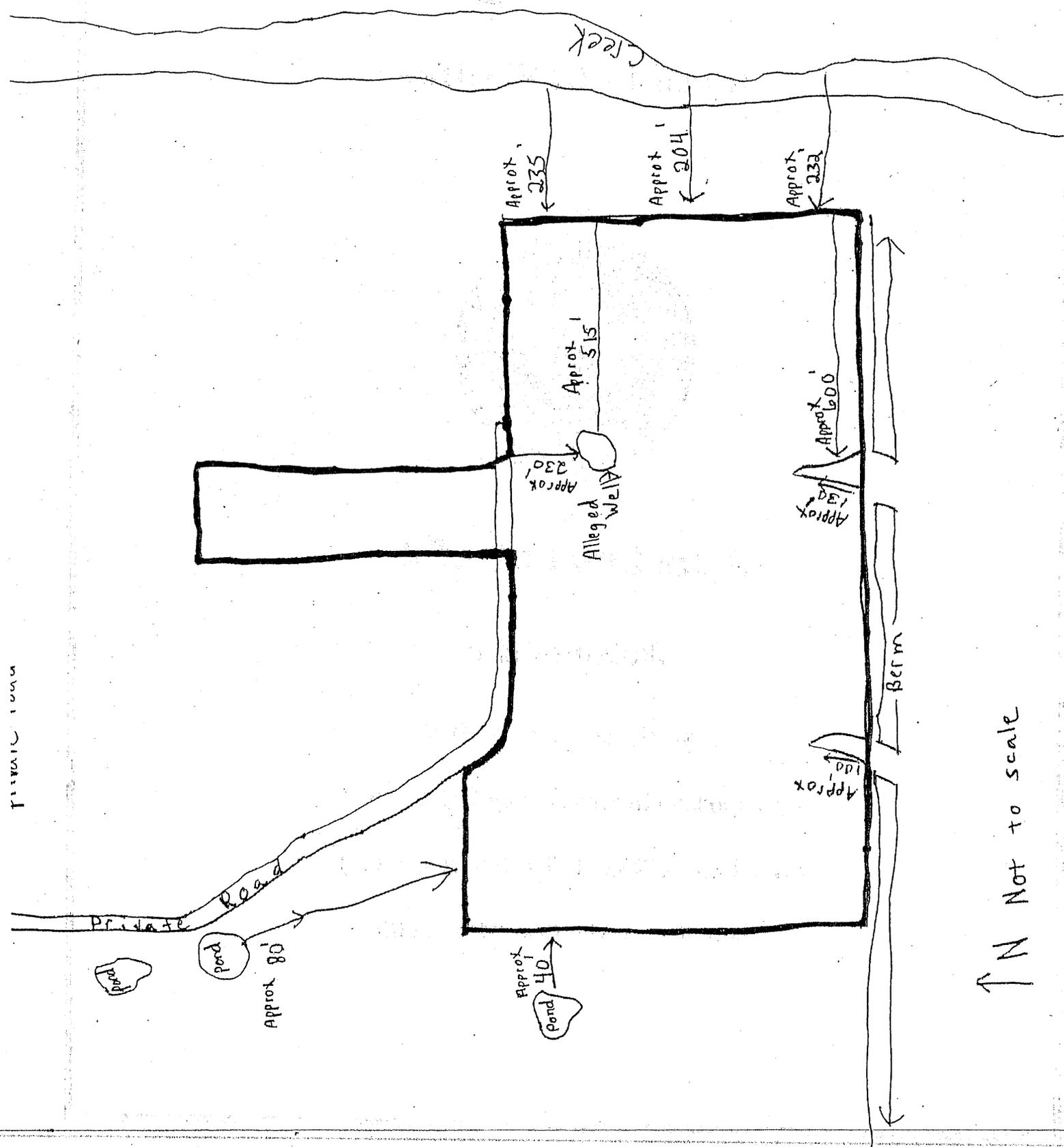
Sketch of site

Investigation No. 456019

Proposed Gustavo Ortega BLU site

Lone Oak, CR3209, TX (Hunt County)

Date of Investigation:04/13/2006



↑ N Not to scale

TCEQ

Region 4 - DFW Office



Attachment 3 of 4

FEMA Map

Investigation No. 456019

Proposed Gustavo Ortega BLU site

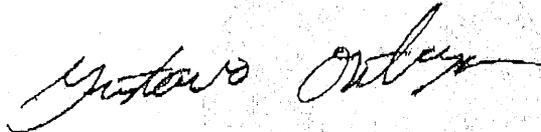
Lone Oak, CR3209, TX (Hunt County)

Date of Investigation: 04/13/2006

Shane Isbell:

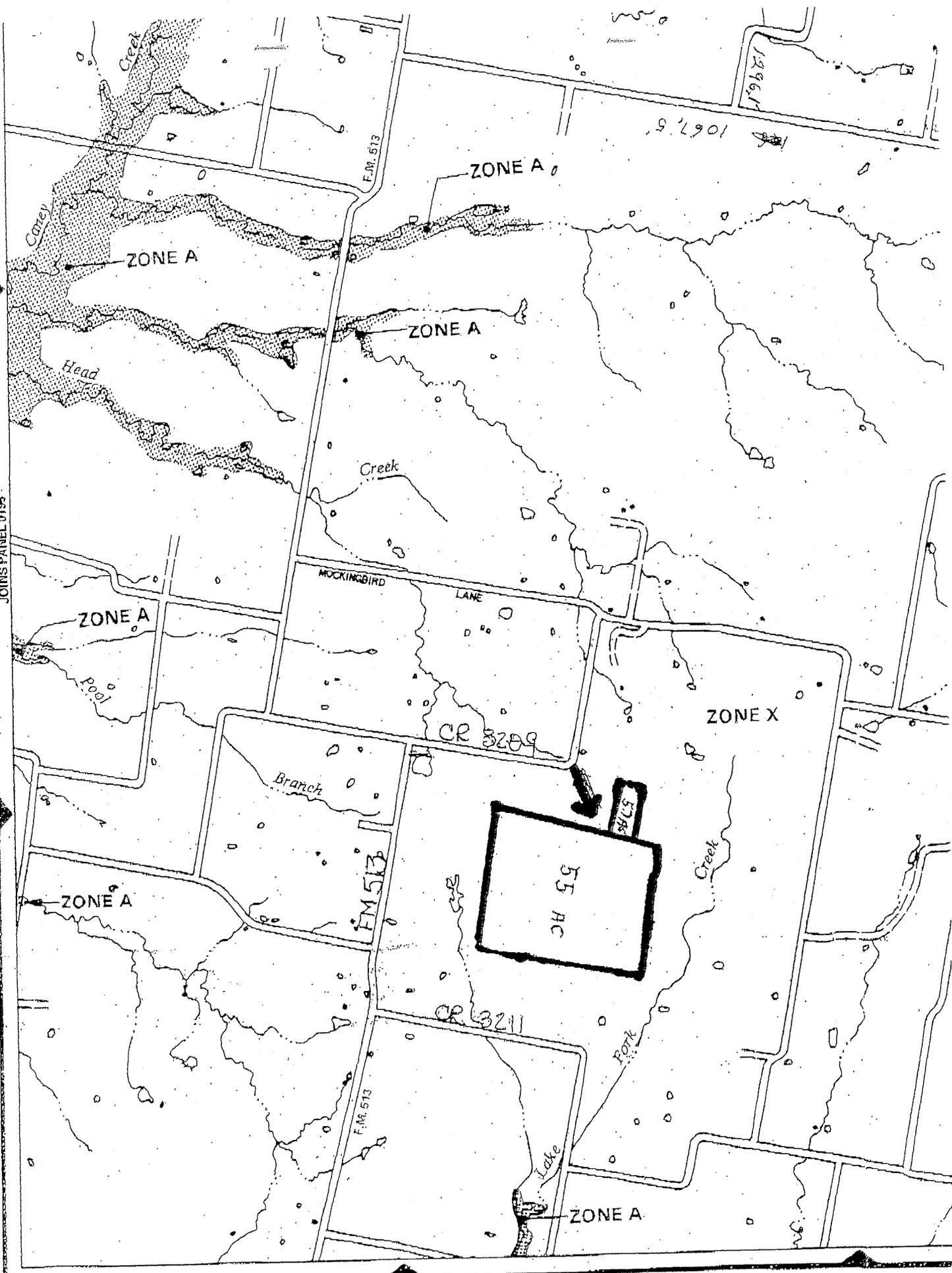
These are the maps and the info that I believe will be needed to assist you. If you would, please look these over and contact me at (903)-513-0811.

Gustavo Ortega,



RECEIVED
APR 14 2006
TCEQ
REGION 4 - DFW

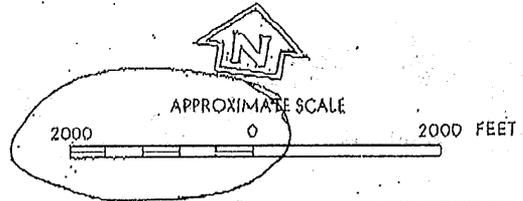
JOINS PANEL 0195



1" = 2000'

Refer to the Flood Insurance Rate Map Effective date shown on this map to determine when actuarial rates apply to structures in the zones where elevations or depths have been established.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at (800) 638-6620.



NATIONAL FLOOD INSURANCE PROGRAM

FIRM FLOOD INSURANCE RATE MAP HUNT COUNTY, TEXAS AND INCORPORATED AREAS

PANEL 225 OF 350

(SEE MAP INDEX FOR PANELS NOT PRINTED)

CONTAINS:

<u>COMMUNITY</u>	<u>NUMBER</u>	<u>PANEL</u>	<u>SUFFIX</u>
CAMPBELL TOWN OF	481504	0225	E
UNINCORPORATED AREAS	480363	0225	E



PANEL LOCATION

MAP NUMBER

48231G0225 E

EFFECTIVE DATE:

SEPTEMBER 4, 1991



Federal Emergency Management Agency



LEGEND

SPECIAL FLOOD HAZARD AREAS INUNDATED BY 100-YEAR FLOOD

ZONE A No base flood elevations determined.

ZONE AE Base flood elevations determined.

ZONE AH Flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations determined.

ZONE AO Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding; velocities also determined.

ZONE A99 To be protected from 100-year flood by Federal flood protection system under construction; no base flood elevations determined.

ZONE V Coastal flood with velocity hazard (wave action); no base flood elevations determined.

ZONE VE Coastal flood with velocity hazard (wave action); base flood elevations determined.

FLOODWAY AREAS IN ZONE AE

OTHER FLOOD AREAS

ZONE X Areas of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood.

OTHER AREAS

ZONE X Areas determined to be outside 500-year floodplain.

ZONE D Areas in which flood hazards are undetermined.

— Floodplain Boundary

— Floodway Boundary

— Zone D Boundary

— Boundary Dividing Special Flood Hazard Zones.

513 — Base Flood Elevation Line; Elevation in Feet*

○—○ Cross Section Line

IEL 987) Base Flood Elevation in Feet Where Uniform Within Zone*

RM 7_x Elevation Reference Mark

■M 1.5 River Mile

*Referenced to the National Geodetic Vertical Datum of 1929

NOTES

This map is for use in administering the National Flood Insurance Program; it does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size, or all planimetric features outside Special Flood Hazard Areas. The community maps repository should be consulted for possible updated flood hazard information prior to use of this map for property purchase or construction purposes.

Coastal base flood elevations apply only landward of 0.0 NGVD, and include the effects of wave action; these elevations may also differ significantly from those developed by the National Weather Service for hurricane evacuation planning.

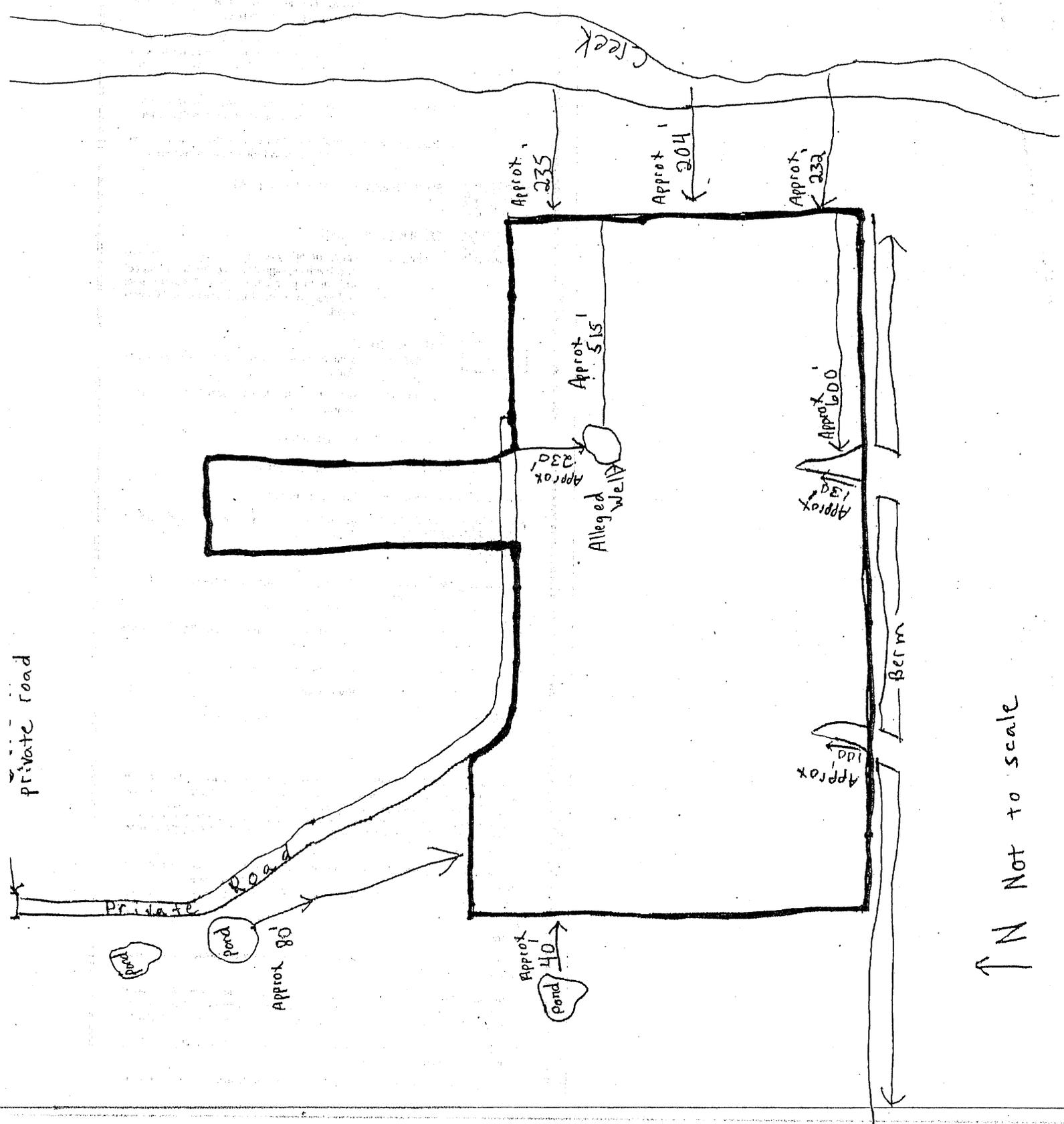
Areas of special flood hazard (100-year flood) include Zones A, AE, AH, AO, A99, V, and VE.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures.

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the Federal Emergency Management Agency.

Floodway widths in some areas may be too narrow to show to scale. Floodway widths are provided in the Flood Insurance Study Report.

Elevation reference marks are described in the Flood Insurance Study Report.



↑ N Not to scale

TCEQ

Region 4 - DFW Office



Attachment 4 of 4

USGS Topographic Map

Investigation No. 456019

Proposed Gustavo Ortega BLU site

Lone Oak, CR3209, TX (Hunt County)

Date of Investigation: 04/13/2006

- - - - - Reports
- - - - - Boundary
- - - - - BLM Site
- - - - - Boundary
- - - - - 50' Buffer
- - - - - Zone

B. No private water supply wells within 150' of property or on property

G. No irrigation conveyance canal on or within 10' of property.

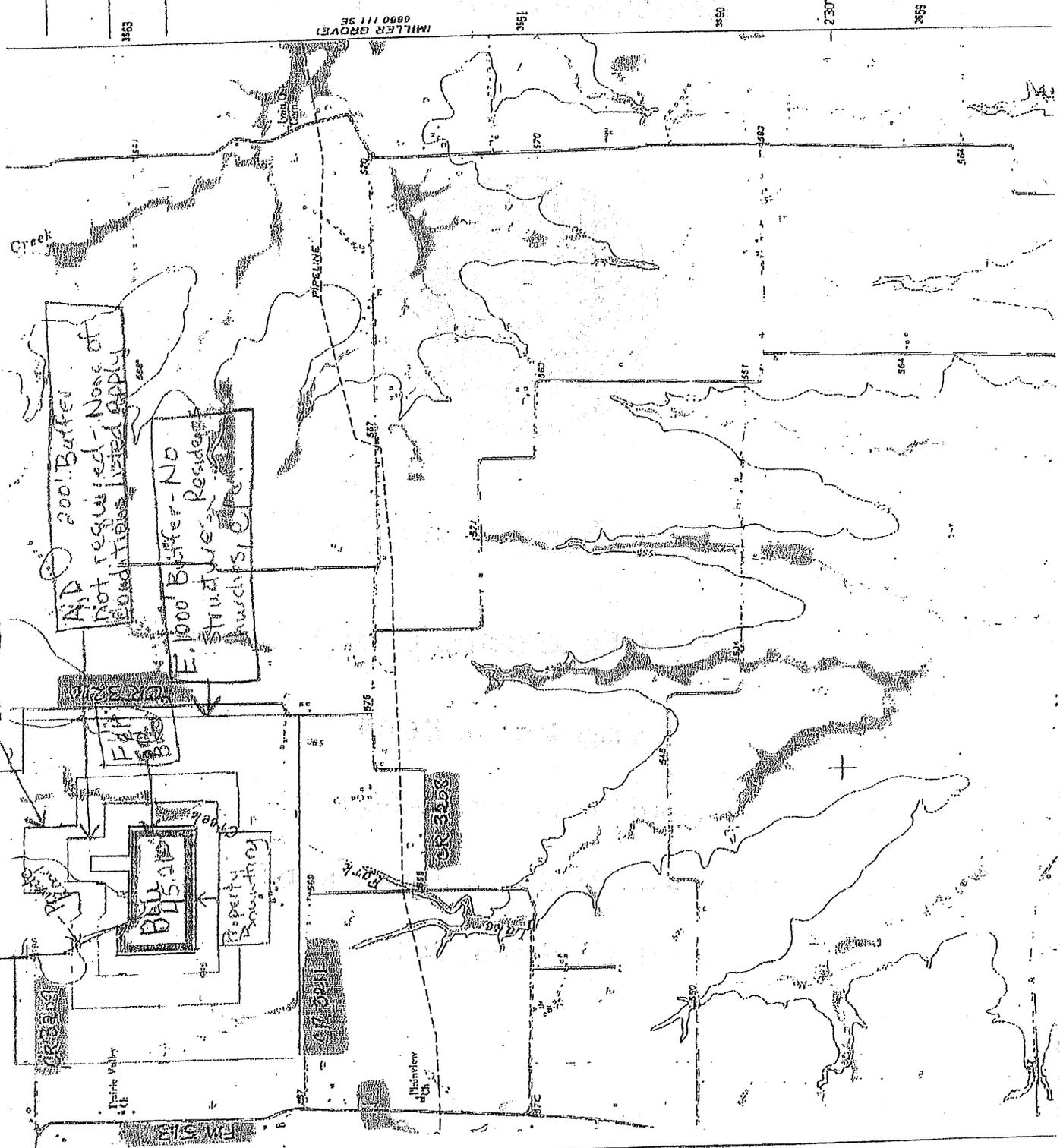
C. No private water on or within 500' of property

A. 200' Buffer
Not required - None of conditions listed apply

E. 1000' Buffer - No Structures or Residences
Muschler Co.

BLM 415.112

Property Boundary



Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Katherine Faz, Permit Coordinator
Land Applications team

Date: October 05, 2006

From: Mike Chadwick, P.G. *MAC 10/05/06*
Water Quality Assessment Team

Subject: Additional Agronomic Management Plan Recommendations for Gustavo Ortega, New Registration No. 710896, Hunt County

Based upon review of the permit application, TCEQ Dallas Ft. Worth Region 4 site inspection, an evaluation of geology, groundwater information, and concerns expressed during the public meeting August 29, 2006, the following Agronomic Management Plan is recommended to be incorporated into the registration to be protective of surface and groundwater quality. This memorandum supersedes the recommendation memorandum dated August 31, 2006.

The Gustavo Ortega Agronomic Management Plan is divided into two parts. Part one will allow the applicant to apply septage in a manner that completely incorporates it into the soil profile and achieves a soil cover during conditions when the cover vegetation is dormant or when the applicant is attempting to establish cover vegetation.

Part two will allow the applicant to apply septage on the surface after common Bermuda is established, well maintained, and achieves at least a 90% ground coverage in all areas of the for Gustavo Ortega property.

The Gustavo Ortega Agronomic Management Plan is more restrictive than the 30TAC 312 rules in that no reduction of buffer areas to surface water is allowed from incorporation of septage into the soil profile.

The Gustavo Ortega Agronomic Management Plan Part One (Map to accompany showing buffer areas excluding septage application)

The applicant will only land apply septage treated to the vector attraction and pathogen requirements set forth by 30 TAC 312. The applicant will land apply septage at the approved surface coverage rate of 68,077 gallons/acre. The example is given that if the capacity of the truck contains 3,600 gallons, then an area 50 feet x 50 feet will receive a truck load application of septage.

Example: $3,600 \text{ gal} / 68,077 \text{ gal/acre} \times 100\% = 0.5288$ of an acre
 $0.5288 \text{ acre} \times 43,560 \text{ ft}^2/\text{acre} = 2,303 \text{ ft}^2$ $47.99 \text{ feet} \times 47.99 \text{ feet} = 2,303 \text{ ft}^2$
47.99 is then rounded to 50 feet x 50 feet

The applicant will land apply in a manner that completely incorporates the septage into the soil profile and achieves a soil cover. Deep plowing is acceptable if the soil completely covers the

applied septage. The area which has received the septage will be incorporated within 48 hours of application. The septage that is completely covered with soil will then be seeded with common Bermuda. This area will not receive any additional septage application until all the available land in the application area has received one septage application.

The applicant will not apply septage on the land surface within 200 feet from the centerline of either of the two low drainage areas nor within 150 feet from the broken concrete area that was cited as a possible well site. The applicant will not apply septage within 200 feet from any surface water, including neighboring, or adjacent land owner ponds or 200 feet from Lake Fork Creek. The applicant will not apply septage within 50 feet from the property boundary. The 200 feet surface water buffer may require more distance than the applicants proposed 50 foot buffer from the property boundary.

Annual soil sampling will only occur in areas which have received septage application the year soil sampling occurs.

**The Gustavo Ortega Agronomic Management Plan
Part Two (Map to accompany showing buffer areas excluding septage application)**

The applicant will only land apply septage treated to the vector attraction and pathogen requirements set forth by 30 TAC 312. The applicant will apply septage on the surface, with no incorporation into the soil profile, only after common Bermuda is established, well maintained, and achieves greater than a 90% ground coverage over the entire Gustavo Ortega property.

The applicant will not apply septage on the land surface within 200 feet from the centerline of either of the two low drainage areas nor within 150 feet from the broken concrete area that was cited as a possible well site. The applicant will not apply septage within 200 feet from any surface water, including neighboring, or adjacent land owner ponds or 200 feet from Lake Fork Creek. The applicant will not apply septage within 50 feet from the property boundary. The 200 feet surface water buffer may require more distance than the applicants proposed 50 foot buffer from the property boundary.

The applicant will maintain the vegetative filter within the fifty foot boundary buffer

The applicant will harvest the common Bermuda at least twice per year where the grass will be cut and removed from the property. The grass height will be maintained between 4 and 12 inches. The applicant will also maintain the vegetative filter between 4 and 12 inches within the fifty foot property boundary buffer.

The applicant may choose to over-seed the warm season common Bermuda with a cool season grass to further establish an annual vegetative cover and continue septage application on an annual basis.

Should the cover vegetation exhibit less than 90% coverage anywhere on the Gustavo Ortega property, whether in the buffer areas or in the land application area, any time during the year, either from seasonal change or from environmental stress caused by agricultural drought, the applicant will land apply septage according to the Gustavo Ortega Agronomic Management Plan Part One, in a manner that completely incorporates it into the soil profile and achieves a soil

cover. Deep plowing is acceptable if the soil completely covers the applied septage. The area which has received the septage will be incorporated within 48 hours of application. The septage that is completely covered with soil will then be seeded with common Bermuda. This area will not receive any additional septage application until all the available land in the application area has received one septage application.

Upon re-establishing a greater than 90% cover vegetation in all areas of the Gustavo Ortega property, the applicant may again land apply septage at the surface following the Gustavo Ortega Agronomic Management Plan, Part Two.

Applicable rules for the above recommendations:

30 TAC 312 Subchapter B

§312.44. Management Practices.

(c) Distance to Surface Waters.

(1) Unless the sewage sludge is incorporated into the soil within 48 hours of application and a vegetated cover is established between the application area and all adjacent surface waters, bulk sewage sludge not meeting Class A pathogen requirements and applied to agricultural land, forest, or a reclamation site shall maintain a buffer zone of at least 200 feet from surface waters.

(2) In cases where sludge is both incorporated into the soil within 48 hours of application and a vegetated cover is established between the application area and all adjacent surface waters, bulk sewage sludge not meeting Class A pathogen requirements and applied to agricultural land, forest, or a reclamation site shall maintain a buffer zone of at least 33 feet from surface waters.

(d) When bulk sewage sludge not meeting Class A pathogen requirements is applied to agricultural land, forest, or a reclamation site, the following buffer zones shall be established for each application area, unless otherwise specified by the commission:

- (1) private water supply well, 150 feet;
- (2) public water supply well, intake, public water supply spring or similar source, public water supply treatment plant, or public water supply elevated or ground storage tank, 500 feet;
- (3) Solution channel, sinkhole, or other conduit to groundwater, 200 feet;
- (4) Established school, institution, business, or occupied residential structure, 750 feet;
- (5) Public right of way, 50 feet;
- (6) Irrigation conveyance canal, 10 feet;
- (7) Property boundary, 50 feet;

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Katherine Faz, Permit Coordinator **Date:** February 19, 2007
Land Applications team

From: Mike Chadwick, P.G. *MJC 2-19-07*
Water Quality Assessment Team

Subject: Additional Agronomic Management Plan Recommendations for Gustavo Ortega, New Registration No. 710896, Hunt County

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The Gustavo Ortega Agronomic Management Plan is more restrictive than the 30TAC 312 rules in that no reduction of buffer areas to surface water is allowed from incorporation of septage into the soil profile.

The Gustavo Ortega Agronomic Management Plan

Part One (Map to accompany showing buffer areas excluding septage application)

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The applicant will harvest the common Bermuda at least twice per year where the grass will be cut and removed from the property.

The applicant will over-seed the warm season common Bermuda with a cool season grass if septage is applied during the dormancy of the Bermuda grass. Septage will be applied when the Bermuda grass or cool season grass is at least 3 inches in height.

Should the cover vegetation exhibit less than 90% coverage anywhere on the Gustavo Ortega property, whether in the buffer areas or in the land application area, any time during the year, either from seasonal change or from environmental stress caused by agricultural drought, the applicant will land apply septage according to the Gustavo Ortega Agronomic Management Plan Part One, in a manner that completely incorporates it into the soil profile and achieves a soil cover. Deep plowing is acceptable if the soil completely covers the applied septage. The area which has received the septage will be incorporated within 48 hours of application. The septage that is completely covered with soil will then be seeded with common Bermuda. This area will

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- (3) Solution channel, sinkhole, or other conduit to groundwater, 200 feet;
- (4) Established school, institution, business, or occupied residential structure, 750 feet;
- (5) Public right of way, 50 feet;
- (6) Irrigation conveyance canal, 10 feet;
- (7) Property boundary, 50 feet;