

January 4, 2010

Ms. LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, TX 78711-3087

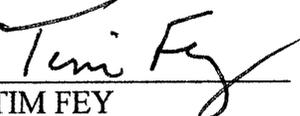
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 JAN -4 AM 11:44
CHIEF CLERKS OFFICE

**Re: AGGREGATE INDUSTRIES – WCR, INC.
TCEQ DOCKET NO. 2009-1842-AIR; PERMIT NO. 83755**

Dear Ms. Castanuela:

Please find enclosed an original and seven copies of our Reply to Responses from the Texas Commission on Environmental Quality (TCEQ) Executive Director, TCEQ Public Interest Counsel, and Applicant regarding requests for a contested hearing on the above-referenced matter. Please feel free to contact us in writing or by telephone (listed below) if you need further information.

Respectfully submitted,


TIM FEY


SHARLENE FEY

ADDRESS AND PHONE:
6028 FM 482, New Braunfels, TX 78132
830-609-0126 (home phone)
210-414-6597 (cell phone)
feyfam@att.net

Enclosures
Cc: See Mailing List (Attachment A)

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ):

We appreciate the opportunity to reply to the responses of the TCEQ Office of Public Interest Counsel (OPIC), TCEQ Executive Director (ED), and Applicant, Aggregate Industries-WCR, Inc (AI), made on December 18, 2009, regarding Air Quality Permit No. 83755. This permit would authorize construction of a Rock Crushing Plant at 5900 FM 482, New Braunfels, Comal County, Texas.

Our reply is in addition to previous written comments submitted by Tim Fey by letter dated March 20, 2008, oral comments submitted by Sharlene Fey and by Tim Fey at a Public Meeting on March 10, 2009, and written comments submitted by Tim Fey and Sharlene Fey by letter dated March 26, 2009. We hereby reaffirm our issues stated in these previous comments. Each and every issue and comment remain outstanding. We believe our issues are disputed questions of fact and that these issues are relevant and material to the decision on the permit. We highly oppose the issuance of this air permit and respectfully ask that the Permit Application be rejected.

We appreciate the reviews and responses of the OPIC, ED and Applicant to the requests for a contested case hearing and agree that this matter should be referred to the State Office of Administrative Hearings (SOAH). In that regard, our replies and clarifications to the responses are stated below:

1. Affected Persons Status and Clarification of Location. We agree that we should be designated "affected persons". However, the responses from OPIC, ED, and AI, together with their maps, indicate that we barely meet the one-mile threshold when in fact we live much closer. Please consider the following:

- Our mailbox at 6028 FM 482 is less than ½ mile from the entrance of AI at 5900 FM 482.
- Our mailbox is located at the end of our driveway on FM 482, but our house, located on 70 acres of farmland, is nestled at the foot of the Balcones Fault (approximately 1,300 feet north of FM 482 and our mailbox).
- Our house is approximately 435 feet away from AI's property line and approximately 2,650 feet (or ½ mile) from AI's proposed primary plant. Our house is around 1,000 feet from AI's proposed secondary plant.
- Our farm land touches the property line with AI.
- AI has designated our house as their "nearest receptor".
- Exhibits 1.1 through 1.4 contain copies of maps from AI's application, marked to show our house and label our land as "Heritage Farm Land" (i.e., owned by the same family for 100 years).
- Additionally, Exhibit 2 is a copy of a map from Dean Word Co.'s renewal which shows that our house is approximately 700 feet from Dean Word's property line and that we may actually be their "nearest receptor" as well.

- In reality, the proposed AI plant would be in our backyard (see photos in Exhibit 3).

2. Denial of Senator Wentworth's Request. We do not agree that Senator Jeff Wentworth's request should be denied. Senator Wentworth represents this area in the Texas State Senate and has been very involved with his constituents' issues. He is named in AI's application.

3. One-Mile Threshold to Determine Affected Persons. It is our understanding that the one-mile threshold is not set by law. If that is the case, we request that additional factors be considered in designating "affected persons". For instance, please consider the massive size of AI's operations (2,000 tons throughput per hour; total of 8,760 hours per year) compared to a standard permit for rock crushers (200 tons throughput per hour and limited to 2,640 hours per year). Then, consider 30 piles of stockpiles, with one at 60 feet and one at 90 feet. We believe contaminants from the higher stock piles may travel farther. Another factor to consider is the adjoining Dean Word plant (maximum of 1,500 tons production per hour; 4,000,000 tons per year). AI and Dean Word would be neighboring operations with adjoining property lines and sharing the same entrance at 5900 FM 482. See Exhibits 1.1 through 1.4. Also, please consider the operations of nearby CEMEX, Chemical Lime, Martin Marietta, and Hanson Aggregates (Exhibit 1.1). With the concentration of other quarry operations and the size of the AI's proposed operation, the one-mile threshold may not tell the whole story, i.e., requestors may marginally miss the distance limitation but may already be impacted by the existing operations which will be greatly magnified by the size of AI's proposed operations. Due to these factors, we believe requestors in at least a 2 to 3 mile radius are impacted significantly more than the general public.

4. Issues for Referral to the SOAH. We believe each and every issue that we have submitted in the comment periods, together with our replies and clarifications, are relevant to the permit decision and should be referred to the SOAH. Our replies to certain exclusions in the responses are provided below, but should not be construed as our only issues. Please refer to our previous written and oral comments.

Reply to OPIC's Recommendation. None at this time. We are supportive of the OPIC recommendations.

Reply to ED's Recommendation. We do not understand why the ED did not include the issues of (1) *Cumulative effects due to other rock quarries in the area* and (2) *Cumulative effects of other rock crushers*. The maps included in Exhibits 1.1 through 1.4 show the concentration of quarrying operations in the area. Dean Word Co. operates right next to the proposed AI site. To model each operation singly would present misleading results and not protect our environment. As stated in previous comments, we are not satisfied with the modeling that was used to prove protectiveness. The modeling techniques and assumptions raise many questions, such as who provided the data and exactly which facilities were included or excluded based on significance or lack thereof. We believe the effects of IH 35 (within the one-mile radius) and rail traffic should be considered. We do not believe a 2008 background factor from a monitor located on Evans Road (over 8 miles away and in Bexar County) or a Comal County background average presents a true picture. Results from a monitor closer to the proposed facility and in place over an extended period of time should be used. If a monitor is not there, please consider setting one up.

We do not agree with the use of averages. We question the terrain and other designations and believe specifications in the modeling need to be readdressed. Please see Exhibit 4 and note that "rotten gravel" was encountered in construction of the Dry Comal Creek Flood Retention Structure. This structure is on the same land parcel of the proposed plant. Does rotten gravel increase emissions? Will AI be able to construct its plant without major devastation to the Balcones Fault and other geological formations? Please consider adding these issues, among others, to the list of issues recommended by the ED.

The ED responded that the following issues were within the TCEQ's jurisdiction, but not within the scope of the air permit review: *adverse effects on the Edwards Aquifer; cumulative effects of other rock crushers; effects on the Edward's Aquifer, ground water, and water quality; other necessary water related approvals; unannounced audits required as part of the permit conditions; and, whether the facility will adversely affect water quality.* Please explain how these issues can be referred to the appropriate division of the TCEQ.

Reply to AI's Recommendation. We believe the following issues, among others, should be added to the list of issues recommended by AI:

. *Cumulative Impacts.* For the same reasons cited above, AI's list should include cumulative impacts. We do not agree with the Executive Director's Response to Comment on this issue or with letters sent directly to us from the TCEQ Office of Permitting and Registration, dated August 18, 2009 and August 20, 2009. The proposed plant is too close to existing operations. Additionally, we do not agree with the justification of the stockpile heights that were provided in said letters.

. *Public Notice.* The issue was not just about the zip code, but also about the entrance at 5900 FM 482 clearly showing the name of "Dean Word Co". There are no signs saying Aggregate Industries, so the public can not tell if a new operation is being proposed.. The TCEQ notification signs are not clearly visible or noticeable (Exhibit 5).

. *Proximity to School.* This should be added as many children and adults travel pass the proposed plant on their way to St. John Paul Catholic High School at 6720 FM 482.

. *Compliance History.* Perhaps this is not required by law, but we believe that this should be an integral part of TCEQ's due diligence in making a permit decision. Information about in-state operations and those outside of the state should be considered.

. *Construction of Comal County Flood Retention Structure.* As stated above, if more actual data is available related to specifications that would be applicable to the plant site (on same parcel of land), then these issues should be addressed (i.e., rotten gravel) and environmental assessments (required by FEMA) should be considered.

. *Geological Features.* We believe the quarrying operations are presenting a risk to the geological structure. This area is filled with caves and springs, some with national prominence such as Natural Bridge Caverns and some without recognition. The issuance of an air permit could cause major devastation to the very geological structure upon which New Braunfels and the surrounding community is built.

. *Quality of Life.* Isn't this the whole purpose of protecting our environment and the air we breathe?

. *Historical Preservation and Land Designation.* We believe there are other governmental agencies within the great State of Texas that would fight to preserve its history and its environment. We believe AI's maps and statements about being surrounded by quarries are misleading. Yes, there are quarries in the area, but only Dean

Word Co. borders a side (see Exhibits 1.1 through 1.4). AI fails to mention the families that live among these existing operations. AI fails to label the historical farms, agriculture operations, schools, parks, cemeteries, chapels, and even, our home (aka "nearest receptor"). AI's maps give the perception that everything is quarry-related. We believe there are records that even show that AI's land, up until recently, was designated as "ranching".

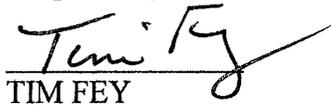
5. Maximum Expected Duration of Hearing. We respectfully request that the OPIC's estimate of nine months from the first date of the preliminary hearing until the proposal for decision be used. However, it is our understanding that a rule would allow this time frame to go as long as one year. Due to the number of issues, we do not agree with the six months recommended by ED and AI.

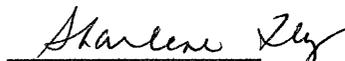
On a separate point, it should be noted that, upon AI's requests, we attended meetings with representatives of AI on May 14, 2008 and on May 28, 2009. We did not agree with any of AI's ideas or proposals. In particular, we did not agree with AI's proposal to build a berm (earthen or trees) on our land to minimize the effects of their proposed operations. In fact, when we asked to see an aerial view on their 3-D computer model, we were shocked to see that the proposed berm was modeled to be on our land! It was clearly evident that they planned to disturb our land for the berm before considering decreasing AI's proposed plant size and allowing space to plant trees or build a berm on AI's land.

Again, we appreciate the opportunity to reply. However, we do feel that there was an unnecessary burden and hardship placed on requestors to provide replies by January 4, 2010. It seems that the OPIC and ED responded in a timely manner on Friday, December 18, 2009. However, with the apparent delay in mail over the holidays, we did not receive our copy from the OPIC or ED until Saturday, December 26, 2009, leaving requestors with only 4 business days to formulate and submit replies. In that regard, we respectfully ask that all replies, whether received timely or late, be considered. Perhaps an extension of time should be granted.

Thank you for your time and consideration of our reply.

Respectfully submitted,


TIM FEY


SHARLENE FEY

ADDRESS AND PHONE:
6028 FM 482, New Braunfels, TX 78132
830-609-0126 (home phone)
210-414-6597 (cell phone)
feyfam@att.net

Attachment A – Mailing List

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Austin, Texas 78711-3087

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, TX 78711-3087

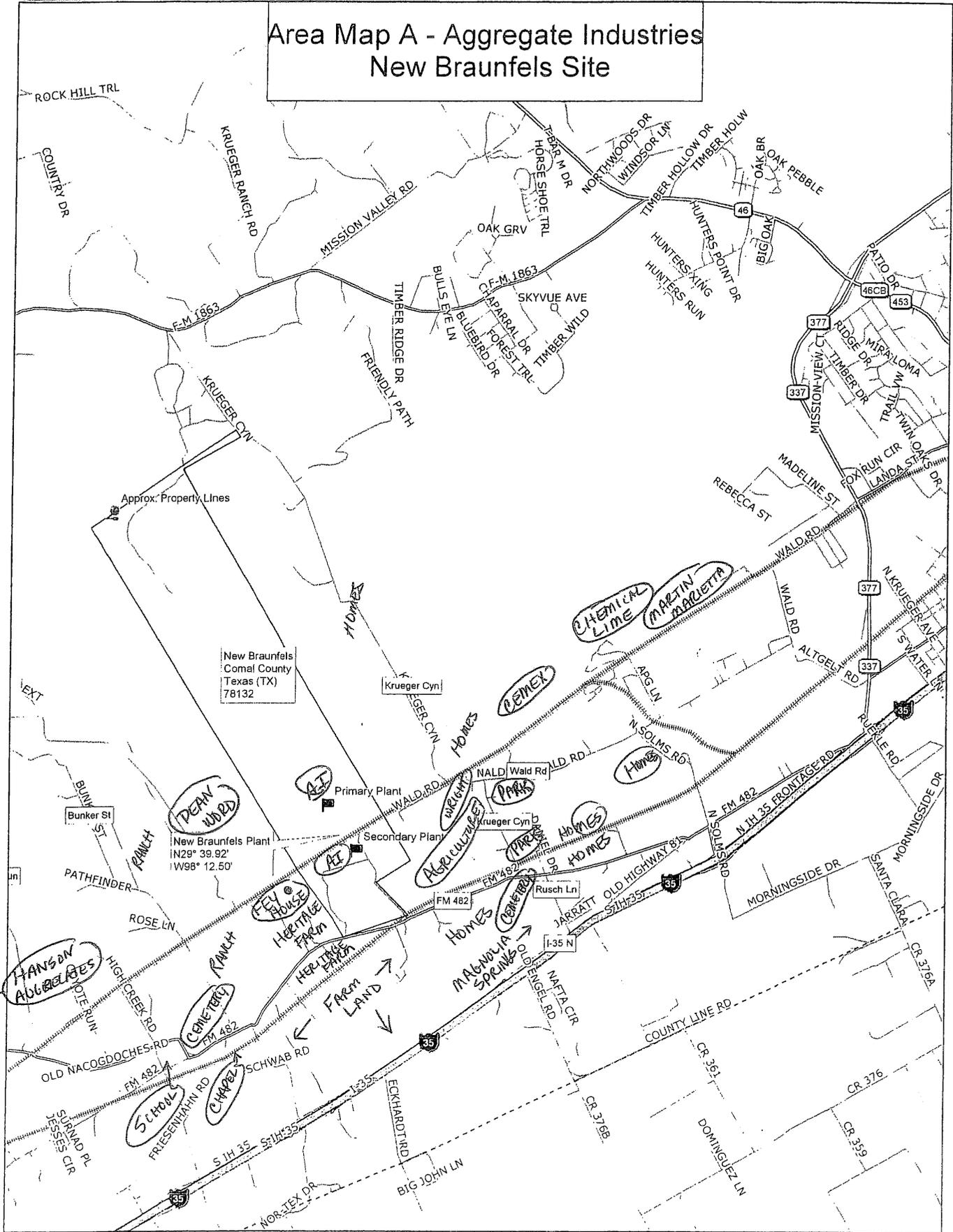
Requestors

Exhibits 1.1, 1.2, 1.3, and 1.4

**Copies of Maps from AI's Application,
Marked to Label the Home of Tim and Sharlene Fey
and Other Designations**



Area Map A - Aggregate Industries New Braunfels Site



Data use subject to license.

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www.delorme.com



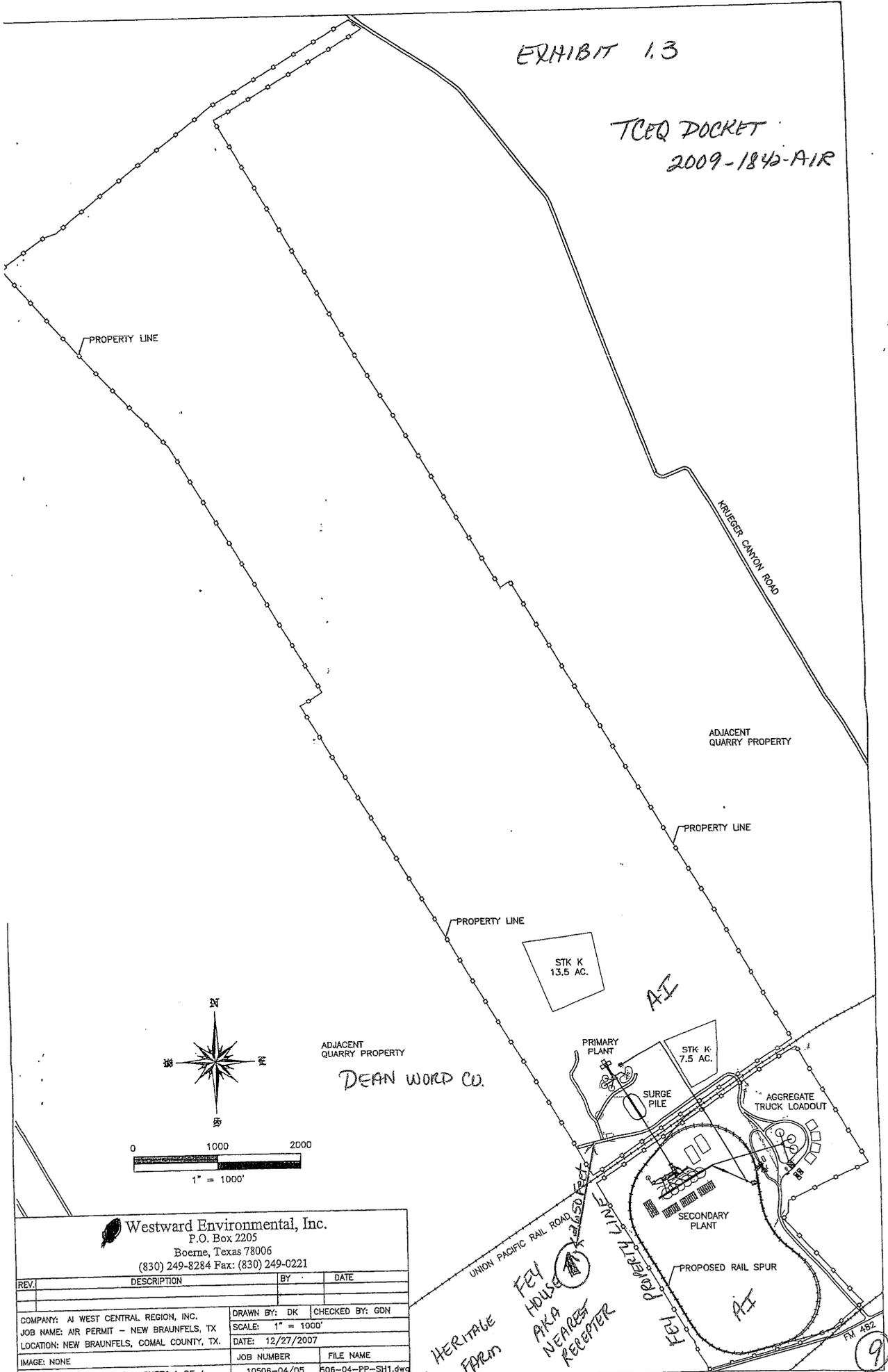
Scale 1 : 50,000

1" = 4,166.7 ft Data Zoom 12-0

7

EXHIBIT 1.3

TCEQ DOCKET
2009-1845-AIR



Westward Environmental, Inc.
P.O. Box 2205
Boerne, Texas 78006
(830) 249-8284 Fax: (830) 249-0221

REV.	DESCRIPTION	BY	DATE

COMPANY: AI WEST CENTRAL REGION, INC.	DRAWN BY: DK	CHECKED BY: GDN
JOB NAME: AIR PERMIT - NEW BRAUNFELS, TX	SCALE: 1" = 1000'	
LOCATION: NEW BRAUNFELS, COMAL COUNTY, TX.	DATE: 12/27/2007	
IMAGE: NONE	JOB NUMBER	FILE NAME
	10506-04/05	506-04-PP-SH1.dwg

HERITAGE FARM
FEY HOUSE
AKA NEAREST RECEIVER

From Westward Env
Doug Knell
02/07/08

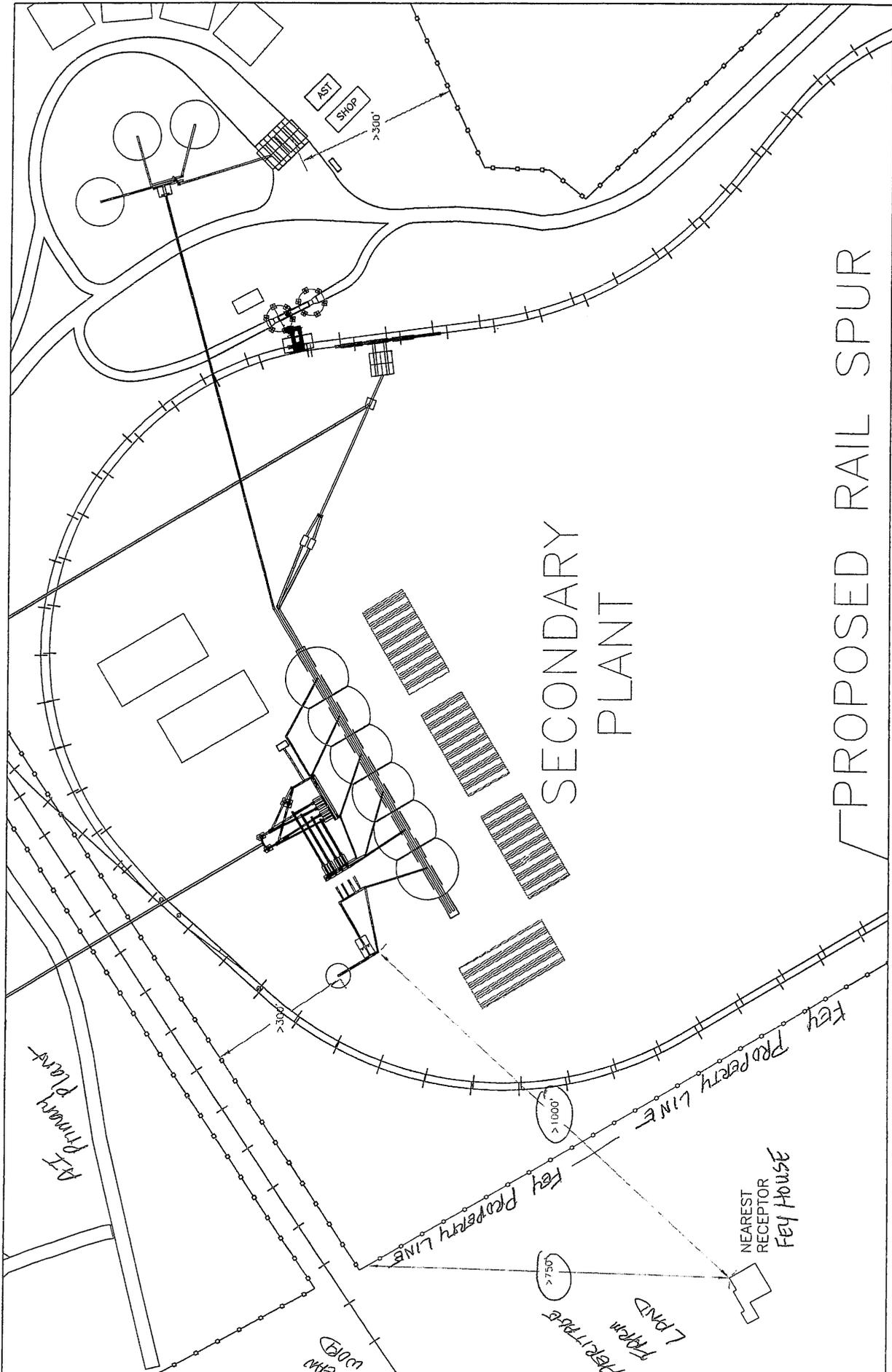
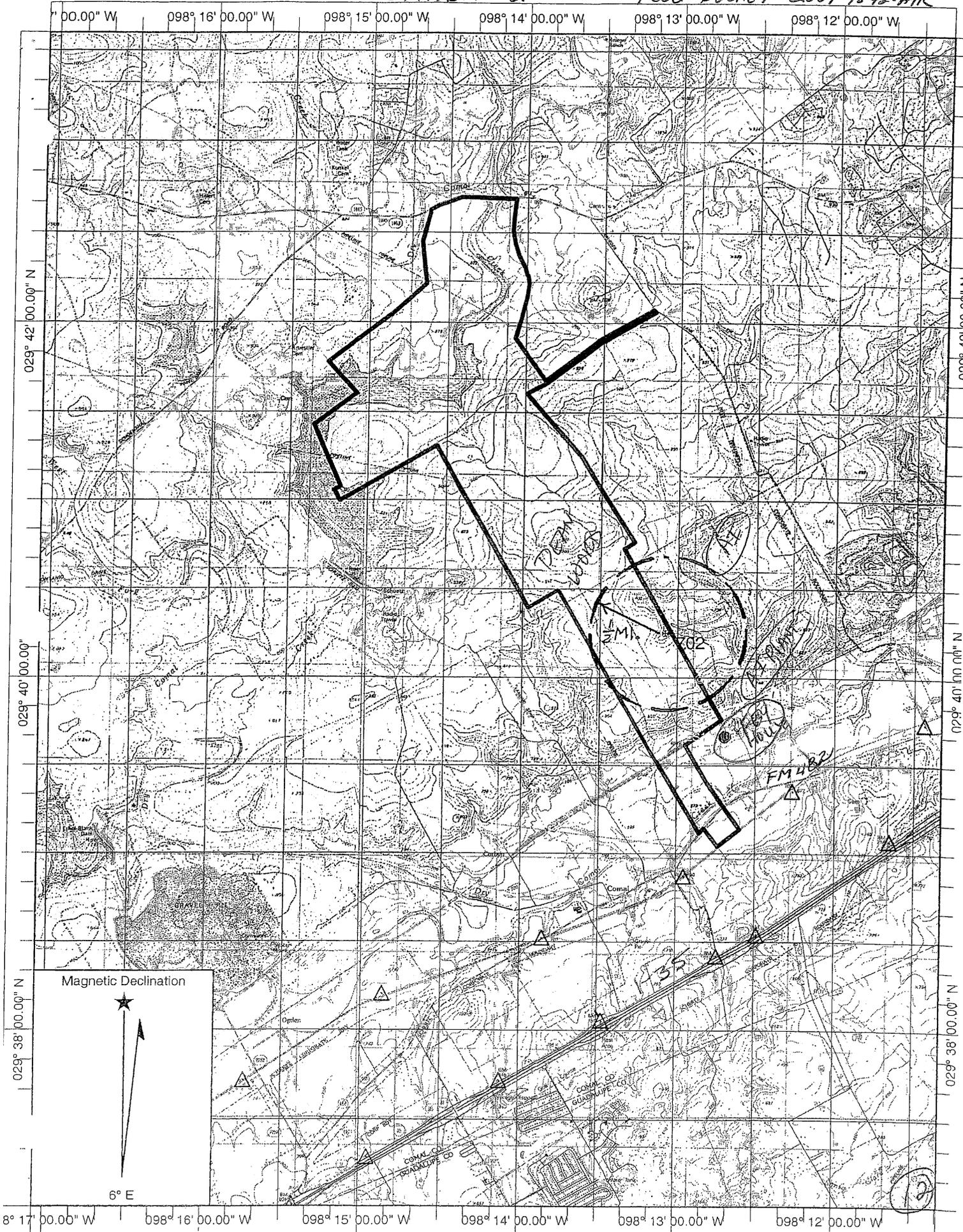


Exhibit 2

**Copy of Map from Dean Word Co.'s Renewal,
Marked to Label the Home of Tim and Sharlene Fey
and Other Designations**



00.00" W

098° 16' 00.00" W

098° 15' 00.00" W

098° 14' 00.00" W

098° 13' 00.00" W

098° 12' 00.00" W

029° 42' 00.00" N

029° 40' 00.00" N

029° 38' 00.00" N

00.00" W

029° 42' 00.00" N

029° 40' 00.00" N

029° 38' 00.00" N

08° 17' 00.00" W

098° 16' 00.00" W

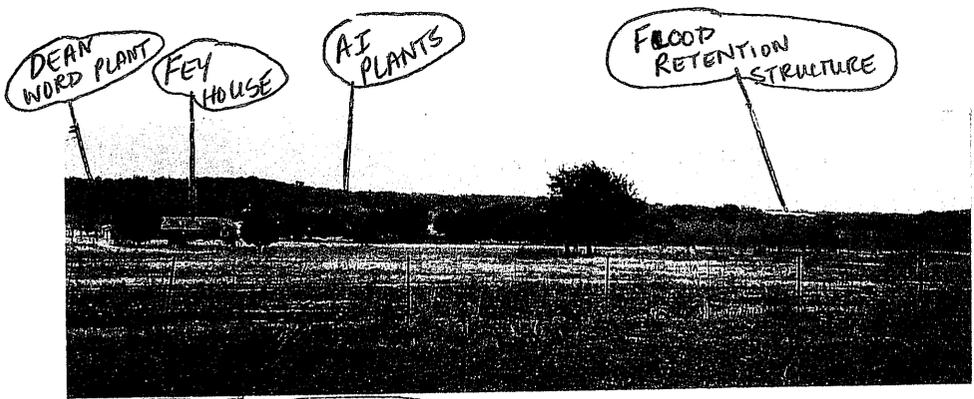
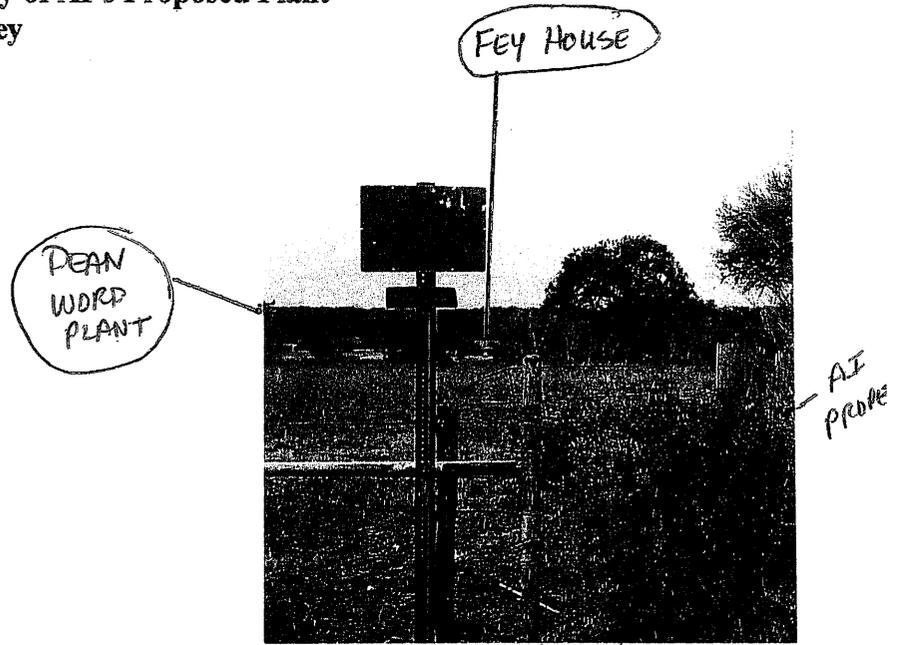
098° 15' 00.00" W

098° 14' 00.00" W

098° 13' 00.00" W

098° 12' 00.00" W

**Exhibit 3 - Photos Showing Proximity of AI's Proposed Plant
To the Home of Tim and Sharlene Fey**



CORNER +
FENCELINE
FORMING
FEY/AI
PROPERTY LINE
AS SEEN FROM
FM 482

FEY FARM PROPERTY

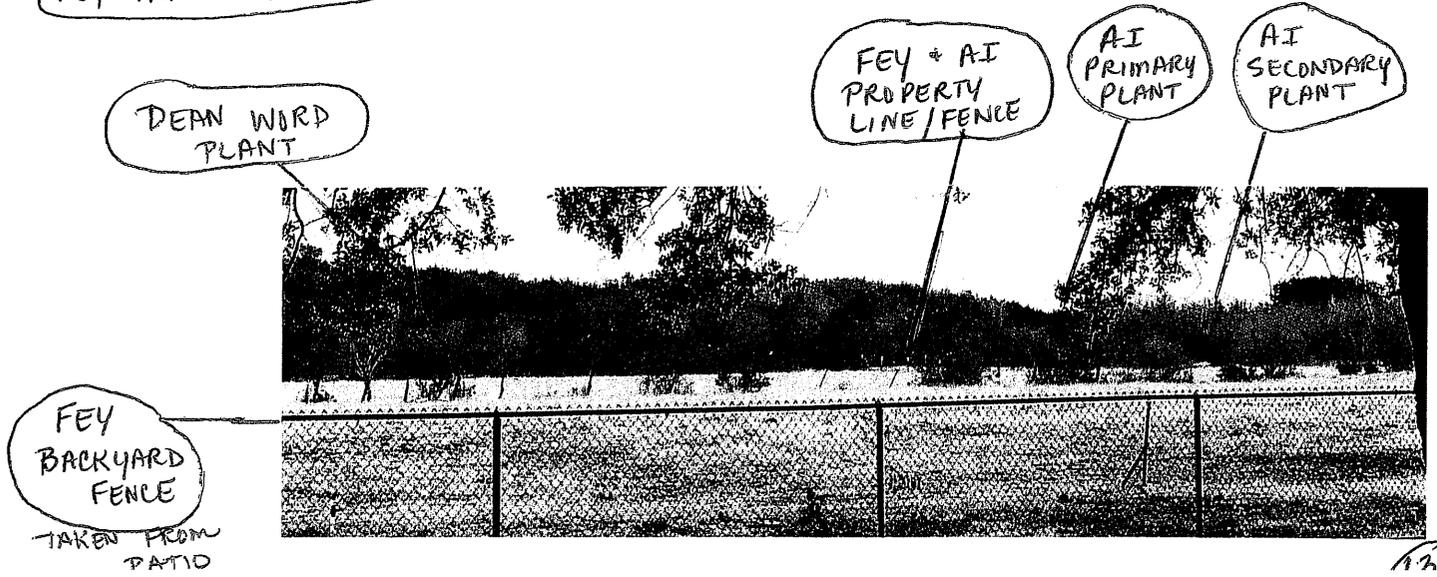


Exhibit 4 - Article Printed in the New Braunfels Herald-Zeitung on November 4, 2009, regarding Terrain Issues and Rotten Gravel at the Dry Comal Creek Flood Retention Structure Site (On Holcim Property)

County needs more
time to build
Dry Comal dam

By Chris Cobb
The Herald-Zeitung

11-4-09

At Thursday's meeting, Comal County Commissioners will consider asking the governor's office for extra time to build a dam on the Dry Comal Creek.

Located near the Holcim quarry just west of Krueger Canyon Road and north of Farm-to-Market 482, the dam was to be finished by around February 2010.

County Commissioners could now be asking the Governor's Division of Emergency Management to extend that completion date for an extra year, after encountering problems with the terrain at the site, according to County Judge Danny Scheel.

He said construction crews encountered unstable "rotten gravel," and because the dam must be built on solid rock, extra time will be needed to pour a foundation underneath the future structure.

The county must ask the governor's office for an extension because nearly \$6 million of the more than \$7 million project is being paid for through grant funding, which was awarded on the condition of met deadlines.

Scheel said the delay would likely add three months to the project's timeline, but the county was asking for one year to "cover their bases."

Commissioners Court will meet at 8:15 a.m. Thursday at 199 Main Plaza.

Exhibit 5 - Photos of Public Notice Signs For the Proposed AI Plant and Entrance to 5900 FM 482 (taken in December 2009)

