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September 16, 2013

Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Docket No. 2013-1506-MSW; Permit No. 2374; Rancho Viejo Waste Management, LLC; Applicant's Response to Contested Case Hearing Requests.

Dear Clerk:

Enclosed for filing, please find an original plus seven copies of Applicant's Response to Contested Case Hearing Requests in the above referenced matter. Please return a file-stamped copy of this letter with the courier.

Thank you for your assistance and please do not hesitate to contact me with any questions or concerns regarding the above referenced matter.

Sincerely,

Alysa Baker

Alysa S. Baker
Paralegal

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September 16, 2013

TCEQ Permit No. 2374

Application by	§	**Before the**
Rancho Viejo Waste	§	**Texas Commission on**
Management, LLC	§	**Environmental Quality**
For Municipal Solid Waste	§	
Permit No. 2374	§	

Applicant's Responses to Contested Case Hearing Requests

This response is submitted on behalf of Rancho Viejo Waste Management, LLC ("Applicant") in the above-styled and captioned matter, pursuant to 30 TAC § 55.209(d) and (e) in response to all contested case hearing requests filed with the Commission by (1) Hurd Ranch Company, Ltd., Hurd Enterprises, Ltd., Killam & Hurd, and John R. Hurd, Jr. and E. Eugene Garcia, individually and on behalf of Hurdco, Inc. (for convenience, collectively called "the Hurds"); (2) John A. Meitzen; (3) ANB Cattle Company, Ltd.; (4) James R. Volz; and (5) the Jordan *et al* group which includes: Anna Jordan Dodier; James Robert Jordan; Lilia Cavazos-Keller; Richard and Sharyn Jordan; Robert F. Wied; Mary L. Wied; Robert F. Wied, Jr.; Miguel A. Villarreal; and Rosemary Jordan Contreras.

This matter involves an application for a Type 1 Municipal Solid Waste Landfill Facility to be located in Webb County, Texas. The Applicant has requested a land use only determination at this time as per 30 TAC § 330.57. Requests for a contested case hearing regarding the Application are governed by the provisions of Subchapter F of 30 TAC Chapter 55 (30 TAC § 55.201-55.211).

Rancho Viejo Waste Management, LLC (owned and established by the Benavides family of Webb County, Texas) has filed this application for the MSW permit described above to be located in Webb County, Texas on a 1,110 acre tract of land owned by the applicant and located

site, but exact location of the protestants' property boundaries is not ascertainable as none of the Jordan *et al* protestants complied with the requests of 30 TAC § 55.201(d)(2) which requires that a request for a contested case hearing contain a *"material statement explaining in plain language the requestor's location and distance relative to the proposed facility..."*

Specific responses to all of the Jordan et al factual issues raised in their latest hearing requests are attached hereto and incorporated herein for any and all purposes.

ANB Cattle Company, Ltd.'s Request for Hearing

ANB Cattle Company, Ltd. ("ANB") request for hearing raises several legal issues and several factual issues related to the permit application.

ANB is not an affected person as it does not have a reasonable justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. ANB has not raised any issues of disputed facts of law which are relevant and material to the Commission's decision on this application.

Specific responses to all of the ANB factual and legal issues raised in their latest hearing requests are attached hereto and incorporated herein for any and all purposes.

James R. Volz Request for Hearing

The request by James R. Volz is the only request by a resident who lives in a reasonable proximity to the proposed permit application site. Even then, it is only because of the narrow cuchillo ("knife") of land that projects into the Benavides property on one side.

As a preliminary matter, Mr. Volz request only asks for a "public hearing," which was in fact held in Laredo subsequent to his request. No request for a contested case hearing has been filed by Volz as required by 30 TAC § 55.201(d)(1)(3). The public meeting held in Laredo on February 28, 2013 aired and addressed the issues raised by Volz, but we restate them here for emphasis:

Mr. Volz is not an affected person as he does not have a reasonable justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Mr. Volz has not raised any issues of disputed facts of law which are relevant and material to the Commission's decision on this application.

Specific responses to all of the Volz factual issues raised in his letter are attached hereto and incorporated herein for any and all purposes.

For the reasons set forth above, Rancho Viejo respectfully requests that the Commission:

1) Determine that the only contested case hearing requests in this matter are the request by the Hurds; John A. Meitzen; ANB Cattle Company, Ltd.; and the Jordan *et al* group which includes: Anna Jordan Dodier; James Robert Jordan; Lilia Cavazos-

Mr. Meitzen's request raises seven issues of fact related to the Rancho Viejo permit application. However, with regard to each of these issues, the protestor request fails to comply with the requirements of 30 TAC § 55.201(d)(4) because the issues raised are not relevant and material to the Commission's determination, the discussion of the issues does not include disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request and/or it does not list any disputed issues of law or policy.

According to the map, the Meitzen property is between a quarter mile and a mile away from the closest property boundary to the landfill site.

Mr. Meitzen is not an affected person as he does not have a reasonable justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Meitzen has raised no issues of disputed facts or law which are relevant and material to the Commission's decision on this application.

Specific responses to all of the Meitzen factual issues raised in their hearing request filed on July 23, 2013 are attached hereto and incorporated herein for any and all purposes.

Jordan *et al* Request for Hearing

Nine individual hearing requests appeared to be the result of a collaborative effort. Each of the nine contained similarly, if not exactly, worded technical issues of fact as the basis for their hearing request. In many instances, even the ordering of the issues was the same. In addition, each of the nine requests appear to have either a social, family, and/or a property ownership, relationship to the Jordan Ranch. The hearing requests were received over approximately a one-year period. The requestors, collectively referred to as the "Jordan *et al*" protestants, and the dates of their requests are as follows:

Rosemary Jordan Contreras July 20, 2011
Miguel A. Villareal July 21, 2011
Mary L. Wied July 22,2011
Robert F. Wied (Louisiana) July 22, 2011
Robert F. Wied, Jr. (New York) August 19, 2012
Richard J. and Sharyn P. Jordan July 25, 2012
Lilia Cavazos-Keller July 30, 2012
James Robert Jordan August 1, 2012
Anna Jordan Dodier August 3, 2012

None of the individual Jordan *et al* hearing requestors are affected persons as they do not have a reasonable justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. None of the Jordan *et al* hearing requestors has raised any issues of disputed facts which are relevant and material to the Commission's decision on this application.

According to the map, none of the Jordan *et al* protestants have property within a quarter mile of the landfill site. In fact, they are clearly more than a quarter mile away from the proposed

entirely within the 12,194 acre Yugo Ranch that is also owned by the Benavides family. As described more fully in the permit application, the site is ideally located because of favorable soil and geological conditions, its isolation from groundwater, absence of neighbors or potentially conflicting land uses, and transportation access. The Benavides family has owned this site, and the surrounding land, for several generations and have planned carefully to incorporate solid waste management and landfill disposal in a highly professional and environmentally responsible way that respects continued cattle ranching and oil and gas extraction, by themselves and adjoining neighbors.

Suitability of the site is of paramount importance to the applicant family since they have owned this land and lived in Webb County for generations. The permit application, as reviewed by the Executive Director, finds that the soil in the upper 160 feet of the site is predominantly clay, existing in nearly horizontal beds that exhibit very low vertical permeability. These soils will provide excellent material for liners, caps and cover systems. What small amount of shallow groundwater has been found is not useable due to both low production and poor quality. In fact, the quality is so poor that it has very limited agricultural use even for livestock watering.

This very suitable site for a landfill is further appealing because of the efforts of the applicant family to locate it well within the boundaries of their own land providing a wide buffer to neighbors meeting or far exceeding the traditional parameters preferred by the TCEQ in such permitting proceedings.

The Hurds' Request for Hearing

Hurds' request discusses a number of issues related to the Rancho Viejo permit application. However, with regard to each of these issues, the protestor request fails to comply with the requirements of 30 TAC § 55.201(d)(4) because the issues raised are not relevant and material to the Commission's determination, the discussion of the issues does not include disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request and/or it does not list any disputed issues of law or policy.

Attached hereto and incorporated herein is a Surface Ownership Map prepared by Mr. Jim Kelly, a certified public landman at STX Petro Properties, LLC, which identifies the Hurd property. Even by their own admission, the Hurd ranch is located at least two miles from the closest property boundary to the landfill site.

The Hurds are not affected persons as they do not have a reasonable justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. The Hurds have raised no issues of disputed facts or law which are relevant and material to the Commission's decision on this application.

Specific responses to all of the Hurds factual and legal issues raised in their hearing request filed on August 2, 2013 are attached hereto and incorporated herein for any and all purposes.

John A. Meitzen Request for Hearing

Keller; Richard and Sharyn Jordan; Robert F. Wied; Mary L. Wied; Robert F. Wied, Jr.; Miguel A. Villarreal; and Rosemary Jordan Contreras.

2) Determine that James R. Volz did not properly request a contested case hearing.
3) Determine that the contested case hearing requests by all four of the above mentioned requestors in this matter do not meet the requirements of 30 TAC Chapter 55, Subchapter F, and
4) Deny the contested case hearing requests by all requestors in this matter.

Respectfully submitted,

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Certificate of Service

This is to certify that a true and correct copy of the foregoing document has been sent by U.S. Certified Mail, Return Receipt Requested, or via E-filing to the following service list on this 16 day of September, 2013.

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Mrs. Anna Jordan Dodier
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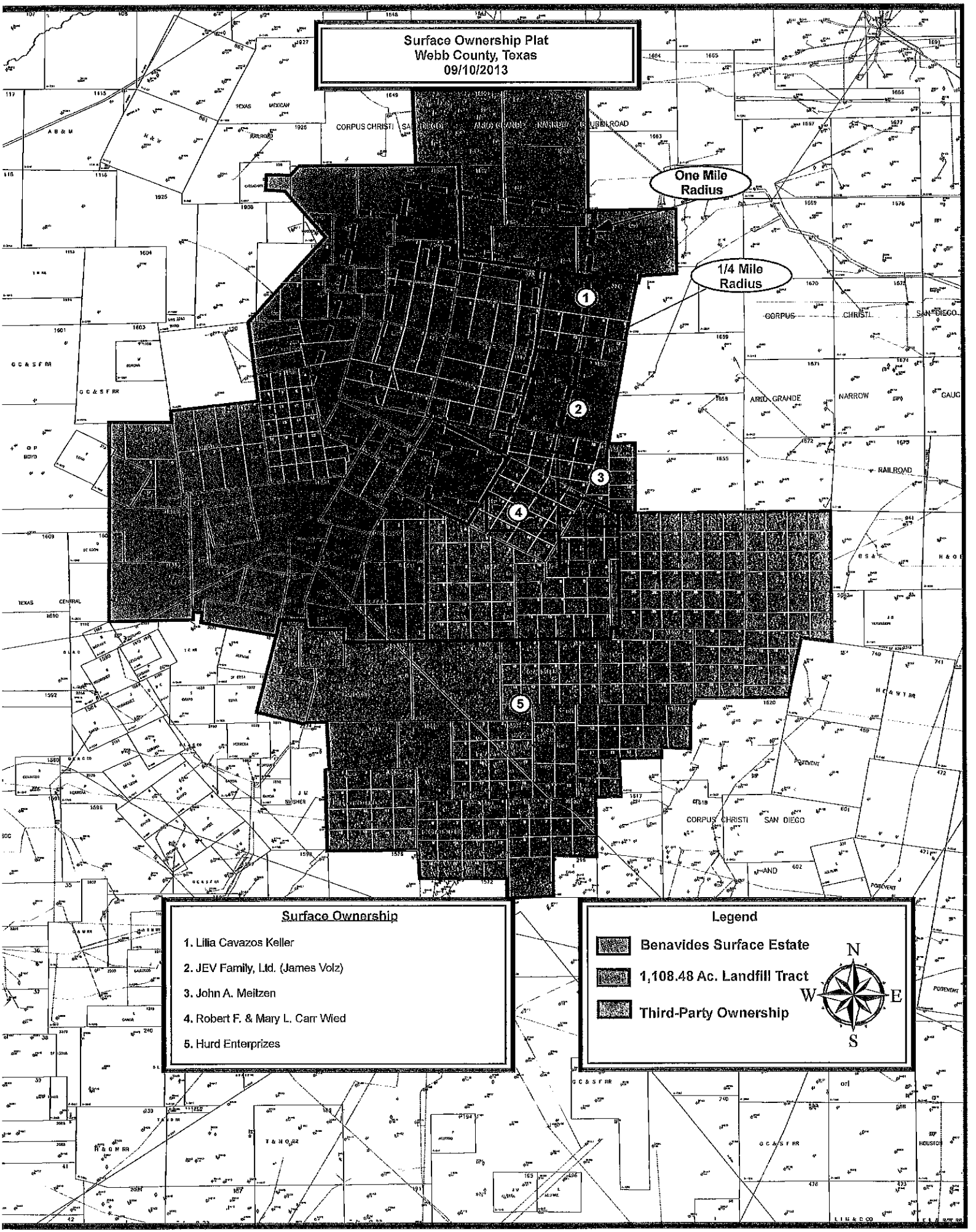
Surface Ownership Plat
Webb County, Texas
09/10/2013
One Mile Radius
1/4 Mile Radius
1
2
3
4
5
CORPUS CHRISTI
SAN DIEGO
ARROYO GRANDE
NARROW GAUGE RAILROAD
TEXAS MEXICAN RAILROAD
Surface Ownership
1. Lilia Cavazos Keller
2. JEV Family, Ltd. (James Volz)
3. John A. Meitzen
4. Robert F. & Mary L. Carr Wied
5. Hurd Enterprizes
Legend
Benavides Surface Estate
1,108.48 Ac. Landfill Tract
Third-Party Ownership
N
W
E
S

Applicant's Specific Responses to Contested Case Hearing Requests by The Hurds

In their hearing request letter of August 2, 2013, Hurd Ranch Company, Ltd.; Hurd Enterprises, Ltd.; Killam and Hurd; and John R. Hurd, Jr. and E. Eugene Garcia, individually ("Hurd") listed some thirty-five comments that are the basis for their hearing request. Several of the Hurd comments would be properly classified as issues of law, and all pertain to the issue of whether the Applicant has a sufficient ownership interest in the property where the landfill is to be located. Hurd's issues of law can be grouped into three legal subject categories. These legal subject categories, and corresponding Hurd enumerated comments, are:

1. **Notice of Application**
   Hurd #1
2. **Identification of owners and property owners' affidavit**
   Hurd ##4, #5, #6
3. **Ownership interests**
   Hurd #7, #9

The remainder of the Hurd comments would be classified as technical issues. Hurd's technical issues of fact can be grouped into seventeen technical subject categories. These technical subject categories, and corresponding Hurd enumerated comments, are:

1. **General Location Maps**
   Hurd #19
2. **Facility layout maps**
   Hurd #20
3. **Aerial photograph**
   Hurd #21
4. **Land-use map**
   Hurd #22
5. **Conformance with regional solid waste management plan**
   Hurd #2
6. **Interior easements, pipelines & roadways**
   Hurd #10, #14
7. **Presence of jurisdictional wetlands and related location restriction**
   Hurd #11, #31
8. **Presence of 100-year floodplain and related location restriction**
   Hurd #12, #15
9. **Potential historically significant sites**
   Hurd #13
10. **Presence of threatened and endangered species and related location restriction**
    Hurd #16, #32
11. **Waste acceptance plan including waste from Mexico**
    Hurd #18
12. **Availability and adequacy of access roads and traffic**

Hurd #23, #24, #28

13. **General geology and soils information including fault areas, seismic impact zones, and unstable areas and related location restrictions**
    Hurd #25, #26, #27
14. **Groundwater, surface water, drainage and water pollution control**
    Hurd #29, #34
15. **Abandoned oil, gas and water wells**
    Hurd #30
16. **Standard air permit and related air issues including management plans for air pollutants, landfill gas, and nuisances (odor and dust)**
    Hurd #33
17. **Land use compatibility including "adverse impact", "general nuisance", "property devaluation" and "buffers"**
    Hurd #8, #35

Applicant's responses to each of Hurd's issues – technical or legal – are provided under one of the subjects listed above.

LEGAL SUBJECT: NOTICE OF APPLICATION

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

1. "Whether Notice of the Application was provided as required by Chapter 39 and Chapter 330. This relates to Response to Comment (RTC) 45."

The Executive Director's (ED) June 28, 2013 Response to Comments (RTC #14 and #50 addressed comments related to proper notice of the Application. The ED's responses are summarized as follows:

Proper notice of the Application was given; see Executive Director's RTC #45 which states: *"The first required notice for an MSW application under TCEQ rules is the Notice of Application and Intent to Obtain Permit (NORI). Within 30 days of the Executive Director declaring an application administratively complete, the applicant must publish the NORI in the newspaper of largest general circulation that is published in the county in which the facility is proposed to be located or; if no newspaper is published in the county, then in any newspaper of general circulation in the county. 30 TAC § 39.405(f)(2). Also within 30 days, the Chief Clerk of the TCEQ must mail the NORI to the landowners identified in the application. In this case, the TCEQ received the Application on April 15, 2011and the Executive Director declared the Application administratively complete on June 1, 2011. The Applicant published the NORI on June 29, 2011, and the Chief Clerk mailed the NORI on June 17, 2011. Finally, the Chief Clerk published a copy of the NORI in the Texas Register on July 1, 2011. The TCEQ does not require any notice prior to the NORI."*

Also, see the attached TCEQ Central Registry printout for Municipal Solid Waste Disposal Permit # 2374 (Exhibit 1).

LEGAL SUBJECT: IDENTIFICATION OF OWNERS AND PROPERTY OWNERS AFFIDAVIT

In their hearing request letter of August 2, 2013, Hurd raised this subject in several enumerated comment:

4. *"Whether the Application correctly identifies the owners of the property on which the facility is proposed to be located. ANB Cattle Company, Ltd. is an owner of such property, but is not identified as such in the Application. This relates to RTC 44."*

Hurd has raised an issue of law regarding the ownership of the property and has stated in this comment that: *"ANB Cattle Company, Ltd. Is an owner of such property..."* Hurd has provided no facts to support such statement, and the issue of the ownership of the property is addressed in the Applicant's response to comments filed by ANB Cattle Company, Ltd.

5. *"Whether the Applicant owns all the land within the proposed permit boundary. This relates to RTC 44."*

Hurd also raised an issue of law as to whether the Applicant owns the land within the permit boundary. Once again, Hurd has provided no facts to support their contention, and the issue of ownership of the property is addressed in the Applicant's response to comments filed by ANB Cattle Company, Ltd.

6. *"Whether the Application complies with 30 TAC § 330.59(d)(2) (regarding property owner affidavit) and that it does not include a property owner's affidavit executed on behalf of ANB Cattle Company, Ltd., an owner of the property on which the facility is proposed to be located. This relates to RTC 44."*

Hurd once again raises an issue of law based upon the premise that ANB Cattle Company, Ltd. is an owner of the property and has stated no facts to support its conclusion. The issue of Applicants' ownership of the property is addressed in the Applicant's response to comments filed by ANB Cattle Company, Ltd.

The Executive Director's (ED) June 28, 2013 Response to Comments (RTC #44) addressed comments # 4, #5, and #6 related to the identification of owners and property owners' affidavit. The ED's responses are summarized as follows:

In RTC #44, page 49, the ED states: *"Under 30 TAC § 330.59(d)(2), an applicant for a municipal solid waste landfill must submit a property owners affidavit that includes the following: an acknowledgement that the State may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the facility; acknowledgement that the owner has a responsibility to file with the county deed records an affidavit to the public advising that the land will be used for a solid waste facility prior to the time that the facility actually begins operating; and acknowledgment that the*

facility owner or operator and the State of Texas shall have access to the property during the active life and post-closure care period. The Application was reviewed based on information provided by the Applicant. The Applicant provided a signed property owner affidavit in Section 4.2 of Part I of the Application. Information provided in the Application indicates that the Applicant owns the land within the proposed permit boundary."

LEGAL SUBJECT: OWNERSHIP INTERESTS

In their hearing request letter of August 2, 2013, Hurd raised this subject in several enumerated comments:

7. **"***Whether the Applicant, Rancho Viejo Waste Management, LLC, has a sufficient ownership interest in or right to use the property on which the facility is proposed to be located for a municipal solid waste landfill facility. This relates to RTC 43."*

This comment filed by Hurd is just a restatement of the comments #4, #5 and #6 and once again Hurd provides no facts to support its conclusion that the Applicant does not *"have a sufficient ownership interest in or right to use the property on which the facility is proposed to be located for a Municipal Solid Waste landfill facility."* The ownership issue is addressed in the Applicant's response to ANB's comments.

9. *"Whether the proposed facility is a compatible land use because persons and/or entities other than Rancho Viejo Waste Management, LLC have sufficient ownership interests in and/or rights to use the property for purposes of exploring for, developing, producing, and transporting minerals, including oil and gas. This relates to RTC 43."*

Hurd's comment regarding whether the Applicant has "*sufficient ownership interest in or right to use the property on which the facility is proposed to be located for a Municipal Solid Waste landfill facility"* is not supported by any facts and the mineral classified issue is discussed in detail in Applicant's response to ANB Cattle Company, Ltd.'s more specific complaint regarding this issue.

The Executive Director's (ED) June 28, 2013 Response to Comments (RTC #43) addressed comments related to ownership interests. The ED's responses are summarized as follows:

In RTC # 43, page 48, the ED states: *"Applicants for MSW landfills must provide a landownership map that indicates all mineral interest ownership under the facility. This is required under Part I of the application. 30 TAC § 330.59(c)(3)(A). The purpose of the landownership map is to identify interested property owners who are entitled to receive notice under 30 TAC § 39.413. Section 3 of Part I of the Application indicates that there are several owners of the mineral interest beneath the facility.*

"The issuance of a permit to construct and operate and MSW landfill merely authorizes an individual to perform a specific activity. The TCEQ does not have the authority to adjudicate

property rights in this regard. Although the Executive Director has not prepared a draft permit for this facility, the issuance of a TCEQ permit would not convey any property rights or become a vested right in the permittee, nor does it authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations. 30 TAC § 305.122(c)-(d). Furthermore, the existence of separate mineral interest owners does not necessarily negate the compatibility of the proposed action with mineral extraction. In Section 1.8 of Part II of the Application, the Applicant asserts that very little oil and gas production has occurred on or adjacent to the site, that several wells were attempted and later sealed and abandoned, and that the width of the landfill was selected to allow for the possibility of directional drilling in the future."

TECHNICAL SUBJECT: GENERAL LOCATION MAPS

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

"19. Whether the general location maps depict the current status of the surrounding roads. This relates to RTC 2."

The Hurd comment regarding general location maps makes no specific assertion of a deficiency in Parts I and II of the Application as a basis for their hearing request.

Relevant facts, pertinent to Hurd comment #19, found in Parts I and II of the Application regarding General Location Maps:

Maps are current. Maps are either from State of Texas or federal map sources that were current at the time Parts I and II of the Application was prepared [2011-2012] or from on-site survey.

- **Part I, Figure 1** ***General Location Map*** is from TxDOT (2003) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part I, Figure 2** ***Detailed Location Map*** is from Mejia Engineering Company (2011) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part I, Figure 3** ***Land Ownership Map*** is from Mejia Engineering Company (2010) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part I, Figure 4** ***Boundary Survey*** is from Mejia Engineering Company (2011) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part II, Figure 7** ***Aerial Photograph*** is from Texas Orthoimagery Program (TOP) (2008) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part II, Figure 8** ***Land Use Map*** used the U.S.G.S. "Burrito Tank" 7.5-minute quad (1980 is most current version of imagery) as a base map; however, details were added from site reconnaissance (2011) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part II, Figure 9** ***Supplemental Land Use Map*** is from Mejia Engineering Company (2011) and signed/sealed by James F. Neyens, P.E. (2011)

- **Part II, Figure 11** ***Flood Insurance Rate*** map is from FEMA (2008) and signed/sealed by James F. Neyens, P.E. (2011)

It should be noted that "access roads within one mile of the site" will be on the Yugo Ranch, which is owned by Rancho Viejo. Parts I and II of the Application are abundantly clear on the subject and demonstrate compliance with applicable regulations.

TxDOT was provided information from Parts I and II of the Application, including the maps, about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintanilla, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

Information about the Pescadito Environmental Resource Center was presented to Webb County Commissioners Court. The Webb County Judge and all four County Commissioners expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez affirms the support of Webb County (see Part II, Attachment E).

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.45(a), 30 TAC §330.59(c-g), and 30 TAC §330.61(c & i). The Executive Director's notice of "Technically Complete" dated July 2, 2012, the December 12, 2011, Letter from South Texas Development Council to TCEQ, and the April 8, 2011, Texas DOT Letter from Laredo District Engineer Albert Quintanilla, P.E. are all further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.45(a), 30 TAC §330.59(c-g), and 30 TAC §330.61(c & i).

The Executive Director's June 28, 2013 Response to Comment (RTC) #2 addressed the Comments on General Location Maps. The ED's relevant responses are summarized as follows:

"TCEQ rules require applications for MSW landfill permits to provide data on proposed access roads, including availability and adequacy of roads that the owner or operator will use to access the site, volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the facility, and projections on the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility. 30 TAC § 330.61(i).

When reviewing permit applications, the Executive Director defers to Texas Department of Transportation's (TxDOT) recommendations on transportation and traffic issues regarding the traffic impacts and adequacy of state-maintained roadways, and to recommendations by local authorities on transportation and traffic issues regarding the traffic impacts and adequacy of locally-maintained roadways. The Application includes information related to the adequacy of access roads and a traffic study in Section 1.4.1 of Part I and Section 9 of Part II of the Application, as well as evidence of coordination with TxDOT and local authorities in Attachments B and E to Part II of the Application.

In regard to the comment that general location maps do not depict the current status of the surrounding roads, 30 TAC § 330.59(c)(2) requires that the latest revision of all maps shall be used. The Application was reviewed based on information provided by the Applicant. 30 TAC § 330.57(d) specifies that it is the responsibility of an applicant to provide the Executive Director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners.

The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding availability and adequacy of roads and traffic impact and safety."

Note that Hurd did not reference ED's RTC #5; however, it is very applicable and appears to be a continuation of RTC #2. It is particularly interesting it was not referenced since RTC #5 was related exclusively to Hurd: ***"Comment 5: Dated Maps and Figures with Non-Current Information*** *Hurd Enterprises raised a concern about the accuracy of certain information, including maps, provided in the Application. The aerial photograph and land-use map are dated and do not provide current information."*

The Executive Director's June 28, 2013 Response to Comment (RTC) #5 addressed the subject on general location maps as follows:

"TCEQ rules require applicants to submit the latest revision of all general location maps. 30 TAC § 330,59(c)(2), Furthermore, 30 TAC § 330.57(d) specifies that it is the responsibility of an applicant to provide the Executive Director with data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residences or property owners. The TCEQ MSW Permits Section is responsible for reviewing and determining whether the information in the Application meets all applicable regulations contained in 30 TAC Chapter 330, regarding Municipal Solid Waste, as well as all other applicable rules. The Application was reviewed based on information provided by the Applicant.

The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding general location maps."

TECHNICAL SUBJECT: FACILITY LAYOUT MAP

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

"20. Whether the Application's facility layout maps are adequate and show the general locations of main interior roadways for the entire proposed landfill, the locations of monitor wells, provisions for the maintenance of any natural windbreaks, plans for screening the facility

from public view, landfill units/cells, buffer zones, and oil and gas operations. This relates to RTC 4."

The Hurd comment on the facility layout map makes no specific assertion of a deficiency in Parts I and II of the Application as a basis for their hearing request.

Relevant facts, pertinent to Hurd comment #20, found in Parts I and II of the Application regarding facility layout maps:

Maps are current. Maps are either from State of Texas or federal map sources that were current at the time Parts I and II of the Application was prepared [2011-2012] or from on-site survey

- **Part II, Figure 3** ***Facility Layout Map*** is from Mejia Engineering Company (2010) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part II, Figure 4** ***Operations Area Layout Map*** is from Mejia Engineering Company (2010) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part II, Figure 4** ***Monitoring System & Cell Layout Plan*** is from Mejia Engineering Company (2010) and signed/sealed by James F. Neyens, P.E. (2011)

General locations for groundwater monitor wells are shown on **Part II, Figure 4** ***Monitoring System & Cell Layout Plan.*** Parts I and II of the Application address the subject of groundwater monitoring and demonstrate compliance with applicable regulations.

The actual buffer or separation distance to adjacent properties, as shown on numerous figures in Parts I and II of the Application, is significantly more than regulatory minimum of 125 feet because the proposed facility is located within the confines of the Yugo Ranch owned by the Applicant. Minimum buffer shown is 3,00 feet along the eastern half of the south side (approximately 3,000 feet of boundary) of the proposed permit boundary. The buffer around the remainder of the proposed permit boundary is over ¼ mile, i.e., 1,500 feet or greater along the east and north sides, and even greater separation distance to the west.

Parts I and II of the Permit Application comply with the requirements of §330.45(a), 30 TAC §330.59(b-d), and 30 TAC §330.61(c-g). The Executive Director's notice of "Technically Complete" dated July 2, 2012, is further evidence of the Permit Application's compliance with all applicable requirements of §330.45(a), 30 TAC §330.59(b-d), and 30 TAC §330.61(c-g).

The Executive Director's June 28, 2013 Response to Comment (RTC) #4 addressed the subject on facility layout maps as follows:

"TCEQ rules require that facility layout maps include general locations of main interior roadways, the locations of monitoring wells, provisions for the maintenance of any natural windbreaks, plans for screening the facility from public view, and landfill units. 30 TAC § 330.59(d). Oil and gas operations are not required to be included in the facility layout maps,

Main interior roadways are shown in Figure 4 of Part II of the Application. Information regarding provisions for the maintenance of any natural windbreaks, plans for screening the

facility from public view, buffer zones, and oil and gas operations are also included in Figure 4 of Part II of the Application. Information regarding groundwater monitoring zone and landfill units/cells is included in Figure 5 of Part II of the Application. Information regarding monitoring wells is required to be included in Part III of the application."

The Executive Director's June 28, 2013 Response to Comment (RTC) #5 addressed the subject on facility layout maps as follows:

"*TCEQ rules require applicants to submit the latest revision of all general location maps. 30 TAC § 330,59(c)(2), Furthermore, 30 TAC § 330.57(d) specifies that it is the responsibility of an applicant to provide the Executive Director with data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residences or property owners. The TCEQ MSW Permits Section is responsible for reviewing and determining whether the information in the Application meets all applicable regulations contained in 30 TAC Chapter 330, regarding Municipal Solid Waste, as well as all other applicable rules. The Application was reviewed based on information provided by the Applicant.*

The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding general location maps."

TECHNICAL SUBJECT: AERIAL PHOTOGRAPH

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

"*21. Whether the Application's aerial photograph is dated and provides current information. This relates to RTC 5.*"

The Hurd comment on the aerial photograph makes no specific assertion of a deficiency in Parts I and II of the Application as a basis for their hearing request.

Relevant facts, pertinent to Hurd comment #21, found in Parts I and II of the Application regarding the aerial photograph:

Maps are current. Maps are either from State of Texas or federal map sources that were current at the time Parts I and II of the Application was prepared [2011-2012] or from on-site survey

- **Part II, Figure 7** ***Aerial Photograph*** is from Texas Orthoimagery Program (TOP) (2008) and signed/sealed by James F. Neyens, P.E. (2011)

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(f). The Executive Director's notice of "Technically Complete" dated July 2, 2012, is further

evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(f).

The Executive Director's June 28, 2013 Response to Comment (RTC) #5 addressed the subject on the aerial photograph as follows:

"TCEQ rules require applicants to submit the latest revision of all general location maps. 30 TAC § 330,59(c)(2), Furthermore, 30 TAC § 330.57(d) specifies that it is the responsibility of an applicant to provide the Executive Director with data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residences or property owners. The TCEQ MSW Permits Section is responsible for reviewing and determining whether the information in the Application meets all applicable regulations contained in 30 TAC Chapter 330, regarding Municipal Solid Waste, as well as all other applicable rules. The Application was reviewed based on information provided by the Applicant.

The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding general location maps."

TECHNICAL SUBJECT: LAND-USE MAP

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

"22. Whether the Application's land-use map is dated and provides current information. This relates to RTC 5."

The Hurd comment on the land-use map makes no specific assertion of a deficiency in Parts I and II of the Application as a basis for their hearing request.

Relevant facts, pertinent to Hurd comment #22, found in Parts I and II of the Application regarding the land-use map:

Maps are current. Maps are either from State of Texas or federal map sources that were current at the time Parts I and II of the Application was prepared [2011-2012] or from on-site survey

- **Part II, Figure 8** ***Land Use Map*** used the U.S.G.S. "Burrito Tank" 7.5-minute quad (1980 is most current version of imagery) as a base map; however, details were added from site reconnaissance (2011) and signed/sealed by James F. Neyens, P.E. (2011)
- **Part II, Figure 9** ***Supplemental Land Use Map*** is from Mejia Engineering Company (2011) and annotated and signed/sealed by James F. Neyens, P.E. (2011)

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(g). The Executive Director's notice of "Technically Complete" dated July 2, 2012, is further

evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(g).

The Executive Director's June 28, 2013 Response to Comment (RTC) #5 addressed the subject on the land-use map as follows:

"TCEQ rules require applicants to submit the latest revision of all general location maps. 30 TAC § 330,59(c)(2), Furthermore, 30 TAC § 330.57(d) specifies that it is the responsibility of an applicant to provide the Executive Director with data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residences or property owners. The TCEQ MSW Permits Section is responsible for reviewing and determining whether the information in the Application meets all applicable regulations contained in 30 TAC Chapter 330, regarding Municipal Solid Waste, as well as all other applicable rules. The Application was reviewed based on information provided by the Applicant.

The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding general location maps."

TECHNICAL SUBJECT: CONFORMANCE WITH REGIONAL SOLID WASTE MANAGEMENT PLAN

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

> *"2. Whether the Application conforms to provisions of the regional solid waste management plan of the South Texas Development Council, including ensuring long-range disposal capacity (Goal 1), protecting water and other environmental resources (Recommendation 10.2), general land use compatibility, visual impacts, impacts to environmental features including the 100-year floodplain and wetlands located on the proposed site, and impacts to local traffic patterns. This relates to RTC 14."*

The Hurd comment regarding the regional solid waste management plan does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts pertinent to Hurd comment #2 found in Parts I and II of the Application regarding conformance with the Regional Solid Waste Management Plan:

With respect to the comment Hurd raised on this issue, Parts I and II of the application address the subject and demonstrate compliance with applicable regulations. The Hurd comment also ignores the clear language from the South Texas Development Council's ("STDC") review of Parts I and II. The STDC, in a letter dated December 12, 2011 to Christine Bergren, manager of the MSW Permit Section of the TCEQ, stated in pertinent part as follows: *"The SWAC [Regional Solid Waste Management Advisory Committee] has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC., Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas*

Regional Solid Waste Management Plan." And "Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County."

It should be noted that receipt of such a review letter is not required by TCEQ under 30 TAC §330.61(p), i.e., "A review letter is not a prerequisite to a final determination on a permit or registration application."

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(p) (council of government and local government review). The Executive Director's notice of "Technically Complete" dated July 2, 2012, and the December 12, 2011 Letter from South Texas Development Council to TCEQ, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(p).

Parts I and II of the Permit Application provide adequate information on Conformance with the Regional Solid Waste Management Plan. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to this comment include:

Part II, Section 16.0, page 40, *Council of Governments and Local Government Review [330.61 (p)]*

"Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E)."

Part II, Attachment E, *Local Agency Coordination*

"*December 12, 2011 Letter from South Texas Development Council to TCEQ "The application for the Pescadito Environmental Resource Center under the Texas Commission on Environmental Quality (TCEQ) MSW Permit No. 2374, for a permit Type 1Municipal Solid Waste Facility to be located in Webb County, Texas, was reviewed on December 8, 2011 by the South Texas Development Council's (STDC), Regional Solid Waste Management Advisory Committee (SWAC).*

The review was conducted to determine the facility's conformance with the South Texas Regional SWM Plan and general land use compatibility, as found in Chapter Four, Volume II of the South Texas Development Council Regional Solid Waste Management Plan. The SWAC has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC, Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan. Furthermore, that

the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County."

The Executive Director's (ED) June 28, 2013 Response to Comments (RTC #14 and #50 addressed comments related to conformance with the Regional Solid Waste Management Plan. The ED's responses are summarized as follows:

In RTC #14 on page 17, the ED noted that *"The Executive Director does not make a preliminary determination as to whether a solid waste management permit complies with an adopted RWMP [regional waste management plan]. Pursuant to 30 TAC §330.61(p), the Executive Director requires an applicant to provide documentation showing that Parts I and II of the Application were submitted for review to the applicable council of government for compliance with the RWMP, and that a review letter was requested from any local governments as appropriate for compliance with local solid waste plans. The Applicant provided the Executive Director with the required documentation. The South Texas Development Council's letter of December 12, 2011 in Attachment E to Part II of the Application confirms that the facility is in conformance with the South Texas Development Council's RWMP and the location of the proposed facility appears to be compatible with the general land-use within the given land portion of Webb County."*

In RTC #50 on page 53, the ED noted that *"The TCEQ does not have authority to consider the need for regional landfill capacity in deciding whether to issue an MSW landfill permit. According to the Texas Health & Safety Code (THSC), THSC § 363.0615, local and regional solid waste planning (including capacity planning and interregional waste transfer) is a responsibility of local governments, such as South Texas Development Council. The South Texas Development Council's letter of December 12, 2011 in Attachment E to Part II of the Application confirms that the facility is in conformance with its Regional Waste Management Plan and the location of the proposed facility appears to be compatible with the general land-use within the given land portion of Webb County."*

TECHNICAL SUBJECT: INTERIOR EASEMENTS, PIPELINES AND ROADWAYS

In their hearing request letter of August 2, 2013, Hurd raised this subject in two enumerated comments:

> *"10. Whether the Application correctly identifies the location and extent of all easements, pipelines, and roadways located within the property on which the facility is proposed to be located. This relates to RTC 3."*
>
> *"14. Whether the Application demonstrates compliance with the easement protection location restriction in 30 TAC 330.543(a) and, because easements, pipelines, and roadways other than those shown in the Application are located within the property on which the facility is proposed to be located, whether the facility as proposed will comply with this location restriction. This relates to RTC 3."*

The Hurd comments regarding easements, pipelines and roadways do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comments #10 and #14, found in Parts I and II of the Application regarding easements, pipelines and roadways:

With respect to comments 10 and 14 by Hurd on the issue of easements, Parts I and II of the permit application on the subject demonstrate compliance with applicable regulations.

The comments appear to blur the distinction between requirements for Parts I and II, i.e., 30 TAC §330.61(c) (general location maps) and TAC §330.61(d) (facility layout maps), and those requirements for Parts III and IV, i.e., 30 TAC §330.63(e)(geology report).

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(c & d). The Executive Director's notice of "Technically Complete" dated July 2, 2012, is further evidence of the Permit Application's compliance with all applicable requirements of TAC §330.61(c) (general location maps) and TAC §330.61(d) (facility layout maps).

Parts I and II of the Permit Application provide adequate information on easements, pipelines and roadways. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 1.8, pages 8-9 ***Oil and Gas Production:***

"Many of these [oil and gas] pipelines exist within easements. The easement agreements allow the landowner (the Applicant for this permit) to reroute the pipelines as may become necessary in the future, as long as the replacement pipelines meet industry standards. Also, ownership of the easement and pipelines typically reverts to the landowner if the pipeline operator abandons the line."

Part II, Section 3.0, pages 15-16, ***General Location Maps [330.61 (c)]:***

"The location and surface type of roads that will be used to access the facility are shown. Easements within or adjacent to the facility cannot be clearly shown on Figure 1 of Part II. Consequently, for the sake of clarity, all known easements are shown on Figure 4 of Part I. Figure 4 was prepared by Mejia Engineering Company, and consists of Sheet 1 of 2 and Sheet 2 of 2."

Part II, Section 4.0, page 17 ***Facility Layout Maps*** **[330.61 (d)]:**

"A Facility Layout Map and an Operations Area Layout Map are provided as Figures 3 And 4 of Part II. These maps provide:

The maximum outline of the landfill unit(s);
General locations of main facility access roadways;
General locations of buildings;
Explanatory notes;
Fencing and lockable gates will be provided along the facility boundary, as shown on Figure 4, Part II; and
Natural amenities and plans for screening the facility from public view.

Easements are shown on Figure 4, Sheets 1 and 2, in Part I. These easements will be protected in accordance with TCEQ rules until such time as they may be voided or relocated outside the waste fill area."

The Executive Director's June 28, 2013 Response to Comments (RTC) #3 addressed the comments on easements, pipelines and roadways. The ED's responses are summarized as follows:

In RTC #3, page 8, the ED noted that *"The Application does not contain information on access roads located within other private easements except the portion from the north end of Jordan Road to the facility located in Yugo Ranch, TCEQ rules require that all on-site and other access roadways be maintained by the Applicant in a clean and safe condition, Litter and any other debris must be picked up at least daily and taken to the working face. Access roadways must be re-graded to minimize depressions, ruts, and potholes, 30 TAC §330.153(c).*

TCEQ rules also require that no solid waste unloading, storage, disposal, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the facility. No solid waste disposal shall occur within 25 feet of the center line of any utility line or pipeline easement but no closer than the easement, unless otherwise authorized by the Executive Director. All pipeline and utility easements shall be clearly marked with posts that extend at least six feet above ground level, spaced at intervals no greater than 300 feet. 30 TAC § 330.543(a). All easements and pipelines located within the proposed facility are shown in Figure 4 of Part I of the Application. Information on the protection of these easements is required to be included in Part III and IV of the application, 30 TAC § 330.141(a)."

TECHNICAL SUBJECT: PRESENCE OF JURISDICTIONAL WETLANDS AND RELATED LOCATION RESTRICTION

In their hearing request letter of August 2, 2013, Hurd raised this subject in two enumerated comments:

"11. Whether the proposed facility is a compatible land use because the waste management unit is proposed to be located in wetlands."

"31. Whether the Application contains a wetlands determination that meets the requirements of 330.61(m) (2) or wetlands determinations required by 330.553. This relates to RTC 26."

The Hurd comments regarding wetlands do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comments #11 and #31, found in Parts I and II of the Application regarding wetlands and the associated location restriction:

Parts I and II of the Permit Application demonstrate compliance with applicable regulations regarding the issue of wetlands.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(m)(2) (wetlands determination) and 30 TAC §330.553 (wetlands). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of §330.61(m)(2) and 30 TAC §330.553.

Parts I and II of the Permit Application provide adequate information on wetlands and associated location restrictions. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 13.0, pages 36-37, Floodplains and Wetlands Statement [330.61(m)]:

"The proposed landfill is located in an ideal location considering soil, groundwater, land use, and oil and gas activities (past, present, and future). No other location is equally plausible. It is difficult to find an area of appropriate size in Eastern Webb County that does not have floodplain issues due to the prevailing flat topography and rapid runoff soil conditions. Applicant endeavored to find an upland location that was reasonably close to the headwater conditions to minimize any impacts to floodplains and/or wetlands.

TRC performed a wetland evaluation at the facility site in 2009 (see Attachment A). The results of this evaluation indicate jurisdictional wetlands in and near the livestock watering tanks discussed in the preceding paragraph. TRC then performed a wetland determination in 2011. ... The USACE concurred that jurisdictional waters exist on site. ... An application for a Section 404 permit will be prepared and submitted to the USACE. No construction or development in jurisdictional wetland areas will be undertaken without appropriate authorization from the USACE.

No Jurisdictional waters at the location of the proposed facility will be disturbed by the proposed construction or operation of the facility without prior authorization under a permit."

The Executive Director's June 28, 2013 Response to Comments (RTC) #26 addressed comments on wetlands and the associated location restriction. The ED's responses are summarized as follows:

In the first paragraph of RTC #26, the ED noted that *"TCEQ rules require applicants for MSW landfills to provide a wetlands determination in Part II of the application. 30 TAC § 330.61(m). In this case, the Application indicates that TRC Environmental Corporation performed a wetland determination (Assessment) at the facility. The Assessment evaluated the facility for applicable federal, state, and local laws, regulations, and rules regarding wetlands. The Assessment results indicate the presence of jurisdictional wetlands in and near the livestock watering tanks within the proposed area. Section 13 of Part II of the Application and the supplemental wetlands document dated June 4, 2012 indicate that the Applicant submitted its findings to the U.S, Army Corp of Engineers (USACE) and the USACE concurred with the findings, In the near future, the Applicant will prepare and submit a Section 404 permit to the USACE for approval. The Section 404 permit application submitted to the USACE is required to be included in Part III of the complete [MSW] application. No construction in jurisdictional wetland areas will be undertaken prior to the Section 404 permit approval."*

In the second paragraph of RTC #26, the ED concluded that *"The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the wetlands."*

TECHNICAL SUBJECT: PRESENCE OF 100-YEAR FLOODPLAIN AND RELATED LOCATION RESTRICTION

In their hearing request letter of August 2, 2013, Hurd raised this subject in two enumerated comments:

"12. Whether the proposed facility is a compatible land use because the waste management unit is proposed to be located within the 100-year floodplain. This relates to RTC 25."

"15. Whether the Application demonstrates compliance with the floodplains location restriction in 30 TAC 330.547 and, because the waste management unit is proposed to be located within the 100-year floodplain, whether the facility as proposed will comply with the location restriction. This relates to RTC 25."

The Hurd comments regarding the 100-year floodplain do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comments #12 and #15, found in Parts I and II of the Application regarding the 100-Year floodplain and the associated location restriction:

With respect to the comments that Hurd raised on this issue, Hurd attempts to blur the distinction between "existing floodplain conditions" and "proposed floodplain conditions" fully detailed in Parts I and II of the Application. Parts I and II are abundantly clear on the subject and demonstrate compliance with applicable regulations.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(m)(floodplains and wetlands statement) and 30 TAC §330.547 (floodplain). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(m) and 30 TAC §330.547.

The proposed landfill is located in an ideal location considering soil, groundwater, land use, and oil and gas activities (past, present, and future). No other location is equally plausible. It is difficult to find an area of appropriate size in Eastern Webb County that does not have floodplain issues due to the prevailing flat topography and rapid runoff soil conditions. Applicant endeavored to find an upland location that was as close as possible to headwater conditions to minimize any impacts to floodplains and/or wetlands.

Obtaining a MSW permit is not authorization to fill in a floodplain or wetlands. Other authorizations are required for that.

Parts I and II of the Permit Application provide adequate information on 100-Year floodplain and the associated location restriction. The submitted sections of Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 1.5, pages 7-8, under *Floodplains*:

"Because the swales that convey drainage across the site are so wide and shallow, they are quite inefficient at conveying runoff. As a result, relatively wide areas of the site are inundated by runoff from the 100-year rainfall event. The flood insurance rate map (FIRM) for the site, as prepared by the Federal Emergency Planning Agency (FEMA), indicates a significant portion of the site to be within Zone A, the 100-year floodplain. This floodplain is depicted in Figure 11, Part II. The FIRM can also be found in Attachment G of Part II. ... [Applicant] will design a series of drainage channels and detention structures that will result in the removal of the proposed landfill area from the 100-year floodplain. Furthermore, [Applicant] will submit to FEMA a Conditional Letter of Map Revision (CLOMR), requesting correction of the existing FIRM to take into account the related drainage and floodplain improvements. ... this action will result in documentation that construction of the proposed watershed improvements at and adjacent to the site will remove the landfill from the 100-year floodplain."

Part II, Section 13.0, pages 36-37, *Floodplains and Wetlands Statement [330.61(m)]*

"Portions of the proposed facility are currently located within the 100-year floodplain, as indicated on the replication of the most current available floodplain map, or Flood Insurance Rate Map (FIRM), presented in Figure 11. The design of the proposed landfill and related facilities will include design of a comprehensive storm water management system of dikes, drainage channels and detention ponds. Collectively, this system will remove the area of the landfill and proposed buildings from the 100-year floodplain. [Applicant] has performed all the necessary hydrological and hydraulic engineering analysis and design to accomplish this. The

results of this engineering design along with an application for a Conditional Letter of Map Revision (CLOMR) have been submitted to the Webb County Planning Department (WCPD) for review and were approved (see Attachment G). WCPD is the local agency responsible for floodplain management. With concurrence from WCPD, the CLOMR application will be submitted to the Federal Emergency Management Agency (FEMA) for review and approval. The CLOMR when issued will verify that the proposed site drainage plans will, in fact, remove areas of the site proposed for the landfill, processing and storage areas and related development from the 100-year floodplain.

Construction of the landfill will impact a named reservoir, Burrito Tank, and possibly several smaller stock tanks. All affected reservoirs are owned by the applicant or by its parent, Rancho Viejo Cattle Company, Ltd. ... The 100-year flood is so broad in the vicinity of the tanks it appears there is sufficient area to carry the flows which will bypass the tanks' zones of impact.

The proposed landfill is located in an ideal location considering soil, groundwater, land use, and oil and gas activities (past, present, and future). No other location is equally plausible. It is difficult to find an area of appropriate size in Eastern Webb County that does not have floodplain issues due to the prevailing flat topography and rapid runoff soil conditions. Applicant endeavored to find an upland location that was reasonably close to the headwater conditions to minimize any impacts to floodplains and/or wetlands."

The Executive Director's June 28, 2013 Response to Comments (RTC) #25 addressed comments on the 100-Year floodplain and the associated location restriction. The ED's responses are summarized as follows:

In the second paragraph of RTC #25 beginning on page 31, the ED noted that *"as indicated in Section 13 of Part II of the Application, the storm water engineering designs, along with an application for a Conditional Letter of Map Revision (CLOMR), have been submitted to the Webb County Planning Development (WCPD) for review and were approved. With concurrence from WCPD, the CLOMR application will be submitted to FEMA. The CLOMR, when issued, will remove areas for waste disposal, processing, storage, and related development from the 100-year floodplain. Detailed storm water engineering designs, the CLOMR application submitted to FEMA, and the approved CLOMR (as well as an implementation of the approved CLOMR project) are not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."*

Beginning with the second full paragraph of RTC #25 on page 32, the ED noted that *"Regarding the comment that the proposed improvements fall outside the boundaries of the proposed permit site and on a property with separate ownership, it is the responsibility of the Applicant to obtain permission from off-site landowner to dredge and fill the area for proposed improvements in the watershed that fall outside the Applicant's property boundary. The TCEQ does not have jurisdiction to consider such process. Once the CLOMR is approved, and the project areas are developed and improved as planned to remove 100-year floodplain areas from the proposed waste management unit areas, elevations for these developed areas, as well as structures (dams, levees, channels, etc.), must be included in the revised FIRM, and any future*

development in these areas will require authorization from FEMA. However, the Applicant will be responsible for maintenance of these developed structures, including off-site areas. The Applicant will be required to provide the authority of the off-site development (easement, right-of-way, etc.) and maintenance procedures for these structures. This information is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application.

Regarding the comment related to the erosion or collapse of the off-site improvements, the floodplain protection structures (onsite or off-site) must be maintained by the Applicant, as stated above. In addition, erosion and sediment control measures for these structures will also be provided in the complete application.

Concerning the comment that the floodplain protection structure designs be in compliance with the state's dam safety provisions and local floodplain management regulations prior to development, the floodplain protection structure designs must be in compliance with the state's dam safety provisions and local floodplain management regulations. However, this information is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."

In the three paragraphs on page 33 of RTC #25, the ED offers "In regard to the comment that the construction of dams and levees will be insufficient to redirect the surface water produced by a large rainfall, and whether the proposed dam and the protective lining of the landfill will be adequate to protect the landfill from subsurface waters from those tributaries that are proposed to be rechanneled and diverted from the site: As previously mentioned, these structures' designs will be included in the complete application and reviewed to make sure the effectiveness of the facility's drainage routing system and the existing drainage patterns will not be adversely altered.

Concerning the comment that the facility must develop a storm water control plan that accounts for a 500 year rainfall event, and not a 100 year rainfall event, the TCEQ's jurisdiction is established by the Legislature, and is limited to the issues set forth in statute and rules. Accordingly, the TCEQ does not have jurisdiction to consider requirements beyond those specified by the rules.

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the Floodplain issue."

TECHNICAL SUBJECT: POTENTIAL HISTORICALLY SIGNIFICANT SITES

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

"13. Whether the Application adequately addresses sites of potential historical significance. The location evaluated by the State Historic Preservation Officer is not

specified and the cultural resources in the Application states that "the presence of ... resources within the [project area] is unknown." This relates to RTC 14."

The Hurd comment regarding historic sites does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comment #13, found in Parts I and II of the Application regarding the Historic Sites issue:

With respect to the comment by Hurd on this issue, the comment appears to be nothing more than a "manufactured issue." Parts I and II are abundantly clear on the subject and demonstrate compliance with applicable regulations.

The Hurd comment also ignores the clear language from the Texas Historical Commission response in Part II, Attachment C: "NO HISTORIC PROPERTIES AFFECTED, PROJECT MAY PROCEED."

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(c) (general location maps) and 30 TAC §330.61(o) (Texas Historical Commission response). The Executive Director's notice of "Technically Complete" dated July 2, 2012, and the December 12, 2011 Letter from South Texas Development Council to TCEQ, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(c & o).

Parts I and II of the Permit Application provide adequate information on Historic Sites. The submitted sections of Parts I and II clearly show Applicant's intent to protect historically significant sites.

Specific, selected citations from the permit application pertinent to this comment include:

Part II, Section 3.0, page 16, *General Location Maps [330.61 (c)]:*

"There are no recorded archeological, historical or aesthetic sites within one mile of the facility, so none can be shown."

Part II, Section 8.0, page 25 *Impact on Surrounding Area [330.61 (h)]:*

"8.3 Compatibility with the Surrounding Area. Proximity to Residences and Other Uses – The proximity of the facility to residences is discussed above. There are no schools, churches, cemeteries, historic structures or sites, archaeologically significant sites, or sites having exceptional aesthetic quality within one mile of the facility. The lack of some of these sites or features has been verified. According to Texas Historical Commission (THC) records, there are no archeological or historic sites in the area of the proposed facility."

Part II, Section 15.0, page 39, *Texas Historical Commission Review [330.61 (o)]:*

"The Texas Historical Commission (THC) was asked to review the proposed project in the context of the Natural Resources Code, Chapter 191, and Texas Administrative Code. THC notified TRC that the proposed project may proceed (see Attachment C). Additionally, TRC searched on-line data sources and found that the project does not appear to affect any known cultural resources sites or historic properties (see Attachment D)."

Part II, Attachment C *Texas Historical Commission Review Letter:*

May 5, 2011 Response from State Historic Preservation Officer of the Texas Historical Commission

"NO HISTORIC PROPERTIES AFFECTED, PROJECT MAY PROCEED"

The Executive Director's June 28, 2013 Response to Comments (RTC) #15 Addressed the Comment Regarding Historic Sites. The ED's responses are summarized as follows:

In RTC #15 page 18, the ED noted that *"The TCEQ's MSW rules require that applicants submit a review letter from the Texas Historical Commission documenting compliance with the Natural Resources Code, Chapter 191, Texas Antiquities Code. The Applicant provided coordination documents between the Applicant and the Texas Historical Commission in Attachments C and D to Part II of the Application. The coordination letter indicates no historic property or prehistoric archeology at the site and states that the landfill project may proceed. The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding the coordination with the Texas Historical Commission."*

TECHNICAL SUBJECT: PRESENCE OF THREATENED AND ENDANGERED SPECIES AND RELATED LOCATION RESTRICTION

In their hearing request letter of August 2, 2013, Hurd raised this subject in two enumerated comments:

"16. Whether the Application demonstrates compliance with the endangered and threatened species location restriction in 30 TAC 330.551. This relates to RTC 21."

"32. Whether the information in the Application related to endangered and threatened species complies with 330.61(n). The proposed example protection measures for the indigo snake reference the wrong snake. Additionally, the Application does not contain correspondence from the United States Fish and Wildlife Service on locations and specific data relating to endangered and threatened species in Texas. This relates to RTC 21."

The Hurd comments regarding threatened and endangered species do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comments #16 and #32, found in Parts I and II of the Application regarding Threatened and Endangered Species:

With respect to the comment by Hurd on this issue, Applicant has been in contact with the U.S. Fish and Wildlife Service which is evident by review of the application. Hurd appears to be attempting to blur the distinction between requirements for Parts I and II and those requirements for Parts III and IV.

Parts I and II are clear on the subject of threatened and endangered species and demonstrates compliance with applicable regulations. Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(n) (endangered or threatened species) and 30 TAC §330.551 (endangered or threatened species). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(n) and 30 TAC §330.551.

Parts I and II of the Permit Application provide adequate information on Threatened & Endangered Species and the associated location restriction. The submitted sections of Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 1.6, page 8, under *Threatened and Endangered Species*:

"TRC has performed an initial assessment of threatened and endangered (T&E) species at the site, and subsequently conducted a more detailed biological evaluation. These studies will assure compliance with federal and state requirements for the protection of T&E species and their habitats. These studies have been submitted to the Texas Parks and Wildlife Department (TPWD) and the U.S. Fish and Wildlife Survey (USFWS), as discussed in Section 4.0 [sic, should be Section 14.0]."

Part II, Section 14.0, pages 38, *Endangered or Threatened Species [330.61(n)]*:

"A site reconnaissance and evaluation was performed ... in 2009 to assess the potential for the facility to harbor endangered and threatened species, or to provide critical habitat for such species. ... [Applicant's] report of this assessment is presented in Part II, Attachment A.

Based on the result of this evaluation, [Applicant] has concluded that the site of the proposed facility may contain habitat or range conditions that may result in the occurrence of endangered or threatened species. By comparing the characteristics of the site to surrounding areas, it is clear that habitat and environmental conditions of the site are not significantly different from conditions for many miles surrounding the site. No unique or critical habitat conditions were observed. A biological evaluation was completed and provided to TPWD and USFWS. TPWD has responded and a copy of its response letter is contained in Attachment A. TRC awaits response from USFWS."

The Executive Director's June 28, 2013 Response to Comments (RTC) #21 addressed the comments on Threatened & Endangered Species and the associated location restriction. The ED's responses are summarized as follows:

In the first paragraph of RTC #25 beginning on page 23, the ED noted that *"an application for an MSW landfill must include information about the impact of the proposed development upon endangered or threatened species (E&TS) and their critical habitat, and the criteria for the protection of any identified E&TS. Specifically, under Part II of the application, an applicant must 'submit Endangered Species Act compliance demonstrations ... and determine whether the [proposed] facility is in the range of endangered or threatened species.' 30 TAC § 330.61(n). If the proposed facility is located in the range of endangered or threatened species the Applicant must provide a biological assessment prepared by a qualified biologist in accordance with standard procedures of the USFWS and the Texas Parks and Wildlife Department (TPWD) to determine the effect of the facility on the endangered or threatened species. 30 TAC § 330.61(n). Finally, an applicant must indicate in their SOP, which is required in Part IV of the application, how the proposed facility will be operated in conformance with any endangered or threatened species protection plan required by the commission. 30 TAC § 330.157."*

In the first full paragraph of RTC #21 beginning on page 24, the ED noted that *"Section 14 of Part II of the Application includes information about E&TS and their habitat. Attachment A to Part II of the Application includes an E&TS assessment performed by a qualified scientist. The assessment concluded that the facility may contain habitat or range of conditions that may result in the occurrence of E&TS. However, by comparing the characteristics of the facility to surrounding areas, it is clear that habitat and environmental conditions of the facility are not significantly different from conditions for many miles surrounding the facility. No unique or critical habitat conditions were observed. As documented in Attachment A to Part II of the Application, the Applicant contacted the USFWS and the TPWD regarding the possible presence of threatened and endangered species in the immediate vicinity of the site. The USFWS has not provided any concerns related to the facility project. The TPWD offered general comments and recommendations regarding migratory birds and the potential impact on the state-listed threatened Texas Tortoises and Texas Indigo Snake."*

The last paragraph on page 24 of RTC #25 concludes: *"The Executive Director has preliminarily determined that the proposals in the Application relating to protection of endangered or threatened species meet the requirements of the above referenced rules."*

TECHNICAL SUBJECT: WASTE ACCEPTANCE PLAN INCLUDING WASTE FROM MEXICO

In their hearing request letter of August 2, 2013, Hurd raised this subject in one comment:

> *"18. Whether the Application's waste acceptance plan is adequate for the Applicant's proposed operations. According to the waste acceptance plan the landfill will be only a Type I municipal solid waste landfill. Additionally, the waste acceptance plan does not provide*

information on the sources and characteristics of wastes proposed to be received at the proposed landfill, including, but not limited to, the sources and characteristics of waste from Mexico. This relates to RTC 34."

The Hurd comment regarding the waste acceptance plan does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comment #18, found in Parts I and II of the Application regarding the Waste Acceptance Plan:

With respect to the comment by Hurd on this issue, Parts I and II of the Permit Application comply with the requirements of 305.45 (a)(8) (technical report) and 30 TAC §330.61(b) (waste acceptance plan). The Executive Director's notice of "Technically Complete" dated June 28, 2013, the December 12, 2011, Letter from South Texas Development Council to TCEQ, and the April 8, 2011,Texas DOT Letter from Laredo District Engineer Albert Quintanilla, P.E. are all further evidence of the Permit Application's compliance with all applicable requirements of 305.45 (a)(8) and 30 TAC §330.61(b).

Parts I and II of the Permit Application provide adequate information on Waste Acceptance Including Waste from Mexico. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the Permit Application pertinent to these comments include:

Part I, Section 1.4.1, pages 4-11 ***Supplementary Technical Report [305.45 (a) (8)]:***

Under subsection 1.4.1 ***General Description of the Facilities***

Pages 5-6 ***Transportation Access***

"One characteristic of the site that is favorable for the development of PERC is the site's access to a relatively inexpensive bulk transportation system, a nearby railroad. The majority of the waste and recyclable materials to be brought to PERC will be hauled by rail, and this waste and material will not travel on public roads in any highly populated area in or near Laredo. ...

The main line of the Kansas City Southern Railway Co. (KCS) between the United States and Mexico passes through Yugo Ranch about two miles from the site. The rail network of KCS and the presence of the KCS main line within two miles of the site provide a significant advantage to this facility. Railroads have re-established a prominent role in the U.S. shipping industry, particularly for long-distance and bulky or heavy commodity shipping. High diesel fuel costs in recent years redefined shipping in the U.S. High fuel costs have adversely impacted the profitability of the trucking industry and made railroads much more economical than trucks hauling heavy loads long distances

Page 7 ***National Trend for Regional Landfills and Longer Hauling Distances:***

"A third factor that supports the proposed facility is the national trend to fewer but larger landfills that serve more distant waste generators through long hauling. ... potential new landfill sites that meet all the necessary criteria, including: sufficiently large land area; suitable soil, geology, and groundwater conditions; acceptable neighboring land use; and access to economical transportation."

Pages 8-10 ***Description of Facilities and Systems***

"PERC will be designed and permitted to accept a variety of waste types. However, regulated hazardous waste and regulated radioactive wastes will not be accepted. Types of wastes that will be accepted for landfill disposal include:

Municipal solid waste,
Non-hazardous industrial waste,
Construction and demolition waste,
Coal combustion ash and pollution control sludges,
Filter cake and process sludge from industrial and municipal water and wastewater treatment plants, Non-hazardous industrial waste from maquiladora industries in Mexico, and
Event-type waste from disaster clean-ups.
Materials that will be received for processing may include:
Unsorted or mixed recyclables for processing and recovery of commodities,
Scrap tires for processing and beneficial reuse,
Electronic waste for processing and beneficial reuse, and
Grease trap and grit trap wastes for processing and potentially beneficial reuse.

Materials that will be received for deep well injection include liquids from oil and gas exploration and production under the regulatory jurisdiction of the Railroad Commission of Texas (RCT).

Waste for landfill disposal at PERC is anticipated to be between 1,000,000 and 2,000,000 tons per year (tpy) in the first few years after the landfill is permitted and constructed. This is between about 2,750 and 5,500 tons per day (tpd), based on receiving waste seven days per week. Going forward, the facility might receive a higher rate of waste, and will have ample capacity to accept larger quantities, but it is difficult to estimate what the future quantity may be. It is expected that almost all incoming waste will be received based on multi-year contracts with generating sources, which will be a combination of local governmental entities, private waste companies with local hauling contracts but no local landfill, and industries. Waste sources are not yet completely determined, as the facility will need to be much closer to being ready to operate before contracts for waste disposal can be put into effect. Consequently, the points of origin of incoming waste have not yet been determined. It is anticipated that PERC will receive solid waste generated in the City of Laredo, as that city's existing landfill is reported to have less than 10 years of remaining capacity and is not likely to be expanded. The City of Laredo landfill received 378,000 tons of solid waste in FY 2008, and waste receipts should increase over the near future as the Laredo population continues to grow. For planning purposes, it is assumed that PERC will receive approximately half of Laredo's solid waste when its landfill closes in the

future, and that the amount of future waste will be about 235,000 tpy, or about 750 tpd (six days per week basis). This waste will be brought to the site by trucks. PERC intends to offer the City of Laredo the opportunity to deliver its solid waste to a proposed transfer station that PREC would construct and operate in or near the city, to facilitate transportation of the City's waste to the facility. Additionally, municipal solid waste, construction and demolition (C&D) waste, and water and wastewater treatment sludge are expected to be between 1,250 and 4,000 tpd, and various industrial wastes are estimated to average about 750 tpd, all transported by rail. Industrial waste from the maquiladora industries in Mexico will also be rail-hauled to the site. KCS owns and operates the rail line on the International Bridge between Laredo and Nuevo Laredo, Tamaulipas.

Waste from Laredo will be trucked to the site via Hwy 359. It is anticipated that a waste transfer station will be established in the city, so that the city waste collection trucks will not need to drive to and from the facility. Instead, waste will be hauled by semi-tractor trailer units dedicated to the transfer station operation. About 30 to 35 transfer truck trips per day are anticipated to carry the 750 tpd to the site. The transfer station will be subject to obtaining a permit or registration from TCEQ. Until the permit or registration is issued, waste collection trucks would haul waste directly to the landfill.

Rail-hauled waste will be transported by several methods. The most common transportation method for the municipal solid waste will involve loading the waste into intermodal shipping containers at the waste generators' transfer stations. Once they are filled, either the containers will be directly loaded onto flat-bed rail cars if the transfer station has rail access, or they will be transported on flatbed trucks to an intermodal rail yard for loading onto rail cars. This method of shipment is commonly used for shipping a wide variety of commodities across the country and internationally, and is also used in most waste-by-rail operations. Some bulk-type industrial wastes, coal combustion waste, most municipal and industrial sludges, and many C&D waste streams may be hauled by gondola cars, provided the particular waste is not subject to odors, wind-blown release of waste, or has similar restrictions. Some generators may establish waste transfer stations that employ balers. Baled waste is readily transportable, as a baler produces a cube of highly compressed waste wrapped in wires. Baled waste is quite stable, and can be moved and stacked inside intermodal containers by conventional fork-lifts, in the same manner as many commodities. Some waste baling operations include wrapping the bale in polyethylene film which seals in odors and any liquids that might be present, and keeps out rainwater and insects, making shipping the waste to the landfill very secure and unobjectionable.

Initially, PERC may receive waste in intermodal shipping containers at the new KCS container facility east of Laredo. If this option is employed, the intermodal containers with waste will be off-loaded from rail cars to flatbed tractor trailers that will be driven to the landfill. As the volume of waste received increases over time, PERC will construct a rail siding along the KCS main line on Yugo Ranch. The facility will employ a container moving equipment to off-load the intermodal containers from rail cars to flatbed tractor-trailer units which will haul the containers to the working face area of the landfill. A long boom crane with a container lifting mechanism will remove each container from the truck and place it near the working face, where a worker will unseal and open the doors. The crane operator will then tip the container to dump the waste into the working face, where the waste will be compacted into the landfill. The crane

operator will remove the container for cleaning, and then replace the empty container on the truck bed so it can be returned to the rail car and eventually returned to a waste generator for re-use. As waste volume increases, a rail spur may be constructed into the landfill area to eliminate the step of off-loading containers onto flat-bed trailers. Also, if the disposal market offers sufficient opportunity for accepting waste in gondola cars, a rail car tipper will be added to the rail siding or spur. Car tippers are commonly used to unload coal at power plants, and are also used for waste transfer at waste-by-rail landfill sites, such as at the ECDC landfill near East Carbon, Utah. . . .

Ancillary facilities proposed for PERC may include a processing facility for recyclable materials, often called a clean materials recovery facility or "clean MRF. This facility will function to separate and recover all re-usable or recyclable components that have economic value from their respective source streams. The source stream for the clean MRF will be materials collected in curbside recycling programs and citizen drop-off centers offered in most cities. ... The site's rail access will provide economical transport of the incoming recyclables and shipment of the recovered commodities to their markets. Unrecoverable materials, or materials that have no use or value as recycled commodities will be landfilled. In addition, it is proposed that grease and grit wastes from the Laredo area will be processed to reduce the water content and then landfilled, with the expectation that recovered grease may used for energy recovery in the form of methane gas production, depending on volumes and the availability of suitable equipment or technology. Landfill gas recovery will only occur after a future registration through TCEQ to authorize this activity.

PERC will seek a permit from the Railroad Commission of Texas (RRC) to construct and operate a Class 2 underground injection well at the site. This type of injection well is limited to the injection of liquids originating in oil and gas exploration and production, which basically is limited to condensate, produced water and brine. ... Discussion of this aspect of PERC is included here in the interests of providing a complete picture of the total anticipated development of the site. The Class 2 well, or a separate Class 5 well may also be used for the disposal by underground injection of shallow groundwater produced during the construction and initial operation of the landfill."

Part I, Section 1.4.1, pages 11- 12 ***Supplementary Technical Report [305.45 (a)(8)]*:**

Under subsection 1.4.2 ***Volumes, Rates and Characteristics of Waste***

"Types of wastes that will be accepted for landfill disposal, along with their volume or rate include:

Municipal solid waste by rail – estimated to be between 1,250 and 4,000 tpd,
Municipal solid waste by truck – estimated to be 750 tpd,
Non-hazardous industrial waste – estimated to be 750 tpd,
Construction and demolition waste – included with municipal solid waste,
Coal combustion ash and pollution control sludges – included with industrial waste,

Filter cake and process sludge from industrial and municipal water and wastewater treatment plants – included with municipal solid waste,
Non-hazardous industrial waste from maquiladora industries in Mexico – included with industrial waste, and
Event-type waste from disaster clean-ups – varies from none to occasionally up to 2,000 tpd.

The types of materials that will be received for processing, along with their volume or rate, may include:

Unsorted or mixed recyclables for processing and recovery of commodities – up to 500 tpd, and grease trap and grit trap wastes for processing and beneficial reuse – up to 50,000 gallons per day.

The characteristics of these wastes and materials are provided in the definitions found at 30 TAC §330.3 (1) through (181). No regulated hazardous wastes will be accepted. Special wastes as defined by 30 TAC §330.3 (148) and Class 2 and Class 3 industrial wastes will be accepted, except for any such wastes that cannot be effectively processed, handled or disposed at this facility. Class 1 non-hazardous wastes will also be accepted. Class I Industrial Waste amounts will not exceed 20 percent of the total amount of all other waste accepted for disposal during the current or previous year.

Materials the will be received for deep well injection include liquids from oil and gas exploration and production under the regulatory jurisdiction of the RRC.

Waste for landfill disposal at PERC is anticipated to be between 1,000,000 and 2,000,000 tons per year (tpy) in the first few years after the landfill is permitted and constructed. This is between about 2,750 and 5,500 tons per day (tpd), based on receiving waste seven days per week. The facility expects to receive a higher rate of waste, and will have ample capacity to accept larger quantities. The landfill has a total disposal capacity currently estimated to be about 300-350,000,000 tons, and have a capacity to receive and dispose of as much as 10,000 tpd.

The above volumes and rates are estimates, and it should be understood that it is difficult to accurately estimate what the future volumes and rates of waste receipts may be. Almost all incoming waste will be received based on multi-year contracts with various waste generators, which will be a combination of local governmental entities, private waste companies with local hauling contracts but no local landfill, and industries."

Part II, Section 2.0, pages 10 – 14 ***Waste Acceptance Plan [330.61 (b)]:***

Under subsection 2.1, pages 10-12 ***General***

2.1.1 ***Type of Facility and Wastes to be Accepted***

"The facility will be a Type I municipal solid waste landfill, with several additional waste management units. As a Type I landfill, the facility will be designed for and will accept certain types of non-hazardous industrial wastes that are compatible with landfill disposal, and may accept liquid industrial wastes in the future. Waste management units for liquid industrial wastes may include solidification (prior to landfill disposal) or underground injection by means of a Class 1 injection well. Design considerations will be made to ensure that storm water and wastewater management are in compliance with TCEQ regulations. All contaminated liquids resulting from the operation of the facility will be disposed of in a manner that will not cause surface water or groundwater pollution. Grease trap and grit trap wastes will be accepted for processing. Processing of recyclables, such as those collected by residential curbside collection programs, may be provided. This process will seek to recover all recyclable commodities that have a market or reuse value, coupled with landfill disposal of non-recyclable residuals.

2.1.2 *General Prohibitions*

The following wastes will not be accepted for landfill disposal at this facility:

(1) Lead acid storage batteries.

(2) Do-it-yourself used motor vehicle oil

(3) Used oil filters from internal combustion engines.

(4) Whole used or scrap tires, unless processed prior to disposal in a manner acceptable to the executive director.

(5) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC).

(6) Liquid waste, except as allowed in 30 TAC §330.177 (relating to Leachate and Gas Condensate Recirculation), and/or except household liquid waste as allowed by30 TAC §330.15(e)(6) will not be accepted for disposal in any MSW landfill unit.

(7) Regulated hazardous waste as defined in 30 TAC §330.3.

(8) Polychlorinated biphenyls (PCB) wastes, as defined under 40 Code of Federal Regulations Part 761, unless authorized by the United States Environmental Protection Agency and the MSW permit.

(9) Radioactive materials as defined in 30 TAC Chapter 336 (relating to Radioactive Substance Rules), except as authorized in Chapter 336 or that are subject to an exemption of the Department of State Health Services.

2.1.3 *Management of Industrial and Special Wastes*

The facility will accept certain Class 1 non-hazardous, Class 2 and Class 3 industrial wastes, as well as many special wastes that are regulated as municipal solid waste (MSW). Only those Class 1 non-hazardous wastes that are allowed to be disposed into Type I MSW landfills in restricted locations will be accepted, with the understanding that the facility may in the future provide on-site stabilization or solidification of certain types of industrial sludge to render these wastes suitable for landfill disposal. Grease and grit trap wastes will be accepted for processing from commercial sources (restaurants, fast food facilities, car wash and vehicle maintenance facilities), industrial sources (food processing plants, manufacturing plants) and institutional sources (hospitals, schools, prisons). Class I Industrial Waste amounts will not exceed 20 percent of the total amount of all waste accepted for disposal. Special design considerations will

be made in accordance with 30 TAC §330.173 to properly manage any Class I waste that is proposed to be accepted for disposal at the landfill. Before accepting wastes that require stabilization, the facility will obtain a permit modification or amendment to add an on-site solidification facility. Special wastes will be accepted only to the extent that any given category or type of special waste can be properly managed by the facility and/or readily disposed into the landfill.

Class I Industrial Waste will be disposed only in landfill cells lined with the industrial waste default design composite liner. The upper component shall consist of a minimum 30-mil (0.75 mm) flexible membrane liner and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10-7 cm/sec. Flexible membrane liner components consisting of high density polyethylene shall be at least 60-mil thick. The flexible membrane liner component shall be installed in direct and uniform contact with the compacted soil component. Class I Industrial Waste cells shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

Under subsection 2.2, page 12 ***Sources and Characteristics of Waste***

"The proposed facility will be a comprehensive waste treatment and disposal facility that serves municipal and industrial customers by means of truck and rail transportation. Municipal solid wastes transported by truck are expected to originate in Webb and nearby counties. The use of tractor-trailers loaded at transfer stations could extend the service area to more distant areas of South Texas such as Corpus Christi and San Antonio. Grease trap and grit trap wastes processed at this facility are expected to be generated in the same service area. Industrial wastes are expected to be generated from this service area plus the industries in the Houston-Beaumont region. Wastes transported by rail can be economically shipped from greater distances, because the transportation cost per ton-mile is much less by rail than by truck. In regions of the country where the cost of landfill disposal is relatively high and landfills are some distance away and served by trucks, the cost of solid waste disposal by rail-hauling to this facility could be less. Thus, the service area for rail-hauled waste may essentially be unlimited.

Sources of non-industrial waste that are intended to be managed at the proposed facility include local governmental entities (cities, towns, waste management districts or authorities, and counties), state institutions, federal agencies that generate waste from disaster response, commercial solid waste collection companies, and similar generators of municipal solid waste. Wastes to be received other than industrial waste can be characterized as garbage, rubbish, ashes, street sweepings, incidental dead animals, and non-recyclable residuals following the removal of recyclables from source-separated recyclable materials. Solids resulting from processing grease and grit trap wastes may also be disposed in the landfill.

A main line of the Kansas City Southern Railroad (KCS) passes within about two miles of the landfill facility and is accessible by all-weather roads on private property. Rail service to the site can be accomplished without having to transport waste over public roads. However, in the initial period of operation, waste may be transported in sealed, steel containers through the KCS intermodal shipping yard in Laredo.

KCS is an international railroad company with extensive track mileage and service in Mexico. The facility intends to provide waste disposal services to industrial generators in Mexico. Both the maquiladora industries along the U.S. border and other industries in Mexico will be served by the facility."

Under subsection 2.3, page 13-14 ***Quantity of Waste***

Estimated Maximum Annual Waste Acceptance Rate

"The facility estimates that it will receive the following maximum annual quantities of waste for landfill disposal during the first five years of its operation, and the population equivalent represented by these quantities:

Year 1 – 1,000,000 tons (1.1 million)

Year 2 – 1,200,000 tons (1.3 million)

Year 3 – 1,400,000 tons (1.6 million)

Year 4 – 1,600,000 tons (1.75 million)

Year 5 – 1,800,000 tons (2.0 million)

It must be noted that these figures are estimates only at this time, and should not be considered either as a firm commitment of quantities to be received or as a limitation on the amount of waste to be received in any of the years shown. The actual quantities to be received are expected to be determined by contracts the owner or operator anticipates securing from waste generators after the facility is closer to being in operation. The facility will be constructed to have sufficient processing and disposal capacity available and sufficient numbers of personnel and equipment, to properly manage the waste streams that are brought to the facility.

The grease and grit trap (G&G) waste processing facility is expected to receive a maximum of 30,000 gallons per day in the first year of operation. The maximum and average lengths of time this waste will remain at the facility prior to disposal, are summarized in the following table. G&G waste will typically be delivered in commercial vacuum trucks and off-loaded into a series of storage tanks. This waste will be transferred to mixing tanks for processing, where treatment chemicals (typically polymers and flocculating agents) and possibly compressed air will be added. Following the reaction time in the mixing tanks, the G&G waste will be transferred to separation tanks, where the grease will float and the grit will settle. Grease may be shipped off-site for processing for energy recovery or dewatered on-site and landfilled. Grease decomposes to produce landfill gas. Grit will be dewatered and landfilled. Remaining water will be managed as contaminated water and treated on site by solar evaporation or solidification (in accordance with TCEQ rules). This water may be hauled off-site for disposal at a wastewater treatment plant under authorization of the plant owner. All aspects of the management of G&G waste will be in accordance with TCEQ rules (and U.S. EPA rules if offsite disposal is employed).

GREASE AND GRIT TRAP WASTE

Year after opening	*Maximum Receipts, gallons per day*	*Maximum Receipts, gallons per year*	*Maximum Storage, days*	*Average Storage, days*
1	*30,000*	*10,800,000*	*5*	*3*
2	*33,000*	*11,900,000*	*5*	*3*
3	*36,000*	*13,000,000*	*5*	*3*
4	*39,000*	*14,000,000*	*5*	*3*
5	*42,000*	*15,100,000*	*5*	*3*

The maximum amount of grease and grit trap waste to be stored, or total storage capacity, will be 50,000 gallons. The proposed maximum daily waste acceptance rate is 50,000 gallons per day."

Part II, Section 9.0, pages 26-27 ***Transportation [330.61(i)]:***

"Vehicular traffic associated with the proposed landfill will primarily approach and leave the general area of the facility on State Highway 359, a two lane asphalt-paved road with paved shoulders. Between SH 359 and the site, traffic will travel about 5 miles on Jordan Road, which is a Webb County road, to within about two miles of the site. There is no posted vehicle weight limitation on Jordan Road. The final road leading into the site is an all-weather surfaced private road on Yugo Ranch.

Webb County was given information about the proposed Pescadito Environmental Resource Center, and has expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez stating the county's support is presented in Part II, Attachment E.

Existing and future estimated traffic volumes on SH 359 were not studied in connection with this application. SH 359 is estimated to be a minimum of 5.9 miles from the proposed facility. A review of publicly-available data on Webb County traffic did not produce existing traffic counts or future traffic projections for Jordan Road, which is about 1.1 mile from the closest portion of the proposed facility.

At the initial expected rate of 1,000,000 tons per year (tpy), the expected volume of traffic associated with the proposed landfill is expected to be approximately 260 trips per day (130 vehicles entering and leaving, including 10 passenger vehicles and 120 trucks). Ultimately for 2,000,000 tpy, the facility traffic is expected to be 520 trips per day (260 vehicles entering and leaving, including 20 passenger vehicles and 240 trucks). At this ultimate volume, truck traffic will average about 10 vehicles per hour or one every 6 minutes. This volume of site-related traffic will have no significant adverse impact on the capacity of SH 359. Because of the relatively low volume of site traffic, along with the favorable geometry, reduced speed limit and

long sight distance, no turning or storage lanes would be needed to safely accommodate the proposed facility.

The applicant proposes that all site-related traffic will approach the site from the south, via SH 359 and Jordan Road.

TxDOT was provided information about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintanilla, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

TRC obtained traffic count data from TxDOT for a location on State Highway 359 (SH 359) approximately 3 miles east of Loop 20. This is the location closest to the intersection of SH 359 and Jordon Road for which traffic count data was available. For the five-year period from 1995 through 1999, the average daily traffic count was 6,080 vehicles per day. The average daily traffic count at this location in 2009 was 8,800 vehicles per day. This is an increase of 2,720 vehicles per day or about 45 percent over an average period of 12 years. Assuming a similar increase will occur over 12-year periods in the future, the 2021 average daily traffic will be 12,760 vehicles per day and the 2033 average daily traffic will be 18,500 vehicles per day. The anticipated site related traffic will not significantly impact the estimated future traffic conditions. This conclusion is shared by TxDOT's District Engineer (see Attachment B, Part II)...."

Part II, Section 16.0, page 40, *Council of Governments and Local Government Review [330.61 (p)]:*

"Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E).

Also, information letters about the proposed project were submitted to Webb County and the City of Laredo, and review letters are being requested from each entity regarding compliance with any local solid waste plans for their jurisdictions (see Part II, Attachment E).

Information about the Pescadito Environmental Resource Center was presented to Webb County Commissioners Court. The Webb County Judge and all four County Commissioners expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez affirms the support of Webb County (see Part II, Attachment E)."

Part II, Attachment E *Local Agency Coordination:*

December 12, 2011 Letter from South Texas Development Council to TCEQ

"The application for the Pescadito Environmental Resource Center under the Texas Commission on Environmental Quality (TCEQ) MSW Permit No. 2374, for a permit Type !Municipal Solid Waste Facility to be located in Webb County, Texas, was reviewed on

December 8, 2011 by the South Texas Development Council's (STDC), Regional Solid Waste Management Advisory Committee (SWAC).

The review was conducted to determine the facility's conformance with the South Texas Regional SWM Plan and general land use compatibility, as found in Chapter Four, Volume II of the South Texas Development Council Regional Solid Waste Management Plan. The SWAC has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC, Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan. Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County."

April 13, 2011 Letter from Webb County

"This letter is in support of the future development of the Pescadito Environmental Resource Center, a proposed state-of-the-art solid waste management facility in Webb County, Texas. The continued population growth and economic development of Webb County requires infrastructure to meet its future needs, including proper management of solid waste. While Webb County needs an environmentally secure landfill, we recognize that landfill disposal alone is not the answer for the future. A landfill should be employed only for those wastes that cannot be recycled or put to some beneficial re-use.

We find that the Pescadito Environmental Resource Center offers Webb County a long term solid waste management facility that will include comprehensive recycling in a location that is both environmentally well-suited and compatible with surrounding land use. Because the facility is proposed to be served by rail, it can serve a broad region without causing impacts to Webb County traffic or its residential communities. Furthermore, the facility will provide significant direct economic impacts, including long-term employment, payroll and taxes. The County of Webb supports the benefits of this proposed project."

The Executive Director's June 28, 2013 Response to Comments (RTC) #31, #33 and #34 addressed comments on the Waste Acceptance Plan including waste from Mexico. The ED's responses are summarized as follows:

Response 31 -- Oil & Gas Waste, Class 1 Industrial Non-Hazardous Waste, and Hazardous Waste:

"Section 2 of Part II of the Application indicates that the facility will not accept the following wastes for landfill disposal: hazardous wastes (other than municipal hazardous waste from conditionally exempt small quantity generators), radioactive wastes (except for certain low-level radioactive wastes as allowed in writing by the Texas Department of State Health Services), PCB wastes, and other prohibited wastes pursuant to 30 TAC § 330.15. In accordance with 30 TAC § 330.3(148), Class 1 Industrial non-hazardous wastes and waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas are classified as special wastes and may be accepted at the facility with special handling and disposal to protect human health or environment. 30 TAC §

330.171. Details on special handling and disposal procedures are not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."

Response 33 -- Out-of-State and Foreign Wastes:

"The TCEQ does not have authority to restrict the area a landfill serves and does not have authority to consider the service area in deciding whether to issue a permit.

Concerning out-of-state industrial wastes, Section 2.2 of Part II of the Application indicates that the facility will accept industrial wastes from Mexico. All out-of-state industrial waste must be handled by the facility as special waste. For more information related to the handling of special waste, please refer to Response 31."

Response 34 -- Waste Acceptance Plan:

"Applicants for MSW permits must submit a waste acceptance plan with Part II of the application. 30 TAC § 330.61(b). The waste acceptance plan must identify the sources and characteristics of waste, provide a brief description of the general sources and generation areas contributing wastes to the facility, and estimate the maximum annual waste acceptance rate for the facility for five years. Section 2.2 of Part II of the Application adequately addresses the sources and characteristics of wastes in accordance with 30 TAC § 330.61(b). This section characterizes wastes to be accepted at the facility as follows: Class 1 non-hazardous, Class 2, and Class 3 industrial wastes, special wastes, out-of-state industrial wastes, industrial sludge, grease and grit trap wastes, liquid industrial wastes, garbage, rubbish, ashes, street sweepings, incidental dead animals, and non-recyclable residuals following the removal of recyclables from source-separated recyclable materials. This section also identifies the areas that the facility proposes to serve, as follows: municipal solid wastes transported by truck are expected to originate in Webb and nearby counties, the use of tractor-trailers loaded at transfer stations could extend the service area to more distant areas of South Texas such as Corpus Christi and San Antonio, grease trap and grit trap wastes processed at the facility are expected to be generated in the same service area, industrial wastes are expected to be generated from this service area in addition to the industries in the Houston-Beaumont region, wastes transported by rail can be economically shipped from greater distances, and waste disposal services to industrial generators in Mexico (both the maquiladora industries [Mexican Corporation which operates under a maquila program] along the U.S. border and other industries in Mexico will be served by the facility).

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the Waste Acceptance Plan."

TECHNICAL SUBJECT: AVAILABILITY AND ADEQUACY OF ACCESS ROADS AND TRAFFIC

In their hearing request letter of August 2, 2013, Hurd raised this subject in three enumerated comments:

"23. Whether the information in the Application related to transportation provides adequate data on 'the availability and adequacy of roads that the owner or operator will use to access the site,' including Jordan Road, the road extending from Jordan Road to the proposed landfill, and the direct rail access road. Additionally, maps included with the Application identify multiple access roads to the site that are not addressed. This relates to RTC 2.

24. Whether the Application provides information on the volume of vehicular traffic on access roads within one mile of the proposed landfill, both existing and expected, as required by 330.61 (i)(2) or the size/weight of such vehicular traffic. The letter from the Webb County Judge included in the Application assumes that proposed landfill will be served by rail and not impact traffic, which is not consistent with the Application, Nor is there a discussion of the interaction between oil and gas related traffic and landfill related traffic. The Application fails to consider the proposed landfill's operating hours in relation to vehicular traffic. This relates to RTC 2.

28. Whether the roadways that the owner or operator proposes to use to access the facility are adequate. This relates to RTC 2."

The Hurd comment regarding access roads do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comments #23, #24 and #28, found in Parts I and II of the Application regarding access roads and traffic:

With respect to the comments by Hurd on this issue, Hurd completely ignores the fact that "access roads within one mile of the site" will be on the Yugo Ranch – owned by Rancho Viejo. At face value, the Hurd comments appear to be nothing more than a manufactured issue. Parts I and II of the Application are abundantly clear on the subject and demonstrate compliance with applicable regulations.

Parts I and II of the Permit Application provide adequate information on access roads and traffic. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

The comments ignore the clear language from the South Texas Development Council's review of Parts I and II. The STDC (1) "has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC., Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan." and (2) "Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County." It should also be noted that receipt of such a review letter is not required by TCEQ

under 30 TAC §330.61(p), i.e., "A review letter is not a prerequisite to a final determination on a permit or registration application."

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.45(a), 30 TAC §330.59(b), and 30 TAC §330.61(c & i). The Executive Director's notice of "Technically Complete" dated July 2, 2012, the December 12, 2011, Letter from South Texas Development Council to TCEQ, and the April 8, 2011, Texas DOT Letter from Laredo District Engineer Albert Quintanilla, P.E. are all further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.45(a), 30 TAC §330.59(b), and 30 TAC §330.61(c & i).

The majority of the waste and recyclable materials to be brought to PERC will be hauled by rail, and this waste and material will not travel on public roads in any highly populated area in or near Laredo.

Vehicular traffic associated with the proposed landfill will primarily approach and leave the general area of the facility on State Highway 359, a two lane asphalt-paved road with paved shoulders. Between SH 359 and the site, traffic will travel about 5 miles on Jordan Road, which is a Webb County road, to within about two miles of the site. There is no posted vehicle weight limitation on Jordan Road. The final road leading into the site is an all-weather surfaced private road on Yugo Ranch.

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned.

The main line of the Kansas City Southern Railway Co. (KCS) between the United States and Mexico passes through Yugo Ranch about two miles landfill facility and is accessible by all-weather roads on private property. Rail service to the site can be accomplished without having to transport waste over public roads. However, in the initial period of operation, waste may be transported in sealed, steel containers through the KCS intermodal shipping yard in Laredo.

Waste from Laredo will be trucked to the site via Hwy 359. It is anticipated that a waste transfer station will be established in the city, so that the city waste collection trucks will not need to drive to and from the facility. Instead, waste will be hauled by semi-tractor trailer units dedicated to the transfer station operation. About 30 to 35 transfer truck trips per day are anticipated to carry the 750 tpd to the site.

At the initial expected rate of 1,000,000 tons per year (tpy), the expected volume of traffic associated with the proposed landfill is expected to be approximately 260 trips per day (130 vehicles entering and leaving, including 10 passenger vehicles and 120 trucks). Ultimately for 2,000,000 tpy, the facility traffic is expected to be 520 trips per day (260 vehicles entering and leaving, including 20 passenger vehicles and 240 trucks). At this ultimate volume, truck traffic will average about 10 vehicles per hour or one every 6 minutes.

Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by

large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic.

Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E).

TxDOT was provided information about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintanilla, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

Information about the Pescadito Environmental Resource Center was presented to Webb County Commissioners Court. The Webb County Judge and all four County Commissioners expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez affirms the support of Webb County (see Part II, Attachment E).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.4, pages 4-11 ***Supplementary Technical Report [305.45 (a)(8)]:***

Under subsection 1.4.1 ***General Description of the Facilities***

Pages 5-6 **Transportation Access**

"One characteristic of the site that is favorable for the development of PERC is the site's access to a relatively inexpensive bulk transportation system, a nearby railroad. The majority of the waste and recyclable materials to be brought to PERC will be hauled by rail, and this waste and material will not travel on public roads in any highly populated area in or near Laredo. The site is accessible for waste hauled by truck, as it is located about four miles from U.S. Highway 59 (Hwy 59) and about five miles from Texas Highway 359 (SH 359), and about 25 miles from Interstate 35 (I-35) in Laredo. Both highways provide suitable access to the site from Laredo, Corpus Christi (110 miles), San Antonio (130 miles), Austin (250 miles) and Houston (325 miles). The access route to the site from Laredo will be SH 359 via Jordan Road, which is an all-weather surface roadway managed by Webb County. Jordan Road "dead ends" at Yugo Ranch about 5.1 miles north of SH 359. There is no vehicle weight limits posted on this road. The access road from Hwy 59 will be used only in case of emergency, not for the routine traffic by trucks hauling solid waste. The owners of Yugo Ranch will convey an easement generally along existing all-weather ranch roads to RVWM, as necessary to ensure

access to the landfill site, and RVWM will improve and maintain this road as its main access route. The existing all-weather access roadway between PERC and Hwy 59 is proposed to be maintained strictly as a secondary, emergency use only, access route into the facility. In the event that road maintenance is being performed on the primary access road, or unusual weather has disrupted access, the secondary access road could be used temporarily to keep the facility in service.

The main line of the Kansas City Southern Railway Co. (KCS) between the United States and Mexico passes through Yugo Ranch about two miles from the site. ... gives KCS access to all population and industrial centers in North America, allowing it to benefit from international trade and shipping under the North American Free Trade Agreement (NAFTA)."

Pages 8-10 ***Description of Facilities and Systems***

"PERC will be designed and permitted to accept a variety of waste types. ...

It is anticipated that PERC will receive solid waste generated in the City of Laredo, as that city's existing landfill is reported to have less than 10 years of remaining capacity and is not likely to be expanded. The City of Laredo landfill received 378,000 tons of solid waste in FY 2008, and waste receipts should increase over the near future as the Laredo population continues to grow. For planning purposes, it is assumed that PERC will receive approximately half of Laredo's solid waste when its landfill closes in the future, and that the amount of future waste will be about 235,000 tpy, or about 750 tpd (six days per week basis). This waste will be brought to the site by trucks. PERC intends to offer the City of Laredo the opportunity to deliver its solid waste to a proposed transfer station that PERC would construct and operate in or near the city, to facilitate transportation of the City's waste to the facility. Additionally, municipal solid waste, construction and demolition (C&D) waste, and water and wastewater treatment sludge are expected to be between 1,250 and 4,000 tpd, and various industrial wastes are estimated to average about 750 tpd, all transported by rail. Industrial waste from the maquiladora industries in Mexico will also be rail-hauled to the site. KCS owns and operates the rail line on the International Bridge between Laredo and Nuevo Laredo, Tamaulipas.

Waste from Laredo will be trucked to the site via Hwy 359. It is anticipated that a waste transfer station will be established in the city, so that the city waste collection trucks will not need to drive to and from the facility. Instead, waste will be hauled by semi-tractor trailer units dedicated to the transfer station operation. About 30 to 35 transfer truck trips per day are anticipated to carry the 750 tpd to the site. The transfer station will be subject to obtaining a permit or registration from TCEQ. Until the permit or registration is issued, waste collection trucks would haul waste directly to the landfill."

Part II, Section 2.0, pages 10 – 14 ***Waste Acceptance Plan [330.61 (b)]***

Under subsection 2.2, page 12 ***Sources and Characteristics of Waste***

"The proposed facility will be a comprehensive waste treatment and disposal facility that serves municipal and industrial customers by means of truck and rail transportation. Municipal solid wastes transported by truck are expected to originate in Webb and nearby counties. The use of tractor-trailers loaded at transfer stations could extend the service area to more distant areas of South Texas such as Corpus Christi and San Antonio. Grease trap and grit trap wastes processed at this facility are expected to be generated in the same service area. Industrial wastes are expected to be generated from this service area plus the industries in the Houston-Beaumont region. Wastes transported by rail can be economically shipped from greater distances, because the transportation cost per ton-mile is much less by rail than by truck. In regions of the country where the cost of landfill disposal is relatively high and landfills are some distance away and served by trucks, the cost of solid waste disposal by rail-hauling to this facility could be less. Thus, the service area for rail-hauled waste may essentially be unlimited. ...

A main line of the Kansas City Southern Railroad (KCS) passes within about two miles of the landfill facility and is accessible by all-weather roads on private property. Rail service to the site can be accomplished without having to transport waste over public roads. However, in the initial period of operation, waste may be transported in sealed, steel containers through the KCS intermodal shipping yard in Laredo."

Part II, Section 8.0, pages 21- 25 ***Impact on Surrounding Area [330.61(h)]***
8.2 ***Potential Impact on the Environment***

"Except for trucks entering and leaving, all on-site noise generation will be limited to areas of the facility that are located on private property at least ¼ mile from neighboring property."

8.3 ***Compatibility with the Surrounding Area***

*"**Character of Surrounding Land Uses** - This facility location and the area extending for many miles in all direction are obviously suitable for oil and gas production and cattle ranching. This is the current and historic land use status of the property on which the facility is proposed, and has been for many years. No other residential, recreational, commercial, agricultural or industrial land uses exist for several miles in the site area.*

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned. ...

Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic. A second commercial type of land use near the site it the KCS railroad, whose tracks are located within one to two miles of the site.

In addition to the residential, commercial and industrial land use described above, land use within a five-mile radius of the facility is divided between agricultural (essentially all pasture land used for cattle ranching) and dispersed oil and gas well sites.

The closest population center and only concentrated residential land use within five miles of the facility is Ranchitos Las Lomas, a community or subdivision located along Hwy 59 about 3.5 to 4.5 miles northwest of the site. This is a community of about 334 persons, according to the 2000 census. Widely scattered residences are found at several ranch headquarters in the area, but these are typically separated from each other by several miles, due to the large size of the ranches, which appear to be on the order of 10,000 acres each. Typical of these is the Yugo Ranch, within which the proposed facility is located. There are an estimated two or three active residences within one mile of the facility, all located at the headquarters of Yugo Ranch. This includes two houses, one mobile home, and occasionally one travel trailer. These nearest occupied residences house ranch hands that are employed by Yugo Ranch.

Vehicle or equipment noise that will be generated by the proposed solid waste activities may not be discernible and should not be objectionable to occupants of the residences at Yugo Ranch because of the low speeds and separation distance. Prevailing winds, which tend to carry noise in its direction of movement, should carry noise away from these residences. Noise resulting from the operation of the facility will not cause any impact to the community of Ranchitos Las Lomas, located about 4 miles northwest of the facility, due primarily to the separation distance. Also, any noise that could be perceived within a limited distance from the facility will be engine noise associated with heavy equipment. Noise generated by truck traffic travelling to and from the facility will be similar to the noise from oil-field trucks and equipment that already travel along area roads many times a day. Truck traffic noise related to accessing the facility will be indistinguishable from the noise of truck and automobile traffic along U.S. Highway 59, which bisects this community. This highway traffic consists of many trucks and tractor-trailer units traveling at up to 70 miles per hour, 24 hours per day."

Part II, Section 9.0, pages 26-27 ***Transportation [330.61(i)]***

"Vehicular traffic associated with the proposed landfill will primarily approach and leave the general area of the facility on State Highway 359, a two lane asphalt-paved

road with paved shoulders. Between SH 359 and the site, traffic will travel about 5 miles on Jordan Road, which is a Webb County road, to within about two miles of the site. There is no posted vehicle weight limitation on Jordan Road. The final road leading into the site is an all-weather surfaced private road on Yugo Ranch.

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The applicant proposes that all site-related traffic will approach the site from the south, via SH 359 and Jordan Road.

TxDOT was provided information about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintinella, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

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Documentation of coordination with the Federal Aviation Administration regarding airport location restrictions is presented in Attachment F."

Part II, Section 16.0, page 40, *Council of Governments and Local Government Review [330.61 (p)]*

"Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E).

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Part II, Attachment B

Texas Department of Transportation, Laredo District, Letter Dated April 8, 2011, from District Engineer Albert Quintanilla, P.E.

"The Texas Department of Transportation (TxDOT) Laredo District has met with your client, Mr. Carlos Y. Benavides, to discuss this proposed municipal solid waste landfill. As mentioned in our discussion, the proposed site is approximately 5 miles north of State Highway 359 (SH 359) near the north end of Jordan Road.

As noted in our discussion, this proposed site does not conflict with any traffic or location restrictions of the department. As a part of TxDOT's long range plans, projected developments along SH 359 east of Laredo has been anticipated to continue in the future, thus our long range plan includes widening along SH 359 from Laredo headed east to add passing lanes in a Super Two configuration. In addition to these planned widening projects, the district will also be studying the need for dedicated left turn lanes at state and county road intersections. Thus, while a dedicated left turn lane from SH 359 to Jordan Road does not currently exist, it is a part of our long range plan.

With the need for additional municipal solid waste landfill capacity in the Webb County area in the near future, your clients proposed site may not only provide the

additional capacity, it has been planned in a manner that does not appear to negatively impact traffic operations on the state highway system. If I may be of any further assistance regarding this proposed project, please contact me at (956) 712-7405."

Part II, Attachment E Local Agency Coordination

December 12, 2011 Letter from South Texas Development Council to TCEQ:

"The application for the Pescadito Environmental Resource Center under the Texas Commission on Environmental Quality (TCEQ) MSW Permit No. 2374, for a permit Type !Municipal Solid Waste Facility to be located in Webb County, Texas, was reviewed on December 8, 2011 by the South Texas Development Council's (STDC), Regional Solid Waste Management Advisory Committee (SW AC).

The review was conducted to determine the facility's conformance with the South Texas Regional SWM Plan and general land use compatibility, as found in Chapter Four, Volume II of the South Texas Development Council Regional Solid Waste Management Plan. The SWAC has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC, Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan. Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County."

The Executive Director's June 28, 2013 Response to Comments (RTC) #2 addressed the comments on access roads and traffic. The ED's responses are summarized as follows:

"TCEQ rules require applications for MSW landfill permits to provide data on proposed access roads, including availability and adequacy of roads that the owner or operator will use to access the site, volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the facility, and projections on the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility. 30 TAC § 330.61(i).

When reviewing permit applications, the Executive Director defers to Texas Department of Transportation's (TxDOT) recommendations on transportation and traffic issues regarding the traffic impacts and adequacy of state-maintained roadways, and to recommendations by local authorities on transportation and traffic issues regarding the traffic impacts and adequacy of locally-maintained roadways. The Application includes information related to the adequacy of access roads and a traffic study in Section 1.4.1 of Part I and Section 9 of Part II of the Application, as well as evidence of coordination with TxDOT and local authorities in Attachments B and E to Part II of the Application. Section 1.4.1 indicates that the majority of the waste and recycling materials to be brought to the facility will be hauled by rail and will not travel on public roads in any highly populated area in or near Laredo, Section 9.0 indicates that publicly-available data on existing and projected traffic counts for Jordan Road are not available and the facility's traffic is expected to generate approximately 120-240 trucks, which

includes passenger vehicles per day. The conclusion made by TxDOT is that State Highway 359 has adequate capacity to handle the predicted volumes of site traffic associated with the facility, In addition, TxDOT's letter of April 8, 2011 in Attachment B to Part II of the Application confirms that the facility would operate in a manner that does not appear to negatively impact traffic operations on the state highway system. Section 2.2 of Part II of the Application indicates that the proposed facility will serve municipal and industrial customers by means of truck and rail transportation, Wastes transmittted by rail will minimize impact to Webb County traffic. Webb County's letter of Apri113, 2012 in Attachment E to Part II of the Application indicates that the County of Webb supports the proposed facility.

Concerning the comment on compensation for damages to private roads under private easement by other landowners, the Application does not contain information on access roads located within other private easements except the portion from the north end of Jordan Road to the facility located in Yugo Ranch. TCEQ rules require that all onsite and other access roadways be maintained by the Applicant in a clean and safe condition. Litter and any other debris must be picked up at least daily and taken to the working face. Access roadways must be re-graded to minimize depressions, ruts, and potholes. 30 TAC § 330.153(c).

In regard to the comment that general location maps do not depict the current status of the surrounding roads, 30 TAC § 330.59(c)(2) requires that the latest revision of all maps shall be used. The Application was reviewed based on information provided by the Applicant. 30 TAC § 330.57(d) specifies that it is the responsibility of an applicant to provide the Executive Director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners.

The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding availability and adequacy of roads and traffic impact and safety."

TECHNICAL SUBJECT: GENERAL GEOLOGY AND SOILS INFORMATION INCLUDING FAULT AREAS, SEISMIC IMPACT ZONES, AND UNSTABLE AREAS AND RELATED LOCATION RESTRICTIONS

In their hearing request letter of August 2, 2013, Hurd raised this subject in three enumerated comments:

"25. Whether the information in the Application related to general geology and soils is adequate and meets the requirements of 330.61(j). There are no figures, cross-sections, strat[igraphic] columns, or soil maps. This relates to RTC 28.

26. Whether the Applicant has complied with 330.555. The area has experienced withdrawal of crude oil, natural gas, sulfur, etc., or significant amounts of groundwater. This relates to RTC 28.

27. Whether the Application contains the information necessary to determine if the area is unstable as required by 330.559(1)-(3). Additionally, whether the Application lacks the demonstration required by 330.559. This relates to RTC 28"

The Hurd comments regarding general geology and soil conditions do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Hurd comments regarding general geology and soils including fault areas, seismic impact zones, and unstable areas appear to blur the distinction between requirements for Parts I and II, i.e., 30 TAC §330.61(j) (general geology and soils statement), and those requirements for Parts III and IV, i.e., 30 TAC §330.63(e) (geology report).

Relevant facts, Pertinent to Hurd comments #25 through #27, found in Parts I and II of the Application regarding general geology and soils including fault areas, seismic impact zones, and unstable areas:

Soil in the upper 160 feet at the site was found to be predominantly clay. Soil conditions provide a naturally favorable site setting, and the clay will provide excellent material for construction of liners, caps and cover systems. Based on review of published reports and geophysical logs, these or similar soils are believed to extend to much greater depths.

Deeper aquifers are protected from possible site-related contamination by hundreds of feet of intervening very low permeability soil intervals.

The geology of the site area is also suitable for landfill development, as the soil strata are laterally very extensive with relatively thick layers of very low permeability soils that prevent vertical migration of water. Consequently, the area geology is very protective of the quality of water in the aquifers that lie below the proposed facility.

The site area is geologically stable, with no evidence of faults and a historical earthquake incidence rate significantly below the Texas state average. There are no recognized geological hazards at the site, as there are no geologic faults in the immediate area, the risk of seismic activity is extremely low, and there is no known incidence of instability due to subsidence, poor foundation conditions, or karst terrains.

The site region, dominated by Eocene and older sediments, is not known as an active fault area; active fault causal mechanisms such as heavy groundwater and/or petroleum withdrawal are absent. Area gas wells, while many, are not known to have experienced or generated problems that might be related to faulting. The topographic map and aerial photography do not show linear features characteristic of faulting. There are inactive faults nearby and at depth as shown on geologic maps and cross-sections; these are more than a mile from the site and not expected to become active.

Potential earthquake sources are far away from the PERC site and this distance is reflected in the anticipated low seismic impact risk for the region; that is, the site is in an area of minimal expected peak horizontal acceleration and thus not in a seismic impact zone.

There appears to be no natural unstable areas, such as karst terrains, landslide areas (the site is essentially flat), subsidence areas, and/or active faults in the area of the PERC site. However, like most landfills located in "good locations", the predominance of subsurface clay materials indicates that the facility location is a potentially "unstable area" due to the properties of the clay materials. At this site, the clays are both expansive and potentially low strength with respect to sliding as a consequence of the clay plasticity ranging from moderate to very high. As demonstrated numerous times at other similar sites, the clay material properties can be readily accommodated in the design and operation of the landfill.

Parts I and II of the Permit Application establish that suitable geologic and soil conditions are present for landfill development and for protection of human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(j) (general geology and soils statement)). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(l).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.4.1, pages 6-7, under *Favorable Site Conditions*:

"Soil in the upper 160 feet at the site was found to be predominantly clay, ... soil conditions provide a naturally favorable site setting, and the clay will provide excellent material for construction of liners, caps and cover systems."

Part II, Section 1.1, page 5:

1.1 Soils and Geology

"These soils are predominantly clays, ... Based on review of published reports and geophysical logs, these or similar soils are believed to extend to much greater depths.....
There are no recognized geological hazards at the site, as there are no geologic faults in the immediate area, the risk of seismic activity is extremely low, and there is no known incidence of instability due to subsidence, poor foundation conditions, or karst terrains."

Part II, Section 8.1, Pages 22-23, under *Groundwater*:

"Deeper aquifers are protected from possible site-related contamination by hundreds of feet of intervening very low permeability soil intervals. ...

The geology of the site area is also suitable for landfill development, as the soil strata are laterally very extensive with relatively thick layers of very low permeability soils that prevent vertical migration of water. Consequently, the area geology is very protective of the quality of water in the aquifers that lie below the proposed facility. There are no

recognized geological hazards at the site, as there are no geologic faults in the immediate area, the risk of seismic activity is extremely low, and there is no known incidence of instability due to subsidence, poor foundation conditions, or karst terrains."

Part II, Section 10.0, pages 28-31, under *General Geology and Soils Statement [330.61(j)]*:

10.1 General Geology [330.61(j)(1)]

"The geology of the area is described, in part, by the Laredo Sheet (Barnes, 1976) of the Geologic Atlas of Texas; it shows the site located on the contact between the Eocene Yegua Formation and Jackson Group ... Kier and others (1977) rate the site as naturally suitable for solid waste disposal with proper monitoring.

10.2 General Soils [330.61(j)(1)]

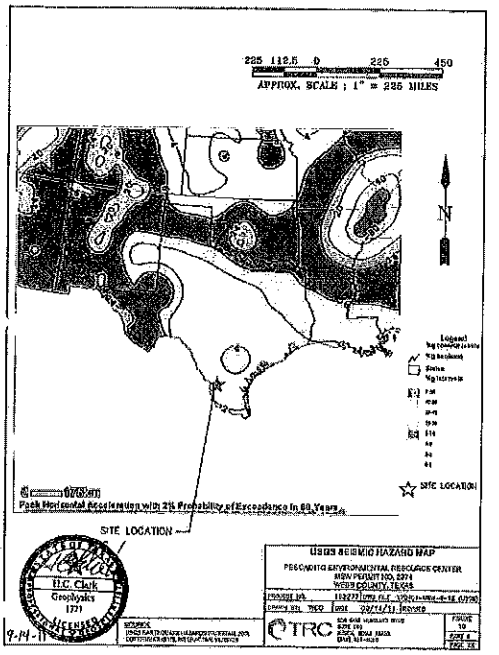
The soils that dominate the site include the Aguilares sandy clay loam, Brundage sandy loam, Catarina clay, and Montell clay. Each of these soils is capable of supporting vegetation suited to ranching.

10.3 Fault Areas [330.61(j)(2) and 330.555]

The site region, dominated by Eocene and older sediments, is not known as an active fault area; active fault causal mechanisms such as heavy groundwater and/or petroleum withdrawal are absent. Area gas wells, while many, are not known to have experienced or generated problems that might be related to faulting. The topographic map and aerial photography do not show linear features characteristic of faulting. There are inactive faults nearby and at depth as shown on geologic maps and cross-sections; these are more than a mile from the site and not expected to become active ...

10.4 Seismic Impact Zones [330.61(j)(3) and 330.557]

Potential earthquake sources are far away from the PERC site and this distance is reflected in the anticipated low seismic impact risk for the region; that is, the site is in an area of minimal expected peak horizontal acceleration and thus not in a seismic impact zone. ... The USGS Seismic Hazard Map(U.S. Geological Survey, 2008) [Figure 10] shows the site location, and contoured values of maximum peak acceleration as a percent of the earth's gravity field, or g, with a 2 percent probability of exceedance in 50 years. The site location between the 2 and 4 percent (g) contours places it well below the threshold for a seismic impact zone. This USGS Seismic Hazard Map is the most current and is widely accepted as the official seismic risk map for this portion of the U.S.



10.5 Unstable Areas [330.61(j)(4) and 330.559]

There appears to be no natural unstable areas, such as karst terrains, landslide areas (the site is essentially flat), subsidence areas, and/or active faults in the area of the PERC site. However, like most landfills located in "good locations", the predominance of subsurface clay materials indicates that the facility location is a potentially "unstable area" due to the properties of the clay materials. At this site, the clays are both expansive and potentially low strength with respect to sliding as a consequence of the clay plasticity ranging from moderate to very high. As demonstrated numerous times at other similar sites, the clay material properties can be readily accommodated in the design and operation of the landfill."

The Executive Director's June 28, 2013 Response to Comments # 28 on these issues addressed the Application's compliance with all requirements of 30 TAC §330.61(j) with the exception of "seismic impact zones." Comment #28 did note that:

"30 TAC § 330.63(e) requires the Applicant to provide a geology report, including subsurface details. The geology report must include the following: a description of the regional geology of the area by means of a geologic map/sand a description of the generalized stratigraphic column in the facility area; a description of the geologic processes active in the vicinity of the facility; a description of the regional aquifers in the vicinity of the facility area based on open-file sources; the results of investigations of subsurface conditions at a particular waste management unit; and geotechnical data that describes the geotechnical properties of the subsurface soil materials and a discussion with conclusions about the suitability of the soils and strata for the uses for which they are intended. However, the geology report and subsurface details are not required to be included in the partial application for a land-use compatibility determination."

"Regarding the Applicant's compliance with 30 TAC §§ 330.555 and 330.559 (related to fault and unstable areas, respectively), Section 10.3 of Part II of the Application adequately addresses the fault areas as required by 30 TAC § 330.555 and concludes that there are no known active or inactive faults within 200 feet of the facility. Section 10.5 of Part II of the Application adequately addresses the unstable areas as required by 30 TAC § 330.559 and concludes that there appear to be no natural unstable areas, such as karst terrains or areas susceptible to mass movement. This section also indicates that the clays plasticity at the site, ranging from moderate to very high, may develop the unstable conditions. However, it continues to indicate that, as demonstrated numerous times at other sites, the clay material properties could be readily accommodated in the design and operation of the facility, Investigation and geotechnical evaluations will be performed in conjunction with the engineering design which will recognize the subsurface materials and conditions. Stability analyses will also be conducted and evaluated to ensure that the integrity of the structural components of the landfill will not be disrupted. The landfill engineering designs, geotechnical and subsurface evaluations, and stability analyses are not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."

TECHNICAL SUBJECT: GROUNDWATER, SURFACE WATER, DRAINAGE AND WATER POLLUTION CONTROL

In their hearing request letter of August 2, 2013, Hurd raised this subject in two enumerated comments:

"29. Whether the Application provides sufficient information about groundwater and surface water as required by 330.61(k). The Application does not contain data on surface water at and near the site, such as the size and characteristics of the water bodies, and does not include information related to the proposed landfill design, including drainage controls. This relates to RTC 24.

34. Whether the Applicant has provided information in response to 330.55(b) (Water Pollution Control). This relates to RTC 7."

The Hurd comments regarding groundwater and drainage do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comments #29 and #34 regarding groundwater, surface water, drainage and water pollution control, found in Parts I and II of the Application:

The Hurd comments appear to question "water pollution control" aspects for the proposed facility. The comments do not appear to take into account the physical setting of the proposed facility with respect to: (1) both groundwater and surface water conditions; (2) prevailing geologic and soil conditions; and (3) area topography and drainage patterns. Further, the Hurd

comments appear to ignore the extensive "water pollution control" regulatory requirements for design, construction, operation, and closure of the proposed facility.

Surface Water Run-Off Facts

The proposed facility is essentially at the top of the drainage (topographic) divide between the Rio Grande and Nueces River basins – the landfill is in the Rio Grande drainage.

The proposed facility is in the upper reaches of the drainage for San Juanito Creek.

Drainage from the proposed facility, i.e. "run-off", flows south-southwest across Rancho Viejo property to at least the railroad spur, with the possible exception of a small component crossing the "wedge."

On the north and east side of the proposed facility, drainage is towards the landfill, i.e., "run-on" conditions.

Note that further south and east of the proposed facility (lower Jordan Road to SH 359) land is in the Reiser Creek drainage.

Waste won't be washed onto adjacent properties.

Note that average annual rainfall for the area is well below the 25-inch cutoff TCEQ uses for an "arid exemption" and for using water-balance covers without modeling.

Groundwater and Aquifer Facts

The regionally-significant Laredo Aquifer [part of the Carrizo-Wilcox Major Aquifer] is found at depths of 1,000 feet or more below the proposed facility.

Relatively impervious clay soils predominate between the surface and the Laredo Aquifer.

The shallower Yegua-Jackson Aquifer [designated as a minor aquifer in 2002 because of use much further to the north and east] has been recently mapped south into the Webb County area; however, in the area of the landfill, water in the Yegua-Jackson is very limited in quantity and highly mineralized and generally found near the base of the Yegua, i.e top of the Laredo.

No evidence of shallow ground water usage – even for stock watering – in the area of the landfill. Windmills are used for pumping surface water from tanks.

At the time the application for Parts I and II was finalized, there were only six water wells within a five-mile radius of the facility including the Ranch Viejo (Yugo Ranch) well according to state records.

Note that a five-mile radius around the facility would encompass over 60,000 acres. Most of the wells are significantly distant from the facility.

Parts I and II of the Permit Application provide adequate information about site-specific groundwater conditions (and aquifers) and adequate data about surface water at and near the site. In addition, the Permit Application addresses water pollution issues. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(k) (groundwater and surface water). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(l).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.3, page 3, under *Permits or Construction Approvals [305.4(a)(7)]*

"National Pollutant Discharge Elimination System Program under the Clean Water Act and Waste Discharge Program under the Texas Water Code, Chapter 26 – an NOI will be submitted to TCEQ for coverage by a storm water discharge general permit,"

Part I, Section 1.4.1, pages 6-7, under *Favorable Site Conditions*:

"Soil in the upper 160 feet at the site was found to be predominantly clay, occasionally interbedded with claystone, sandstone and shale, and these soil types are believed to extend much deeper. The soils exist in nearly horizontal beds that exhibit very low vertical permeability. ...

While groundwater is encountered in thin layers of sandy or silty material within otherwise highly impermeable clay, this groundwater is essentially not usable due to its very low production potential and poor water quality. The uppermost aquifer beneath the site that is capable of producing water in potentially useful quantities to wells is the Jackson-Yegua Aquifer, which is expected to be encountered in the upper 750 feet below ground surface at the facility area. Water in this aquifer is poor to very poor in quality, due to concentrations of total dissolved solids, chloride and sulfate that exceed Federal drinking water standards. The Jackson-Yegua Aquifer is classified as a minor aquifer, because it produces relatively low yields of highly mineralized water. These water quantity and quality issues limit the usefulness of Jackson-Yegua Aquifer water for human consumption and agricultural uses such as livestock watering or crop irrigation. ... Rainfall averages about 20 inches per year ...

However, the site is situated in a mostly upland area near the top of the watershed, and existing or proposed livestock watering tanks capture and store a portion of the area's storm water runoff. As a result, the quantity of storm water runoff that will flow across the site is relatively low. Such runoff volumes can be readily contained in the perimeter drainage system that will be designed to remove the entire landfill footprint from the 100-year flood plain."

Part II, Section 1.1, page 5

1.1 Soils and Geology

"A series of 56 soil borings were completed to evaluate the characteristics of soil encountered in the upper 160 feet at the site. These soils are predominantly clays, with some interbedded sand, sandstone, and claystone or shale. Based on review of published reports and geophysical logs, these or similar soils are believed to extend to much greater depths. ... These soils have very low permeability characteristics ...

The geology of the site area is also suitable for landfill development, as the soil strata are laterally very extensive with relatively thick layers of very low permeability soils that prevent vertical migration of water. Consequently, the area geology is very protective of the quality of water in the aquifers that lie below the proposed facility."

Part II, Section 1.2, pages 5-6

1.2 Groundwater

"Groundwater was encountered beneath the site within soils of the Jackson and Yegua Groups. These soils are part of the Jackson-Yegua Aquifer, which is classified as a minor aquifer by the Texas Water Development Board (TWDB). This classification is due to the relatively low yield and marginal quality of water in the aquifer. The ground water below the site was encountered in several water-bearing zones or layers that are generally characterized by gradational changes to sandy or silty soil classifications. These water-bearing zones are generally on the order of several feet thick and are found at several depth intervals across the site. These water-bearing zones may also be found layered as a transition between two highly impermeable layers of clay soil or at the top of a relatively impermeable layer of rock-like indurate material, and may also be associated with secondary porosity in the over-consolidated clay soils. These water bearing zones exhibit the characteristics of a confined aquifer. However, the hydraulic characteristics or relative thinness of these zones severely limit their ability to produce water in potentially useful quantities. The quality of this water is very poor to unacceptable for most domestic or agricultural uses. Regional aquifers exist beneath the site, but at significant depth. The Laredo Aquifer is expected to occur at a depth of about 1,000 feet or more below the ground surface. Water in this aquifer is generally slightly saline, with total dissolved solids in the range of 1,000-2,500 milligrams per liter (mg/l), about two to five times the U.S. EPA's secondary drinking water regulation (SDWR) standard of 500 mg/l. Published

reports indicate the groundwater produced by some wells contain some metals and trace elements in excess of SDWR limits. This and other deeper aquifers in south central Webb County dip towards the southeast towards the Gulf of Mexico and generally crop out in relatively narrow bands that trend northeast-southwest.

Groundwater usage in the general area of the site is very limited. Only one water well is known to exist within a one-mile radius of the facility boundary. This is the private water well that is located near the Yugo Ranch headquarters buildings and serves the general needs of the ranch. This well is located roughly 900 feet southwest of the proposed facility. The ranch well was geophysically logged as part of this study and the caliper log indicates that the well is screened in the Yegua from about 1020 feet to 1136 feet where the diameter is reduced to final log depth [1160 feet], suggesting a smaller screen or sediment trap. According to TWDB records and information developed during the preparation of this permit application, there are only 6 water wells within a five-mile radius of the facility, including this ranch well.[current records now show there are eight wells] The next closest well is about 2.5 miles northwest of the facility. Four wells are located between 4.3 and 5 miles northwest of the facility, in the community of Ranchitos Las Lomas. One of these is a well located nearly 5 miles away that is owned and operated by Webb County. This well was intended as a public water supply well to make dispensed water available to the residents of Ranchitos Las Lomas. Water quality from this well is so poor that the majority of the water dispensed at this site is hauled by tanker trucks from the Webb County maintenance facility near U.S. Highway 59 and Loop 20 in Laredo. The source of this hauled water is the Laredo public water system. Of the total quantity of water Webb County dispenses at this location, relatively little water comes from this well, and that follows extensive treatment."

Part II, section 1.4, page 7

1.4 Rainfall, Hydrology and Storm Water Runoff

"The Texas Water Atlas (Estaville, Lawrence & Earl, Richard A., River Systems Institute at Texas State Univeristy, Texas A&M Press, 2008) provides the following site-specific hydrologic information:

Average Annual Precipitation is 22-23 inches (period 1971-2000).
Annual Potential Evapotranspiration (Priestly Taylor Method) is 76 inches.
Annual Potential Evapotranspiration (Penman Method) is 106 inches.
Annual Gross Lake Surface Evaporation is 79 inches (period 1950-1979).

The site is considered an arid location and is located at the boundary of the "Subtropical Subhumid" and "Subtropical Steppe" climates. Currently-published information documents that average annual evaporation exceeds average annual rainfall by more than 40 inches."

Part II, section 2.1.4, pages 11-12

2.1.4 Soil and Groundwater –

"The soils encountered during drilling and described in the literature are dominantly clays. While the bottom and sides of the landfill excavation could encounter thin, isolated sand/silt units with a Unified Soil Classification of "SM" or "SP," these soil units do not appear to be sufficiently thick and laterally continuous to provide a significant pathway for waste migration. In addition, most of these units will not exhibit hydraulic conductivity greater than 1 x 10-5 cm/sec. However, any effect of the sand/silt units is minimized because the average annual evaporation exceeds average annual rainfall by more than 40 inches. The nearest "regional aquifer" is located approximately 1,000 feet below the site, according to regional cross-sections, the literature, geophysical log data obtained from the ranch water well located 900 feet from the facility, and geophysical log interpretations for gas wells in the site area. The ranch water well produces water from that depth. As a consequence of the prevailing soil conditions, the aquifer is protected by many hundred feet of low-permeability, clay-rich soil."

Part II, Section 3.0, page 15

3.0 General Locations Maps [330.61 (c)]

"There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II."

Part II, Section 8.1, Pages 22-23, under *Groundwater:*

"The facility's geological and hydrogeological setting also provides protection of public health, as water quality in the upper aquifer at the facility is too poor to be used for human consumption. Deeper aquifers are protected from possible site-related contamination by hundreds of feet of intervening very low permeability soil intervals."

Part II, Section 8.3, Page 25, under *Compatibility with the Surrounding Area*: *Wells*

"There are no known or recorded water supply wells, either active or abandoned, within 500 feet of the proposed facility."

Part II, Section 11.1, pages 32—33, under *11.0 GROUNDWATER AND SURFACE WATER [330.61 (k)]*

11.1 Groundwater [330.61(k)(1)]

"Groundwater conditions at the site are known from a combination of on-site soil boring data and the published literature. Groundwater is localized in sandier sediments

encountered, but these sediments, as expected from the nature of the depositional environment, are not necessarily continuous across the site. There appears to be enough ultimate connectivity between water bearing materials, however, to allow this shallow groundwater to approach an equilibrium, or coherent potentiometric surface across the site. Water levels range from about 550 feet [msl] in the north part of the proposed landfill footprint to about 530 feet [msl] in the south--and generally follow the area slope, and consequently the drainage as well.

The near surface sediments at the site are part of the Yegua-Jackson Aquifer, a TWDB designated Minor Aquifer, and named for the geology involved. ... Water quality tests on ground water samples from six site borings were analyzed for constituents that include the maximum contaminant levels (MCLs) as established in the national primary drinking water regulations by U.S. EPA. All these ground water samples exceeded the secondary MCLs for total dissolved solids (TDS) and chloride by orders of magnitude. ... There are six water wells within about five miles of the site. The geophysical log of the Yugo Ranch well, about 900 feet from the site, indicates clays and some sands continuing to its total depth of about 1100 feet [bgs], where it is screened in the lower part of the Yegua. This well, sampled as part of the site study, also showed TDS and chloride values somewhat above the secondary MCLs. The site is a part of this Yegua-Jackson recharge zone and is situated on or near the contact between its elements. However, soil characteristics and groundwater chemistry at the site indicate groundwater recharge in the area is limited.

The Laredo Aquifer underlies the Yegua-Jackson. ... This aquifer is an important part of Webb County, for it is capable of producing significant quantities of freshwater, particularly for the sandier lower portion of the Laredo Formation. The Laredo Aquifer provides a portion of Laredo's water supply ..."

Part II, Section 11.2, pages 33- 34

11.2 Surface Water [330.61(k)(2)]

"There are two large surface water impoundments on the proposed PERC landfill site and several smaller impoundments. For the most part surface water flow occurs as overland flow and flow in dry washes whose course is difficult to identify on available aerial photos. ... will incorporate appropriate drainage controls into the facility design that comply with all regulations including the Texas Pollution Discharge Elimination System (TPDES) and allow obtaining appropriate TPDES permits.

Currently existing drainage patterns at the proposed permit boundary will not be significantly altered by landfill development and operation. Existing flow volumes, peak discharges, and discharge points will be maintained by the landfill design. The facility will be protected from 100-year frequency flooding to prevent the washout of solid waste. Calculations and analyses will be provided to demonstrate compliance with regulatory requirements concerning surface water drainage.

The proposed facility will operate under TPDES General Permit No. TXR050000. A signed certification to this effect is presented as Attachment H in Part II,... It will also operate in accordance with a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP will be prepared as the actual design of the landfill and related facilities is completed during the preparation of Parts III and IV of this permit application.

The facility will comply with the requirements of the TPDES storm water permitting requirements by continuous operation and monitoring of its SWPPP throughout the active life of the facility. ... A Notice of Intent (NOI) to obtain coverage under TPDES General Permit No. TXR050000 (or its successor) will be submitted to TCEQ. Filing the NOI will initiate coverage of this facility under the General Permit and is one of the criteria for compliance with the TPDES and Section 402 of the CWA. Operation of the SWPPP is the other criteria for compliance with the TPDES requirements.

Surface water conditions near the site are very similar to those at the site. Due to the generally flat surface topography and low runoff, combined with the tight, cohesive surficial soils, natural drainage systems exhibit very little erosion. Relatively small artificial dams exist in the area to create "stock tanks" for livestock watering."

The Executive Director's June 28, 2013 Response to Comments (RTC) #7 and # 28 addressed the comments on groundwater, surface water, drainage, and water pollution control in separate discussions. The ED's responses are summarized by general subject as follows:

Water Pollution Control Issues

In RTC #7, the Executive Director (ED) noted that "*The rule cited by Hurd Enterprises, 30 TAC § 330.55(b), requires that all liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution and ensure that storm water and wastewater management is in compliance with the regulations of the commission. This information is required to be included in Part III of the complete application under 30 TAC § 330.63(b)(4) (relating to water pollution control). Because this Application is a partial application for determination of land-use compatibility, only Parts I and II of the Application are reqt\ired under 30 TAC § 330.57(a). The Executive Director will assess the information required in Part III of the Application when it becomes available.*"

In RTC #24, the ED noted that "*Regarding the comment that many existing receptors in the area will be exposed to polluted storm water runoff and that the river and reservoir in the area will be impacted by the facility, the facility will be required to take all steps necessary to control and prevent the discharge of contaminated water from the facility. Should the discharge of contaminated water become necessary, the facility will be required to obtain specific written authorization from the TCEQ prior to the discharge. All water coming in contact with waste or contaminated soils will be treated as contaminated water. Run-on and runoff for the 25-year, 24-hour storm event must be controlled. Temporary*

diversion berms will be constructed around areas of exposed waste (unloading area) to collect and contain surface water that has come into contact with waste. Contaminated water must be managed in accordance with the TCEQ regulations."

Surface Water and Drainage Issues

In RTC #24, the ED noted that *"TCEQ rules at 30 TAC §§ 330.63(c), 330.303, 330.305, and 330.307 require the Applicant to provide a surface water drainage report that demonstrates that the owner or operator will design, construct, maintain and operate the facility to manage run-on and runoff during the peak discharge from at least a 25-year storm and prevent the offsite discharge of waste and contaminated storm water, ensure erosional stability of the landfill during all phases of landfill operation, closure, and post-closure care, provide structures to collect and control at least the water volume resulting from a 24-hour, 25-year storm, protect the facility from washouts, and ensure that the existing drainage pattern is not adversely altered. A detailed surface water management plan (discussions, designs, calculations, and operational considerations for the collection, control, and discharge of storm water from the facility as required by the above-referenced rules) is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in Parts III and IV of the complete application.*

A typical surface water management plan will basically consist of drainage swales, downchutes, perimeter channels, detention ponds, and outlet structures. The facility must be designed to prevent discharge of pollutants into waters in the state or waters of the United States, as defined by the Texas Water Code and the Federal Clean Water Act, respectively. The Applicant will be required to obtain the appropriate Texas Pollutant Discharge Elimination System (TPDES) coverage for the proposed facility to assure that storm water discharges are in accordance with applicable regulations. Storm water runoff management system must be designed to convey the 25-year runoff from the developed landfill, consistent with TCEQ regulations, and to provide the necessary storage and outlet control to mitigate impacts to the receiving channels downstream of the facility. A demonstration that existing permitted drainage patterns will not be adversely altered must be provided in Part III of the Application.

The Applicant will also be required to inspect, restore, and repair constructed permanent stormwater systems such as channels, drainage swales, chutes, and flood control structures in the event of wash-out or failure from extreme storm events. Excessive sediment will be removed, as needed, so that the drainage structures, such as the perimeter channels and detention ponds, function as designed. ...

Regarding the comment that the Application failed to provide sufficient information about groundwater and surface water as required by 30 TAC § 330.61(k), the rule requires that the applicant provide data about the site-specific groundwater conditions and data on surface water at and near the facility. Sections 1.2 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the

groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]. Likewise, Sections 1.3, 1.4, 1.5, and 11.2 of Part II of the application adequately provides data on surface water. These sections indicate that surface water conditions at or near the proposed facility are very similar, due to the generally flat surface topography and low runoff. These sections also indicate that the swales that convey drainage across the proposed facility are so wide and shallow that they are quite inefficient at conveying runoff. As a result, relatively wide areas of the site are inundated by runoff from the 100-year rainfall event.

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the Storm water Run-On, Runoff, and Contaminated Water Discharge to River and Reservoir issue."

Groundwater Issues

In RTC #24, the ED concluded that *"Sections 1.1 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]."*

TECHNICAL SUBJECT: ABANDONED OIL, GAS AND WATER WELLS

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

"30. Whether the Application contains all the information required by 330.61(l), which requires that the owner or operator 'provide the executive director with written certification that these wells have been properly capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas at the time of application.' Such certification is missing from the Application. This relates to RTC 6.

The Hurd comment regarding abandoned oil and water wells does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comment #30, found in Parts I and II of the Application regarding abandoned oil, gas and water wells:

Part II, Section 12.0 states there are "*no active wells within the proposed landfill footprint or facility site and only one abandoned and plugged gas well*" based on well records obtained from the Railroad Commission of Texas (RRT).

Part II, Section 1.8 clearly differentiates between "area" and "site of the facility" in discussing oil wells.

Parts I and II of the Permit Application provide adequate information on abandoned oil, gas, and water wells. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(l) (abandoned oil and water wells). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(l).

Specific, selected citations from the permit application pertinent to this comment include:

Part II, Section 1.8, pages 8-9

1.8 Oil and Gas Production

"While some oil but mostly gas production has been prevalent in the area, very little has actually occurred on the proposed site of the facility. Several wells were attempted on or adjacent to the site, but have been sealed and abandoned. The width of the landfill was selected to allow possible future development of gas reserves beneath the landfill by using directional drilling methods. ...

The oil and gas production at and around the site has resulted in a number of wells and pipelines being installed. Every production well has a certain useful or productive life, which ends when the oil or gas reserves it tapped is no longer recoverable. Some wells and pipelines in the site area are no longer active and have been abandoned in place, while others continue in service."

Part II, Section 12.0, page 35, under Abandoned Oil and Water Wells [330.61(l)

"Abandoned Oil Wells - The area around the proposed landfill site on the Yugo Ranch has been drilled for oil and gas. However, there are no active wells within the proposed landfill footprint or facility site and only one abandoned and plugged gas well. Records of the oil and gas wells were obtained from the Railroad Commission of Texas (RRT). A map of the active and plugged wells was obtained and used as a reference. These records in conjunction with an onsite inspection before and during excavation will allow determination of whether this one well, or any others discovered onsite, need to be capped, plugged, and closed in accordance with applicable rules and regulations of TCEQ or the RRT. As required, within 30 days prior to construction, written certification will be provided to executive director of TCEQ that the gas well, and any others encountered, have been properly capped, plugged, and closed. Gathering lines do crisscross the proposed landfill site; thus, if a waste disposal permit is received, these lines will have to be abandoned and relocated as necessary. Future drilling for mineral resources beneath the landfill will use deviated drilling techniques from surface locations outside the footprint of the proposed landfill.

Abandoned Water Wells – There are no abandoned water wells at the facility."

The Executive Director's June 28, 2013 Response to Comments (RTC) #6 and # 43 addressed the Hurd comment on abandoned oil, gas and water wells. The ED's responses are summarized as follows:

In RTC #6, the ED noted that *"TCEQ rules require that the owner or operator provide the Executive Director with written certification that all applicable wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas at the time of application. 30 TAC § 330.61(1)(2). The Application includes information regarding abandoned oil and gas wells in Section 12 of Part II of the Application. It indicates that there is one abandoned and plugged gas well within the proposed facility. The Application does not include written certification at this time. However, the Application includes sufficient information regarding oil and gas wells on the proposed facility to allow the Executive Director to make a [favorable] land-use compatibility determination under 30 TAC § 330.57(a), and the Executive Director may consider the technical matters related to plugged and abandoned oil and gas wells at the time the completed Application is submitted."*

In RTC #43, the ED noted that: *"In Section 1.8 of Part II of the Application, the Applicant asserts that very little oil and gas production has occurred on or adjacent to the site, that several wells were attempted and later sealed and abandoned, and that the width of the landfill was selected to allow for the possibility of directional drilling in the future."*

TECHNICAL SUBJECT: STANDARD AIR PERMIT AND RELATED AIR ISSUES INCLUDING MANAGEMENT PLANS FOR AIR POLLUTANTS, LANDFILL GAS, AND NUISANCES (ODOR AND DUST)

In their hearing request letter of August 2, 2013, Hurd raised this subject in a single enumerated comment:

> *"33. Whether the Application complies with 330.55(a). Under 330.55(a) owners or operators of certain waste management facilities should consult with the TCEQ's Air Permits Division on or before the date that the municipal solid waste application is filed with the executive director. The Application does not indicate whether such a consultation took place. Additionally, whether the Applicant has provided an analysis on whether its proposed landfill operations can comply with a standard air permit. This relates to RTC 17."*

The Hurd comments regarding a standard air permit do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comment #33, found in Parts I and II of the Application regarding a Standard Air Permit and related air issues including management plans for air pollutants, landfill gas, and nuisances (odor and dust):

With respect to the comments by Hurd's issue, Parts I and II of the Permit Application provide adequate information on the Standard Air Permit and related air issues including management plans for air pollutants, landfill gas, and nuisances (odor and dust). The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.59 (contents of Part I of the Application) and 30 TAC §330.61 (contents of Part II of the Application). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.59 and 30 TAC §330.61.

Specific, selected citations from the permit application pertinent to this comment include:

Part II, Section 4.0, page 17

"4.0 Facility Layout Maps [330.61 (d)]:

A Facility Layout Map and an Operations Area Layout Map are provided as Figures 3 and 4 of Part II. ...

Locations of gas monitoring probes are generally shown on Figure 5. In accordance with 30 TAC §330.371(h)(2), permanent gas monitoring probes are required to monitor for subsurface migration of landfill gas. Although, 1,000-foot spacing is typical, 600-foot spacing is recommended along the southwest corner of the perimeter due to habitable structures within 3,000 feet. This spacing can be accommodated at the location shown on Figure 5."

Part II, Section 8.1, Pages 22-23, under *Air Mode*:

"Air Mode - The two nearby houses and one mobile home in the facility area are located to the southwest of the landfill, as shown on the Aerial Photograph, Figure 7. The prevailing wind direction, as shown by the Wind Rose in Figure 2, is not in this direction. In fact, Figure 2 shows that wind blows from the facility towards these two residences only about 5 percent of the time. The three factors of low incidence of wind blowing towards these residences, lack of etiological agents or vectors, and the separation distance of over 2,100 feet, combine to produce a negligible chance of adverse health effects to these residents due to the facility.

The individuals to be considered with respect to potential human health impacts due to inhalation or ingestion are employees of facility and visitors to the facility."

Part II, Section 17.0, page 35, under Air Pollution Control [330.371]

"The proposed landfill will have a design capacity greater than 2.5 million megagrams (2.76 million tons) and 2.5 million cubic meters (3.27 million cubic yards). Air emissions from the landfill facility will be controlled, to the extent necessary, to qualify for a standard permit.

The owner/operator of the landfill facility will submit a certification for the initial construction of the landfill at least 120 days prior to building or installation of any equipment or structure that may emit air contaminants. The certification will be based on the capacity of the landfill for a minimum ten-year period. The certification will include supporting documentation to demonstrate compliance with TCEQ air permitting requirements and any other applicable federal and state requirements and at a minimum will include the following:

(1) The basis and quantification of emission estimates;
(2) Sufficient information to demonstrate that the facility will comply with all applicable TCEQ air permitting requirements; and
(3) A description of any equipment and related processes."

The Executive Director's June 28, 2013 Response to Comments (RTC) #17 Addressed the Comment on Standard Air Permit. The ED's responses are summarized as follows:

In the first paragraph of RTC #17, the ED first noted that *"emissions from MSW facilities are subject to applicable air quality requirements, separate and apart from MSW permits. Air emissions from landfills are regulated and authorized under a standard air permit, pursuant to 30 TAC, Subchapter U."* The ED further noted that *"MSW permittees must claim the standard air permit by certifying compliance with Subchapter U within 120 days of initial construction of the landfill."*

In the second paragraph of RTC #17, the ED noted that *"air quality issues are generally outside the scope of review of MSW landfill applications for compliance with Chapter 330. While 30 TAC § 330.55(a) recommends that applicants consult with the TCEQ's Air Permits Division on or before the application filing date, there is no requirement in Chapter 330 that an applicant demonstrate this coordination within the MSW application."* The ED further noted that Part II, Section 17 of the Application described *"Applicant's intention to certify compliance with the standard air permit prior to construction, which is adequate for the land-use compatibility determination. Detailed management plans for air pollutants, landfill gas, and nuisances (odor and dust) are not required to be included in the partial application for a land-use compatibility determination. This information will be required and addresses in the complete application."*

TECHNICAL SUBJECT: LAND USE COMPATIBILITY INCLUDING "ADVERSE IMPACT", "GENERAL NUISANCE", "PROPERTY DEVALUATION" AND "BUFFERS"

In their hearing request letter of August 2, 2013, Hurd raised this subject two enumerated comments:

"8. Whether the proposed facility will be compatible with land uses, and adversely impact property located, in the surrounding area. This relates to RTC 9 and II.

35. Whether the Application provides details on how construction and operation of the proposed landfill will comply with 330.15. Section 18 of Part II of the Application simply recites the general prohibitions contained in 330.15. This relates to RTC 38."

The Hurd comments regarding compatible land uses, buffers and adverse impact do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Hurd comments #8 and #35, found in Parts I and II of the Application regarding compatible land uses, adverse impact, general nuisance, property devaluation, and buffers:

Texas law and regulations specifically prohibit the issues of concern, i.e., "nuisance" conditions. Any permitted waste management facility that creates and maintains a nuisance can lose its permit and/or be subject to legal action in state courts.

The general subject of "land use compatibility" is addressed by the entirety of Parts I and II of the Application – hence the use of the name "Land Use Only" to identify a bifurcated permit application process.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §305.45(a)(6-8), 30 TAC §330.59(b-d) and 30 TAC §330.61(a-p). The Executive Director's determination of "Technically Complete" dated July 2, 2012, and the December 12, 2011 Letter from South Texas Development Council to TCEQ, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC 305.45(a)(6-8), 30 TAC §330.59(b-d) and 30 TAC §330.61(a-p).

The actual buffer or separation distance to adjacent properties is significantly more than regulatory minimum of 125 feet because the proposed facility is located within the confines of the Yugo Ranch owned by the Applicant. Minimum buffer shown is 300 feet along the eastern half of the south side (approximately 3,000 feet of boundary) of the proposed permit boundary. The buffer around the remainder of the proposed permit boundary is over ¼ mile, i.e., 1,500 feet or greater along the east and north sides, and even greater separation distance to the west.

Parts I and II of the Permit Application provide adequate information on Buffers. Parts I and II of the Permit Application also provide adequate information on Land Use Compatibility including "Adverse Impact", "General Nuisance", "Property Devaluation" and "buffers." The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.4, page 4 ***Supplementary Technical Report [330.45(a)(8)]***

1.4.1 General Description of the Facilities

"Rancho Viejo Waste Management, LLC (RVWM) owns a 1,110 acre tract of land (site) about 20 miles east of Laredo in Webb County, Texas and proposes to establish a solid waste management facility on this site. The proposed facility is known as Pescadito Environmental Resource Center (PERC). The site is ideally located for such a facility because of the favorable soil and geological conditions, its isolation from groundwater, absence of neighbors or potentially conflicting land uses, and transportation access. The site is located entirely within the 12,194 acre Yugo Ranch that is owned by Rancho Viejo Cattle Company, Ltd. and has been family-owned for generations, and has been used for cattle ranching and oil and gas production for many years. The owners of the Yugo Ranch support the development of PERC. They view the proposed solid waste management and landfill disposal as the next stage in land use at the site, one that is fully compatible with historic and ongoing extraction of oil and gas, as well as cattle ranching."

Part II, Section 3.0, pages 15-16, ***General Location Maps [330.61 (c)]***

"The General Location Map is presented as Figure 1 in Part II. This map is used to present the following described features, to the extent they exist within the distances from the proposed facility as defined by 30 TAC 330.61(c). For clarity, certain of these features are presented elsewhere in this permit application. The prevailing wind direction with a wind rose is presented on Figure 2 of Part II.

There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II.

There are no structures and inhabitable buildings within 500 feet of the proposed facility. There are several structures and inhabitable buildings about 2,100 feet from the facility; these are shown on Figure 1 of Part II. These include one house, one mobile home, and several ranch buildings (one machine storage building and two sheds used as stables). On occasion, one travel trailer may also be temporarily parked in this area. All residents of these structures are ranch workers employed by Yugo Ranch.

There are no schools, licensed day-care facilities, churches, or cemeteries within one mile of the facility. Several man-made ponds (stock tanks) exist within one mile of the

site, and these are shown on the map. There are no other residential, commercial or recreational areas within one mile of the facility, so none are shown; there also are no hospitals in this area. The nearest known airport used for commercial or general aviation is the Laredo International Airport, located more than 20 miles west of the facility."

Part II, Section 4.0, page 17 ***Facility Layout Maps [330.61 (d)]***

"A Facility Layout Map and an Operations Area Layout Map are provided as Figures 3 and 4 of Part II. ...

The proposed facility is completely isolated from all land use except cattle ranching and oil and gas production, and is provided with an effective separation distance of more than one-quarter mile on three sides and 300 feet on the fourth side."

Part II, Section 8.0, pages 21-25 ***Impact on Surrounding Area [330.61 (h)]***

"8.1 Potential Impact on Human Health

The following discussion assesses potential human health impacts on cities, communities, groups of property owners and individuals. Due to demographic factors associated with this particular site, and the nature of the proposed landfill and waste processing operations and type of materials to be processed, the only potentially affected category that should be considered is individuals. This is because the site area has a very low population density, with no residential dwelling units within 500 feet of the proposed facility. Fewer than 10 persons live within a one-mile radius of the facility. The closest residential dwelling units are two structures at the Yugo Ranch headquarters about 2,100 feet southwest of the facility boundary. The next closest residential structures are at another ranch headquarters located approximately 2 miles away to the northwest.

There is no city, community, or group of property owners that are potential target receptors that might be subjected to adverse human health impacts from the proposed facility. This is because of the separation distances that will exist and because of the virtual lack of etiological agents or disease vectors that might result in such impacts. The individuals to be considered in the evaluation of health impacts include nearby residents, facility employees, and visitors. This evaluation will consider the potential modes of transmission of etiological agents or disease vectors that might impact human health. The modes are transport by air, surface water and ground water. Transmission by vectors, such as insects (particularly flies) and rodents (particularly rats and mice), are not being considered any further in this analysis because the waste storage and processing methods to be employed at this facility will prevent the propagation or reproduction of these species in or near the waste, and will essentially deny access to the waste to any existing members of these species. Basically, waste will be in closed containers until placed into the landfill, at which time the waste will be covered with additional waste or cover soil. Transmission by dermal contact or ingestion are not realistic modes because all persons who may come in direct contact with waste will be

required to wear gloves and will be specifically trained to avoid dermal contact or ingestion of waste or waste materials.

8.1 ***Air Mode***

The two nearby houses and one mobile home in the facility area are located to the southwest of the landfill, as shown on the Aerial Photograph, Figure 7. The prevailing wind direction, as shown by the Wind Rose in Figure 2, is not in this direction. In fact, Figure 2 shows that wind blows from the facility towards these two residences only about 5 percent of the time. The three factors of low incidence of wind blowing towards these residences, lack of etiological agents or vectors, and the separation distance of over 2,100 feet, combine to produce a negligible chance of adverse health effects to these residents due to the facility. ..."

8.2 Potential Impact on the Environment

No adverse impacts on the environment of the area are anticipated from the proposed landfill operation. Debris barriers will be employed to reduce the potential for wind-blown dispersal of debris and litter. Some noise will be generated by the periodic operation of the motorized equipment including waste compactors, bull dozers, hydraulic backhoes and the trucks used to bring and remove waste containers. The frequency and the intensity of the equipment noise generated on-site will be quite low in all off-site directions. This is due to the buffer zone width and the operation of most equipment within a building. Except for trucks entering and leaving, all on-site noise generation will be limited to areas of the facility that are located on private property at least ¼ mile from neighboring property."

8.3 ***Compatibility with the Surrounding Area Zoning***

The facility is located more than 5 miles east of the City of Laredo and the area surrounding the site within two miles extends into unincorporated Webb County. No specific approval is required from the City of Laredo or Webb County for the proposed facility. The facility is well beyond the extra-territorial jurisdiction (ETJ) of the City of Laredo. Accordingly, the City of Laredo has no authority to establish zoning, land use planning, or other restrictions on development in the area. Similarly, the facility is not within the extra-territorial jurisdiction (ETJ) of any other incorporated city. Webb County has enacted no zoning or similar restriction on land use at the facility or surrounding area.

Character of Surrounding Land Uses:

This facility location and the area extending for many miles in all direction are obviously suitable for oil and gas production and cattle ranching. This is the current and historic land use status of the property on which the facility is proposed, and has been for many years. No other residential, recreational, commercial, agricultural or industrial land uses exist for several miles in the site area.

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned. Existing residential and several commercial properties are located at Ranchitos los Lomas, about 3.5 to 4.5 miles northwest of the proposed facility. The proposed facility is more than adequately screened from view from both of these areas by a distance of about two to four miles. The intervening areas consist of heavily wooded or brushy vegetation and rolling topography.

Commercial development within one mile of the site is non-existent. Land use is exclusively devoted to the exploration and production of oil and gas and cattle ranching, both of which are commercial ventures, but are not normally considered to be described as commercial development. Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic. A second commercial type of land use near the site it the KCS railroad, whose tracks are located within one to two miles of the site.

In addition to the residential, commercial and industrial land use described above, land use within a five-mile radius of the facility is divided between agricultural (essentially all pasture land used for cattle ranching) and dispersed oil and gas well sites.

The closest population center and only concentrated residential land use within five miles of the facility is Ranchitos Las Lomas, a community or subdivision located along Hwy 59 about 3.5 to 4.5 miles northwest of the site. This is a community of about 334 persons, according to the 2000 census. Widely scattered residences are found at several ranch headquarters in the area, but these are typically separated from each other by several miles, due to the large size of the ranches, which appear to be on the order of 10,000 acres each. Typical of these is the Yugo Ranch, within which the proposed facility is located. There are an estimated two or three active residences within one mile of the facility, all located at the headquarters of Yugo Ranch. This includes two houses, one mobile home, and occasionally one travel trailer. These nearest occupied residences house ranch hands that are employed by Yugo Ranch.

Vehicle or equipment noise that will be generated by the proposed solid waste activities may not be discernible and should not be objectionable to occupants of the residences at Yugo Ranch because of the low speeds and separation distance. Prevailing winds, which tend to carry noise in its direction of movement, should carry noise away from these residences. Noise resulting from the operation of the facility will not cause any impact to the community of Ranchitos Las Lomas, located about 4 miles northwest of the facility, due primarily to the separation distance. Also, any noise that could be

perceived within a limited distance from the facility will be engine noise associated with heavy equipment. Noise generated by truck traffic travelling to and from the facility will be similar to the noise from oil-field trucks and equipment that already travel along area roads many times a day. Truck traffic noise related to accessing the facility will be indistinguishable from the noise of truck and automobile traffic along U.S. Highway 59, which bisects this community. This highway traffic consists of many trucks and tractor-trailer units traveling at up to 70 miles per hour, 24 hours per day.

Growth Trends:

The population of Webb County (2000 Census) was 193,117, and the population estimate for 2009 is 241,438, an increase of about 25 percent in 9 years. Within a one-mile radius of the facility, the long-term population is estimated to be fewer than 10 persons, and this population has no growth or growth trend. The 2000 population for Ranchitos Las Lomas was 334, which had 148 housing units and a population density is calculated to be 15.3 persons per square mile. According to www.bestplaces.net, the population of Ranchitos Las Lomas was 409 in 2011, an increase of 22 percent in 11 years. Historic population data indicates the population of Ranchitos Las Lomas has been about 300 to 400 persons for many years. Visual observation of this community shows no evidence of recent growth, such as new homes or commercial buildings.

Proximity to Residences and Other Uses:

The proximity of the facility to residences is discussed above. There are no schools, churches, cemeteries, historic structures or sites, archaeologically significant sites, or sites having exceptional aesthetic quality within one mile of the facility. The lack of some of these sites or features has been verified. According to Texas Historical Commission (THC) records, there are no archeological or historic sites in the area of the proposed facility. There are no recreational areas within one mile. There are three residences within one mile of the facility, all located at Yugo Ranch headquarters about 2,100 feet southwest of the facility, and no commercial establishments. The estimated population density within a one-mile radius of the facility is less than one person per square mile."

The Executive Director's June 28, 2013 Response to Comments (RTC) addressed the Comments on Land Use Compatibility including "Adverse Impact", "General Nuisance", and "Property Devaluation" (including Buffers) in a number of responses. The ED's relevant responses are summarized as follows:

Responses Related to the Facility Adversely Impacting & Devaluing Property

Response 9 – Land-use compatibility and growth trends.

"An applicant must provide certain information, including an available public zoning map for the facility within two miles of the facility for the county or counties in which the facility will be located; information about the character of the surrounding land uses within one mile of the proposed facility; information about growth trends within five miles of the facility with

directions of major development; information on the proximity of the facility to residences, business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; information regarding all known wells within 500 feet of the site; and any other information requested by the Executive Director.

The required information is provided in Sections 6, 7, and 8 of Part II of the Application. ... The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding land-use compatibility and growth trends."

Response 11 – Impact on property values.

ED noted that TCEQ does not have jurisdiction to consider property value impact.

Response 54 – Economic impact.

ED noted that *"TCEQ has no rules or regulations that require applicants to consider impacts on property values, taxes, local economies, or local businesses. ... The Executive Director's review of a permit application considers whether the proposed facility meets the requirements of Chapter 330 of the Commission's rules. In addition; ... the issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulation."*

Responses Related to the Facility Creating General Nuisance Conditions

Response 12 – Area and life quality.

ED noted that "issuance of a TCEQ permit would not convey any property right or become a vested right in the permittee, nor would it authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations. ... An operator of an MSW landfill remains subject to common law principles of nuisance and trespass. TCEQ rules also generally prohibit operation of an MSW landfill in a manner that causes, suffers, allows or contributes to the creation or maintenance of a nuisance. ... an applicant for an MSW landfill must provide for visual screening of deposited waste materials. However, this information is required to be submitted with the Site Operating Plan (SOP), which is required to be included in Part IV of the application."

Response 18 – Odor control.

ED noted that Applicant is not required to submit odor control procedures/designs in a partial application for a land-use compatibility determination. Odor control information is a requirement of Parts III and IV of the Application.

Response 19 – Dust control.

ED noted that Applicant is not required to submit dust control procedures/designs in a partial application for a land-use compatibility determination. Dust control information is a requirement of Parts III and IV.

Response 20 – Vectors.

ED noted that Applicant is not required to submit vector control procedures/designs in a partial application for a land-use compatibility determination. Vector control information is a requirement of Part IV of the Application.

Response 22 – Wildlife, domestic animals, birds and scavengers.

"TCEQ does not have jurisdiction to consider the impact of an MSW landfill facility on wildlife or wildlife habitat that is not protected by state or federal statute." ED has preliminarily determined that "Application complies with all applicable requirements regarding the Wildlife and Domestic Animals, Birds and scavengers issue." Procedures for controlling vectors and scavenging animals, including birds, are detailed in the requirements of Part IV of the Application.

Response 23 – Health and environmental concerns.

ED has preliminarily determined that *"that the proposed landfill complies with the Texas Solid Waste Disposal Act (TSWDA) and 30 TAC Chapter 330, which were promulgated to protect human health and the environment. Neither the TSWDA nor Chapter 330 requires health impact studies to be conducted as a part of the MSW landfill application process. Furthermore, an Environmental Impact Statement (EIS) is not required for this permit.... However, landfill performance and potential impacts on environmental media are evaluated by monitoring programs put in place to monitor groundwater quality and landfill gas migration at the facility boundary." Environmental monitoring is detailed in the requirements for Parts III and IV of the Application.*

Response 36 – Nuisances from grease and grit trap waste.

ED noted that ED noted that TCEQ regulations specifically address these issues; however, Applicant is not required to include "nuisances control measures" in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Response 38 – General prohibitions.

ED noted that Applicant is not required to submit details on how a facility will comply with "general prohibitions" in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Response 39 – Noise.

ED noted that although there is a prohibition to causing a nuisance: *"there are no operational standards for MSW facilities that specifically relate to noise control."*

Response 40 – Windblown trash, roadside trash, and debris.

ED noted that TCEQ regulations specifically address these issues; however, Applicant is not required to submit details on how a facility will address these issues in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Although buffers weren't raised by the Hurd's as an issue, the significant buffers provided in the Application have significant relevance to the discussions of other issues as well as to affected party status. Buffers and or "separation distance" between solid waste operations and adjacent properties are the best way to deal with "nuisance-type" issues.

Parts I and II of the Permit Application comply with, and greatly exceed, the requirements of 30 TAC §330.61(c & d) for buffers. The Executive Director's notice of "Technically Complete" determination dated July 2, 2012, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(c & d).

Responses Related to the Facility Buffer Zone Requirements

Response 30 – Buffer Zones

"TCEQ rules establish minimum buffer zone requirements at 30 TAC §330.543(b)(2). These rules require that all buffer zones must be within and adjacent to the facility boundary on property owned or controlled by the owner or operator. For a new Type I landfill, the owner or operator shall establish and maintain a 125-foot buffer zone.

The l/4 mile cited in the Application is a description of the characteristic of the facility addressing the potential impact to the environment and not the rule required buffer zone. The Applicant must provide information describing how they will meet the buffer zone requirements of 30 TAC § 330.543 when they submit Part IV of the Application. 30 TAC §330.141."

Response 46 – Potentially Affected Landowners

"Under 30 TAC § 330.59(c)(3), applications for MSW permits must include a map that is sufficient to show the location of properly owners within 1/4 mile of the proposed facility, as well as a corresponding list of property owners. Section 3.0 of the Application provides information related to the maps required by TCEQ rules. The information provided by the Applicant was obtained from the Webb County Appraisal District deed records as listed on the date that the application was filed, which is acceptable under 30 TAC § 330.59(c)(3)(B)."

Central Registry

Detail of: **Municipal Solid Waste Disposal Permit 2374**
For: **PESCADITO ENVIRONMENTAL RESOURCE CENTER (RN106119639)**
1116 CALLE DEL NORTE, LAREDO
Permit Status: **PENDING**
Held by: **RANCHO VIEJO WASTE MANAGEMENT LLC (CN603835489)**
OWNER OPERATOR View Compliance History
Mailing Address: 1116 CALLE DEL NORTE LAREDO, TX 78041-6076

Commissioners' Actions

Item Number	Item Type	Document Type	Status	TCEQ Docket Number	SOAH Docket Number
77621	NEW	PERMIT	ACTIVE	2013-1506-MSW	N/A

Item 77621

Activity Actions

Action Date	Document Type	Action
10/09/2013	Commission Agenda	SCHEDULED
09/04/2013	Agenda Setting Letter	MAILED
08/02/2013	RFR/HR Period	END
07/03/2013	Final Decision Letter	MAILED
06/28/2013	Response to Comments	RECEIVED
04/29/2013	Comment Period	END
02/25/2013	Billingual Notice	PUBLISHED
05/14/2013	PUBLIC NOTICE VERIFICATION FOR	COMPLETE
02/21/2013	Notice - Public Meeting	PUBLISHED
02/09/2013	Notice - Public Meeting	PUBLISHED
04/26/2013	Affidavit	RECEIVED
04/26/2013	Bilingual Affidavit	RECEIVED
03/30/2013	Notice - Preliminary Decision	PUBLISHED
04/26/2013	Affidavit - Notice of Prelimin	RECEIVED
04/05/2013	Newspaper Tearsheet	RECEIVED
02/14/2013	Notice - Public Meeting	PUBLISHED
04/05/2013	Newspaper Tearsheet	RECEIVED
04/05/2013	Affidavit	RECEIVED
04/05/2013	Bilingual Tearsheet	RECEIVED
04/05/2013	Newspaper Tearsheet	RECEIVED
04/05/2013	Bilingual Tearsheet	RECEIVED
12/04/2012	Public Meeting	ED APPROVE
02/28/2013	Public Meeting	HELD
02/01/2013	Notice - Public Meeting	MAILED
01/31/2013	Confirmation	RECEIVED
02/28/2013	Public Meeting	SCHEDULED
01/30/2013	Notice - Public Meeting	FAXED
01/29/2013	Notice - Public Meeting	RECEIVED
07/12/2012	Notice - Preliminary Decision	MAILED

Blumberg No. 6137 1

07/06/2012	File	RECEIVED
06/29/2011	Notice - Receipt and Intent	PUBLISHED
08/01/2011	Affidavit - Notice of Receipt/	RECEIVED
06/29/2011	Billingual Notice	PUBLISHED
07/25/2011	Bilingual Affidavit	RECEIVED
07/13/2011	Bilingual Tearsheet	RECEIVED
07/13/2011	Newspaper Tearsheet	RECEIVED
07/13/2011	Bilingual Verification Form	RECEIVED
07/13/2011	Availability Verification Form	RECEIVED
06/17/2011	Notice - Receipt and Intent	MAILED
06/14/2011	Notice - Receipt and Intent	RECEIVED
06/08/2011	Notice - Receipt and Intent	MAILED
06/01/2011	Notice - Receipt and Intent	RECEIVED
06/01/2011	Administrative Review	COMPLETE
04/15/2011	APPLICATION	RECEIVED

Protestant Information

Request Type	Count
Hearing Request	26
Public Meeting - Request	7
Comment - Written	188
mail list add per OGC or for UCR items	24
COMMENT - ORAL AT PUB MTG	10

Filings

Date Received	Title
No Filings exist for this Item	

Public Meeting

Meeting Type	Meeting Date	Meeting Time	Location	Total Attendance
PUBLIC MEETING	02/28/2013	07:00 PM	TEXAS A&M INTERNATIONAL UNIVERSITY - STUDENT CENTE, 5201 UNIVERSITY BLVD RM 236, LAREDO, TX, 78041	120

Applicant's Specific Responses to Requests for Contested Case Hearing by ANB Cattle Company, Ltd.

ANB Cattle Company, Ltd. ("ANB") filed numerous comments which are all properly classified as issues of law and three issues of fact. Applicant's responses to each of ANB's legal and factual issues are addressed below.

LEGAL SUBJECT: OWNERSHIP INTERESTS IN SURVEYS 112 AND 2366

In their hearing request letter dated July 30, 2013, ANB raised the following legal issues:

2.1 "The Application proposes a landfill site covering approximately 1,109.48 acres out of Surveys 373, 111, 112, and 2366 in Webb County, Texas. ANB owns an undivided one-half (1/2) interest to the surface of Surveys 112 and 2366. ANB also owns a beneficial interest in the mineral estate of those two surveys. Both of those real property interests are and will be adversely affected by the Application.

2.2 The Application incorrectly omits ANB as an owner of a significant portion of the real property upon which the proposed landfill is to be located. ANB objects to the use and encumbrance of its real property interests by the facility proposed by the Application.

2.3 Contrary to the representation in the Application and contrary to the Executive Director's Decision, Response to Comment 44, ANB submitted documentation of its ownership interest of the surface of those portions of the land covered by the Application. By the terms of the January 1, 1990, cross-conveyance deed, Rancho Viejo Cattle Company, Ltd. And ANB cross-conveyed to each other interests in five tract of land, including Surveys 2366 and 112 at issue here, so as to vest each with an undivided one-half (1/2) fee simple interest in those lands. A certified copy of that cross-conveyance is attached hereto as Exhibit A.

2.4 The undivided fee simple interest of ANB in said Surveys 2366 and 112 was confirmed in that certain Stipulation Confirming Surface Ownership, Agreed Boundary Line and Roadway Access dated November 17, 1998 and recorded in Volume 704, Pages 827 et seq. of the Official Records of Webb County, Texas. A certified copy of that Stipulation is attached hereto as Exhibit B.

2.5 Attached hereto as Exhibit C is the plat of the proposed landfill site with Surveys 2366 and 112 highlighted.

2.6 Contrary to the clear terms of these duly recorded conveyances, the Application is materially incorrect and deficient in asserting that Rancho Viejo Waste Management, LLC and/or Carlos Y. Benavides III is/are the sole owner(s) of the lands sought to be permitted for the Proposed Facility. To reaffirm its previous filings in this proceeding, ANB objects to the issuance of any permit for or toward the construction and operation of the proposed facility on lands owned (whether in whole or in part) by ANB. Not only is the Application materially

incomplete on the ownership of the landfill site, but the clear evidence provided by ANB shows the Applicant's lack of requisite ownership of that site cannot be remedied.

2.7 The proposed landfill facility sought by the Application would by its nature be exclusive use of all land within the permitted area. The Applicant does not have or own any such right to exclusive use of any portion of Surveys 2366 and 112. By the terms of the January 1, 1990, cross-conveyance deed (Exhibit A attached hereto), any exclusive use of the lands cross-conveyed by either party, is limited to 'hunting and grazing purposes.' The use of those Surveys 2366 and 112 for a landfill facility is not hunting or grazing. It would be beyond any property right in those lands that could be claimed by the Applicant.

2.9 The Commission cannot turn a blind eye to the fact that the wrong box was checked in part E of the Application on property ownership. It is fatal error for the Executive Director to rely on that incorrectly checked box and incorrect 'Property Owner Affidavit' (which in substance makes no reference to property ownership). As recently held by the Supreme Court, 'Private property cannot be imperiled with such nonchalance, via an irrefutable presumption created by checking a certain box... Our Constitution demands far more.' Texas Rice Land Partners, Ltd. V. Denbury Green Pipeline-Texas, LLC, 363 S.W.3d 192, 199 (Tex. 2012). The Executive Director proposes that the Application's material misstatement on property ownership be given an irrefutable presumption of accuracy. As held in Denbury Green, that type of presumption in an administrative permitting context is not legal. At the very least, an evidentiary hearing with constitutional due process on that and other issues that could impact ANB's property rights, is required.

2.10 The Commission also cannot ignore the uncontradicted and unambiguous deed disproving the Applicant's assertion in the Application of property ownership. That material misrepresentation is grounds for denial of this Application. Tex. Health and Safety Code § 361.089(e)(2). At the very least, ownership of the property is a material issue that requires a contested case hearing. See Application of Williamson County for a Permit Amendment to Expand a Type I Municipal Solid Waste Landfill Facility, SOAH Docket No. 582-06-3321, TCEQ Docket No. 2005-0337-MSW, Permit No. MSW-1405B (2008).

2.11 To issue any permit for or toward a landfill facility on property owned in whole or in part by ANB without its consent, especially without any due process hearing, would be an unconstitutional regulatory taking by the State of Texas."

Background

ANB and Rancho Viejo Cattle Company, Ltd. ("Rancho Viejo") are the current owners of adjacent ranches in Webb County, Texas, which were owned by their predecessor Carlos Y. Benavides, Sr. The ranches were originally partitioned in 1987 by the predecessors of ANB and Rancho Viejo, with ANB taking the portion to the north and Rancho Viejo to the south. **Since 1987, ANB and Rancho Viejo have been in exclusive possession of their respective ranches.** The mineral estates were not partitioned, but contributed to the Benavides Family Mineral Trust ("BFMT") where they remain essentially jointly owned. However, the State of Texas owns the minerals under the Mineral Classified Lands (not ANB), and the owner of the surface is

authorized to lease them and share in the State's lease benefits. At different times after the partition, ANB and Rancho Viejo executed the Cross-Conveyance and Stipulation described below.

Rancho Viejo has a Sufficient Interest in the Mineral Classified Tracts

ANB claims that, as to the Mineral Classified Lands at issue (Surveys 2366 and 112), Rancho Viejo misrepresented its ownership interest and authority to conduct surface operations in the Permit Application. ANB basis this claim on two real property instruments: (1) an instrument of cross-conveyance between Rancho Viejo and ANB executed on April 6, 1990, and filed for record at Volume 1417, Pages 445, et seq., in the Real Property records of Webb County, Texas (the "Cross-Conveyance" Exhibit A) and; and (2) a Stipulation Confirming Surface Ownership, Agreed Boundary Line and Roadway Access, effective November 1, 1998, and filed for record at Volume 704, Pages 827, et seq., of the Deed Records of Webb County, Texas (the "Stipulation" Exhibit B).

When construing deeds, courts must seek the intent of the parties, the Texas Supreme Court explained:

> *"The primary duty of a court when construing such a deed is to ascertain the intent of the parties from all of the language in the deed by a fundamental rule of construction known as the 'four corners' rule. 'That intention, when ascertained, prevails over arbitrary rules.' The court, when seeking to ascertain the intention of the parties, attempts to harmonize all parts of the deed. '[T]he parties to an instrument intend every clause to have some effect and in some measure to evidence their agreement.' Even if different parts of the deed appear contradictory or inconsistent, the court must strive to harmonize all of the parts, construing the instrument to give effect to all of its provisions."*

Luckel v. White, 819 S.W.2d 459, 461-62 (Tex. 1991). In this case the Cross-Conveyance and Stipulation must be construed to together to determine the rights of ANB and Rancho Viejo.

Contrary to ANB's assertion, the Cross-Conveyance and Stipulation do not in any way limit Rancho Viejo's right of possession or right to control surface operations on the two Mineral Classified Tracts at issue. In fact, these documents establish the parties' intent that **Rancho Viejo has exclusive possession of the two Surveys at issue, and control of surface operations.**

The Cross Conveyance contains the following provisions pertaining to Surveys 2366 and 112:

> *"In order to effect and accomplish this cross-conveyance and amendment of previous conveyances, the parties hereto, RANCHO VIEJO CATTLE COMPANY, LTD., ... does hereby GRANT, SELL, ASSIGN and CROSS-CONVEY unto ANB CATTLE COMPANY, LTD., and undivided one-half (1/2) interest in any part of each of the five (5) surveys located within the above described Pescadito or Yugo Ranch as are more fully described and identified in attached Exhibit "A"[1], the fee*

[1] The property described in Exhibit A to the Cross-Conveyance includes Surveys 112 and 2366.

title to which appears of record as now owned by Rancho Viejo Cattle Company, Ltd., and for the same consideration, ANB CATTLE COMPANY, LTD., ... does hereby GRANT, SELL, ASSIGN and CROSS-CONVEY unto RANCHO VIEJO CATTLE COMPANY, LTD., and undivided one-half (1/2) interest in part in any part of those five (5) surveys located within the said Pescadito or Yugo Ranch, each of which are Mineral Classified land, as are more fully described and identified in attached Exhibit "A" ...

The Cross-Conveyance further defined the rights of Rancho Viejo and ANB, as follows:

"This conveyance is made expressly subject to the rights of the State of Texas in and to each of the above described surveys and to the agreement of the parties that the Limited Partnership which is a co-owner of any portion of any of the said surveys which lies within pasture fences enclosing that portion of the Yugo Ranch occupied by such partnership shall remain in exclusive possession of said lands and shall have the exclusive right to continue to occupy all portions of any such surveys lying within the fence enclosures of the pasture belonging to the particular Limited Partnership for hunting and grazing purposes ..."

Surveys 2366 and 112 (the mineral classified tracts) are within the pasture belonging to Rancho Viejo. Therefore, under the Cross Conveyance, Rancho Viejo has the ***exclusive right of possession*** of Surveys 2366 and 112. The other side of this coin is that ANB's interest in Survey 2366 and 112 is a ***non-possessory interest***. Clearly, the Cross-Conveyance was not intended to undo the partition of the property.

ANB, in comment 2.7, now asserts that Rancho Viejo's exclusive right to use the surface of Surveys 2366 and 122 is limited to "hunting and grazing purposes" only. ANB is incorrect for two reasons. First, the Cross-Conveyance confirms that Rancho Viejo has the exclusive right of possession of those two surveys, and an exclusive right to occupy the property for hunting and grazing purposes. So while ANB may have the right to come onto and occupy the surface of the two surveys for purposes other than hunting and grazing, **ANB's rights remain non-possessory.** Second, and most importantly, ANB has ***stipulated*** that Rancho Viejo has possession of these two surveys, and control of all surface operations related to these two surveys, subject to an obligation to account to and share in the benefits of such surface operations. Section VIII of the Stipulation provides in pertinent part that as to the five surveys of Mineral Classified lands referenced in the Cross-Conveyance, ANB and Rancho Viejo:

"... hereby covenant that in addition to sharing the benefits as agents for the State of Texas under any and all oil, gas and mineral leases, ***that such sharing (in equal proportions) shall also apply to any and all surface operations*** *including any sand and/or gravel sold or used from the mineral classified lands in connection with such oil, gas and other mineral leases ... Furthermore,* ***the party not in possession*** *of a State Mineral Classified Tract agrees to fully cooperate (without expense to the* ***non-possessory party)*** *with* ***the party actually in possession*** *in connection with any filings with any regulatory authority incident to plugging of any well being abandoned of oil and gas production so that such well*

can be plugged by the oil or gas operator so as to permit the completion of a water well at the expense of ***the party in possession****. Furthermore, in connection with the surface use of these lands for oil, gas and/or other mineral operations,* ***the limited partnership who has exclusive possession*** *to such lands shall also have the exclusive right (executive rights) to negotiate and conclude all terms in connection with such surface matters, keeping the interest of the non-executive limited partnership in mind. The standard of conduct of the limited partnership with the exclusive/executive right shall be that of which a fiduciary owes to his beneficiary or principal and shall include the right to account to the non-exclusive/executive right holder immediately upon closing and/or receipt of funds and/or benefits attributable to any transaction in connection with the above matters." (emphasis added)*

This language from the Stipulation establishes that over fifteen years ago, ANB stipulated that Rancho Viejo has exclusive possession of Surveys 2366 and 112, and has the right to control and conduct surface operations as it sees fit on that property, subject to a duty to account to ANB as a beneficiary for any profits Rancho Viejo receives for those surface operations. **Consistent with this agreement, ANB has not been in possession of the property nor had any input on any activity taking place on the property.**

Rancho Viejo recognizes that the TCEQ does not have the authority to determine title issues, and, as the ED stated in its RTC #43, ***"[t]he issuance of a permit to construct and operate an MSW landfill merely authorizes an individual to perform a specific activity. The TCEQ does not have the authority to adjudicate property rights in this regard."*** The language of the Cross-Conveyance and Stipulation cited above show that, at a minimum, Rancho Viejo's ownership interest is sufficient to entitle it to the issuance of the permit it seeks. It is beyond the scope of the TCEQ to adjudicate any rights that ANB's non-possessory interest may, or may not, entitle it to.

LEGAL SUBJECT: MINERAL CLASSIFIED LANDS

In their hearing request letter dated July 30, 2013, ANB raised the following legal issue:

2.8 "Both Survey 2366 and Survey 112 are Mineral Classified Lands originally sold by the State of Texas under the Texas Relinquishment Act. The surface was sold and the State retained the mineral rights. The surface owner acts as the agent for the State in preserving and developing the oil, gas and other minerals. The surface owner and the State each share one-half (1/2) of all proceeds from the oil, gas and other minerals in, on and under said lands. The Applicant and ANB are owners of the soil or surface of those tracts. As such they both have fiduciary duties and obligations with regards to the preservation and/or development of those mineral interests owned by the State of Texas. The cross-conveyance deed for those lands, Exhibit A hereto, is made expressly subject to those mineral interests. Further, pursuant to the terms of the Stipulation attached hereto as Exhibit B, paragraph VIII, that fiduciary duty regarding the mineral rights also applies as between the Applicant and ANB. ANB for itself and

as fiduciary for the State of Texas, objects to the issuance of any permit for or toward the construction or operation of the proposed facility, which will thwart or encumber the development of the oil, gas and other minerals under said Mineral Classified Land Surveys.

MINERAL DEVELOPMENT/ACCOMODATION DOCTRINE

ANB also suggests in comment 2.8 that issuance of the permit will damage their mineral interests and/or prevent future oil and gas development. This assertion, however, is no reason for the TCEQ not to issue the permit. As the ED's RTC #43 points out ***"the existence of separate mineral interest owners does not necessarily negate the compatibility of the proposed action with mineral extraction."***

Certainly the TCEQ is not unaware of the recent widespread (and successful) use of improved technology for directional and horizontal drilling, which allows for mineral development underneath properties upon which no surface operations occur. In this case, Rancho Viejo has made allowances in its landfill plan to allow surface locations for directional drilling in the future. Further, Texas Accommodation Doctrine law insures that Rancho Viejo's then existing surface use will never be able to prevent development of the minerals.

Nature of Mineral and Surface Estates, and Rights of their respective Owners

The severed mineral estate is dominant under Texas law, and allows the mineral owner to use as much of the surface as is reasonably necessary for mineral development. *Merriman v. XTO Energy, Inc.*, Tex. Sup. Ct. J 719, 2013 WL 3119563 at *3 (Tex. June 21, 2013). That concept does not preclude surface owners from constructing landfills on their property. The TCEQ has previously granted landfill permits to surface owners with severed minerals. *See, e.g., Tex. Genco, LP v. Valence Operating Co.*, 187 S.W.3d 118 (Tex. App.—Waco 2006, no pet. h.).

Although the mineral estate is dominant, surface owners may still use the surface of the land. The rights of the surface owner and the mineral owner are "reciprocal and distinct," and if either party "exceeds [his] rights he becomes a trespasser." *Brown v. Lundell*, 344 S.W.2d 863, 866 (Tex. 1961). Surface owners may continue to use the surface of the land in any manner that is not inconsistent with the mineral owner's use of its estate. *Atlantic Refining Co. v. Bright & Schiff*, 321 S.W.2d 167, 169 (Tex. Civ. App.—San Antonio 1959, writ ref'd n.r.e.). A surface owner is not prohibited from a certain activity merely because it might prevent one method or possibility of mineral development in the future. *Id.* In order for a mineral owner to prohibit a certain activity by a surface owner, the mineral owner must show that, at that specific moment time, the surface use interferes with the reasonable exercise of mineral owner's rights. *Id.*

The mineral easement is not an unfettered right to the use of the surface. Mineral owner may only use the surface as is reasonable necessary and must exercise due regard toward the surface owners. Apart from claims for breach of a written agreement, Texas courts have created two causes of action by surface owners against mineral owners that may result in the award of damages or an injunction. Under these causes of action, the surface owner must prove that either (1) the mineral owner exercised its rights in a negligent or intentionally wrongful manner or (2) the mineral owner used more of the surface of the land than was reasonably necessary. *Reading*

& Bates Offshore Drilling Co. v. Jergenson, 453 S.W.2d 853, 855 (Tex. Civ. App.—Eastland 1970, writ ref'd n.r.e).

The Accommodation Doctrine Ensures Future Mineral Development

In some cases, Texas courts provide special protection for surface uses that pre-exist mineral uses under the accommodation doctrine. *Getty Oil Company v. Jones,* 470 S.W.2d 618 (Tex. 1971). In Getty *Oil Company v. Jones* in 1971, the Texas Supreme Court interpreted the "with due regard" language of the mineral easement as adopting the accommodation doctrine. *See also Tarrant County Water Control and Improvement District Number One v. Haupt, Inc.*, 854 S.W.2d 909, 910-11 (Tex. 1993) (holding that the right of accommodation applies to government-owned land). Under the accommodation doctrine, where there is an existing use by a surface owner which would be impaired or precluded by a mineral owner's activities, and where there is an industry established alternative practice reasonably available to the mineral owner that would not impair or preclude the existing surface activity, the mineral owner ***must*** use the alternative method. *Merriman v. XTO Energy, Inc.,* Tex. Sup. Ct. J 719, 2013 WL 3119563 at *3 (Tex. June 21, 2013); *Getty Oil v. Jones*, 470 S.W.2d at 622. However, if the mineral owner has only one method available for developing the minerals, the mineral owner may use that method regardless of whether it impairs or precludes and existing surface use. *Merriman,* 2013 WL 3119563 at *3. The surface owner carries the burden of proving both the impairment or preclusion of its existing use and the availability of a reasonable alternative to the mineral party. *Id.* If the surface owner is unable to prove both elements, the accommodation doctrine will not apply and the mineral owner will be able to use as much of the surface as reasonably necessary even if a surface owner's preexisting use is precluded or impaired.

Therefore, under the Accommodation Doctrine, the minerals under the property will be able to be produced one way or another. If there are methods for developing the minerals, such as directional drilling, that do not conflict with the use of the property as a landfill, the Accommodation Doctrine will require that those methods be used to develop the minerals. Recently, the Waco Court of appeals held that directional drilling is a reasonable, industry-established alternative requiring the mineral estate holder to accommodate a surface use. *See Tex. Genco, LP,* 187 S.W.3d at 124-25 (requiring the mineral operator to directionally drill from an area adjacent to an existing coal ash industrial landfill in order to avoid making portions of the existing landfill unusable for ash waste disposal). If, however, there are no such alternative methods by which the minerals can be developed, then the mineral owners will have the right to preclude or impair the then existing surface use to extract the minerals. *Id.* Regardless, the possibility of future mineral development provides no basis for the TCEQ to reject Rancho Viejo's Application.

The Executive Director was correct when it stated in RTC #43 that ***"the existence of separate mineral interest owners does not necessarily negate the compatibility of the proposed action with mineral extraction."***

It is also important to note that ANB is not the owner of the minerals at issue here; the State of Texas is the owner of said minerals. ANB's only claim is an economic interest in lease revenue.

It is clear that the TCEQ has already determined that issues involving mineral rights are not matters which are to be considered during its MSW permitting process.

Specifically, in the March 24, 2006 *Texas Register* (Volume 31, Number 12) preamble to the amendments to Chapter 330 Municipal Solid Waste Rules, the TCEQ clearly stated its position regarding its role related to mineral rights in MSW permit proceedings.

Below are selected comments and responses to comments by the TCEQ from the March 24, 2006 *Texas Register*:

"§330.59. Contents of Part I of the Application.

Comment

Commenters requested clarification about whether it was necessary to list mineral interest owners on a map of the facility property, and whether mineral interest owners will be considered affected persons.

Response

The proposal to designate mineral interest holders on the land ownership map is reasonable since the commission is only intending to notify mineral interest owners under the facility. Designating mineral interest owners on the map could be done by including a reference on the map indicating that such owners are listed in the property owner list. The decision about who will be considered an affected person will be made on a case-by-case basis for each permit application. However, the permitting process is not the appropriate forum to address issues regarding the protection of mineral interests or access to minerals under a proposed site. No changes were made in response to these comments.

Comment

OPIC requested that the commission not delete the current requirement in §330.62(c) that lease agreements contain specific provisions delineating mineral rights attached to the property.

Response

The Chapter 330 rules are being amended, in part, to update specific provisions in light of recent commission decisions involving mineral rights issues. The commission has decided that issues involving the protection of mineral rights or access to minerals are not matters which the commission will consider during the MSW permitting process. Deleting the requirement that lease agreements address the mineral rights attached to the property is consistent with the commission's position on how mineral interests will be addressed in the context of MSW permit applications. No changes were made in response to these comments.

Comment

OPIC commented that the commission has the jurisdiction and duty to address any interference the disposal of waste may have upon a person's mineral right under THSC, Chapter 361, because the purpose of the Solid Waste Disposal Act is to safeguard the health, welfare, and

physical property of people. WMTX commented that no provision of the Health and Safety Code requires or allows TCEQ to consider the mineral estate in the context of MSW permitting. WMTX commented that if the legislature had intended to delegate authority to the TCEQ to consider mineral interests in the MSW program, it would have explicitly done so as it has in other permitting contexts.

Response

The commission's jurisdiction under THSC, Chapter 361, does not extend to preventing interference with mineral rights. As noted by the commenter, the legislature has expressly provided the commission with the authority to consider mineral interests in other permitting areas. Because no express statutory authority to consider mineral interests exists within the MSW program, the commission concludes that its authority to safeguard property does not include the protection of mineral interests. No changes were made in response to these comments.

Comment

Several commenters recommended that the rules specify that owners or operators must include an agreement with the mineral rights holders as part of the demonstration that they have a sufficient interest in the property. TCE commented that applicants should be required to own any relevant mineral rights in order to ensure land use compatibility.

Response

The commission does not agree that a permit applicant should be required to own the mineral rights under a site, or have an agreement with the mineral rights holders, in order to demonstrate a sufficient interest in the property. As discussed in response to other comments on this issue, the commission's authority under the Solid Waste Disposal Act does not extend to the protection of mineral rights. As a result, the commission will not require permit applicants to own or control the mineral interests in order to demonstrate a sufficient property interest. A demonstration of a sufficient interest in the surface estate will be adequate for the purpose of complying with §330.67. Issues related to the protection of mineral rights or access to the minerals underlying a site are not matters which the commission will address in the context of an MSW permit application. No changes were made in response to these comments.

Comment

GDHM commented that the staff does not recognize the rights of mineral owners to use the surface estate. GDHM also commented that if applicants must show a sufficient interest in the surface estate to conduct proposed landfill operations, they should also be required to show the required use cannot be prohibited or interfered with by a mineral interest owner just as they must show that no easement, lease, or license will interfere with the proposed site.

Response

The commission understands that the mineral estate is the dominant estate under Texas property law. However, as discussed in response to other comments, issues related to the protection of mineral interests are not matters which the commission will consider as part of the MSW permit review process. The commission will not require that permit applicants

control or own the mineral interests under a site. No changes were made in response to these comments.

Comment

GDHM commented that if the commission can assert jurisdiction to prevent the drilling of wells by mineral owners, then mineral owners must have the right to protect their rights in permit proceedings.

Response

The commission does not assert that it has jurisdiction to prevent a mineral interest holder from exercising his or her mineral rights. The commission does not consider the permitting process the appropriate forum to address issues related to the protection of mineral interests or the access to minerals. No changes were made in response to these comments.

Comment

GDHM commented that if the rules either expressly or effectively prohibit mineral owners from developing their minerals under landfill sites, the commission would be denying these owners their property without just process or just compensation in violation of the Texas and United States Constitutions.

Response

The commission does not intend for these rules to prohibit mineral owners from exercising their mineral interests, or for the MSW permitting process to become a forum for protecting mineral interests. No changes were made in response to these comments.

Comment

TCE commented that planned resource extraction activities should be considered by the TCEQ in determining whether a proposed site is a compatible land use.

Response

The commission does not consider the permitting process the appropriate forum to address issues related to the protection of mineral interests or the access to minerals. No changes were made in response to these comments.

Comment

Allied commented that any conflicts concerning the use of the surface between a waste disposal operator and a mineral operator are matters of real property law to be resolved by private agreement or the courts.

Response

The commission agrees that disputes between the owner of the surface estate and the mineral interest holders are matters to be resolved by the courts or by private agreement. The commission does not intend for the permitting process to become a forum for addressing these disputes. No changes were made in response to these comments.

Comment

WMTX commented that requiring applicants to identify and notify mineral interest holders will lead to disputes that are beyond TCEQ's statutory authority to resolve.

Response

The commission does not expect the number of disputes between surface estate owners and mineral interest holders to be materially affected by the new notice requirement. In the event that disputes do arise, the commission does not intend for the permitting process to become a forum for addressing these disputes. No changes were made in response to these comments."

The potential conflicts that may arise as a result of the granting of the Applicant's permit are tort issues which are to be addressed before a court of Texas, and the TCEQ has made it clear that they do not consider the permitting process the proper forum to address mineral interests or other subsurface estate interests. State legislation as well as case law support this contention and provide a remedy to those who allege that their rights have been affected, infringed upon or diminished by the permit applicant. In *FPL Farming, Ltd. v Environmental Processing Systems, LC*, 351 S.W.3d 306 (Tex 2011), EPS applied for an amendment to their permit to operate a deep subsurface wastewater injection well, which was granted. However, as a result of the activities conducted under that permit, the injected wastewater migrated onto the subsurface estate owned by FPL. The lower courts determined that because a permit was properly granted, the permittee was shielded from tort liability resulting from actions governed by the permit. After numerous appeals, the Texas Supreme Court made the following ruling:

> *"...[A] permit granted by an agency does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because a permit is a "negative pronouncement" that "grants no affirmative rights to the permittee." Magnolia Petroleum Co. v. R.R. Comm'n, 141 Tex. 96, 170 S.W.2d 189, 191 (1943). A permit removes the government imposed barrier to the particular activity requiring a permit. As the Amarillo Court of Appeals aptly stated: " [O]btaining a permit simply means that the government's concerns and interests, at the time, have been addressed; so, it, as a regulatory body, will not stop the applicant from proceeding under the conditions imposed, if any." Berkley, 282 S.W.3d at 243. Similarly, when the Board of Law Examiners grants an attorney a license to practice law in this state, even after undertaking a significant background check on the candidate's character and fitness to practice, the license does not preclude a private party from seeking damages for the attorney's malpractice. See Tex.R. Govern. Bar Adm'n IV, X. When the Austin health authority issues a permit after inspection for a person to operate a restaurant, and a patron gets sick from eating at the restaurant, the fact that the restaurant was licensed (and may have been in compliance with health regulations) does not, in and of itself, preclude the ill patron from recovering in a negligence action against the restaurant. See Austin City Code § 10-3-61.*
>
> *An example of this situation arose in Magnolia Petroleum, **170 S.W.2d 189**. A person applied for a permit to drill an oil well, which was opposed before the Railroad Commission on the grounds that another entity, Magnolia Petroleum,*

actually had title to the land at issue in the permit. The Railroad Commission granted the permit, and Magnolia filed a district court action challenging the permit, introducing its chain of title and arguing that because it had proved superior title, the permit should not have been granted. Id. at 190. The trial court cancelled the permit and the court of appeals reversed, but suspended the permit, remanding with instructions to suspend the suit for a separate lawsuit in which title was being determined. We reversed because, even though the Railroad Commission could consider whether an applicant " appears" to have title, the mere fact that the applicant received the permit did not provide the applicant with any authority to drill on land that was not his, or shield him from tort liability or an injunction action should it be determined that he is not the rightful owner of the parcel. Id.at 190-91. We noted that, if the permit were granted, the permittee may still have no such title as will authorize him to drill on the land.... In short, ... [the permit] merely removes the conservation laws and regulations as a bar to drilling the well, and leaves the permittee to his rights at common law. Where there is a dispute as to those rights, it must be settled in court. The permit may thus be perfectly valid, so far as the conservation laws are concerned, and yet the permittee' s right to drill under it may depend upon his establishing title in a suit at law. Id. at 191. While we noted that the Railroad Commission " should not do the useless thing of granting a permit to one who does not claim the property in good faith," the Railroad Commission's determination of the propriety of the permit has no effect on the propriety of the permittee' s potentially tortious actions. Id."

***FPL Farming, Ltd. v Environmental Processing Systems, LC*, 351 S.W.3d 306 (Tex 2011)**

TECHNICAL SUBJECT: PRESENCE OF JURISDICTIONAL WETLANDS AND RELATED LOCATION RESTRICTION

In their hearing request letter of July 30, 2013, ANB raised this subject in comment 2.12:

"The Application does not explain the effects of the proposed landfill on area wetlands and or measures to mitigate damage thereto."

The ANB comment regarding wetlands does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the ANB comment, found in Parts I and II of the Application regarding wetlands and the associated location restriction:

ANB's assertion that the "*Application does not explain the effects of the proposed landfill on area wetlands and or measures to mitigate damage thereto."* is simply wrong. As noted in Part

II, Section 13.0 of the Application: "*No construction or development in jurisdictional wetland areas will be undertaken without appropriate authorization from the USACE. ... No Jurisdictional waters at the location of the proposed facility will be disturbed by the proposed construction or operation of the facility without prior authorization under a permit.*"

It also appears that ANB may be attempting to blur the distinction between "wetlands within the proposed permit boundary" and "area wetlands".

Parts I and II of the Permit Application demonstrate compliance with applicable regulations regarding the issue of wetlands.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(m)(2) (wetlands determination) and 30 TAC §330.553 (wetlands). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of §330.61(m)(2) and 30 TAC §330.553.

Parts I and II of the Permit Application provide adequate information on wetlands and associated location restrictions. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 13.0, pages 36-37, Floodplains and Wetlands Statement [330.61(m)]:

"The proposed landfill is located in an ideal location considering soil, groundwater, land use, and oil and gas activities (past, present, and future). No other location is equally plausible. It is difficult to find an area of appropriate size in Eastern Webb County that does not have floodplain issues due to the prevailing flat topography and rapid runoff soil conditions. Applicant endeavored to find an upland location that was reasonably close to the headwater conditions to minimize any impacts to floodplains and/or wetlands.

TRC performed a wetland evaluation at the facility site in 2009 (see Attachment A). The results of this evaluation indicate jurisdictional wetlands in and near the livestock watering tanks discussed in the preceding paragraph. TRC then performed a wetland determination in 2011. ... The USACE concurred that jurisdictional waters exist on site. ... An application for a Section 404 permit will be prepared and submitted to the USACE. No construction or development in jurisdictional wetland areas will be undertaken without appropriate authorization from the USACE.

No Jurisdictional waters at the location of the proposed facility will be disturbed by the proposed construction or operation of the facility without prior authorization under a permit."

The Executive Director's June 28, 2013 Response to Comments (RTC) #26 addressed comments on wetlands and the associated location restriction. The ED's responses are summarized as follows:

In the first paragraph of RTC #26, the ED noted that *"TCEQ rules require applicants for MSW landfills to provide a wetlands determination in Part II of the application. 30 TAC § 330.61(m). In this case, the Application indicates that TRC Environmental Corporation performed a wetland determination (Assessment) at the facility. The Assessment evaluated the facility for applicable federal, state, and local laws, regulations, and rules regarding wetlands. The Assessment results indicate the presence of jurisdictional wetlands in and near the livestock watering tanks within the proposed area. Section 13 of Part II of the Application and the supplemental wetlands document dated June 4, 2012 indicate that the Applicant submitted its findings to the U.S, Army Corp of Engineers (USACE) and the USACE concurred with the findings, In the near future, the Applicant will prepare and submit a Section 404 permit to the USACE for approval. The Section 404 permit application submitted to the USACE is required to be included in Part III of the complete [MSW] application. No construction in jurisdictional wetland areas will be undertaken prior to the Section 404 permit approval."*

In the second paragraph of RTC #26, the ED concluded that *"The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the wetlands."*

TECHNICAL SUBJECT: PRESENCE OF 100-YEAR FLOODPLAIN AND RELATED LOCATION RESTRICTION

In their hearing request letter of July 30, 2013, ANB raised this subject in comment 2.12:

> "The Application does not specifically address flood plain issues which may result in contamination of neighboring tracts by flowing water."

The ANB comment regarding the 100-year floodplain does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the ANB comment, found in Parts I and II of the Application regarding the 100-Year floodplain and the associated location restriction:

With respect to the comment that ANB raised on this issue, ANB appears to be attempting to blur the distinction between "existing floodplain conditions" and "proposed floodplain conditions" fully detailed in Parts I and II of the Application. Parts I and II are abundantly clear on the subject and demonstrate compliance with applicable regulations. Further, ANB appears to be alluding to drainage design requirements for Parts III and IV of the Application which are not required for a land-use compatibility determination.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(m)(floodplains and wetlands statement) and 30 TAC §330.547 (floodplain). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is

further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(m) and 30 TAC §330.547.

The proposed landfill is located in an ideal location considering soil, groundwater, land use, and oil and gas activities (past, present, and future). No other location is equally plausible. It is difficult to find an area of appropriate size in Eastern Webb County that does not have floodplain issues due to the prevailing flat topography and rapid runoff soil conditions. Applicant endeavored to find an upland location that was as close as possible to headwater conditions to minimize any impacts to floodplains and/or wetlands.

Obtaining a MSW permit is not authorization to fill in a floodplain or wetlands. Other authorizations are required for that.

Parts I and II of the Permit Application provide adequate information on 100-Year floodplain and the associated location restriction. The submitted sections of Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 1.5, pages 7-8, under *Floodplains*:

"Because the swales that convey drainage across the site are so wide and shallow, they are quite inefficient at conveying runoff. As a result, relatively wide areas of the site are inundated by runoff from the 100-year rainfall event. The flood insurance rate map (FIRM) for the site, as prepared by the Federal Emergency Planning Agency (FEMA), indicates a significant portion of the site to be within Zone A, the 100-year floodplain. This floodplain is depicted in Figure 11, Part II. The FIRM can also be found in Attachment G of Part II. ... [Applicant] will design a series of drainage channels and detention structures that will result in the removal of the proposed landfill area from the 100-year floodplain. Furthermore, [Applicant] will submit to FEMA a Conditional Letter of Map Revision (CLOMR), requesting correction of the existing FIRM to take into account the related drainage and floodplain improvements. ... this action will result in documentation that construction of the proposed watershed improvements at and adjacent to the site will remove the landfill from the 100-year floodplain."

Part II, Section 13.0, pages 36-37, *Floodplains and Wetlands Statement [330.61(m)]*

"Portions of the proposed facility are currently located within the 100-year floodplain, as indicated on the replication of the most current available floodplain map, or Flood Insurance Rate Map (FIRM), presented in Figure 11. The design of the proposed landfill and related facilities will include design of a comprehensive storm water management system of dikes, drainage channels and detention ponds. Collectively, this system will remove the area of the landfill and proposed buildings from the 100-year floodplain. [Applicant] has performed all the necessary hydrological and hydraulic engineering analysis and design to accomplish this. The results of this engineering design along with an application for a Conditional Letter of Map Revision (CLOMR) have been submitted to the Webb County Planning Department (WCPD) for review and were approved (see Attachment G). WCPD is the local agency responsible for

floodplain management. With concurrence from WCPD, the CLOMR application will be submitted to the Federal Emergency Management Agency (FEMA) for review and approval. The CLOMR when issued will verify that the proposed site drainage plans will, in fact, remove areas of the site proposed for the landfill, processing and storage areas and related development from the 100-year floodplain.

Construction of the landfill will impact a named reservoir, Burrito Tank, and possibly several smaller stock tanks. All affected reservoirs are owned by the applicant or by its parent, Rancho Viejo Cattle Company, Ltd. ... The 100-year flood is so broad in the vicinity of the tanks it appears there is sufficient area to carry the flows which will bypass the tanks' zones of impact.

The proposed landfill is located in an ideal location considering soil, groundwater, land use, and oil and gas activities (past, present, and future). No other location is equally plausible. It is difficult to find an area of appropriate size in Eastern Webb County that does not have floodplain issues due to the prevailing flat topography and rapid runoff soil conditions. Applicant endeavored to find an upland location that was reasonably close to the headwater conditions to minimize any impacts to floodplains and/or wetlands."

The Executive Director's June 28, 2013 Response to Comments (RTC) #25 addressed comments on the 100-Year floodplain and the associated location restriction. The ED's responses are summarized as follows:

In the second paragraph of RTC #25 beginning on page 31, the ED noted that *"as indicated in Section 13 of Part II of the Application, the storm water engineering designs, along with an application for a Conditional Letter of Map Revision (CLOMR), have been submitted to the Webb County Planning Development (WCPD) for review and were approved. With concurrence from WCPD, the CLOMR application will be submitted to FEMA. The CLOMR, when issued, will remove areas for waste disposal, processing, storage, and related development from the 100-year floodplain. Detailed storm water engineering designs, the CLOMR application submitted to FEMA, and the approved CLOMR (as well as an implementation of the approved CLOMR project) are not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."*

Beginning with the second full paragraph of RTC #25 on page 32, the ED noted that *"Regarding the comment that the proposed improvements fall outside the boundaries of the proposed permit site and on a property with separate ownership, it is the responsibility of the Applicant to obtain permission from off-site landowner to dredge and fill the area for proposed improvements in the watershed that fall outside the Applicant's property boundary. The TCEQ does not have jurisdiction to consider such process. Once the CLOMR is approved, and the project areas are developed and improved as planned to remove 100-year floodplain areas from the proposed waste management unit areas, elevations for these developed areas, as well as structures (dams, levees, channels, etc.), must be included in the revised FIRM, and any future development in these areas will require authorization from FEMA. However, the Applicant will be responsible for maintenance of these developed structures, including off-site areas. The Applicant will be required to provide the authority of the off-site development (easement, right-*

of-way, etc.) and maintenance procedures for these structures. This information is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application.

Regarding the comment related to the erosion or collapse of the off-site improvements, the floodplain protection structures (onsite or off-site) must be maintained by the Applicant, as stated above. In addition, erosion and sediment control measures for these structures will also be provided in the complete application.

Concerning the comment that the floodplain protection structure designs be in compliance with the state's dam safety provisions and local floodplain management regulations prior to development, the floodplain protection structure designs must be in compliance with the state's dam safety provisions and local floodplain management regulations. However, this information is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."

In the three paragraphs on page 33 of RTC #25, the ED offers "In regard to the comment that the construction of dams and levees will be insufficient to redirect the surface water produced by a large rainfall, and whether the proposed dam and the protective lining of the landfill will be adequate to protect the landfill from subsurface waters from those tributaries that are proposed to be rechanneled and diverted from the site: As previously mentioned, these structures' designs will be included in the complete application and reviewed to make sure the effectiveness of the facility's drainage routing system and the existing drainage patterns will not be adversely altered.

Concerning the comment that the facility must develop a storm water control plan that accounts for a 500 year rainfall event, and not a 100 year rainfall event, the TCEQ's jurisdiction is established by the Legislature, and is limited to the issues set forth in statute and rules. Accordingly, the TCEQ does not have jurisdiction to consider requirements beyond those specified by the rules.

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the Floodplain issue."

TECHNICAL SUBJECT: GROUNDWATER, SURFACE WATER, DRAINAGE AND WATER POLLUTION CONTROL

In their hearing request letter of July 30, 2013, ANB raised this subject in comment 2.12:

- *"The Application does not specifically address flood plain issues which may result in contamination of neighboring tracts by flowing water.*

- *The Application does not sufficiently address the possible effects of the landfill on ground water and the local aquifer.*"

The ANB comments regarding groundwater and drainage do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the ANB comments, regarding groundwater, surface water, drainage and water pollution control, found in Parts I and II of the Application:

ANB's comments appear to question "water pollution control" aspects for the proposed facility. The comments do not appear to take into account the physical setting of the proposed facility with respect to: (1) both groundwater and surface water conditions; (2) prevailing geologic and soil conditions; and (3) area topography and drainage patterns. Further, the ANB comments appear to ignore the extensive "water pollution control" regulatory requirements for design, construction, operation, and closure of the proposed facility.

Surface Water Run-Off Facts

The proposed facility is essentially at the top of the drainage (topographic) divide between the Rio Grande and Nueces River basins – the landfill is in the Rio Grande drainage.

The proposed facility is in the upper reaches of the drainage for San Juanito Creek.

Drainage from the proposed facility, i.e. "run-off", flows south-southwest across Rancho Viejo property to at least the railroad spur, with the possible exception of a small component crossing the "wedge."

On the north and east side of the proposed facility, drainage is towards the landfill, i.e., "run-on" conditions.

Note that further south and east of the proposed facility (lower Jordan Road to SH 359) land is in the Reiser Creek drainage.

Waste won't be washed onto adjacent properties.

Note that average annual rainfall for the area is well below the 25-inch cutoff TCEQ uses for an "arid exemption" and for using water-balance covers without modeling.

Groundwater and Aquifer Facts

The regionally-significant Laredo Aquifer [part of the Carrizo-Wilcox Major Aquifer] is found at depths of 1,000 feet or more below the proposed facility.

Relatively impervious clay soils predominate between the surface and the Laredo Aquifer.

The shallower Yegua-Jackson Aquifer [designated as a minor aquifer in 2002 because of use much further to the north and east] has been recently mapped south into the Webb County area; however, in the area of the landfill, water in the Yegua-Jackson is very limited in quantity and highly mineralized and generally found near the base of the Yegua, i.e top of the Laredo.

No evidence of shallow ground water usage – even for stock watering – in the area of the landfill. Windmills are used for pumping surface water from tanks.

At the time the application for Parts I and II was finalized, there were only six water wells within a five-mile radius of the facility including the Ranch Viejo (Yugo Ranch) well according to state records.

Note that a five-mile radius around the facility would encompass over 60,000 acres. Most of the wells are significantly distant from the facility.

Parts I and II of the Permit Application provide adequate information about site-specific groundwater conditions (and aquifers) and adequate data about surface water at and near the site. In addition, the Permit Application addresses water pollution issues. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(k) (groundwater and surface water). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(l).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.3, page 3, under *Permits or Construction Approvals [305.4(a)(7)]*

"National Pollutant Discharge Elimination System Program under the Clean Water Act and Waste Discharge Program under the Texas Water Code, Chapter 26 – an NOI will be submitted to TCEQ for coverage by a storm water discharge general permit,"

Part I, Section 1.4.1, pages 6-7, under *Favorable Site Conditions*:

"Soil in the upper 160 feet at the site was found to be predominantly clay, occasionally interbedded with claystone, sandstone and shale, and these soil types are believed to extend much deeper. The soils exist in nearly horizontal beds that exhibit very low vertical permeability. ...

While groundwater is encountered in thin layers of sandy or silty material within otherwise highly impermeable clay, this groundwater is essentially not usable due to its very low production potential and poor water quality. The uppermost aquifer beneath the site that is capable of producing water in potentially useful quantities to wells is the Jackson-Yegua Aquifer, which is expected to be encountered in the upper 750 feet below ground surface at the facility area. Water in this aquifer is poor to very poor in quality, due to concentrations of total dissolved solids, chloride and sulfate that exceed Federal drinking water standards. The Jackson-Yegua Aquifer is classified as a minor aquifer, because it produces relatively low yields of highly mineralized water. These water quantity and quality issues limit the usefulness of Jackson-Yegua Aquifer water for human consumption and agricultural uses such as livestock watering or crop irrigation. ... Rainfall averages about 20 inches per year ...

However, the site is situated in a mostly upland area near the top of the watershed, and existing or proposed livestock watering tanks capture and store a portion of the area's storm water runoff. As a result, the quantity of storm water runoff that will flow across the site is relatively low. Such runoff volumes can be readily contained in the perimeter drainage system that will be designed to remove the entire landfill footprint from the 100-year flood plain."

Part II, Section 1.1, page 5

1.1 Soils and Geology

"A series of 56 soil borings were completed to evaluate the characteristics of soil encountered in the upper 160 feet at the site. These soils are predominantly clays, with some interbedded sand, sandstone, and claystone or shale. Based on review of published reports and geophysical logs, these or similar soils are believed to extend to much greater depths. ... These soils have very low permeability characteristics ...

The geology of the site area is also suitable for landfill development, as the soil strata are laterally very extensive with relatively thick layers of very low permeability soils that prevent vertical migration of water. Consequently, the area geology is very protective of the quality of water in the aquifers that lie below the proposed facility."

Part II, Section 1.2, pages 5-6

1.2 Groundwater

"Groundwater was encountered beneath the site within soils of the Jackson and Yegua Groups. These soils are part of the Jackson-Yegua Aquifer, which is classified as a minor aquifer by the Texas Water Development Board (TWDB). This classification is due to the relatively low yield and marginal quality of water in the aquifer. The ground water below the site was encountered in several water-bearing zones or layers that are generally characterized by gradational changes to sandy or silty soil classifications. These water-bearing zones are generally on the order of several feet thick and are found at several

depth intervals across the site. These water-bearing zones may also be found layered as a transition between two highly impermeable layers of clay soil or at the top of a relatively impermeable layer of rock-like indurate material, and may also be associated with secondary porosity in the over-consolidated clay soils. These water bearing zones exhibit the characteristics of a confined aquifer. However, the hydraulic characteristics or relative thinness of these zones severely limit their ability to produce water in potentially useful quantities. The quality of this water is very poor to unacceptable for most domestic or agricultural uses. Regional aquifers exist beneath the site, but at significant depth. The Laredo Aquifer is expected to occur at a depth of about 1,000 feet or more below the ground surface. Water in this aquifer is generally slightly saline, with total dissolved solids in the range of 1,000-2,500 milligrams per liter (mg/l), about two to five times the U.S. EPA's secondary drinking water regulation (SDWR) standard of 500 mg/l. Published reports indicate the groundwater produced by some wells contain some metals and trace elements in excess of SDWR limits. This and other deeper aquifers in south central Webb County dip towards the southeast towards the Gulf of Mexico and generally crop out in relatively narrow bands that trend northeast-southwest.

Groundwater usage in the general area of the site is very limited. Only one water well is known to exist within a one-mile radius of the facility boundary. This is the private water well that is located near the Yugo Ranch headquarters buildings and serves the general needs of the ranch. This well is located roughly 900 feet southwest of the proposed facility. The ranch well was geophysically logged as part of this study and the caliper log indicates that the well is screened in the Yegua from about 1020 feet to 1136 feet where the diameter is reduced to final log depth [1160 feet], suggesting a smaller screen or sediment trap. According to TWDB records and information developed during the preparation of this permit application, there are only 6 water wells within a five-mile radius of the facility, including this ranch well.[current records now show there are eight wells] The next closest well is about 2.5 miles northwest of the facility. Four wells are located between 4.3 and 5 miles northwest of the facility, in the community of Ranchitos Las Lomas. One of these is a well located nearly 5 miles away that is owned and operated by Webb County. This well was intended as a public water supply well to make dispensed water available to the residents of Ranchitos Las Lomas. Water quality from this well is so poor that the majority of the water dispensed at this site is hauled by tanker trucks from the Webb County maintenance facility near U.S. Highway 59 and Loop 20 in Laredo. The source of this hauled water is the Laredo public water system. Of the total quantity of water Webb County dispenses at this location, relatively little water comes from this well, and that follows extensive treatment."

Part II, section 1.4, page 7

1.4 Rainfall, Hydrology and Storm Water Runoff

"The Texas Water Atlas (Estaville, Lawrence & Earl, Richard A., River Systems Institute at Texas State Univeristy, Texas A&M Press, 2008) provides the following site-specific hydrologic information:

Average Annual Precipitation is 22-23 inches (period 1971-2000).
Annual Potential Evapotranspiration (Priestly Taylor Method) is 76 inches.
Annual Potential Evapotranspiration (Penman Method) is 106 inches.
Annual Gross Lake Surface Evaporation is 79 inches (period 1950-1979).

The site is considered an arid location and is located at the boundary of the "Subtropical Subhumid" and "Subtropical Steppe" climates. Currently-published information documents that average annual evaporation exceeds average annual rainfall by more than 40 inches."

Part II, section 2.1.4, pages 11-12

2.1.4 Soil and Groundwater

"The soils encountered during drilling and described in the literature are dominantly clays. While the bottom and sides of the landfill excavation could encounter thin, isolated sand/silt units with a Unified Soil Classification of "SM" or "SP," these soil units do not appear to be sufficiently thick and laterally continuous to provide a significant pathway for waste migration. In addition, most of these units will not exhibit hydraulic conductivity greater than 1 x 10-5 cm/sec. However, any effect of the sand/silt units is minimized because the average annual evaporation exceeds average annual rainfall by more than 40 inches. The nearest "regional aquifer" is located approximately 1,000 feet below the site, according to regional cross-sections, the literature, geophysical log data obtained from the ranch water well located 900 feet from the facility, and geophysical log interpretations for gas wells in the site area. The ranch water well produces water from that depth. As a consequence of the prevailing soil conditions, the aquifer is protected by many hundred feet of low-permeability, clay-rich soil."

Part II, Section 3.0, page 15

3.0 General Locations Maps [330.61 (c)]

"There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. [I believe that ANB put a well in northeast of the site] This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II."

Part II, Section 8.1, Pages 22-23, under *Groundwater*

"The facility's geological and hydrogeological setting also provides protection of public health, as water quality in the upper aquifer at the facility is too poor to be used for human consumption. Deeper aquifers are protected from possible site-related contamination by hundreds of feet of intervening very low permeability soil intervals."

Part II, Section 8.3, Page 25, under *Compatibility with the Surrounding Area Wells*

"There are no known or recorded water supply wells, either active or abandoned, within 500 feet of the proposed facility."

Part II, Section 11.1, pages 32—33, under *11.0 GROUNDWATER AND SURFACE WATER [330.61 (k)]*

11.1 Groundwater [330.61(k)(1)]

"Groundwater conditions at the site are known from a combination of on-site soil boring data and the published literature. Groundwater is localized in sandier sediments encountered, but these sediments, as expected from the nature of the depositional environment, are not necessarily continuous across the site. There appears to be enough ultimate connectivity between water bearing materials, however, to allow this shallow groundwater to approach an equilibrium, or coherent potentiometric surface across the site. Water levels range from about 550 feet [msl] in the north part of the proposed landfill footprint to about 530 feet [msl] in the south--and generally follow the area slope, and consequently the drainage as well.

The near surface sediments at the site are part of the Yegua-Jackson Aquifer, a TWDB designated Minor Aquifer, and named for the geology involved. ... Water quality tests on ground water samples from six site borings were analyzed for constituents that include the maximum contaminant levels (MCLs) as established in the national primary drinking water regulations by U.S. EPA. All these ground water samples exceeded the secondary MCLs for total dissolved solids (TDS) and chloride by orders of magnitude. ... There are six water wells within about five miles of the site. The geophysical log of the Yugo Ranch well, about 900 feet from the site, indicates clays and some sands continuing to its total depth of about 1100 feet [bgs], where it is screened in the lower part of the Yegua. This well, sampled as part of the site study, also showed TDS and chloride values somewhat above the secondary MCLs. The site is a part of this Yegua-Jackson recharge zone and is situated on or near the contact between its elements. However, soil characteristics and groundwater chemistry at the site indicate groundwater recharge in the area is limited.

The Laredo Aquifer underlies the Yegua-Jackson. ... This aquifer is an important part of Webb County, for it is capable of producing significant quantities of freshwater, particularly for the sandier lower portion of the Laredo Formation. The Laredo Aquifer provides a portion of Laredo's water supply ..."

Part II, Section 11.2, pages 33- 34

11.2 Surface Water [330.61(k)(2)]

"There are two large surface water impoundments on the proposed PERC landfill site and several smaller impoundments. For the most part surface water flow occurs as overland flow and flow in dry washes whose course is difficult to identify on available aerial photos. ... will incorporate appropriate drainage controls into the facility design that comply with all regulations including the Texas Pollution Discharge Elimination System (TPDES) and allow obtaining appropriate TPDES permits.

Currently existing drainage patterns at the proposed permit boundary will not be significantly altered by landfill development and operation. Existing flow volumes, peak discharges, and discharge points will be maintained by the landfill design. The facility will be protected from 100-year frequency flooding to prevent the washout of solid waste. Calculations and analyses will be provided to demonstrate compliance with regulatory requirements concerning surface water drainage.

The proposed facility will operate under TPDES General Permit No. TXR050000. A signed certification to this effect is presented as Attachment H in Part II,... It will also operate in accordance with a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP will be prepared as the actual design of the landfill and related facilities is completed during the preparation of Parts III and IV of this permit application.

The facility will comply with the requirements of the TPDES storm water permitting requirements by continuous operation and monitoring of its SWPPP throughout the active life of the facility. ... A Notice of Intent (NOI) to obtain coverage under TPDES General Permit No. TXR050000 (or its successor) will be submitted to TCEQ. Filing the NOI will initiate coverage of this facility under the General Permit and is one of the criteria for compliance with the TPDES and Section 402 of the CWA. Operation of the SWPPP is the other criteria for compliance with the TPDES requirements.

Surface water conditions near the site are very similar to those at the site. Due to the generally flat surface topography and low runoff, combined with the tight, cohesive surficial soils, natural drainage systems exhibit very little erosion. Relatively small artificial dams exist in the area to create "stock tanks" for livestock watering."

The Executive Director's June 28, 2013 Response to Comments (RTC) #7 and # 28 addressed the comments on groundwater, surface water, drainage, and water pollution control in separate discussions. The ED's responses are summarized by general subject as follows:

Water Pollution Control Issues

In RTC #7, the Executive Director (ED) noted that "*The rule cited by Hurd Enterprises, 30 TAC § 330.55(b), requires that all liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution and ensure that storm water and wastewater management is in compliance with the regulations of the commission. This information is required to be*

included in Part III of the complete application under 30 TAC § 330.63(b)(4) (relating to water pollution control). Because this Application is a partial application for determination of land-use compatibility, only Parts I and II of the Application are reqt\ired under 30 TAC § 330.57(a). The Executive Director will assess the information required in Part III of the Application when it becomes available."

In RTC #24, the ED noted that "*Regarding the comment that many existing receptors in the area will be exposed to polluted storm water runoff and that the river and reservoir in the area will be impacted by the facility, the facility will be required to take all steps necessary to control and prevent the discharge of contaminated water from the facility. Should the discharge of contaminated water become necessary, the facility will be required to obtain specific written authorization from the TCEQ prior to the discharge. All water coming in contact with waste or contaminated soils will be treated as contaminated water. Run-on and runoff for the 25-year, 24-hour storm event must be controlled. Temporary diversion berms will be constructed around areas of exposed waste (unloading area) to collect and contain surface water that has come into contact with waste. Contaminated water must be managed in accordance with the TCEQ regulations.*"

Surface Water and Drainage Issues

In RTC #24, the ED noted that "*TCEQ rules at 30 TAC §§ 330.63(c), 330.303, 330.305, and 330.307 require the Applicant to provide a surface water drainage report that demonstrates that the owner or operator will design, construct, maintain and operate the facility to manage run-on and runoff during the peak discharge from at least a 25-year storm and prevent the offsite discharge of waste and contaminated storm water, ensure erosional stability of the landfill during all phases of landfill operation, closure, and post-closure care, provide structures to collect and control at least the water volume resulting from a 24-hour, 25-year storm, protect the facility from washouts, and ensure that the existing drainage pattern is not adversely altered. A detailed surface water management plan (discussions, designs, calculations, and operational considerations for the collection, control, and discharge of storm water from the facility as required by the above-referenced rules) is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in Parts III and IV of the complete application.*

A typical surface water management plan will basically consist of drainage swales, downchutes, perimeter channels, detention ponds, and outlet structures. The facility must be designed to prevent discharge of pollutants into waters in the state or waters of the United States, as defined by the Texas Water Code and the Federal Clean Water Act, respectively. The Applicant will be required to obtain the appropriate Texas Pollutant Discharge Elimination System (TPDES) coverage for the proposed facility to assure that storm water discharges are in accordance with applicable regulations. Storm water runoff management system must be designed to convey the 25-year runoff from the developed landfill, consistent with TCEQ regulations, and to provide the necessary storage and outlet control to mitigate impacts to the receiving channels downstream of the facility. A

demonstration that existing permitted drainage patterns will not be adversely altered must be provided in Part III of the Application.

The Applicant will also be required to inspect, restore, and repair constructed permanent stormwater systems such as channels, drainage swales, chutes, and flood control structures in the event of wash-out or failure from extreme storm events. Excessive sediment will be removed, as needed, so that the drainage structures, such as the perimeter channels and detention ponds, function as designed. ...

Regarding the comment that the Application failed to provide sufficient information about groundwater and surface water as required by 30 TAC § 330.61(k), the rule requires that the applicant provide data about the site-specific groundwater conditions and data on surface water at and near the facility. Sections 1.2 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]. Likewise, Sections 1.3, 1.4, 1.5, and 11.2 of Part II of the application adequately provides data on surface water. These sections indicate that surface water conditions at or near the proposed facility are very similar, due to the generally flat surface topography and low runoff. These sections also indicate that the swales that convey drainage across the proposed facility are so wide and shallow that they are quite inefficient at conveying runoff. As a result, relatively wide areas of the site are inundated by runoff from the 100-year rainfall event.

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the Storm water Run-On, Runoff, and Contaminated Water Discharge to River and Reservoir issue."

Groundwater Issues

In RTC #24, the ED concluded that *"Sections 1.1 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]."*

426234

THE STATE OF TEXAS §
COUNTY OF WEBB §

KNOW ALL MEN BY THESE PRESENTS:

That RANCHO VIEJO CATTLE COMPANY, LTD., a Texas Limited Partnership, and ANB CATTLE COMPANY, LTD., a Texas Limited Partnership, each acting herein by and through their respective General Partners, in order to carry out agreements reached within the families of Carlos Y. Benavides, Jr. and Arturo N. Benavides, do hereby cross-convey an undivided one-half interest in the specific surveys hereinafter described and, in order to accomplish same, to the extent necessary, do hereby amend conveyances heretofore made under deeds hereinafter described, so that all lands situated within those particular surveys lying within the Pescadito or Yugo Ranch which are described in attached Exhibit "A" will be owned in fee simple by Rancho Viejo Cattle Company, Ltd., as to an undivided one-half (1/2) interest and by ANB Cattle Company, Ltd., as to an undivided one-half (1/2) interest.

In order to effect and accomplish this cross-conveyance and amendment of previous conveyances, the parties hereto, RANCHO VIEJO CATTLE COMPANY, LTD., a Texas Limited Partnership, for a valuable consideration moving to it, the sufficiency of which is hereby acknowledged, does hereby GRANT, SELL, ASSIGN and CROSS-CONVEY unto ANB CATTLE COMPANY, LTD., an undivided one-half (1/2) interest in any part of each of those five (5) surveys located within the above described Pescadito or Yugo Ranch as more fully described and identified in attached Exhibit "A", the fee title to which now

1417 445

A

Blumberg No. 5137

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, and same appears of record in my office.
Witness my hand and seal of office on
JUL 18 2013
Margie Ramirez Ibarra
Webb County Clerk
By _____ Deputy

appears of record as now owned entirely by Rancho Viejo Cattle Company, Ltd., and for the same consideration, ANB CATTLE COMPANY, LTD., a Texas Limited Partnership, does hereby GRANT, SELL, ASSIGN and CROSS-CONVEY unto RANCHO VIEJO CATTLE COMPANY, LTD., an undivided one-half (1/2) interest in any part of those five (5) surveys located within the said Pescadito or Yugo Ranch, each of which are State Mineral Classified land, as more fully described and identified in attached Exhibit "A", which is incorporated into and made a part hereof for all relevant purposes.

This conveyance is made expressly subject to the rights of the State of Texas in and to each of the above described surveys and to the agreement of the parties that the Limited Partnership which is a co-owner of any portion of any of the said surveys which lies within pasture fences enclosing that portion of the Yugo Ranch occupied by such partnership shall remain in exclusive possession of said lands and shall have the exclusive right to continue to occupy all portions of any of such surveys lying within the fence enclosures of the pasture belonging to the particular Limited Partnership for hunting and grazing purposes in consideration of that partnership paying the ad valorem taxes due on such acreage and that the other limited partnership shall, likewise, have exclusive possession of any portion of any of the said above described five (5) surveys which lie within the outside fence enclosures of the pastures belonging to that particular Limited Partnership for hunting and grazing purposes in consideration of that partnership paying the ad valorem taxes on that portion of

said five (5) surveys lying within its fence enclosures.

The parties to this cross conveyance affirm that this instrument of cross-conveyance and, to the extent necessary, amendment to previous deeds into the partnership, is in compliance with family agreements heretofore entered into relating to the division of the Pescadito or Yugo Ranch and the parties hereto expressly affirm that this cross-conveyance, and the agreements and recitals herein contained, shall be deemed to effectively amend the following described instruments of conveyance insofar as they relate to lands which form a part of Pescadito or Yugo Ranch, situated in the eastern part of Webb County, Texas, viz:

Deed dated December 28, 1989, executed by Carlos Y. Benavides to Rancho Viejo Cattle Company, Ltd., a Texas Limited Partnership, as now recorded in Volume 1399, pages 268-270 in the Real Property Records of Webb County, Texas.

Deed dated December 28, 1989, executed by Carlos Y. Benavides to ANB Cattle Company, Ltd., a Texas Limited Partnership, as now recorded in Volume 1399, pages 271-273 in the Real Property Records of Webb County, Texas.

Deed dated December 28, 1989, executed by Carlos Y. Benavides, Jr. to Rancho Viejo Cattle Company, Ltd., a Texas Limited Partnership, as now recorded in Volume 1399, pages 265-267 in the Real Property Records of Webb County, Texas.

Deed dated December 28, 1989, executed by Arturo N. Benavides to ANB Cattle Company, Ltd., a Texas Limited Partnership, as now recorded in Volume 1399, pages 262-264 Real Property Records of Webb County, Texas.

and each of the partnerships who are parties to this deed hereby further confirm that each partnership received one-half (1/2) of those mineral rights described under "Fifth" of the above mentioned two deeds from Carlos Benavides, each dated December 28, 1989, as

now of record in Volume 1399, pages 268-270 in the Real Property Records of Webb County, Texas and Volume 1399, pages 271-273 in the Real Property Records of Webb County, Texas, respectively, which mineral rights were subsequently conveyed by the Co-Trustees under the Benavides Family Mineral Trust under Trust Instrument dated March 22, 1990, now bearing Webb County Clerk File No. 424921.

Executed the 6th day of April 1990, but for all purposes to be deemed effective as of 12:01 a.m. January 1, 1990.

RANCHO VIEJO CATTLE COMPANY, LTD.,
A Texas Limited Partnership

By: _____
Carlos Y. Benavides
General Partner

_____
Carlos Y. Benavides, Jr.
General Partner

ANB CATTLE COMPANY, LTD.,
A Texas Limited Partnership

By: _____
Carlos Y. Benavides
General Partner

_____
Arturo N. Benavides
General Partner

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument was acknowledged before me on the 6th day of April, 1990 by Carlos Y. Benavides, General Partner, on behalf of Rancho Viejo Cattle Company, Ltd. a Texas Limited Partnership.

ELVA AGUILAR
NOTARY PUBLIC
State of Texas
Comm. Exp. 10-28-93

Elva Aguilar
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument was acknowledged before me on the 10th day of April, 1990 by Carlos Y. Benavides, Jr., General Partner, on behalf of Rancho Viejo Cattle Company, Ltd., a Texas Limited Partnership.

ELVA AGUILAR
NOTARY PUBLIC
State of Texas
Comm. Exp. 10-28-93

Elva Aguilar
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument was acknowledged before me on the 6th day of April, 1990 by Carlos Y. Benavides, General Partner, on behalf of ANB Cattle Company, Ltd., a Texas Limited Partnership.

ELVA AGUILAR
NOTARY PUBLIC
State of Texas
Comm. Exp. 10-28-93

Elva Aguilar
Notary Public, State of Texas

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I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.

Witness my hand and seal of office on

JUL 18 2013

Margie Ramirez Ibarra
Webb County Clerk

Deputy County Clerk

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument was acknowledged before me on the 13th day of April, 1990 by Arturo N. Benavides, General Partner, on behalf of ANB Cattle Company, Ltd., a Texas Limited Partnership.

RAQUEL V. ALCOCER
Notary Public
State Of Texas
My Comm. Exp. Feb. 13, 1991

Raquel V. Alcocer
Notary Public, State of Texas

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office,

Witness my hand and seal of office on

JUL 18 2013

Margie Ramirez Ibarra
Webb County Clerk

Deputy County Clerk

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6.

EXHIBIT "A"

FIRST: Survey 112, Certificate No. 1/177, Abstract No. 2835, Original Grantee, J. Poitevent, containing 640 acres, more or less.

SECOND: Survey 1906, Certificate No. 391, Abstract No. 3103, Original Grantee, Texas Trunk, containing 640 acres, more or less.

THIRD: Survey 2366, Abstract No. 3182, Certificate SF 12687, Original Grantee A. R. Villarreal, containing 27.34 acres, more or less.

FOURTH: All of Survey 1604, Certificate 3674, Abstract No. 2787, Original Grantee, Gregorio Rubio, containing 640 acres, more or less.

FIFTH: All of Survey 1994, Certificate No. 90, Abstract No. 2788, Original Grantee, Gregorio Rubio, containing 320 acres, more or less.

FILED 4-18-1990
HENRY FLORES AT 4:53 P.M.
COUNTY CLERK, WEBB COUNTY, TEXAS
BY _____ DEPUTY

1990 APR 18 PM 4:53
HENRY FLORES
COUNTY CLERK
WEBB COUNTY, TEXAS
FILED
BY _____ DEPUTY

1417 461

EXHIBIT "A" TO CROSS-CONVEYANCE
RANCHO VIEJO CATTLE COMPANY, LTD. and
AND CATTLE COMPANY, LTD.

STIPULATION CONFIRMING SURFACE OWNERSHIP, AGREED BOUNDARY LINE AND ROADWAY ACCESS

STATE OF TEXAS §

COUNTY OF WEBB §

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Under Partition Deed executed by Rosa Vela de Benavides, et. al. dated December 9, 1949, now recorded in Volume 306, pages 424-37, Deed Records of Webb County, Texas, (hereinafter referred to as the December 9, 1949 Benavides Family Partition Agreement) the surface estate in and to The Pescadito Ranch containing 16,258 acres, more or less, was set aside to the late Carlos Y. Benavides, Sr. Carlos Y. Benavides, Sr. thereafter acquired other lands located to the West and adjacent to his Pescadito Ranch. Such other lands were subsequently conveyed by Carlos Y. Benavides, Sr. to his sons, Carlos Y. Benavides, Jr., and Arturo N. Benavides. Carlos Y. Benavides, Jr. and Arturo N. Benavides thereafter partitioned the surface estate lands they acquired from their father between themselves. The Partition Deed between Carlos Y. Benavides, Jr. and Arturo N. Benavides is dated February 17, 1987 and is now recorded in Volume 1219, Pages 944-948, Deed Records of Webb County, Texas. Under their February 17, 1987 Partition Deed the mineral and surface estate in the land described in such partition was severed. The surface estate in the northerly half of the lands affected by their February 17, 1987 Partition Deed was set aside in severalty to Arturo N. Benavides and the surface estate in the southerly half of said land was set aside in severalty to Carlos Y. Benavides, Jr.

Thereafter, by two separate conveyances, each dated December 28, 1989 as now recorded in Volume 1399, pages 268-270 and Volume 1399, Pages 271-273, Real Property Records of Webb County, Texas, Carlos Y. Benavides, Sr. contributed all of the surface ownership he then owned in the El Yugo and Rancho Viejo Pastures and one-half of the Ranch Headquarters of the Pescadito Ranch to Rancho Viejo Cattle Company, Ltd. (entire Ranch Headquarters consists of 45.2619 acres, more or less), and contributed all of the surface ownership he then owned in the Lassos Pasture, the Llave Pasture, the Retama Gorda Pasture and the Cuchilla Pasture, located North of Highway 59 and one-half of the Ranch Headquarters of the Pescadito Ranch to ANB Cattle Company, Ltd.. The above referenced December 29, 1989 conveyances by Carlos Y. Benavides, Sr. included other non-related properties as therein described.

By separate instruments, dated December 28, 1989, Carlos Y. Benavides, Jr. contributed all of the surface estate in the lands set aside to him under the February 17, 1987 Partition Deed with his brother to Rancho Viejo Cattle Company, Ltd. and Arturo N. Benavides contributed all of the surface estate in the lands set aside to him in said February 17, 1987 Partition Deed to ANB Cattle Company, Ltd. These conveyances are now of record in Volume 1399, Pages 262-264 and Volume 1399, Pages 265-267, Real Property Records of Webb County, Texas, to which reference is here made for all purposes.

Thereafter, by instrument dated April 6, 1990 of record in Volume 1417, pages 445-451, Real Property Records of Webb County, Texas, ANB Cattle Company, Ltd. and Rancho Viejo Cattle Company, Ltd. entered into a Cross-Conveyance Agreement relating to certain State Mineral Classified lands located within the Pescadito Ranch.

The approximate 16,258 acre Pescadito Ranch that was set aside to Carlos Y. Benavides, Sr. under the December 9, 1949 Benavides Family Partition Agreement and the additional lands acquired by the late Carlos Y. Benavides, Sr. located to the West of his 16,258 acre Pescadito Ranch, as later deeded to his sons, have been surveyed and determined to contain a total of 21,920.1407 acres, more or less. Such acreage is depicted as Tract No. 1 consisting of 9726.2984 acres, more or less, and Tract No. 2 consisting of 12, 193.8423 acres, more or less, on a Survey Plat attached hereto as Exhibit A.

Rancho Viejo Cattle Company, Ltd., simultaneous with the execution of this Stipulation Confirming Surface Ownership, Agreed Boundary Line and Roadway Access is conveying to Arturo N. Benavides, Sr., Arturo N. Benavides, Jr., Anna Gloria Benavides Galo and Kirk R. Clovis, in varying proportions, the most northerly 1093.3849 surface acres, more or less, out of the lands contributed by the late Carlos Y. Benavides, Sr. to Rancho Viejo Cattle Company, Ltd. This acreage although conveyed to Rancho Viejo Cattle Company, Ltd. was determined by recent survey to be within the Lassos Pasture, a pasture conveyed by the late C. Y. Benavides, Sr. to ANB Cattle Company, Ltd. Rancho Viejo Cattle Company, Ltd is making such conveyance in order to more accurately reflect the actual intention of the late Carlos Y. Benavides, Sr. to divide the surface estate in the Pescadito Ranch by pasture and also pursuant to a mediation accord arrived at by the undersigned parties as subsequently amended and confirmed in Cause No. 92-00052 in the County Court at Law No. 1, styled Estate of Carlos Y. Benavides, Sr., Deceased. Also in said conveyance, Rancho Viejo Cattle Company, Ltd. is conveying its right, title and interest in and to the surface estate to the Ranch Headquarters Tract of the Pescadito Ranch consisting of 45.2619 acres, more or less, together with all improvements thereto subject to Rancho Viejo Cattle Company, Ltd. retaining its non-possessory undivided one-half interest in any portion of said Ranch Headquarters Tract located within State Mineral Classified Survey 1906, Abstract 3103, Webb County, Texas, consistent with Section VIII below. Also by simultaneous conveyance herewith, Arturo N. Benavides, Sr., Arturo N. Benavides, Jr., Anna Gloria Benavides Galo and Kirk R. Clovis, are conveying the above referenced 1093.3849 surface acres, more or less, and an undivided one-half interest in and to the above referenced Ranch Headquarters Tract to AKA Properties, Ltd., a Texas Limited Partnership also subject to Rancho Viejo Cattle Company, Ltd.'s above mentioned reservation.

The parties hereto desire to confirm the respective surface ownerships of Rancho Viejo Cattle Company, Ltd., ANB Cattle Company, Ltd. and AKA Properties, Ltd. in the 21,920.1407 acres, more or less, depicted on attached Exhibit A; to establish the Agreed Boundary Line between the respective ranch lands owned and possessed by Rancho Viejo Cattle Company, Ltd. and the ranch lands owned and possessed by ANB Cattle Company, Ltd. and AKA Properties, Ltd.; and to recognize and confirm the permanent non-exclusive rights of ingress and egress along an established

forty (40') wide road easement across their respective ranches. Accordingly, it is agreed and stipulated that:

I.

ANB Cattle Company, Ltd. is hereby recognized to be the owner of the surface estate in all of Tract No.1 containing, 9,726.2984 acres, more or less, as depicted in Exhibit A attached hereto and described by metes and bounds in Field Notes attached hereto as Exhibit B, each of which are hereby incorporated into this agreement for all relevant Purposes, Less and Except:

a) All of the above referenced 1093.3849 surface acres now owned by AKA Properties, Ltd., depicted in Exhibit "D" and described by metes and bounds in Field Notes attached hereto as Exhibit "E";

b) undivided one-half (1/2) interest in and to the Ranch Headquarters tract consisting of 45.2619 acres of land, more or less, now owned by AKA Properties, Ltd., described by metes and bounds in Field Notes attached hereto as Exhibit "F" subject to Rancho Viejo Cattle Company, Ltd.'s reserved non-possessory interest in any portion of Survey 1906 that is within the Ranch Headquarters Tract as called for in I c) below;

c) undivided one-half (1/2) interest held by Rancho Viejo Cattle Company, Ltd. in all state mineral classified lands located within said Tract No. 1, being Survey No. 1994, Abstract No. 2786, Survey No. 1604, Abstract No. 2787 and a portion of Survey No. 1906, Abstract No. 3103, subject to Section VIII below; and,

d) retained right-of-way access by Rancho Viejo Cattle Co., Ltd. and AKA Properties, Ltd., respectively along the designated forty foot (40') roadway easement over said Tract No. 1, as more particularly described in Section V below;

and Rancho Viejo Cattle Company, Ltd. and AKA Properties, Ltd. have RELEASED, RELINQUISHED and QUITCLAIMED and by these presents do RELEASE, RELINQUISH and QUITCLAIM all right, title and interest in and to the surface estate in and to Tract No. 1 containing 9,726.2984 acres, more or less, as depicted in Exhibit A and described by metes and bounds in attached Exhibit B, subject to each of the above stated exceptions and reservation, unto ANB Cattle Company, Ltd., its successors and assigns.

II.

Rancho Viejo Cattle Company, Ltd. is hereby recognized to be the owner of the surface estate in and to Tract No. 2 containing 12,193.8423 acres, more or less, as depicted in attached Exhibit A and described by metes and bounds in Field Notes attached hereto as Exhibit C, Less and Except:

a) undivided one-half (1/2) interest held by ANB Cattle Company, Ltd., in all State Mineral Classified lands located within said Tract No. 2, being Survey No. 2366, Abstract No. 3182 Survey No. 112, Abstract No. 2835 and a portion of Survey No. 1906, Abstract No. 3103, subject to Section VIII below; and,

b) retained right of access by ANB Cattle Company, Ltd., along the designated forty foot (40') roadway easement over Tract No. 2 as more particularly described in Section VI below;

and ANB Cattle Company, Ltd. and AKA Properties, Ltd. have RELEASED, RELINQUISHED and QUITCLAIMED and by these presents do RELEASE, RELINQUISH and QUITCLAIM all of their right, title and interest in and to the surface estate in and to TRACT No. 2, containing 12,193.8423, acres, more or less, as depicted in attached Exhibit A and described by metes and bounds in attached Exhibit C, subject to each of the above stated exceptions and reservation, unto Rancho Viejo Cattle Company, Ltd., its successors and assigns.

III.

AKA Properties, Ltd. is hereby recognized to be the owner of the surface estate in and to:

1) 1093.3849 acres, more or less, depicted in Exhibit "D" and described by metes and bounds on Field Notes attached hereto as Exhibit "E"; and,

2) undivided one-half (1/2) interest in and to the Ranch Headquarters tract consisting of 45.2619 acres of land, more or less, as described by metes and bounds in Field Notes attached hereto as Exhibit "F", subject to Rancho Viejo Cattle Company Ltd.'s reserved non-possessory interest in any part of the Ranch Headquarters Tract that is within State Mineral Classified Survey 1906;

both of which tracts of land are within Tract No 1, and ANB Cattle Company, Ltd. and Rancho Viejo Cattle Company, Ltd. have RELEASED, RELINQUISHED AND QUITCLAIMED and by these presents do RELEASE, RELINQUISH AND QUITCLAIM all right, title and interest in and to the surface estate in and to the two (2) above described tracts, subject to the above stated exception affecting the Ranch Headquarters surface rights within State Mineral Classified Survey No. 1906, unto AKA Properties, Ltd., its successors and assigns.

IV.

It is Stipulated and Agreed that the existing fence line, being the survey boundary line separating occupied Tract No. 1 from occupied Tract No. 2 shall constitute the Agreed Boundary Line between said Tract No. 1 and Tract No. 2, the ownership of which have been identified and confirmed in Sections I, II and III above. The Agreed Boundary Line, as currently fenced, shall continue to be the Agreed Boundary Line segregating such respective surface ownerships and it is agreed that such adjoining owners and their respective successors and assigns shall continue to

maintain such division fences in a good state of repair along said Agreed Boundary Line, sharing the cost of all required maintenance equally between adjoining owners.

V.

ANB Cattle Company, Ltd. grants, conveys and confirms in Rancho Viejo Cattle Company, Ltd., the individual members of the Carlos Y. Benavides, Jr. family, and their employees and invitees, a perpetual, non-exclusive roadway easement for ingress and egress along a 40 ft. wide roadway extending from U.S. Highway 59 to an existing cattle guard in the Agreed Boundary Line between Tract No. 1 and Tract No. 2 located South of the Ranch Headquarters Tract for use as a permanent means of ingress and egress from U. S. Highway 59 to Tract No. 2. Such permanent, right of ingress and egress is depicted and described by metes and bounds in the attached Exhibits "G" and "H", respectively, and shall, for all purposes be deemed an appurtenance and a covenant running with the land to Tract No. 2. Furthermore, notwithstanding any language herein contained to the contrary, under no circumstances shall this grant of road easement be construed to include the right for Rancho Viejo Cattle Company, Ltd. and the individual members of the Carlos Y. Benavides, Jr. Family or their successors in interest to any part of Tract No. 2 to assign or allow the use of said 40' road easement by any third party that is not an owner of all or some part of Tract No. 2 for the purpose of using said 40' road easement as a thoroughfare or convenience road for accessing State Highway 359 from U.S. Highway 59 or for other commercial purposes unrelated to the ownership of all or some part of Tract No. 2.

VI.

Rancho Viejo Cattle Company, Ltd. grants, conveys and confirms in ANB Cattle Company, Ltd. and the individual members of the Arturo N. Benavides family, and their employees and invitees, a perpetual, non-exclusive roadway easement for ingress and egress along a 40 ft. wide roadway extending from said existing cattle guard in the Agreed Boundary Line between Tract No. 1 and Tract No. 2 located South of the Ranch Headquarters Tract over and across Tract No. 2 along said designated road to a point of exit at an existing exterior gate in the most southerly East Boundary Line fence for use as a permanent means of ingress and egress from Highway 359 to Tract No. 1. Such permanent, right of ingress and egress is depicted and described by metes and bounds in the attached Exhibits "I" and "J", respectively, and shall for all purposes be deemed an appurtenance and covenant running with the land to Tract No. 1. Furthermore, notwithstanding any language herein contained to the contrary, under no circumstances shall this grant of road easement be construed to include the right for ANB Cattle Company, Ltd. and the individual members of the Arturo N. Benavides, Sr. Family, or their successors in interest to any part of Tract No. 1, to assign or allow the use of said 40' road easement by any third party that is not an owner of all or some part of Tract No. 1 for the purpose of using said 40' road easement as a thoroughfare or convenience road for accessing U.S. Highway 59 from State Highway 359 or for some other commercial purposes unrelated to the ownership of all or some part of Tract No. 1.

VII.

The cost of all required construction, maintenance and repair of the above referenced 40' road shall be shared equally between ANB Cattle Company, Ltd. and Rancho Viejo Cattle Company, Ltd, their successors and assigns. The parties hereto further agree that the exit gates shall remain closed and locked except immediately before and immediately after each such separate use unless supervised by a gate guard, and each of said parties shall have the right to place their own lock on said exit gates.

VIII.

Survey Nos. 1994, 1604, 1906, 2366 and 112 as made reference to in Sections Ic and IIa above, are owned in undivided 50% interest each by ANB CATTLE COMPANY, LTD. and RANCHO VIEJO CATTLE COMPANY, LTD, respectively. Such Surveys are State Mineral Classified Lands and are expressly subject to the rights of the State of Texas together with those rights and obligations described in Cross-Conveyance Deed dated April 6, 1990, but effective January 1, 1990, by and between RANCHO VIEJO CATTLE COMPANY, LTD. and ANB CATTLE COMPANY, LTD., recorded in Volume 1417, Page 445 of the Deed Records of Webb County, Texas. In addition to the rights and obligations as stated in such Cross-Conveyance Deed, ANB CATTLE COMPANY, LTD. and RANCHO VIEJO CATTLE COMPANY, LTD., their successors and assigns, to the extent permitted by law, hereby agree and covenant that in addition to sharing the benefits as agents for the State of Texas under any and all oil, gas and other mineral leases, that such sharing (in equal proportions) shall also apply to any and all surface operations including any sand and/or gravel sold or used from the mineral classified lands in connection with such oil, gas and other mineral leases, together with any other receipts and/or benefits received from the exploration, development, production and marketing of such oil, gas or other minerals, including but not limited to all surface damages for the laying and construction of pipelines, roads, drillsites, seismic surveys, production facility sites, and/or any other surface sites or surface use of these surveys in connection with any and all oil, gas and mineral operations. Any proceeds and/or benefits from the sale or use of water out of a mineral classified survey or portion thereof situated within the respective property boundaries of any of the undersigned parties shall not be shared and all of such proceeds and/or benefits shall be entitled by such party. Furthermore, the party not in possession of a State Mineral Classified Tract agrees to fully cooperate (without expense to the non-possessory party) with the party actually in possession in connection with any filings with any regulatory authority incident to plugging of any well being abandoned of oil and gas production so that such well can be plugged by the oil or gas operator so as to permit the completion of a water well at the expense of the party in possession. Furthermore, in connection with the surface use of these lands for oil, gas and/or other mineral operations, the limited partnership who has exclusive possession to such lands shall also have the exclusive right (executive rights) to negotiate and conclude all terms in connection with such surface matters, keeping the interest of the non-executive limited partnership in mind. The standard of conduct of the limited partnership with the exclusive/executive right shall be that of which a fiduciary owes to his beneficiary or principal and shall include the right to account to the non-exclusive/executive right holder immediately upon closing and/or receipt of funds and/or benefits attributable to any

transaction in connection with the above matters. All payments and/or benefits derived in connection with the above transactions shall be made and/or attributed 50% to ANB CATTLE COMPANY, LTD. and 50% to RANCHO VIEJO CATTLE COMPANY, LTD, respectively. All ad valorem taxes due on such general classified surveys shall be paid 50% by ANB CATTLE COMPANY, LTD. and 50% by RANCHO VIEJO CATTLE COMPANY, LTD. Provided, however, ANB CATTLE COMPANY, LTD. and AKA PROPERTIES, LTD. shall be responsible for all ad valorem improvement taxes attributable to the Ranch Headquarters Tract which lies on a portion of Survey 1956.

IX.

This agreement is entered into expressly subject to any and all existing railroad, pipeline, transmission and/or electrical line easements, together with the above described 40' road easement and any other recorded easements in full force and subsisting. Further, all parties hereto expressly warrant that the mineral fee estate in the entire lands covered hereby are unaffected by this agreement, that they hold and that those claiming an interest in the oil, gas and other minerals in and under said lands are not affected by this agreement.

X.

It is further agreed and understood that in the event existing Highway 59 is ever abandoned in favor of a new, that ANB Cattle Company, Ltd., its successors and assigns shall be entitled to all reversionary rights to the surface of any abandoned highway right-of-way.

XI.

It is further agreed and understood that the sign situated at the main existing gate on U.S. Highway 59 which reads, "Benavides & Sons/Viejo Ranch" shall remain as is. However, in the event ANB CATTLE COMPANY, LTD., its successors and assigns shall remove, change the text of the location of such sign, then RANCHO VIEJO CATTLE COMPANY, LTD. shall have the right to place a sign portraying its ranch name and location on ANB CATTLE COMPANY's fence to one side of the main entrance gate. The size and dimensions of such sign shall be comparable to any similar sign that ANB CATTLE COMPANY, LTD., its successors and assigns may place on the opposite side of said main gate. RANCHO VIEJO CATTLE COMPANY, LTD., shall also have the right to install (at its own cost and risk) low profile signs comparable to those used by Oil and Gas Operators along the 40' road easement described in Section V above. Such sign shall indicate the approximate location of RANCHO VIEJO CATTLE COMPANY, LTD.'s ranch lands.

IN WITNESS WHEREOF this Stipulation Confirming Surface Ownership, Agreed Boundary Lines and Roadway Access is executed by each of the undersigned on the date reflected

in the acknowledgment of their respective signature, effective as of the 1st day of November 1998, and shall be binding and enforceable on the undersigned their heirs, successors and assigns.

RANCHO VIEJO CATTLE COMPANY, LTD.

By: _____
Carlos Y. Benavides, Jr., its General Partner

_____
Carlos Y. Benavides, Jr.

_____
Carlos Y. Benavides, III

_____
Guillermo David Benavides

_____
Linda Cristina Benavides Alexander

ANB CATTLE COMPANY, LTD.

By: _____
Arturo N. Benavides, Jr., General Partner

By: _____
Anna Gloria Benavides Galo, General Partner

By: _____
Kirk R. Clovis, General Partner

_____
Arturo N. Benavides, Sr.

_____
Arturo N. Benavides, Jr.

_____
Anna Gloria Benavides Galo

_____
Kirk R. Clovis

AKA PROPERTIES, LTD.
By: Arturo N. Benavides, Sr., L.L.C., its General Partner

By: _____
Arturo N. Benavides, Jr., Manager

By: _____
Anna Gloria Benavides Galo, Manager

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra, Webb County Clerk
By _____ Deputy County Clerk

By: _____
Kirk R. Clovis, Manager

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument as acknowledged before me on this 17th day of Nov., 1998, Carlos Y. Benavides, Jr., individually and as the General Partner of Rancho Viejo Cattle Company, Ltd.

PATRICIA PEREZ
Notary Public
STATE OF TEXAS
Comm. Exp 07-03-2002

_____
NOTARY PUBLIC, In and for the
State of Texas

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument as acknowledged before me on this 17th day of Nov., 1998, by Carlos Benavides, III.

OSCAR TORRES, JR.
Notary Public
State of Texas
My Comm. Exp. 10-10-2001

_____
NOTARY PUBLIC, In and for the
State of Texas

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument as acknowledged before me on this 17th day of Nov, 1998, by Guillermo David Benavides.

OSCAR TORRES, JR.
Notary Public
State of Texas
My Comm. Exp. 10-10-2001

_____
NOTARY PUBLIC, In and for the
State of Texas

704 835

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy as the same appears of record in my office.
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
Webb County Clerk
_____
Deputy County Clerk

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument as acknowledged before me on this 17th day of Nov., 1998, by Linda Cristina Benavides Alexander.

PATRICIA PEREZ
Notary Public
STATE OF TEXAS
Comm. Exp 07-03-2002

NOTARY PUBLIC, In and for the
State of Texas

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument as acknowledged before me on this 17th day of Nov., 1998, by Arturo N. Benavides, Jr., Individually and as General Partner of ANB CATTLE COMPANY, LTD. and as Manager of ARTURO N. BENAVIDES, SR., L.L.C., General partner of AKA PROPERTIES, LTD.

OSCAR TORRES, JR.
Notary Public
State of Texas
My Comm. Exp. 10-18-2000

NOTARY PUBLIC, In and for the
State of Texas

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument as acknowledged before me on this 17th day of Nov., 1998, by Anna Gloria Benavides Gato, Individually and as General Partner of ANB CATTLE COMPANY, LTD. and as Manager of ARTURO N. BENAVIDES, SR., L.L.C., General partner of AKA PROPERTIES, LTD.

OSCAR TORRES, JR.
Notary Public
State of Texas
My Comm. Exp. 10-18-2000

NOTARY PUBLIC, In and for the
State of Texas

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.

Witness my hand and seal of office on

JUL 15 2013

Margie Ramirez Ibarra
Webb County Clerk
By
Deputy County Clerk

STATE OF TEXAS §

COUNTY OF WEBB §

This instrument as acknowledged before me on this 17th day of Nov., 1998, by Kirk R. Clovis, individually and as General Partner of ANB CATTLE COMPANY, LTD. and as Manager of ARTURO N. BENAVIDES, SR., L.L.C., General partner of AKA PROPERTIES, LTD.

OSCAR TORRES, JR.
Notary Public
State of Texas
My Comm. Exp. 10-16-1999

NOTARY PUBLIC, In and for the
State of Texas

Page 11 of 11

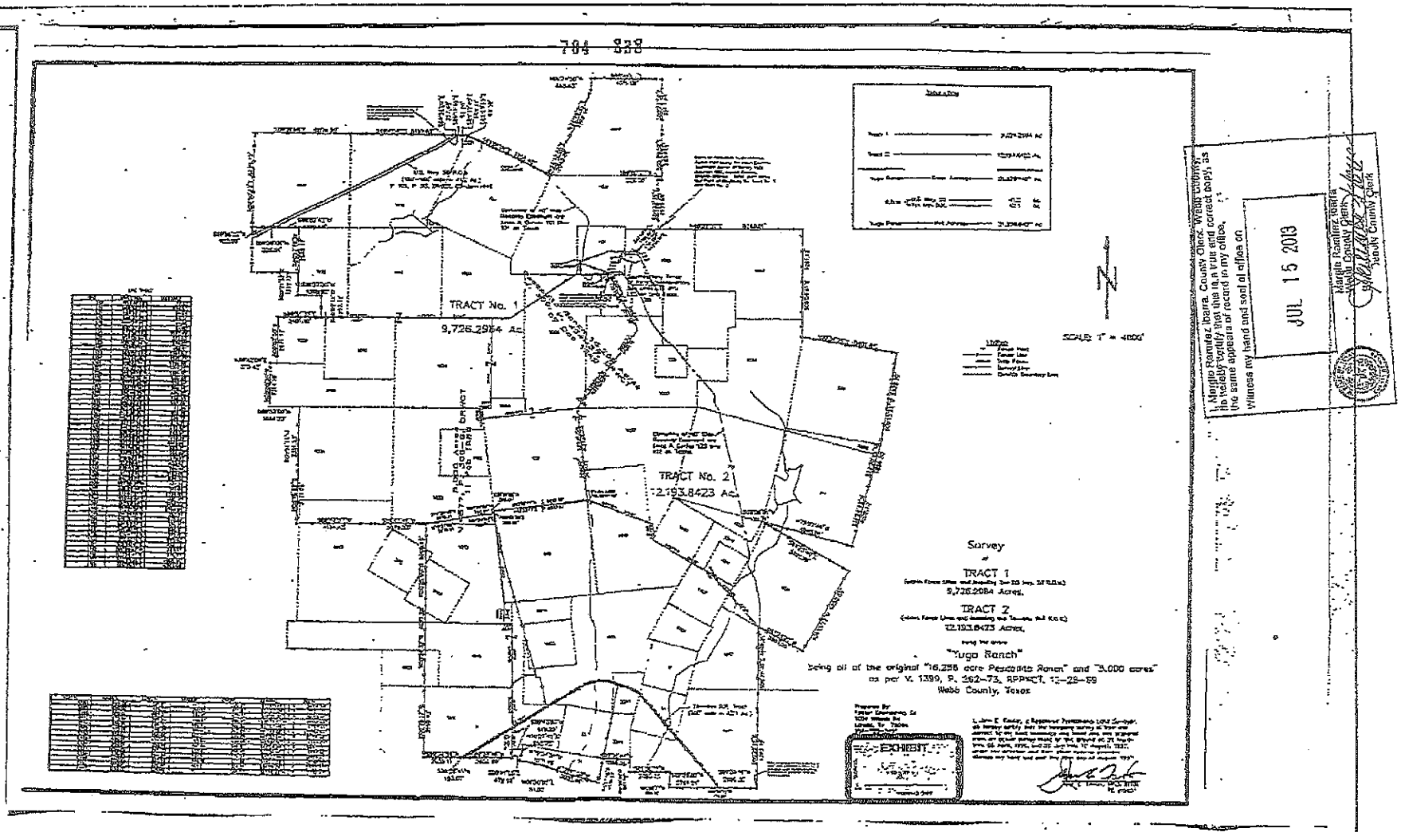
I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.

Witness my hand and seal of office on

JUL 15 2013

Margie Ramirez Ibarra
Webb County Clerk

By _____
Deputy County Clerk


TRACT No. 1
9,726.2984 Ac.
TRACT No. 2
2,193.8423 Ac.
SCALE: 1" = 4000'
Survey
of
TRACT 1
9,726.2984 Acres,
TRACT 2
2,193.8423 Acres,
"Yugo Ranch"
being all of the original "16,258 acre Pescadito Ranch" and "3.000 acres"
as per V. 1399, P. 362-73, RPPMCT, 12-28-59
Webb County, Texas
EXHIBIT
I, Margie Ramirez Ibarra, County Clerk, Webb County, Texas,
do hereby certify that the foregoing is a true and correct copy, as
the same appears of record in my office,
witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
County Clerk
Webb County, Texas

Field Notes for Tract 1 of Yugo Ranch

Being 9,726.2984 acres of land, more or less, out of and being a part of the original 16,258 acre Pescadito Ranch, consisting of pastures Retama Gorda, Llave, Lassos, and also containing a ranch headquarters pasture, said 9,726.2984 acres also being a part of a 5,000 acre tract; as per deed from Carlos Y. Benavides to A.N.B. Cattle Co. and Rancho Viejo Cattle Co., described in further detail and recorded on Dec-28-1989 in V. 1399, P. 262-73, Real Property Records of Webb County, Texas; said 9,726.2984 acres of land, more or less, consisting of the above mentioned pastures, being more particularly described by metes and bounds as follows:

BEGINNING at an existing fence post being the most Easterly Southeast corner of Survey 1926, Abstract 992, Manuel Collado, Original Grantee, said fence post also being the Southwest corner of Survey 1649, an exterior corner hereof, for the POINT OF BEGINNING of said 9,726.2984 acre tract;

(1) THENCE, South 42°48'18" West, a distance of 1781.08 feet, along the division line for the Yugo Ranch, same being a fence line, to a fence post along the southerly fence line of the Ranch Headquarters;

THENCE, continuing along said fence line, the following; to Survey corner

(2)	South 26°38'34" East	574.02 feet			
	South 71°09'04" West	373.63 feet			
	North 73°58'57" West	1177.49 feet			
(5)	North 85°32'05" West	91.00 feet			
	South 04°27'55" West	61.00 feet			
	North 85°32'05" West	98.30 feet			
	South 66°13'37" West	64.86 feet			
	South 08°58'37" West	634.57 feet			
(10)	South 53°40'13" West	77.33 feet			

THENCE, along said division fence line, the following;

South 28°11'25" East	3756.70 feet			
South 37°08'03" West	5636.76 feet	NE	120	
(15) South 07°07'43" East	5279.21 feet	SE	120	
South 83°32'17" West	5292.82 feet	SW	120	
South 26°05'56" West	208.66 feet			
South 84°24'54" West	758.51 feet			
South 79°30'48" West	2976.91 feet			

(20) THENCE, along the existing outer boundary fence line of the aforementioned group of pastures, the following;

South 89°43'49" West	3079.33 feet	deflection left	
South 89°42'57" West	4154.43 feet	exterior corner	
North 00°15'58" West	3271.98 feet	deflection left	
North 00°16'14" West	3301.53 feet	NW	1601
(25) North 89°53'09" West	1644.73 feet	SW	1994
North 00°00'38" West	2514.16 feet	NW	1994
North 89°42'09" East	373.43 feet	SW	1209
North 00°02'50" West	2641.77 feet	NW	1209
North 89°51'23" East	2401.18 feet	NE	1209

EXHIBIT

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as, the same appears of record in my office,

Witness my hand and seal of office on

JUL 15 2013

Margie Ramirez Ibarra
Webb County Clerk

Deputy County Clerk

1399 0339

(30)	North 00°09'48" West	1237.72 feet	interior corner
	South 89°37'30" West	1318.93 feet	exterior corner
	North 00°21'52" West	1319.12 feet	deflection right
	North 00°12'22" West	2640.47 feet	interior corner
	South 89°52'42" West	1379.60 feet	US 59 South ROW
(35)	South 89°58'08" West	336.81 feet	US 59 North ROW
	South 89°56'22" West	923.99 feet	SW 1117
	North 00°00'43" East	5425.79 feet	NW 1117
	South 89°31'49" East	6074.99 feet	deflection left
	South 89°47'47" East	5157.63 feet	US 59 North ROW
(40)	South 89°39'06" East	257.48 feet	US 59 South ROW
	South 89°11'46" East	58.60 feet	deflection left
	South 89°32'40" East	469.31 feet	deflection right
	South 82°27'22" East	69.38 feet	NW 861
	South 65°01'08" East	5268.40 feet	NE 861
(45)	North 24°45'08" East	2042.80 feet	deflection right
	North 24°49'26" East	3268.96 feet	NE 862
	North 00°24'50" West	663.63 feet	NW 1927
	North 89°44'02" East	4076.08 feet	NE 1927
	South 00°22'58" East	2867.88 feet	deflection left
(50)	South 00°28'58" East	2857.19 feet	exterior corner
	South 88°02'27" West	226.58 feet	interior corner

(52) THENCE, South 00°34'43" East, a distance of 2839.69 feet, continuing along said boundary fence line, to the POINT OF BEGINNING, and containing 9,726.2984 acres of land, more or less.

Note: 1) Save and Except 41.2 acres for U.S. Hwy. 59 Right Of Way acquisition as per V. 189, P. 93, D.R.W.C.T.

Note: 2) Basis of bearings taken from the North American Datum 1927 (NAD 27), with Global Positioning System (GPS), utilizing USGS Monument "Casa", for the N-E-E.

STATE OF TEXAS
COUNTY OF WEBB

I, John E. Foster, a Registered Professional Land Surveyor, do hereby certify that the foregoing fieldnotes are true and correct to my best knowledge and belief and was prepared from an actual survey made on the ground on 27 March thru 06 April, 1996 and 20 July thru 10 August, 1997, under my direction and from office records available.

WITNESS MY HAND AND SEAL THIS 10th DAY OF AUGUST, 1997.

STATE OF TEXAS REGISTERED JOHN E. FOSTER 1136 PROFESSIONAL LAND SURVEYOR

[signature] Foster, R.P.L.S. #1136
P.E. #15051

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I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
Webb County Clerk
[signature]
Deputy County Clerk

Field Notes for Tract 2

Being 12,193.8423 acres of land, more or less, out of and being a part of the original 16,258 acre Pescadito Ranch, consisting of pastures El Yugo and Rancho Viejo, said 12,193.8423 acres also out of and being a part of a 5,000 acre tract, as per deed from Carlos Y. Benavides to A.N.B. Cattle Co. and Rancho Viejo Cattle Co., described in further detail and recorded on Dec-28-1989 in V. 1399, P. 252-73, Real Property Records of Webb County, Texas; said 12,193.8423 acres of land, more or less, consisting of the above mentioned pastures, being more particularly described by metes and bounds as follows:

BEGINNING at an existing fence post being the most Easterly Southeast corner of Survey 1926, Abstract 992, Manuel Collado, Original Grantee, said fence post also being the Southwest corner of Survey 1649, an exterior corner hereof, for the POINT OF BEGINNING of said 12,193.8423 acre tract;

(1) THENCE, North 89°32'57" East, a distance of 8240.01 feet, along the existing outer boundary fence line of the aforementioned group of pastures, to a fence post being the Northeast corner of Survey 1653;

THENCE, continuing along said boundary fence line, the following;

				to Survey corner
(2)	South 00°04'51" East	6261.12 feet	NW	373
	South 80°34'28" East	5405.81 feet	NE	373
	South 09°15'22" West	5322.70 feet	SE	373
(5)	South 14°20'05" West	1856.50 feet	deflection right	
	South 14°24'42" West	4002.73 feet	SE	111
	North 75°27'44" West	4945.66 feet	NE	2248
	South 68°26'01" West	126.31 feet	NW	259
	South 61°25'40" East	5391.19 feet	NE	259
(10)	South 29°01'12" West	5258.58 feet	SE	259
	North 61°24'22" West	2861.25 feet	interior corner	
	South 00°26'36" East	4986.21 feet	deflection right	
	South 00°25'17" East	4265.49 feet	SE	1641
	South 89°35'16" West	2060.30 feet	RxR North Line	
(15)	South 89°28'13" West	133.65 feet	RxR South Line	
	South 89°25'03" West	2769.21 feet	exterior corner	
	North 00°26'57" West	856.55 feet	NE	572
	South 89°36'11" West	2280.73 feet	SW	1641
	North 01°00'19" West	697.52 feet	SE	2078
(20)	South 89°38'44" West	1568.35 feet	SW	2078
	South 11°07'55" West	1370.47 feet	SE	11
	North 72°47'52" West	3023.46 feet	deflection right	
	North 09°30'05" East	51.92 feet	deflection left	
	North 79°34'51" West	1571.16 feet	SW	11
(25)	North 10°27'45" East	665.75 feet	interior corner	
	South 89°48'57" West	619.85 feet	SW	2075
	South 00°41'58" East	479.98 feet	SE	1616
	South 89°39'46" West	2652.89 feet	RxR South Line	
	South 89°28'41" West	193.07 feet	RxR North Line	
(30)	South 89°36'51" West	2035.11 feet	SW hereof	
	North 00°25'17" West	3999.43 feet	deflection right	
	North 00°24'37" West	4677.26 feet	deflection left	
	North 00°25'09" West	4598.58 feet	westerly corner	

EXHIBIT A

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
Webb County Clerk
Deputy County Clerk

THENCE, along the division line for the Yugo Ranch, same being a fence line, the following;

	North 79°30'48" East	2976.91 feet			
(35)	North 84°24'54" East	758.51 feet			
	North 26°06'56" East	208.66 feet	SW	120	
	North 83°32'17" East	5292.82 feet	SE	120	
	North 07°07'43" West	5279.21 feet	NE	120	
	North 37°08'03" East	5636.76 feet			
(40)	North 28°11'25" West	3756.70 feet			

THENCE, continuing along the division line for the Yugo Ranch, same being the southerly fence line of the Ranch Headquarters, the following;

North 53°40'13" East	77.33 feet	
North 08°58'37" East	834.57 feet	
North 66°13'37" East	64.86 feet	
South 85°32'05" East	98.30 feet	
(45) North 04°27'55" East	61.00 feet	
South 85°32'05" East	91.00 feet	
South 73°58'57" East	1177.49 feet	
North 71°09'04" East	373.63 feet	
(49) North 26°38'34" West	574.02 feet	

(50) THENCE, North 42°48'18" East, a distance of 1781.06 feet, along said division fence line, to the POINT OF BEGINNING, and containing 12,193.8423 acres of land, more or less.

Note: 1) Basis of bearings taken from the North American Datum 1927 (NAD 27), with Global Positioning System (GPS), utilizing USGS Monument "Casa", for the N-E-E.

STATE OF TEXAS
COUNTY OF WEBB

I, John E. Foster, a Registered Professional Land Surveyor, do hereby certify that the foregoing fieldnotes are true and correct to my best knowledge and belief and was prepared from an actual survey made on the ground on 27 March thru 06 April, 1996 and 20 July thru 10 August, 1997, under my direction and from office records available.

WITNESS MY HAND AND SEAL THIS 10th DAY OF AUGUST, 1997.

John E. Foster, R.P.L.S. #1136
P.E. #15851

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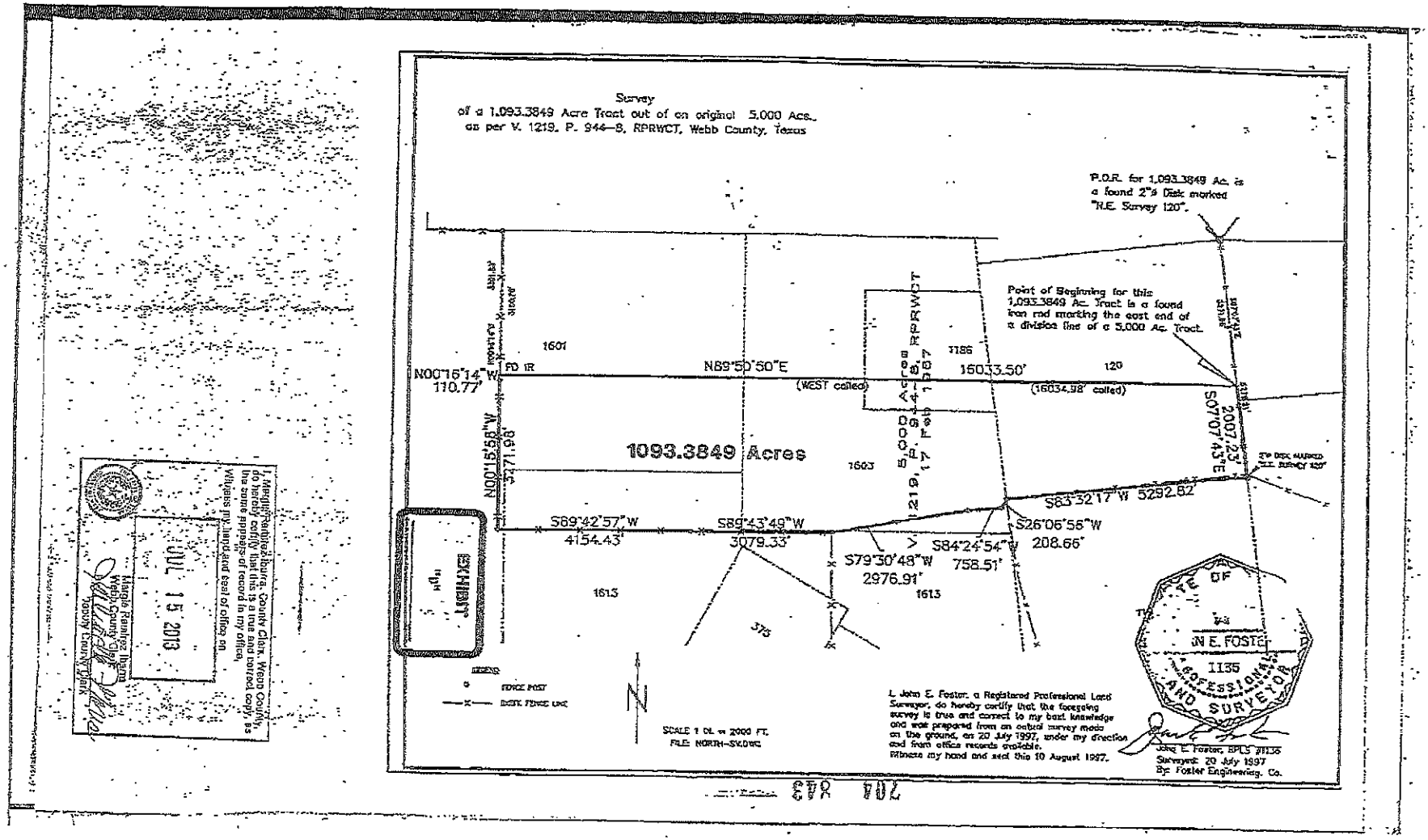
STATE OF TEXAS
REGISTERED
JOHN E. FOSTER
1136
PROFESSIONAL
LAND SURVEYOR

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
Webb County Clerk
By
Deputy County Clerk

292 PG


Survey
of a 1,093.3849 Acre Tract out of an original 5.000 Acs.
as per V. 1219, P. 944-8, RPRWCT, Webb County, Texas
P.O.R. for 1,093.3849 Ac. is a found 2"ø Disk marked "R.E. Survey 120".
Point of Beginning for this 1,093.3849 Ac. Tract is a found iron rod marking the east end of a division line of a 5.000 Ac. Tract.
1601
1186
N00°16'14"W
110.77'
FD IR
N89°50'50"E
16033.50'
120
(WEST called)
(16034.98' called)
S07°07'43"E
2007.23'
1093.3849 Acres
1603
N00°08'55"W
3211.68'
S83°32'17"W 5292.82'
S89°42'57"W
4154.43'
S89°43'49"W
3079.33'
S26°06'56"W
208.66'
S84°24'54"W
758.51'
S79°30'48"W
2976.91'
1613
1613
375
EXHIBIT "A"
FENCE POST
BARB FENCE LINE
SCALE 1 DE. = 2000 FT.
FILE: NORTH-SK.DWG
I, John E. Foster, a Registered Professional Land Surveyor, do hereby certify that the foregoing survey is true and correct to my best knowledge and was prepared from an actual survey made on the ground, on 20 July 1997, under my direction and from office records available.
Witness my hand and seal this 10 August 1997.
JOHN E. FOSTER
1135
REGISTERED PROFESSIONAL LAND SURVEYOR
John E. Foster, RPLS #1135
Surveyed: 20 July 1997
By: Foster Engineering, Co.
I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy as the same appears of record in my office.
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
Webb County Clerk
Deputy County Clerk

704 843

Field Notes for North section of the South Valle Pasture

Being 1,093.3849 acres of land, more or less, out of an original 5,000 acre pasture known as the North Valle &.South Valle; as per deed from Carlos Y. Benavides to A.N.B. Cattle Co.' and Rancho Viejo Cattle Co., described in further detail and recorded on Dec-28-1989 in V. 1399, P. 262-73, Real Property Records of Webb County, Texas; said 1,093.3849 acres of land, more or less, being more particularly described by metes and bounds as follows;

COMMENCING at a found 2" disk marked "N.E. Survey 120", THENCE South 07°07'43" East, a distance of 3271.98 feet, along the Easterly line of Survey 120, to a found iron rod marking the east end of a division line of the a 5,000 acre tract as per V. 1219, P. 944-8, Real Property Records of Webb County, Texas, the POINT OF BEGINNING of said 1,093.3849 acre tract;

(1) THENCE, South 07°07'43" East, at a distance of 2007.23 feet, along the East boundary line of Survey 120, to a found 2" disk marked "S.E. Survey 120", for the most Easterly corner hereof;

			to Survey corner
(2)	South 83°32'17" West	5293.82 feet	SW 120
	South 26°06'56" West	208.66 feet	
	South 84°24'54" West	758.51 feet	
(5)	South 79°30'48" West	2976.91 feet	
	South 89°43'49" West	3079.33 feet	deflection left
	South 89°42'57" West	4154.43 feet	exterior corner
(8)	North 00°15'58" West	3271.98 feet	deflection left

(9) THENCE, North 00°16'14" West, a distance of 110.77 feet, along the West boundary line of Survey 1601, to a found iron rod marking the west end of the mentioned division line of a 5,000 acre tract, for the most westerly corner hereof;

(10) THENCE, North 89°50'50" East, a distance of 16033.50 feet, along said division line, to the POINT OF BEGINNING, and containing 1,093.3849 acres of land, more or less.

Note: Basis of bearings taken from the North American Datum 1927 (NAD 27), with Global Positioning System (GPS), utilizing USGS Monument "Casa", for the N-E-E.

STATE OF TEXAS
COUNTY OF WEBB

I, John E. Foster, a Registered Professional Land Surveyor, do hereby certify that the foregoing fieldnotes are true and correct to my best knowledge and belief and was prepared from an actual survey made on the ground on March 27 thru April 06, 1996 under my direction and from office records available.

WITNESS MY HAND AND SEAL THIS 22ND DAY OF AUGUST, 1997.

STATE OF TEXAS REGISTERED JOHN E. FOSTER 1136 PROFESSIONAL LAND SURVEYOR

John E. Foster, R.P.L.S. #1136
P.E. #15851

D:\OFFICE\WPWIN\WPDOCS\YUGO-1.FG

EXHIBIT "B"

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office,
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
Webb County Clerk
Deputy County Clerk

Field Notes for Ranch Headquarters Pasture

Being 45.2619 acres of land, more or less, out of and being a part of the original 16,258 acre Pescadito Ranch, consisting of pastures Retama Gorda, Llave, Lassos, El Yugo, & Rancho Viejo, and also containing a ranch headquarters pasture, as per deed from Carlos Y. Benavides to: A.N.B. Cattle Co. and Rancho Viejo Cattle Co., described in further detail and recorded on Dec-28-1989 in V. 1399, P. 362-73, Real Property Records of Webb County, Texas; said 45.2619 acres of land, more or less, consisting of the ranch headquarters pasture, being more particularly described by metes and bounds as follows:

COMMENCING at an existing fence post being the most Easterly Southeast corner of Survey 1926, Abstract 992, Manuel Collado, Original Grantee, said fence post also being the Southwest corner of Survey 1649; THENCE, South 42°49'28" West, a distance of 1761.08 feet, along an existing fence line to a fence corner, the Northeast corner hereof, for the POINT OF BEGINNING of said 45.2619 acre tract;

(1) THENCE, South 25°38'34" East, a distance of 874.02 feet, along an existing fence to a fence corner, the most Easterly corner hereof;

THENCE, continuing along said fence line, the following;

(2)	South 71°09'04" West	373.63	feet
	North 73°58'57" West	1177.49	feet
	North 85°32'05" West	91.00	feet
(5)	South 04°27'55" West	61.00	feet
	North 85°32'05" West	98.30	feet
	South 66°13'37" West	64.86	feet
	South 08°58'37" West	834.57	feet
	South 53°40'13" West	77.33	feet
(10)	North 43°04'26" West	63.11	feet
	South 87°05'36" West	13.11	feet
	North 70°50'50" West	1682.45	feet
	North 09°17'36" East	12.57	feet
	North 68°16'19" East	1730.12	feet
(15)	North 82°21'33" East	108.56	feet
	North 89°46'28" East	292.60	feet
	South 19°03'21" East	27.40	feet
	South 04°59'22" West	49.63	feet
	South 83°04'30" East	25.29	feet
(20)	North 45°28'32" East	57.51	feet
	South 88°36'24" East	46.73	feet
(21)	North 78°08'15" East	160.27	feet

EXHIBIT

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.

Witness my hand and seal of office on

JUL 15 2013

Margie Ramirez Ibarra
Webb County Clerk

By _____
Deputy County Clerk

704 985

(23) THENCE, South 89°23'09" East, a distance of 1036.44 feet, continuing along said fence line to the POINT OF BEGINNING, and containing 46.2619 acres of land, more or less.

Note: Basis of bearings taken from the North American Datum 1927 (NAD 27), with Global Positioning System (GPS), utilizing USGS Monument "Casa", for the N-E-E.

STATE OF TEXAS :
COUNTY OF WEBB

I, John E. Foster, a Registered Professional Land Surveyor, do hereby certify that the foregoing fieldnotes are true and correct to my best knowledge and belief and was prepared from an actual survey made on the ground on March 27 thru [illegible] under my direction and from office records available [illegible]

WITNESS MY HAND AND SEAL THIS 19th DAY OF [illegible]

JOHN E. FOSTER
[illegible] SURVEYOR

John E. Foster, [illegible] #1136
[illegible] #15851

File: YUGO-1.FG

704 816

EXHIBIT "[illegible]" Page 2

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office,

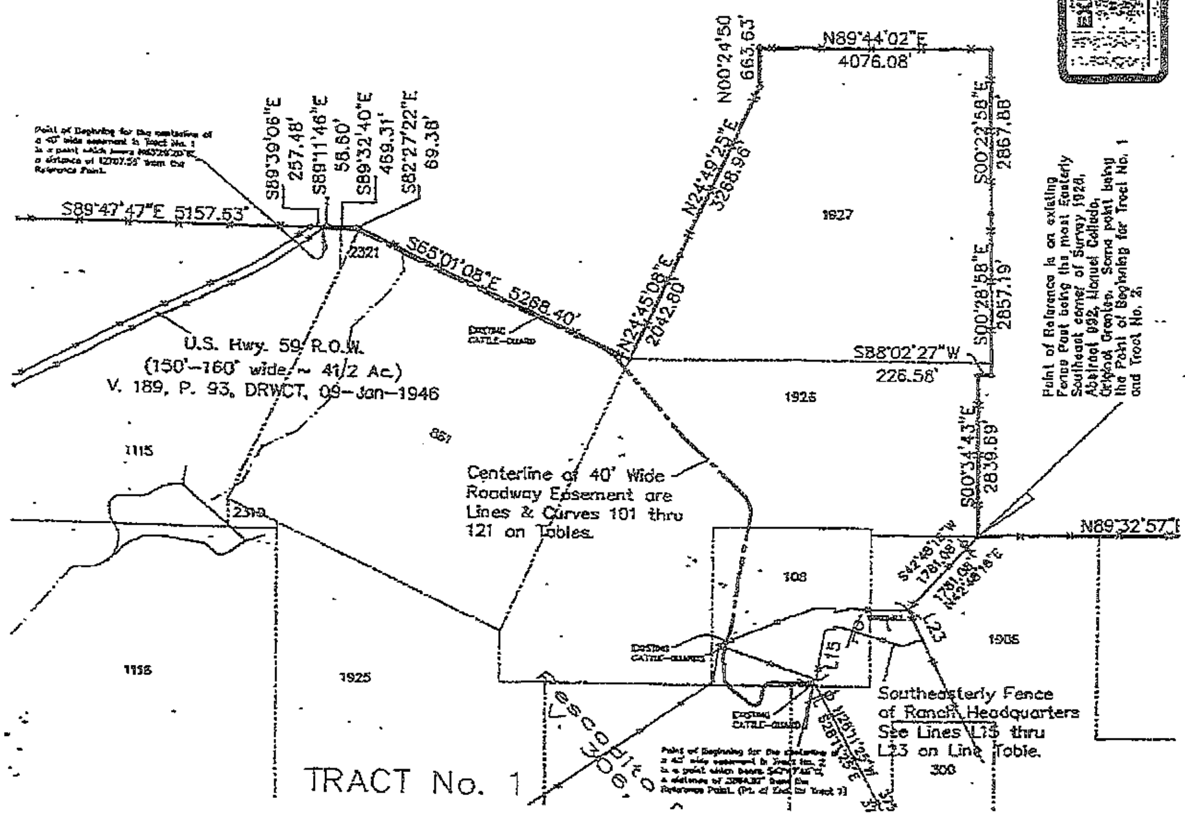
Witness my hand and seal of office on

JUL 15 2013

Margie Ramirez Ibarra,
Webb County Clerk

Deputy County Clerk

704 847



EXHIBIT

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.

Witness my hand and seal of office on

JUL 15 2019

Margie Ramirez Ibarra
Webb County Clerk
Deputy County Clerk

Field Notes for Centerline of 40' Wide Road Easement in Tract 1

Being the centerline of a 40' wide road easement, out of the original 16,258 acre Pescadito Ranch, as per deed from Carlos Y. Benavides to A.N.B. Cattle Co. and Rancho Viejo Cattle Co., described in further detail and recorded on Dec-28-1989 in V. 1399, P. 252-73, Real Property Records of Webb County, Texas; said centerline of 40' wide road easement, being more particularly described by metes and bounds as follows:

COMMENCING at an existing fence post being the most Easterly Southeast corner of Survey 1926, Abstract 992, Manuel Collado, Original Grantee, said fence post also being the Southwest corner of Survey 1649; THENCE, North 65°28'20" West, a distance of 12707.59 feet, to the centerline of said 40' wide road easement, the most Northerly point hereof, for the POINT OF BEGINNING of said centerline;

THENCE, along the centerline of the 40' wide road easement, the following line and curves;

LINE # / CURVE #	BEARING / RADIUS	ARC	DISTANCE / TAN	DIR-DELTA	
L101	S89°10'16"E		486.91'		to P.C.
C102	550.00'	231.97'	117.73'	R 24°09'54"	to P.T.
L103	S65°00'23"E		3397.63'		
L104	S65°34'35"E		1226.71'		to P.C.
C105	950.00'	415.17'	210.95'	R 25°02'21"	to P.T.
L106	S40°32'14"E		1756.09'		
L107	S46°35'26"E		1411.75'		to P.C.
C108	500.00'	497.37'	271.45'	R 56°59'41"	to P.T.
L109	S10°24'15"W		1081.55'		
L110	S07°55'36"W		906.39'		
L111	S17°11'34"W		330.54'		to P.C.
C112	575.00'	207.54'	104.91'	L 20°40'48"	to P.T.
L113	S03°29'14"E		299.78'		to P.C.
C114	250.00'	206.33'	109.45'	L 47°17'11"	to P.T.
L115	S50°46'25"E		469.80'		to P.C.
C116	115.00'	246.71'	211.43'	L 122°54'54"	to P.T.
L117	N06°18'41"E		159.60'		to P.C.
C118	175.00'	260.06'	160.77'	R 85°08'46"	to P.T.
L119	S88°32'33"E		597.86'		to P.C.
C120	450.00'	124.49'	62.64'	L 15°51'01"	to P.T.

THENCE N75°36'28"E, a distance of 11.34' to the POINT OF ENDING of this centerline for said 40' wide road easement, said ending point bears South 47°47'46" West, a distance of 3684.97 feet from the commencing point.

EXHIBIT "B"

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office,
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
Webb County Clerk
Deputy County Clerk

704 486

Note: 1) Basis of bearings taken from the North American Datum 1927 (NAD 27), with Global Positioning System (GPS), utilizing USGS Monument "Cass", for the N-E-E.

STATE OF TEXAS
COUNTY OF WEBB

I, John E. Foster, a Registered Professional Land Surveyor, do hereby certify that the foregoing fieldnotes are true and correct to my best knowledge and belief and was prepared from an actual survey made on the ground on 27 March thru 06 April, 1996 and 20 July thru 10 August, 1997, under my direction and from office records available.

WITNESS MY HAND AND SEAL THIS 10th DAY OF AUGUST, 1997.

John E. Foster, R.P.L.S. #1136
P.E. #15851

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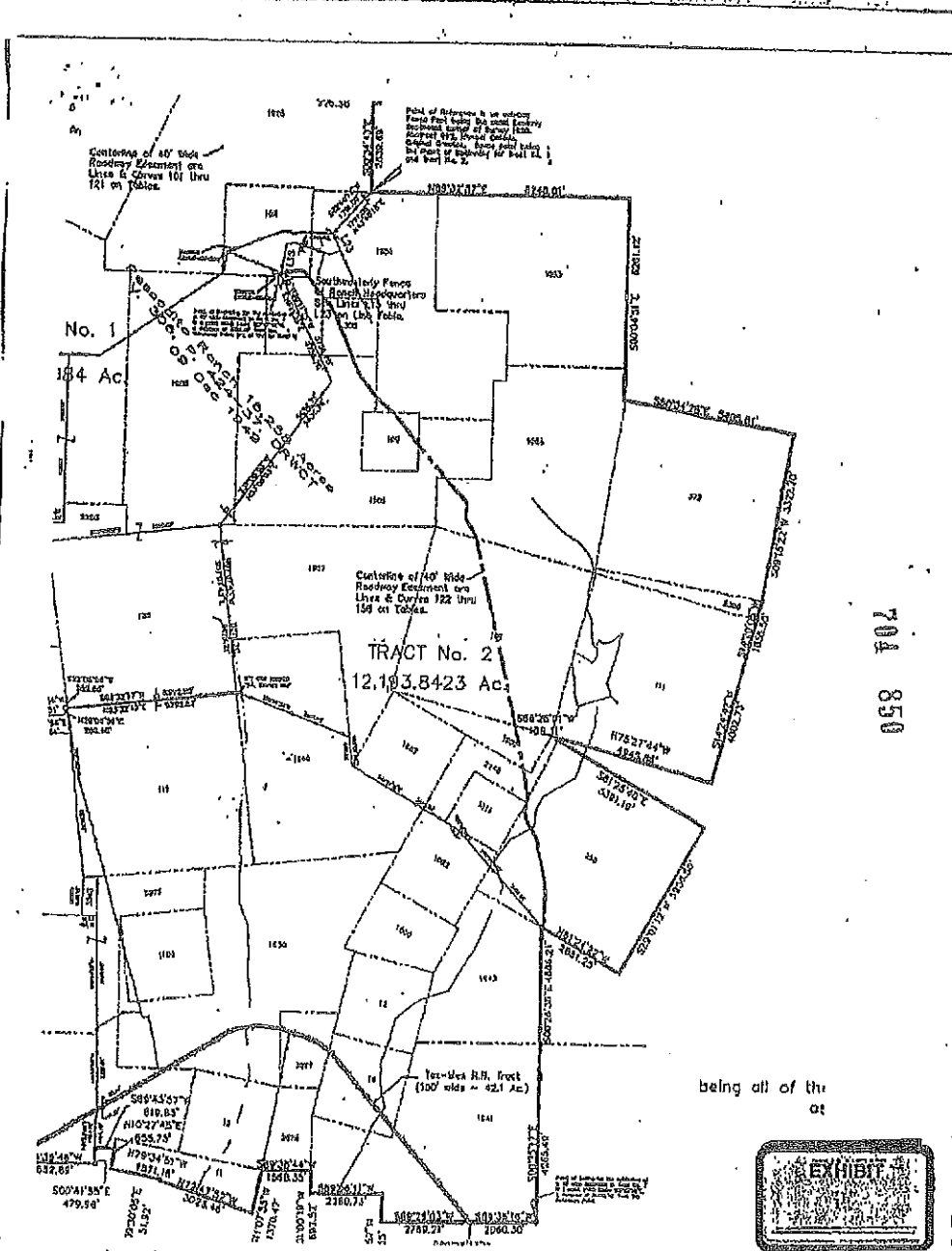
STATE OF TEXAS
REGISTERED
JOHN E. FOSTER
1136
PROFESSIONAL
LAND SURVEYOR

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.
Witness my hand and seal of office on

JUL 15 2013

Margio Ramirez Ibarra
Webb County Clerk
Deputy County Clerk



I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.

Witness my hand and seal of office on

JUL 15 2019

Margie Ramirez Ibarra
Webb County Clerk

Deputy County Clerk

Field Notes for Centerline of 40' Wide Road Easement in Tract 2

Being the centerline of a 40' wide road easement, out of the original 16,250 acre Pescadito Ranch; as per deed from Carlos Y. Benavides to A.N.B. Cattle Co. and Rancho Viejo Cattle Co., described in further detail and recorded on Dec-28-1989 in V. 1399, P. 262-73, Real Property Records of Webb County, Texas; said centerline of 40' wide road easement, being more particularly described by metes and bounds as follows:

COMMENCING at an existing fence post being the most Easterly Southeast corner of Survey 1926, Abstract 992, Manuel Collado, Original Grantee, said fence post also being the Southwest corner of Survey 1649; THENCE, South 47°47'46" West, a distance of 3864.97 feet, to the centerline of said 40' wide road easement, the most Westerly point hereof, for the POINT OF BEGINNING of said centerline;

THENCE, along the centerline of the 40' wide road easement, the following lines and curves;

LINE # / CURVE #	BEARING / RADIUS	ARC	DISTANCE / TAN	DIR-DELTA	
L122	N75°36'26"E		303.75'		
L123	N82°55'20"E		329.72'		to P.C.
C124	350.00'	258.19'	141.94'	R 59°10'22"	to P.T.
L125	S37°54'18"E		525.71'		
L126	S41°32'39"E		672.93'		to P.C.
C127	1000.00'	265.22'	133.40'	R 15°11'46"	to P.T.
L128	S26°20'52"E		553.95'		
L129	S20°29'26"E		413.29'		
L130	S25°22'39"E		1143.68'		
L131	S41°44'50"E		583.25'		
L132	S39°04'13"E		266.68'		
L133	S46°03'57"E		378.13'		
L134	S53°08'41"E		433.45'		
L135	S39°43'06"E		704.44'		
L136	S41°13'40"E		2183.06'		
L137	S42°35'05"E		599.59'		to P.C.
C138	330.00'	288.34'	154.10'	R 50°03'43"	to P.T.
L139	S07°28'37"W		161.29'		to P.C.
C140	440.00'	335.13'	176.16'	L 43°38'22"	to P.T.
L141	S36°09'44"E		211.69'		to P.C.
C142	800.00'	326.41'	165.51'	R 23°23'37"	to P.T.
L143	S12°47'07"E		1735.89'		
L144	S15°46'04"E		482.77'		
L145	S12°59'50"E		3418.58'		
L146	S12°21'56"E		2394.85'		to P.C.
C147	650.00'	309.48'	157.73'	R 27°16'47"	to P.T.
L148	S14°54'51"W		282.51'		
L149	S16°30'39"E		240.66'		
L150	S24°52'37"E		136.15'		
L151	S30°30'45"E		558.81'		
L152	S10°41'15"E		279.01'		
L153	S12°32'18"E		995.63'		
L154	S06°20'46"E		458.72'		
L155	S00°55'42"W		887.17'		
L156	S23°56'41"W		175.77'		
L157	S00°26'36"E		4086.20'		

EXHIBIT

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.
Witness my hand and seal of office on
JUL 15 2013
Margie Ramirez Ibarra
Webb County Clerk
By: Deputy County Clerk

304
1 of 8

THENCE S00°25'17"E, a distance of 4265.49' to the POINT OF ENDING of this centerline for said 40' wide road easement, said ending point bears South 10°50'16" East, a distance of 32352.10 feet from the commencing point.

Note: 1) Basis of bearings taken from the North American Datum 1927 (NAD 27), with Global Positioning System (GPS), utilizing USGS Monument "Casa", for the N-E-E.

STATE OF TEXAS
COUNTY OF WEBB

I, John S. Foster, a Registered Professional Land Surveyor, do hereby certify that the foregoing fieldnotes are true and correct to my best knowledge and belief and was prepared from an actual survey made on the ground on 27 March thru 06 April, 1996 and 20 July thru 10 August, 1997, under my direction and from office records available.

WITNESS MY HAND AND SEAL THIS 10th DAY OF AUGUST, 1997.

John S. Foster, R.P.L.S. #1136
P.E. #15051

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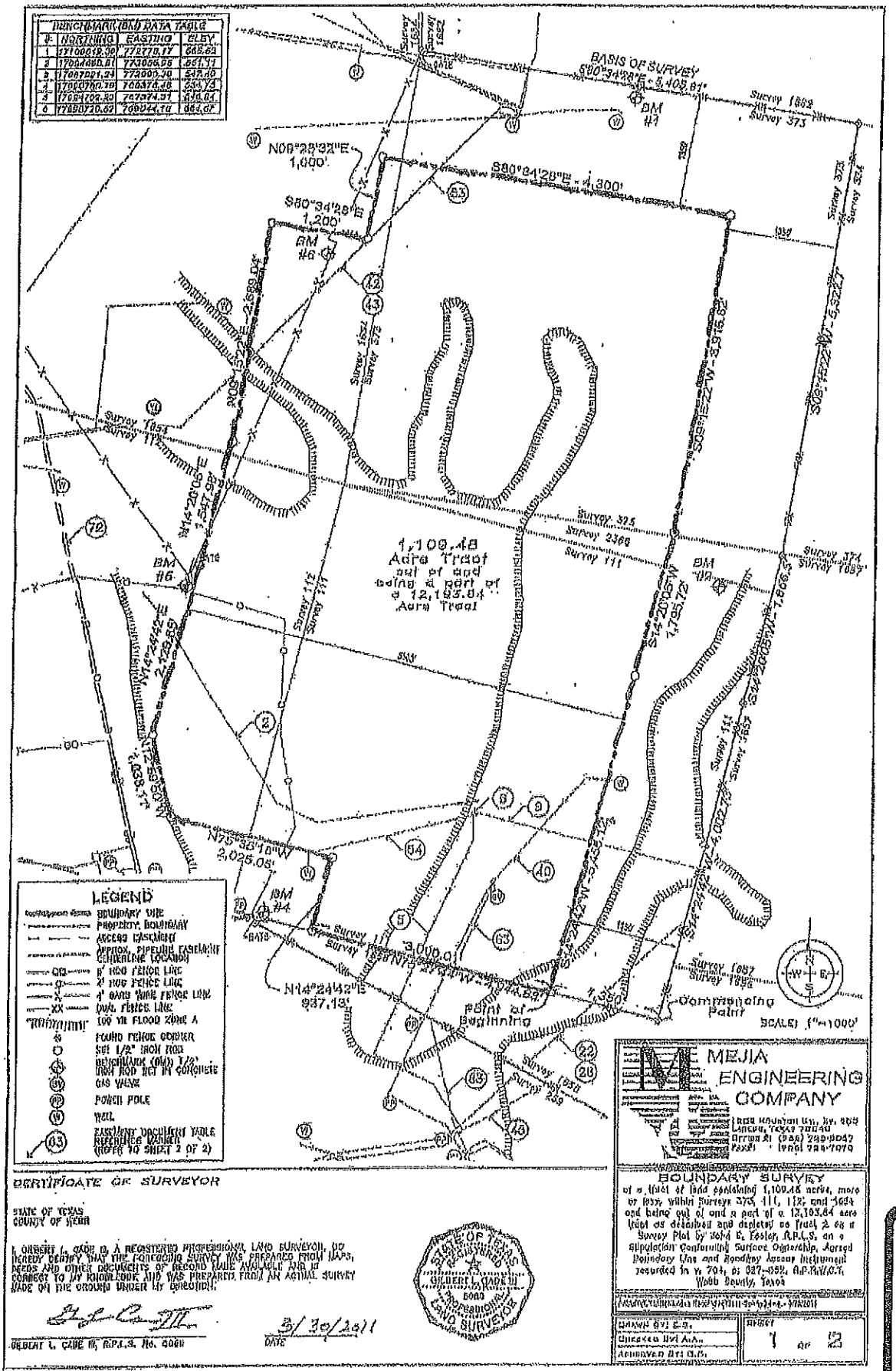
STATE OF TEXAS
REGISTERED
JOHN E. FOSTER
1136
PROFESSIONAL
LAND SURVEYOR

VOL 852

HENRY FLORES
COUNTY CLERK
FILED
97 AUG 19 PM 4:55
WEBB COUNTY, TEXAS
by _____ DEPUTY

THE STATE OF TEXAS)(
COUNTY OF WEBB)(I, MARGIE RAMIREZ IBARRA, Clerk of the County Court of Webb County, Texas, do hereby certify that the foregoing is a true and correct copy of the original [illegible] as the same appears on record in my office, in Vol. [illegible] page(s) 829-858 of the Official Public Records of Webb County, Texas.
Witness my Hand and Seal of Office this the 21st day of July A.D. 1998.
MARGIE RAMIREZ IBARRA, Webb County Clerk
Webb County, Texas.
By [illegible] Deputy



CERTIFICATE OF SURVEYOR

STATE OF TEXAS
COUNTY OF WEBB

I, GILBERT L. CADE III, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE FOREGOING SURVEY WAS PREPARED FROM MAPS, DEEDS AND OTHER DOCUMENTS OF RECORD MADE AVAILABLE AND TO CORRECT TO MY KNOWLEDGE AND WAS PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECTION.

GILBERT L. CADE III, R.P.L.S. No. 5080

3/30/2011
DATE

STATE OF TEXAS
GILBERT L. CADE III
5080
REGISTERED PROFESSIONAL LAND SURVEYOR

EXHIBIT C

Applicant's Specific Responses to Contested Case Hearing Requests by John A. Meitzen

In his hearing request letter of July 23, 2013, John A. Meitzen ("Meitzen") listed some ten comments that are the basis for his hearing request. One of the Meitzen comments would be properly classified as an issue of law, Meitzen's issue of law (comment #9) falls under the general legal subject category – Evidence of Competency.

The remainder of the Meitzen comments would be classified as technical issues. Meitzen's technical issues of fact can be grouped into seven technical subject categories. These technical subject categories, and corresponding Meitzen enumerated comments, are:

1. **Presence of 100-year floodplain and related location restriction**
   Meitzen #8
2. **Availability and adequacy of access roads and traffic**
   Meitzen #1
3. **Groundwater, surface water, drainage and water pollution control**
   Meitzen #6, #7
4. **Abandoned oil, gas and water wells**
   Meitzen #3, #10
5. **Land use compatibility including "adverse impact", "general nuisance", "property devaluation" and "buffers"**
   Meitzen #4
6. **Groundwater monitoring**
   Meitzen #2
7. **Site Operating Plan**
   Meitzen #5

Applicant's responses to each of Meitzen's issues – technical or legal – are provided under one of the subjects listed above.

SUBJECT: EVIDENCE OF COMPETENCY

In his hearing request letter of July 23, 2013, Meitzen referenced this subject in a single enumerated comment:

"9. Response 37 does not adequately address the issue of Applicant competency. The Executive Director cannot determine competency if there is no evidence of competency. A discussion of future employees with the licenses necessary to operate equipment does not determine competency."

Relevant facts, pertinent to Meitzen comment #9, found in Parts I and II of the Application regarding evidence of competency:

The owner or operator has the financial means to purchase or lease all of the equipment necessary to construct and operate all of the waste management units covered by this permit application. Prior to the commencement of operations, the owner or operator will acquire all such equipment and have it on site. Likewise, the owner or operator will hire a trained and experienced staff of supervisors, equipment operators, technicians, laborers and other categories of employees as needed to construct and operate the facility in accordance with this permit application and the applicable TCEQ rules. At a minimum class the facility will be operated under the supervision of a landfill manager who holds a Class A municipal solid waste facility supervisor license.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.59(f). The Executive Director's notice of "Technically Complete" dated July 2, 2012, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.59(f).

Specific, selected citations from the Permit Application pertinent to these comments include:

Part I, Section 6.0, page 22 ***Evidence of Competency [330.59 (f)]***

"The owner or operator of the proposed MSW facility currently does not own or operate any other solid waste facilities in Texas or elsewhere.

Either a properly licensed solid waste facility supervisor will be hired or an existing officer, partner, or employee of PERC will become licensed as a solid waste facility supervisor prior to commencing the operation of the proposed facility, in accordance with Title 30 of the Texas Administrative Code Chapter 330.59(f) [30 TAC 330.59(f)].

A preliminary schedule of construction and operating equipment that is currently proposed to conduct the operations proposed in this permit application is as follows: Landfill Compactor – Cat 836G or equivalent (minimum one), Bulldozer – Cat D-9R or equivalent (minimum one), Hydraulic Excavator – Cat 330B or equivalent (minimum one), Articulated Dump Truck – Cat 730 or equivalent (minimum one). Additional equipment for construction and operation will be added as necessary.

The owner or operator has the financial means to purchase or lease all of the equipment necessary to construct and operate all of the waste management units covered by this permit application. Prior to the commencement of operations, the owner or operator will acquire all such equipment and have it on site. Likewise, the owner or operator will hire a trained and experienced staff of supervisors, equipment operators, technicians, laborers and other categories of employees as needed to construct and operate the facility in accordance with this permit application and the applicable TCEQ rules. At a minimum class the facility will be operated under the supervision of a landfill manager who holds a Class A municipal solid waste facility supervisor license."

The Executive Director's (ED) June 28, 2013 Response to Comments (RTC) #37 addressed comments related to evidence of competency. The ED's responses are summarized as follows:

"30 TAC § 330.59(f) requires the Applicant to demonstrate evidence of competency to operate a facility. The Applicant must list all Texas solid waste sites that the Applicant has owned or operated within the last ten years; list all solid waste sites in all states, territories, or countries in which the Applicant has a direct financial interest; state that a licensed solid waste facility supervisor shall be employed before commencing facility operation; list the names of the principals and supervisors of the owner's or operator's organizations together with previous affiliations with other organizations engaged in solid waste activities; show landfilling and earthmoving experience, and other pertinent experience or licenses possessed by key personnel as well as list the number and size of each type of equipment to be dedicated to facility operation, Section 6 of Part I of the Application provides discussions on the evidence of competency. The Applicant does not own or operate any other solid waste facilities in Texas or elsewhere. A properly licensed solid waste facility supervisor must be hired prior to commencing the operation of the facility. At minimum, a preliminary schedule of construction and operating equipment that is currently proposed to conduct the operations is as follows: Landfill Compactor- Cat 836G or equivalent, Bulldozer- Cat D-9R or equivalent, Hydraulic Excavator- Cat 330B or equivalent, Articulated Dump Truck- Cat 730 or equivalent. Additional equipment for construction and operation will be added as necessary.

The Executive Director has preliminarily determined that the evidence of competency discussions provided in the Application meet the requirements of the rule cited above."

TECHNICAL SUBJECT: PRESENCE OF 100-YEAR FLOODPLAIN AND RELATED LOCATION RESTRICTION

In his hearing request letter of July 23, 2013, Meitzen referenced this technical subject:

"8. There is no approved CLOMR from FEMA that removes any part of the site from the 100 Year Floodplain. It is presumptive to issue a permit for land use compatibility without this document."

The Meitzen comment regarding the 100-year floodplain does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Meitzen comment #8, found in Parts I and II of the Application regarding the 100-Year floodplain and the associated location restriction:

With respect to the comment that Meitzen raised on this issue, Meitzen attempts to blur the distinction between "existing floodplain conditions" and "proposed floodplain conditions" fully detailed in Parts I and II of the Application. Parts I and II are abundantly clear on the subject and demonstrate compliance with applicable regulations.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(m)(floodplains and wetlands statement) and 30 TAC §330.547 (floodplain). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(m) and 30 TAC §330.547.

The proposed landfill is located in an ideal location considering soil, groundwater, land use, and oil and gas activities (past, present, and future). No other location is equally plausible. It is difficult to find an area of appropriate size in Eastern Webb County that does not have floodplain issues due to the prevailing flat topography and rapid runoff soil conditions. Applicant endeavored to find an upland location that was as close as possible to headwater conditions to minimize any impacts to floodplains and/or wetlands.

Obtaining a MSW permit is not authorization to fill in a floodplain or wetlands. Other authorizations are required for that.

Parts I and II of the Permit Application provide adequate information on 100-Year floodplain and the associated location restriction. The submitted sections of Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 1.5, pages 7-8, under *Floodplains*:

"Because the swales that convey drainage across the site are so wide and shallow, they are quite inefficient at conveying runoff. As a result, relatively wide areas of the site are inundated by runoff from the 100-year rainfall event. The flood insurance rate map (FIRM) for the site, as prepared by the Federal Emergency Planning Agency (FEMA), indicates a significant portion of the site to be within Zone A, the 100-year floodplain. This floodplain is depicted in Figure 11, Part II. The FIRM can also be found in Attachment G of Part II. ... [Applicant] will design a series of drainage channels and detention structures that will result in the removal of the proposed landfill area from the 100-year floodplain. Furthermore, [Applicant] will submit to FEMA a Conditional Letter of Map Revision (CLOMR), requesting correction of the existing FIRM to take into account the related drainage and floodplain improvements. ... this action will result in documentation that construction of the proposed watershed improvements at and adjacent to the site will remove the landfill from the 100-year floodplain."

Part II, Section 13.0, pages 36-37, *Floodplains and Wetlands Statement [330.61(m)]*

"Portions of the proposed facility are currently located within the 100-year floodplain, as indicated on the replication of the most current available floodplain map, or Flood Insurance Rate Map (FIRM), presented in Figure 11. The design of the proposed landfill and related facilities will include design of a comprehensive storm water management system of dikes, drainage channels and detention ponds. Collectively, this system will remove the area of the landfill and proposed buildings from the 100-year floodplain. [Applicant] has performed all the necessary hydrological and hydraulic engineering analysis and design to accomplish this. The

results of this engineering design along with an application for a Conditional Letter of Map Revision (CLOMR) have been submitted to the Webb County Planning Department (WCPD) for review and were approved (see Attachment G). WCPD is the local agency responsible for floodplain management. With concurrence from WCPD, the CLOMR application will be submitted to the Federal Emergency Management Agency (FEMA) for review and approval. The CLOMR when issued will verify that the proposed site drainage plans will, in fact, remove areas of the site proposed for the landfill, processing and storage areas and related development from the 100-year floodplain.

Construction of the landfill will impact a named reservoir, Burrito Tank, and possibly several smaller stock tanks. All affected reservoirs are owned by the applicant or by its parent, Rancho Viejo Cattle Company, Ltd. ... The 100-year flood is so broad in the vicinity of the tanks it appears there is sufficient area to carry the flows which will bypass the tanks' zones of impact.

The proposed landfill is located in an ideal location considering soil, groundwater, land use, and oil and gas activities (past, present, and future). No other location is equally plausible. It is difficult to find an area of appropriate size in Eastern Webb County that does not have floodplain issues due to the prevailing flat topography and rapid runoff soil conditions. Applicant endeavored to find an upland location that was reasonably close to the headwater conditions to minimize any impacts to floodplains and/or wetlands."

The Executive Director's June 28, 2013 Response to Comments (RTC) #25 addressed comments on the 100-Year floodplain and the associated location restriction. The ED's responses are summarized as follows:

In the second paragraph of RTC #25 beginning on page 31, the ED noted that *"as indicated in Section 13 of Part II of the Application, the storm water engineering designs, along with an application for a Conditional Letter of Map Revision (CLOMR), have been submitted to the Webb County Planning Development (WCPD) for review and were approved. With concurrence from WCPD, the CLOMR application will be submitted to FEMA. The CLOMR, when issued, will remove areas for waste disposal, processing, storage, and related development from the 100-year floodplain. Detailed storm water engineering designs, the CLOMR application submitted to FEMA, and the approved CLOMR (as well as an implementation of the approved CLOMR project) are not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."*

Beginning with the second full paragraph of RTC #25 on page 32, the ED noted that *"Regarding the comment that the proposed improvements fall outside the boundaries of the proposed permit site and on a property with separate ownership, it is the responsibility of the Applicant to obtain permission from off-site landowner to dredge and fill the area for proposed improvements in the watershed that fall outside the Applicant's property boundary. The TCEQ does not have jurisdiction to consider such process. Once the CLOMR is approved, and the project areas are developed and improved as planned to remove 100-year floodplain areas from the proposed waste management unit areas, elevations for these developed areas, as well as structures (dams, levees, channels, etc.), must be included in the revised FIRM, and any future*

development in these areas will require authorization from FEMA. However, the Applicant will be responsible for maintenance of these developed structures, including off-site areas. The Applicant will be required to provide the authority of the off-site development (easement, right-of-way, etc.) and maintenance procedures for these structures. This information is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application.

Regarding the comment related to the erosion or collapse of the off-site improvements, the floodplain protection structures (onsite or off-site) must be maintained by the Applicant, as stated above. In addition, erosion and sediment control measures for these structures will also be provided in the complete application.

Concerning the comment that the floodplain protection structure designs be in compliance with the state's dam safety provisions and local floodplain management regulations prior to development, the floodplain protection structure designs must be in compliance with the state's dam safety provisions and local floodplain management regulations. However, this information is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."

In the three paragraphs on page 33 of RTC #25, the ED offers "In regard to the comment that the construction of dams and levees will be insufficient to redirect the surface water produced by a large rainfall, and whether the proposed dam and the protective lining of the landfill will be adequate to protect the landfill from subsurface waters from those tributaries that are proposed to be rechanneled and diverted from the site: As previously mentioned, these structures' designs will be included in the complete application and reviewed to make sure the effectiveness of the facility's drainage routing system and the existing drainage patterns will not be adversely altered.

Concerning the comment that the facility must develop a storm water control plan that accounts for a 500 year rainfall event, and not a 100 year rainfall event, the TCEQ's jurisdiction is established by the Legislature, and is limited to the issues set forth in statute and rules. Accordingly, the TCEQ does not have jurisdiction to consider requirements beyond those specified by the rules.

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the Floodplain issue."

TECHNICAL SUBJECT: AVAILABILITY AND ADEQUACY OF ACCESS ROADS AND TRAFFIC

In his hearing request letter of July 23, 2013, Meitzen raised this subject in a single comment:

"1. Adequacy of all methods of ingress and egress of the proposed site, including vehicular traffic and rail traffic and its effect on neighboring landowners."

The Meitzen comment regarding roads and traffic does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Meitzen comment #8, found in Parts I and II of the Application regarding access roads-and traffic:

It should be noted that "access roads within one mile of the site" will be on the Yugo Ranch – owned by Rancho Viejo. At face value, the Meitzen comments appear to be nothing more than a "manufactured issue." Parts I and II of the Application are abundantly clear on the subject and demonstrate compliance with applicable regulations.

Parts I and II of the Permit Application provide adequate information on access roads and traffic. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

The comments ignore the clear language from the South Texas Development Council's review of Parts I and II. The STDC (1) "has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC., Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan." and (2) "Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County." It should also be noted that receipt of such a review letter is not required by TCEQ under 30 TAC §330.61(p), i.e., "A review letter is not a prerequisite to a final determination on a permit or registration application."

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.45(a), 30 TAC §330.59(b), and 30 TAC §330.61(c & i). The Executive Director's notice of "Technically Complete" dated July 2, 2012, the December 12, 2011, Letter from South Texas Development Council to TCEQ, and the April 8, 2011, Texas DOT Letter from Laredo District Engineer Albert Quintanilla, P.E. are all further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.45(a), 30 TAC §330.59(b), and 30 TAC §330.61(c & i).

The majority of the waste and recyclable materials to be brought to PERC will be hauled by rail, and this waste and material will not travel on public roads in any highly populated area in or near Laredo.

Vehicular traffic associated with the proposed landfill will primarily approach and leave the general area of the facility on State Highway 359, a two lane asphalt-paved road with paved shoulders. Between SH 359 and the site, traffic will travel about 5 miles on Jordan Road, which is a Webb County road, to within about two miles of the site. There is no posted vehicle weight limitation on Jordan Road. The final road leading into the site is an all-weather surfaced private road on Yugo Ranch.

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned.

The main line of the Kansas City Southern Railway Co. (KCS) between the United States and Mexico passes through Yugo Ranch about two miles landfill facility and is accessible by all-weather roads on private property. Rail service to the site can be accomplished without having to transport waste over public roads. However, in the initial period of operation, waste may be transported in sealed, steel containers through the KCS intermodal shipping yard in Laredo.

Waste from Laredo will be trucked to the site via Hwy 359. It is anticipated that a waste transfer station will be established in the city, so that the city waste collection trucks will not need to drive to and from the facility. Instead, waste will be hauled by semi-tractor trailer units dedicated to the transfer station operation. About 30 to 35 transfer truck trips per day are anticipated to carry the 750 tpd to the site.

At the initial expected rate of 1,000,000 tons per year (tpy), the expected volume of traffic associated with the proposed landfill is expected to be approximately 260 trips per day (130 vehicles entering and leaving, including 10 passenger vehicles and 120 trucks). Ultimately for 2,000,000 tpy, the facility traffic is expected to be 520 trips per day (260 vehicles entering and leaving, including 20 passenger vehicles and 240 trucks). At this ultimate volume, truck traffic will average about 10 vehicles per hour or one every 6 minutes.

Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic.

Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E).

TxDOT was provided information about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintanilla, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

Information about the Pescadito Environmental Resource Center was presented to Webb County Commissioners Court. The Webb County Judge and all four County Commissioners expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez affirms the support of Webb County (see Part II, Attachment E).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.4, pages 4-11 ***Supplementary Technical Report [305.45 (a)(8)]:***

Under subsection 1.4.1 ***General Description of the Facilities***

Pages 5-6 **Transportation Access**

"One characteristic of the site that is favorable for the development of PERC is the site's access to a relatively inexpensive bulk transportation system, a nearby railroad. The majority of the waste and recyclable materials to be brought to PERC will be hauled by rail, and this waste and material will not travel on public roads in any highly populated area in or near Laredo. The site is accessible for waste hauled by truck, as it is located about four miles from U.S. Highway 59 (Hwy 59) and about five miles from Texas Highway 359 (SH 359), and about 25 miles from Interstate 35 (I-35) in Laredo. Both highways provide suitable access to the site from Laredo, Corpus Christi (110 miles), San Antonio (130 miles), Austin (250 miles) and Houston (325 miles). The access route to the site from Laredo will be SH 359 via Jordan Road, which is an all-weather surface roadway managed by Webb County. Jordan Road "dead ends" at Yugo Ranch about 5.1 miles north of SH 359. There is no vehicle weight limits posted on this road. The access road from Hwy 59 will be used only in case of emergency, not for the routine traffic by trucks hauling solid waste. The owners of Yugo Ranch will convey an easement generally along existing all-weather ranch roads to RVWM, as necessary to ensure access to the landfill site, and RVWM will improve and maintain this road as its main access route. The existing all-weather access roadway between PERC and Hwy 59 is proposed to be maintained strictly as a secondary, emergency use only, access route into the facility. In the event that road maintenance is being performed on the primary access road, or unusual weather has disrupted access, the secondary access road could be used temporarily to keep the facility in service.

The main line of the Kansas City Southern Railway Co. (KCS) between the United States and Mexico passes through Yugo Ranch about two miles from the site. ... gives KCS access to all population and industrial centers in North America, allowing it to benefit from international trade and shipping under the North American Free Trade Agreement (NAFTA)."

Pages 8-10 ***Description of Facilities and Systems***

"PERC will be designed and permitted to accept a variety of waste types. ...

It is anticipated that PERC will receive solid waste generated in the City of Laredo, as that city's existing landfill is reported to have less than 10 years of remaining capacity and is not likely to be expanded. The City of Laredo landfill received 378,000 tons of solid waste in FY 2008, and waste receipts should increase over the near future as the Laredo population continues to grow. For planning purposes, it is assumed that PERC will receive approximately half of Laredo's solid waste when its landfill closes in the future, and that the amount of future waste will be about 235,000 tpy, or about 750 tpd (six days per week basis). This waste will be brought to the site by trucks. PERC intends to offer the City of Laredo the opportunity to deliver its solid waste to a proposed transfer station that PERC would construct and operate in or near the city, to facilitate transportation of the City's waste to the facility. Additionally, municipal solid waste, construction and demolition (C&D) waste, and water and wastewater treatment sludge are expected to be between 1,250 and 4,000 tpd, and various industrial wastes are estimated to average about 750 tpd, all transported by rail. Industrial waste from the maquiladora industries in Mexico will also be rail-hauled to the site. KCS owns and operates the rail line on the International Bridge between Laredo and Nuevo Laredo, Tamaulipas.

Waste from Laredo will be trucked to the site via Hwy 359. It is anticipated that a waste transfer station will be established in the city, so that the city waste collection trucks will not need to drive to and from the facility. Instead, waste will be hauled by semi-tractor trailer units dedicated to the transfer station operation. About 30 to 35 transfer truck trips per day are anticipated to carry the 750 tpd to the site. The transfer station will be subject to obtaining a permit or registration from TCEQ. Until the permit or registration is issued, waste collection trucks would haul waste directly to the landfill."

Part II, Section 2.0, pages 10 – 14 ***Waste Acceptance Plan [330.61 (b)]***

Under subsection 2.2, page 12 ***Sources and Characteristics of Waste***

"The proposed facility will be a comprehensive waste treatment and disposal facility that serves municipal and industrial customers by means of truck and rail transportation. Municipal solid wastes transported by truck are expected to originate in Webb and nearby counties. The use of tractor-trailers loaded at transfer stations could extend the service area to more distant areas of South Texas such as Corpus Christi and San Antonio. Grease trap and grit trap wastes processed at this facility are expected to be generated in the same service area. Industrial wastes are expected to be generated from this service area plus the industries in the Houston-Beaumont region. Wastes transported by rail can be economically shipped from greater distances, because the transportation cost per ton-mile is much less by rail than by truck. In regions of the country where the cost of landfill disposal is relatively high and landfills are some distance away and served by trucks, the cost of solid waste disposal by rail-hauling to this facility could be less. Thus, the service area for rail-hauled waste may essentially be unlimited. ...

A main line of the Kansas City Southern Railroad (KCS) passes within about two miles of the landfill facility and is accessible by all-weather roads on private property. Rail service to the site can be accomplished without having to transport waste over public roads. However, in the initial period of operation, waste may be transported in sealed, steel containers through the KCS intermodal shipping yard in Laredo."

Part II, Section 8.0, pages 21- 25 ***Impact on Surrounding Area [330.61(h)]***
8.2 ***Potential Impact on the Environment***

"Except for trucks entering and leaving, all on-site noise generation will be limited to areas of the facility that are located on private property at least ¼ mile from neighboring property."

8.3 ***Compatibility with the Surrounding Area***

*"**Character of Surrounding Land Uses** - This facility location and the area extending for many miles in all direction are obviously suitable for oil and gas production and cattle ranching. This is the current and historic land use status of the property on which the facility is proposed, and has been for many years. No other residential, recreational, commercial, agricultural or industrial land uses exist for several miles in the site area.*

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned. ...

Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic. A second commercial type of land use near the site it the KCS railroad, whose tracks are located within one to two miles of the site.

In addition to the residential, commercial and industrial land use described above, land use within a five-mile radius of the facility is divided between agricultural (essentially all pasture land used for cattle ranching) and dispersed oil and gas well sites.

The closest population center and only concentrated residential land use within five miles of the facility is Ranchitos Las Lomas, a community or subdivision located along Hwy 59 about 3.5 to 4.5 miles northwest of the site. This is a community of about 334 persons, according to the 2000 census. Widely scattered residences are found at

several ranch headquarters in the area, but these are typically separated from each other by several miles, due to the large size of the ranches, which appear to be on the order of 10,000 acres each. Typical of these is the Yugo Ranch, within which the proposed facility is located. There are an estimated two or three active residences within one mile of the facility, all located at the headquarters of Yugo Ranch. This includes two houses, one mobile home, and occasionally one travel trailer. These nearest occupied residences house ranch hands that are employed by Yugo Ranch.

Vehicle or equipment noise that will be generated by the proposed solid waste activities may not be discernible and should not be objectionable to occupants of the residences at Yugo Ranch because of the low speeds and separation distance. Prevailing winds, which tend to carry noise in its direction of movement, should carry noise away from these residences. Noise resulting from the operation of the facility will not cause any impact to the community of Ranchitos Las Lomas, located about 4 miles northwest of the facility, due primarily to the separation distance. Also, any noise that could be perceived within a limited distance from the facility will be engine noise associated with heavy equipment. Noise generated by truck traffic travelling to and from the facility will be similar to the noise from oil-field trucks and equipment that already travel along area roads many times a day. Truck traffic noise related to accessing the facility will be indistinguishable from the noise of truck and automobile traffic along U.S. Highway 59, which bisects this community. This highway traffic consists of many trucks and tractor-trailer units traveling at up to 70 miles per hour, 24 hours per day."

Part II, Section 9.0, pages 26-27 ***Transportation [330.61(i)]***

"Vehicular traffic associated with the proposed landfill will primarily approach and leave the general area of the facility on State Highway 359, a two lane asphalt-paved road with paved shoulders. Between SH 359 and the site, traffic will travel about 5 miles on Jordan Road, which is a Webb County road, to within about two miles of the site. There is no posted vehicle weight limitation on Jordan Road. The final road leading into the site is an all-weather surfaced private road on Yugo Ranch.

Webb County was given information about the proposed Pescadito Environmental Resource Center, and has expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez stating the county's support is presented in Part II, Attachment E.

Existing and future estimated traffic volumes on SH 359 were not studied in connection with this application. SH 359 is estimated to be a minimum of 5.9 miles from the proposed facility. A review of publicly-available data on Webb County traffic did not produce existing traffic counts or future traffic projections for Jordan Road, which is about 1.1 mile from the closest portion of the proposed facility.

At the initial expected rate of 1,000,000 tons per year (tpy), the expected volume of traffic associated with the proposed landfill is expected to be approximately 260 trips

per day (130 vehicles entering and leaving, including 10 passenger vehicles and 120 trucks). Ultimately for 2,000,000 tpy, the facility traffic is expected to be 520 trips per day (260 vehicles entering and leaving, including 20 passenger vehicles and 240 trucks). At this ultimate volume, truck traffic will average about 10 vehicles per hour or one every 6 minutes. This volume of site-related traffic will have no significant adverse impact on the capacity of SH 359. Because of the relatively low volume of site traffic, along with the favorable geometry, reduced speed limit and long sight distance, no turning or storage lanes would be needed to safely accommodate the proposed facility.

The applicant proposes that all site-related traffic will approach the site from the south, via SH 359 and Jordan Road.

TxDOT was provided information about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintinella, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

TRC obtained traffic count data from TxDOT for a location on State Highway 359 (SH 359) approximately 3 miles east of Loop 20. This is the location closest to the intersection of SH 359 and Jordon Road for which traffic count data was available. For the five-year period from 1995 through 1999, the average daily traffic count was 6,080 vehicles per day. The average daily traffic count at this location in 2009 was 8,800 vehicles per day. This is an increase of 2,720 vehicles per day or about 45 percent over an average period of 12 years. Assuming a similar increase will occur over 12-year periods in the future, the 2021 average daily traffic will be 12,760 vehicles per day and the 2033 average daily traffic will be 18,500 vehicles per day. The anticipated site related traffic will not significantly impact the estimated future traffic conditions. This conclusion is shared by TxDOT's District Engineer (see Attachment B, Part II).

Documentation of coordination with the Federal Aviation Administration regarding airport location restrictions is presented in Attachment F."

Part II, Section 16.0, page 40, *Council of Governments and Local Government Review [330.61 (p)]*

"Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E).

Also, information letters about the proposed project were submitted to Webb County and the City of Laredo, and review letters are being requested from each entity regarding compliance with any local solid waste plans for their jurisdictions (see Part II, Attachment E).

Information about the Pescadito Environmental Resource Center was presented to Webb County Commissioners Court. The Webb County Judge and all four County Commissioners expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez affirms the support of Webb County (see Part II, Attachment E)."

Part II, Attachment B

Texas Department of Transportation, Laredo District, Letter Dated April 8, 2011, from District Engineer Albert Quintanilla, P.E.

"The Texas Department of Transportation (TxDOT) Laredo District has met with your client, Mr. Carlos Y. Benavides, to discuss this proposed municipal solid waste landfill. As mentioned in our discussion, the proposed site is approximately 5 miles north of State Highway 359 (SH 359) near the north end of Jordan Road.

As noted in our discussion, this proposed site does not conflict with any traffic or location restrictions of the department. As a part of TxDOT's long range plans, projected developments along SH 359 east of Laredo has been anticipated to continue in the future, thus our long range plan includes widening along SH 359 from Laredo headed east to add passing lanes in a Super Two configuration. In addition to these planned widening projects, the district will also be studying the need for dedicated left turn lanes at state and county road intersections. Thus, while a dedicated left turn lane from SH 359 to Jordan Road does not currently exist, it is a part of our long range plan.

With the need for additional municipal solid waste landfill capacity in the Webb County area in the near future, your clients proposed site may not only provide the additional capacity, it has been planned in a manner that does not appear to negatively impact traffic operations on the state highway system. If I may be of any further assistance regarding this proposed project, please contact me at (956) 712-7405."

Part II, Attachment E Local Agency Coordination

December 12, 2011 Letter from South Texas Development Council to TCEQ:

"The application for the Pescadito Environmental Resource Center under the Texas Commission on Environmental Quality (TCEQ) MSW Permit No. 2374, for a permit Type !Municipal Solid Waste Facility to be located in Webb County, Texas, was reviewed on December 8, 2011 by the South Texas Development Council's (STDC), Regional Solid Waste Management Advisory Committee (SW AC).

The review was conducted to determine the facility's conformance with the South Texas Regional SWM Plan and general land use compatibility, as found in Chapter Four, Volume II of the South Texas Development Council Regional Solid Waste Management Plan. The SWAC has determined that the application of Pescadito Environmental

Resource Center, Rancho Viejo Waste Management, LLC, Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan. Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County."

The Executive Director's June 28, 2013 Response to Comments (RTC) #2 addressed the comments on access roads and traffic. The ED's responses are summarized as follows:

"TCEQ rules require applications for MSW landfill permits to provide data on proposed access roads, including availability and adequacy of roads that the owner or operator will use to access the site, volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the facility, and projections on the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility. 30 TAC § 330.61(i).

When reviewing permit applications, the Executive Director defers to Texas Department of Transportation's (TxDOT) recommendations on transportation and traffic issues regarding the traffic impacts and adequacy of state-maintained roadways, and to recommendations by local authorities on transportation and traffic issues regarding the traffic impacts and adequacy of locally-maintained roadways. The Application includes information related to the adequacy of access roads and a traffic study in Section 1.4.1 of Part I and Section 9 of Part II of the Application, as well as evidence of coordination with TxDOT and local authorities in Attachments B and E to Part II of the Application. Section 1.4.1 indicates that the majority of the waste and recycling materials to be brought to the facility will be hauled by rail and will not travel on public roads in any highly populated area in or near Laredo, Section 9.0 indicates that publicly-available data on existing and projected traffic counts for Jordan Road are not available and the facility's traffic is expected to generate approximately 120-240 trucks, which includes passenger vehicles per day. The conclusion made by TxDOT is that State Highway 359 has adequate capacity to handle the predicted volumes of site traffic associated with the facility, In addition, TxDOT's letter of April 8, 2011 in Attachment B to Part II of the Application confirms that the facility would operate in a manner that does not appear to negatively impact traffic operations on the state highway system. Section 2.2 of Part II of the Application indicates that the proposed facility will serve municipal and industrial customers by means of truck and rail transportation, Wastes transmittted by rail will minimize impact to Webb County traffic. Webb County's letter of Apri113, 2012 in Attachment E to Part II of the Application indicates that the County of Webb supports the proposed facility.

Concerning the comment on compensation for damages to private roads under private easement by other landowners, the Application does not contain information on access roads located within other private easements except the portion from the north end of Jordan Road to the facility located in Yugo Ranch. TCEQ rules require that all onsite and other access roadways be maintained by the Applicant in a clean and safe condition. Litter and any other debris must be picked up at least daily and taken to the working face. Access roadways must be re-graded to minimize depressions, ruts, and potholes. 30 TAC § 330.153(c).

In regard to the comment that general location maps do not depict the current status of the surrounding roads, 30 TAC § 330.59(c)(2) requires that the latest revision of all maps shall be used. The Application was reviewed based on information provided by the Applicant. 30 TAC § 330.57(d) specifies that it is the responsibility of an applicant to provide the Executive Director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners.

The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding availability and adequacy of roads and traffic impact and safety."

TECHNICAL ISSUE: GROUNDWATER, SURFACE WATER, DRAINAGE AND WATER POLLUTION CONTROL

In his hearing request letter dated July 23, 2013, Meitzen enumerated two items relative to this subject:

"6. This land use compatibility decision does not take into consideration significant changes in elevation of existing floodplain on the proposed site and the impact of those changes on the surrounding area.

7. In regard to Response 24 in the Executive Director's Response to Public Comments, it is impossible to determine the future site water run-off using present and historic conditions. A MSW landfill will drastically change those elevations and site water run-off will change as those elevations change. This issue has not been properly addressed by the Executive Director."

The Meitzen comments regarding groundwater and drainage do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Meitzen comments, regarding groundwater, surface water, drainage and water pollution control, found in Parts I and II of the Application:

Surface Water Run-Off Facts

The proposed facility is essentially at the top of the drainage (topographic) divide between the Rio Grande and Nueces River basins – the landfill is in the Rio Grande drainage.

The proposed facility is in the upper reaches of the drainage for San Juanito Creek.

Drainage from the proposed facility, i.e. "run-off", flows south-southwest across Rancho Viejo property to at least the railroad spur, with the possible exception of a small component crossing the "wedge."

On the north and east side of the proposed facility, drainage is towards the landfill, i.e., "run-on" conditions.

Note that further south and east of the proposed facility (lower Jordan Road to SH 359) land is in the Reiser Creek drainage.

Waste won't be washed onto adjacent properties.

Note that average annual rainfall for the area is well below the 25-inch cutoff TCEQ uses for an "arid exemption" and for using water-balance covers without modeling.

Groundwater and Aquifer Facts

The regionally-significant Laredo Aquifer [part of the Carrizo-Wilcox Major Aquifer] is found at depths of 1,000 feet or more below the proposed facility.

Relatively impervious clay soils predominate between the surface and the Laredo Aquifer.

The shallower Yegua-Jackson Aquifer [designated as a minor aquifer in 2002 because of use much further to the north and east] has been recently mapped south into the Webb County area; however, in the area of the landfill, water in the Yegua-Jackson is very limited in quantity and highly mineralized and generally found near the base of the Yegua, i.e top of the Laredo.

No evidence of shallow ground water usage – even for stock watering – in the area of the landfill. Windmills are used for pumping surface water from tanks.

At the time the application for Parts I and II was finalized, there were only six water wells within a five-mile radius of the facility including the Ranch Viejo (Yugo Ranch) well according to state records.

Note that a five-mile radius around the facility would encompass over 60,000 acres. Most of the wells are significantly distant from the facility.

Parts I and II of the Permit Application provide adequate information about site-specific groundwater conditions (and aquifers) and adequate data about surface water at and near the site. In addition, the Permit Application addresses water pollution issues. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(k) (groundwater and surface water). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(l).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.3, page 3, under *Permits or Construction Approvals [305.4(a)(7)]*

"National Pollutant Discharge Elimination System Program under the Clean Water Act and Waste Discharge Program under the Texas Water Code, Chapter 26 – an NOI will be submitted to TCEQ for coverage by a storm water discharge general permit,"

Part I, Section 1.4.1, pages 6-7, under *Favorable Site Conditions*:

"Soil in the upper 160 feet at the site was found to be predominantly clay, occasionally interbedded with claystone, sandstone and shale, and these soil types are believed to extend much deeper. The soils exist in nearly horizontal beds that exhibit very low vertical permeability. ...

While groundwater is encountered in thin layers of sandy or silty material within otherwise highly impermeable clay, this groundwater is essentially not usable due to its very low production potential and poor water quality. The uppermost aquifer beneath the site that is capable of producing water in potentially useful quantities to wells is the Jackson-Yegua Aquifer, which is expected to be encountered in the upper 750 feet below ground surface at the facility area. Water in this aquifer is poor to very poor in quality, due to concentrations of total dissolved solids, chloride and sulfate that exceed Federal drinking water standards. The Jackson-Yegua Aquifer is classified as a minor aquifer, because it produces relatively low yields of highly mineralized water. These water quantity and quality issues limit the usefulness of Jackson-Yegua Aquifer water for human consumption and agricultural uses such as livestock watering or crop irrigation. ... Rainfall averages about 20 inches per year ...

However, the site is situated in a mostly upland area near the top of the watershed, and existing or proposed livestock watering tanks capture and store a portion of the area's storm water runoff. As a result, the quantity of storm water runoff that will flow across the site is relatively low. Such runoff volumes can be readily contained in the perimeter drainage system that will be designed to remove the entire landfill footprint from the 100-year flood plain."

Part II, Section 1.1, page 5

1.1 Soils and Geology

"A series of 56 soil borings were completed to evaluate the characteristics of soil encountered in the upper 160 feet at the site. These soils are predominantly clays, with some interbedded sand, sandstone, and claystone or shale. Based on review of published reports and geophysical logs, these or similar soils are believed to extend to much greater depths. ... These soils have very low permeability characteristics ...

The geology of the site area is also suitable for landfill development, as the soil strata are laterally very extensive with relatively thick layers of very low permeability soils that prevent vertical migration of water. Consequently, the area geology is very protective of the quality of water in the aquifers that lie below the proposed facility."

Part II, Section 1.2, pages 5-6

1.2 Groundwater

"Groundwater was encountered beneath the site within soils of the Jackson and Yegua Groups. These soils are part of the Jackson-Yegua Aquifer, which is classified as a minor aquifer by the Texas Water Development Board (TWDB). This classification is due to the relatively low yield and marginal quality of water in the aquifer. The ground water below the site was encountered in several water-bearing zones or layers that are generally characterized by gradational changes to sandy or silty soil classifications. These water-bearing zones are generally on the order of several feet thick and are found at several depth intervals across the site. These water-bearing zones may also be found layered as a transition between two highly impermeable layers of clay soil or at the top of a relatively impermeable layer of rock-like indurate material, and may also be associated with secondary porosity in the over-consolidated clay soils. These water bearing zones exhibit the characteristics of a confined aquifer. However, the hydraulic characteristics or relative thinness of these zones severely limit their ability to produce water in potentially useful quantities. The quality of this water is very poor to unacceptable for most domestic or agricultural uses. Regional aquifers exist beneath the site, but at significant depth. The Laredo Aquifer is expected to occur at a depth of about 1,000 feet or more below the ground surface. Water in this aquifer is generally slightly saline, with total dissolved solids in the range of 1,000-2,500 milligrams per liter (mg/l), about two to five times the U.S. EPA's secondary drinking water regulation (SDWR) standard of 500 mg/l. Published reports indicate the groundwater produced by some wells contain some metals and trace elements in excess of SDWR limits. This and other deeper aquifers in south central Webb County dip towards the southeast towards the Gulf of Mexico and generally crop out in relatively narrow bands that trend northeast-southwest.

Groundwater usage in the general area of the site is very limited. Only one water well is known to exist within a one-mile radius of the facility boundary. This is the private water well that is located near the Yugo Ranch headquarters buildings and serves the general needs of the ranch. This well is located roughly 900 feet southwest of the proposed facility. The ranch well was geophysically logged as part of this study and the caliper log indicates that the well is screened in the Yegua from about 1020 feet to 1136 feet where the diameter is reduced to final log depth [1160 feet], suggesting a smaller screen or sediment trap.

According to TWDB records and information developed during the preparation of this permit application, there are only 6 water wells within a five-mile radius of the facility, including this ranch well.[current records now show there are eight wells] The next closest well is about 2.5 miles northwest of the facility. Four wells are located between 4.3 and 5 miles northwest of the facility, in the community of Ranchitos Las Lomas. One of these is a well located nearly 5 miles away that is owned and operated by Webb County. This well was intended as a public water supply well to make dispensed water available to the residents of Ranchitos Las Lomas. Water quality from this well is so poor that the majority of the water dispensed at this site is hauled by tanker trucks from the Webb County maintenance facility near U.S. Highway 59 and Loop 20 in Laredo. The source of this hauled water is the Laredo public water system. Of the total quantity of water Webb County dispenses at this location, relatively little water comes from this well, and that follows extensive treatment."

Part II, section 1.4, page 7

1.4 Rainfall, Hydrology and Storm Water Runoff

"The Texas Water Atlas (Estaville, Lawrence & Earl, Richard A., River Systems Institute at Texas State University, Texas A&M Press, 2008) provides the following site-specific hydrologic information:

Average Annual Precipitation is 22-23 inches (period 1971-2000).
Annual Potential Evapotranspiration (Priestly Taylor Method) is 76 inches.
Annual Potential Evapotranspiration (Penman Method) is 106 inches.
Annual Gross Lake Surface Evaporation is 79 inches (period 1950-1979).

The site is considered an arid location and is located at the boundary of the "Subtropical Subhumid" and "Subtropical Steppe" climates. Currently-published information documents that average annual evaporation exceeds average annual rainfall by more than 40 inches."

Part II, section 2.1.4, pages 11-12

2.1.4 Soil and Groundwater –

"The soils encountered during drilling and described in the literature are dominantly clays. While the bottom and sides of the landfill excavation could encounter thin, isolated sand/silt units with a Unified Soil Classification of "SM" or "SP," these soil units do not appear to be sufficiently thick and laterally continuous to provide a significant pathway for waste migration. In addition, most of these units will not exhibit hydraulic conductivity greater than 1 x 10-5 cm/sec. However, any effect of the sand/silt units is minimized because the average annual evaporation exceeds average annual rainfall by more than 40 inches. The nearest "regional aquifer" is located approximately 1,000 feet below the site, according to regional cross-sections, the literature, geophysical log data obtained from the ranch water well located 900 feet from the facility, and geophysical log interpretations for

gas wells in the site area. The ranch water well produces water from that depth. As a consequence of the prevailing soil conditions, the aquifer is protected by many hundred feet of low-permeability, clay-rich soil."

Part II, Section 3.0, page 15

3.0 General Locations Maps [330.61 (c)]

"There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. [I believe that ANB put a well in northeast of the site] This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II."

Part II, Section 8.1, Pages 22-23, under *Groundwater:*

"The facility's geological and hydrogeological setting also provides protection of public health, as water quality in the upper aquifer at the facility is too poor to be used for human consumption. Deeper aquifers are protected from possible site-related contamination by hundreds of feet of intervening very low permeability soil intervals."

Part II, Section 8.3, Page 25, under *Compatibility with the Surrounding Area*: *Wells*

"There are no known or recorded water supply wells, either active or abandoned, within 500 feet of the proposed facility."

Part II, Section 11.1, pages 32—33, under *11.0 GROUNDWATER AND SURFACE WATER [330.61 (k)]*

11.1 Groundwater [330.61(k)(1)]

"Groundwater conditions at the site are known from a combination of on-site soil boring data and the published literature. Groundwater is localized in sandier sediments encountered, but these sediments, as expected from the nature of the depositional environment, are not necessarily continuous across the site. There appears to be enough ultimate connectivity between water bearing materials, however, to allow this shallow groundwater to approach an equilibrium, or coherent potentiometric surface across the site. Water levels range from about 550 feet [msl] in the north part of the proposed landfill footprint to about 530 feet [msl] in the south--and generally follow the area slope, and consequently the drainage as well.

The near surface sediments at the site are part of the Yegua-Jackson Aquifer, a TWDB designated Minor Aquifer, and named for the geology involved. ... Water quality tests on ground water samples from six site borings were analyzed for constituents that

include the maximum contaminant levels (MCLs) as established in the national primary drinking water regulations by U.S. EPA. All these ground water samples exceeded the secondary MCLs for total dissolved solids (TDS) and chloride by orders of magnitude. ... There are six water wells within about five miles of the site. The geophysical log of the Yugo Ranch well, about 900 feet from the site, indicates clays and some sands continuing to its total depth of about 1100 feet [bgs], where it is screened in the lower part of the Yegua. This well, sampled as part of the site study, also showed TDS and chloride values somewhat above the secondary MCLs. The site is a part of this Yegua-Jackson recharge zone and is situated on or near the contact between its elements. However, soil characteristics and groundwater chemistry at the site indicate groundwater recharge in the area is limited.

The Laredo Aquifer underlies the Yegua-Jackson. ... This aquifer is an important part of Webb County, for it is capable of producing significant quantities of freshwater, particularly for the sandier lower portion of the Laredo Formation. The Laredo Aquifer provides a portion of Laredo's water supply ..."

Part II, Section 11.2, pages 33- 34

11.2 Surface Water [330.61(k)(2)]

"There are two large surface water impoundments on the proposed PERC landfill site and several smaller impoundments. For the most part surface water flow occurs as overland flow and flow in dry washes whose course is difficult to identify on available aerial photos. ... will incorporate appropriate drainage controls into the facility design that comply with all regulations including the Texas Pollution Discharge Elimination System (TPDES) and allow obtaining appropriate TPDES permits.

Currently existing drainage patterns at the proposed permit boundary will not be significantly altered by landfill development and operation. Existing flow volumes, peak discharges, and discharge points will be maintained by the landfill design. The facility will be protected from 100-year frequency flooding to prevent the washout of solid waste. Calculations and analyses will be provided to demonstrate compliance with regulatory requirements concerning surface water drainage.

The proposed facility will operate under TPDES General Permit No. TXR050000. A signed certification to this effect is presented as Attachment H in Part II, ... It will also operate in accordance with a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP will be prepared as the actual design of the landfill and related facilities is completed during the preparation of Parts III and IV of this permit application.

The facility will comply with the requirements of the TPDES storm water permitting requirements by continuous operation and monitoring of its SWPPP throughout the active life of the facility. ... A Notice of Intent (NOI) to obtain coverage under TPDES General Permit No. TXR050000 (or its successor) will be submitted to TCEQ. Filing the NOI will initiate coverage of this facility under the General Permit and is one of the criteria for

compliance with the TPDES and Section 402 of the CWA. Operation of the SWPPP is the other criteria for compliance with the TPDES requirements.

Surface water conditions near the site are very similar to those at the site. Due to the generally flat surface topography and low runoff, combined with the tight, cohesive surficial soils, natural drainage systems exhibit very little erosion. Relatively small artificial dams exist in the area to create "stock tanks" for livestock watering."

The Executive Director's June 28, 2013 Response to Comments (RTC) #7 and # 28 addressed the comments on groundwater, surface water, drainage, and water pollution control in separate discussions. The ED's responses are summarized by general subject as follows:

Water Pollution Control Issues

In RTC #7, the Executive Director (ED) noted that "*The rule cited by Meitzen Enterprises, 30 TAC § 330.55(b), requires that all liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution and ensure that storm water and wastewater management is in compliance with the regulations of the commission. This information is required to be included in Part III of the complete application under 30 TAC § 330.63(b)(4) (relating to water pollution control). Because this Application is a partial application for determination of land-use compatibility, only Parts I and II of the Application are reqt\ired under 30 TAC § 330.57(a). The Executive Director will assess the information required in Part III of the Application when it becomes available.*"

In RTC #24, the ED noted that "*Regarding the comment that many existing receptors in the area will be exposed to polluted storm water runoff and that the river and reservoir in the area will be impacted by the facility, the facility will be required to take all steps necessary to control and prevent the discharge of contaminated water from the facility. Should the discharge of contaminated water become necessary, the facility will be required to obtain specific written authorization from the TCEQ prior to the discharge. All water coming in contact with waste or contaminated soils will be treated as contaminated water. Run-on and runoff for the 25-year, 24-hour storm event must be controlled. Temporary diversion berms will be constructed around areas of exposed waste (unloading area) to collect and contain surface water that has come into contact with waste. Contaminated water must be managed in accordance with the TCEQ regulations."*

Surface Water and Drainage Issues

In RTC #24, the ED noted that *"TCEQ rules at 30 TAC §§ 330.63(c), 330.303, 330.305, and 330.307 require the Applicant to provide a surface water drainage report that demonstrates that the owner or operator will design, construct, maintain and operate the facility to manage run-on and runoff during the peak discharge from at least a 25-year*

storm and prevent the offsite discharge of waste and contaminated storm water, ensure erosional stability of the landfill during all phases of landfill operation, closure, and post-closure care, provide structures to collect and control at least the water volume resulting from a 24-hour, 25-year storm, protect the facility from washouts, and ensure that the existing drainage pattern is not adversely altered. A detailed surface water management plan (discussions, designs, calculations, and operational considerations for the collection, control, and discharge of storm water from the facility as required by the above-referenced rules) is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in Parts III and IV of the complete application.

A typical surface water management plan will basically consist of drainage swales, downchutes, perimeter channels, detention ponds, and outlet structures. The facility must be designed to prevent discharge of pollutants into waters in the state or waters of the United States, as defined by the Texas Water Code and the Federal Clean Water Act, respectively. The Applicant will be required to obtain the appropriate Texas Pollutant Discharge Elimination System (TPDES) coverage for the proposed facility to assure that storm water discharges are in accordance with applicable regulations. Storm water runoff management system must be designed to convey the 25-year runoff from the developed landfill, consistent with TCEQ regulations, and to provide the necessary storage and outlet control to mitigate impacts to the receiving channels downstream of the facility. A demonstration that existing permitted drainage patterns will not be adversely altered must be provided in Part III of the Application.

The Applicant will also be required to inspect, restore, and repair constructed permanent stormwater systems such as channels, drainage swales, chutes, and flood control structures in the event of wash-out or failure from extreme storm events. Excessive sediment will be removed, as needed, so that the drainage structures, such as the perimeter channels and detention ponds, function as designed. ...

Regarding the comment that the Application failed to provide sufficient information about groundwater and surface water as required by 30 TAC § 330.61(k), the rule requires that the applicant provide data about the site-specific groundwater conditions and data on surface water at and near the facility. Sections 1.2 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]. Likewise, Sections 1.3, 1.4, 1.5, and 11.2 of Part II of the application adequately provides data on surface water. These sections indicate that surface water conditions at or near the proposed facility are very similar, due to the generally flat surface topography and low runoff. These sections also indicate that the swales that convey drainage across the proposed facility are so wide and shallow that they are quite inefficient at conveying runoff. As a result, relatively wide areas of the site are inundated by runoff from the 100-year rainfall event.

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination

regarding the Storm water Run-On, Runoff, and Contaminated Water Discharge to River and Reservoir issue."

Groundwater Issues

In RTC #24, the ED concluded that *"Sections 1.1 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]."*

TECHNICAL SUBJECT: ABANDONED OIL, GAS AND WATER WELLS

In his hearing request letter dated July 23, 2013, Meitzen enumerated two items relative to this subject:

"3. Written certification that abandoned water, oil and gas wells have been properly capped, plugged, and closed at the time of application is not included in this incomplete application."

10. Response 43 [ED's 6-28, 2013 Response to Comments] contradicts Response 6. In Response 6, the Executive Director refers to the Applicant indicating that there is one (1) abandoned and plugged gas well within the proposed facility. Response 43 indicates that "several wells were attempted and later sealed and abandoned".

The Meitzen comments regarding abandoned oil and water wells do not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to Meitzen comments #3 and #10, found in Parts I and II of the Application regarding abandoned oil, gas and water wells:

Part II, Section 12.0 states there are "*no active wells within the proposed landfill footprint or facility site and only one abandoned and plugged gas well*" based on well records obtained from the Railroad Commission of Texas (RRT).

Part II, Section 1.8 clearly differentiates between "area" and "site of the facility" in discussing oil wells.

Parts I and II of the Permit Application provide adequate information on abandoned oil, gas, and water wells. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(l) (abandoned oil and water wells). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(l).

Specific, selected citations from the permit application pertinent to this comment include:

Part II, Section 1.8, pages 8-9

1.8 Oil and Gas Production

"While some oil but mostly gas production has been prevalent in the area, very little has actually occurred on the proposed site of the facility. Several wells were attempted on or adjacent to the site, but have been sealed and abandoned. The width of the landfill was selected to allow possible future development of gas reserves beneath the landfill by using directional drilling methods. ...

The oil and gas production at and around the site has resulted in a number of wells and pipelines being installed. Every production well has a certain useful or productive life, which ends when the oil or gas reserves it tapped is no longer recoverable. Some wells and pipelines in the site area are no longer active and have been abandoned in place, while others continue in service."

Part II, Section 12.0, page 35, under Abandoned Oil and Water Wells [330.61(l)

"Abandoned Oil Wells - The area around the proposed landfill site on the Yugo Ranch has been drilled for oil and gas. However, there are no active wells within the proposed landfill footprint or facility site and only one abandoned and plugged gas well. Records of the oil and gas wells were obtained from the Railroad Commission of Texas (RRT). A map of the active and plugged wells was obtained and used as a reference. These records in conjunction with an onsite inspection before and during excavation will allow determination of whether this one well, or any others discovered onsite, need to be capped, plugged, and closed in accordance with applicable rules and regulations of TCEQ or the RRT. As required, within 30 days prior to construction, written certification will be provided to executive director of TCEQ that the gas well, and any others encountered, have been properly capped, plugged, and closed. Gathering lines do crisscross the proposed landfill site; thus, if a waste disposal permit is received, these lines will have to be abandoned and relocated as necessary. Future drilling for mineral resources beneath the landfill will use deviated drilling techniques from surface locations outside the footprint of the proposed landfill.

Abandoned Water Wells – There are no abandoned water wells at the facility."

The Executive Director's June 28, 2013 Response to Comments (RTC) #6 and # 43 addressed the Meitzen comment on abandoned oil, gas and water wells. The ED's responses are summarized as follows:

In RTC #6, the ED noted that *"TCEQ rules require that the owner or operator provide the Executive Director with written certification that all applicable wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas at the time of application. 30 TAC § 330.61(1)(2). The Application includes information regarding abandoned oil and gas wells in Section 12 of Part II of the Application. It indicates that there is one abandoned and plugged gas well within the proposed facility. The Application does not include written certification at this time. However, the Application includes sufficient information regarding oil and gas wells on the proposed facility to allow the Executive Director to make a [favorable] land-use compatibility determination under 30 TAC § 330.57(a), and the Executive Director may consider the technical matters related to plugged and abandoned oil and gas wells at the time the completed Application is submitted."*

In RTC #43, the ED noted that: *"In Section 1.8 of Part II of the Application, the Applicant asserts that very little oil and gas production has occurred on or adjacent to the site, that several wells were attempted and later sealed and abandoned, and that the width of the landfill was selected to allow for the possibility of directional drilling in the future."*

TECHNICAL SUBJECT: GROUNDWATER MONITORING

In his hearing request letter of July 23, 2013, John A. Meitzen ("Meitzen") raised this subject in a single enumerated comment:

"2. Location of groundwater monitoring wells is not included in this incomplete application and no permit should be granted without prior knowledge of this information".

Relevant facts, pertinent to Meitzen comment #2, found in Parts I and II of the Application regarding groundwater monitoring:

Meitzen comment #2 appears to be completely without basis. Not only does the Application show the "location of groundwater monitoring wells" on Figure 5 of Part II but also discusses groundwater monitoring at several locations in the text of Part II.

Meitzen also appears to be attempting to blur the distinction between requirements for Parts I and II, i.e., 30 TAC §330.61(d), and those requirements for Parts III and IV, i.e., of 30 TAC §330.401 – 330.421 of Subchapter J to the 330 MSW rules (Groundwater Monitoring and Corrective Action). It should be noted that, until the subsurface investigation and characterization required for Part III is completed, a groundwater monitoring system can't be completely designed for site-specific conditions. [***do you want?***]

Parts I and II of the Application address the subject of groundwater monitoring and demonstrate compliance with applicable regulations. Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(d). The Executive Director's notice of

"Technically Complete" dated July 2, 2012, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(d).

Specific, selected citations from the permit application pertinent to this comment include:

Part II, Section 4.0, page 17, *FACILITY LAYOUT MAPS [330.61 (d)]*
"Locations of monitoring wells are generally shown on the Monitoring System and Cell Layout Plan, Figure 5. In accordance with 30 TAC §330.403(a)(2), default spacing for groundwater monitoring wells is a maximum of 600 feet. Figure 5 shows a proposed facility perimeter of approximately 28,000 feet. On this default spacing basis, 48 wells are proposed with a maximum spacing of 600 feet."

Part II, Section 8.1, Pages 22-23, under *Groundwater:*
"Groundwater – The landfill will be designed and constructed with a liner and leachate collection system that will act in tandem to prevent the migration of waste or waste constituents to groundwater. An array of groundwater monitoring wells will be designed and installed to check groundwater quality and to make sure the liner and leachate collection system is working to prevent release of contaminants to the groundwater. Should such a release occur, it can be detected and corrective measures can be taken before any adverse health impact can occur.

The facility's geological and hydrogeological setting also provides protection of public health, as water quality in the upper aquifer at the facility is too poor to be used for human consumption. Deeper aquifers are protected from possible site-related contamination by hundreds of feet of intervening very low permeability soil intervals."

The Executive Director's (ED) June 28, 2013 Response to Comments (RTC) #16 and # 27 addressed the technical subject – groundwater monitoring. The ED's responses are summarized as follows:

In RTC #16, the ED concluded that: "*The proposed facility must include a groundwater monitoring system based on site-specific technical information to detect any contamination from the facility prior to migration off site. ...However, the Applicant is not required to submit contamination protection system designs in a partial application for a land-use compatibility determination. This information would be required and addressed in Parts III and IV of the complete application.*"

In RTC #27, the ED noted that: *"Applicants must indicate the location of monitoring wells in the site layout map, included in Part II of the application. 30 TAC §330.61(d)(3). However, the applicant is not required to provide a detailed groundwater monitoring system design until it submits Part III of the application. 30 TAC §330.63(f)."*

TECHNICAL SUBJECT: SITE OPERATING PLAN

In his hearing request letter of July 23, 2013, John A. Meitzen ("Meitzen") raised this subject in a single enumerated comment:

"5. A Site Operating Plan has not been reviewed prior to this land use compatibility decision by the Executive Director."

Relevant facts, pertinent to Meitzen comment #5, found in Parts I and II of the Application regarding the Site Operating Plan:

Meitzen comment #5 appears to be completely without basis. Either Meitzen does not understand, or chose to ignore, the fact that the Site Operating Plan is the specific requirement for part IV of the Application.

The comments appear to blur the distinction between requirements for Parts I and II, i.e., 30 TAC §330.59 (Contents of Part I of the Application) and 30 TAC §330.61(Contents of Part II of the Application), and those requirements for Parts IV, i.e., 30 TAC §330.65 (Contents of Part IV of the Application).

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.59 (contents of Part I of the Application) and 30 TAC §330.61 (contents of Part II of the Application). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.59 and 30 TAC §330.61.

The Meitzen comment regarding the Site Operating Plan cannot be considered a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing.

There are no specific, selected citations from the permit application pertinent to these comments because (1) there are no references to the Site Operating Plan in Parts I and II of the Application; and (2) nor are any required by applicable regulations for Parts I and II of the Application.

The Executive Director's (ED) June 28, 2013 Response to Comments (RTC) did not address the technical subject of the Site Operating Plan because it was not referenced by any of the commenters nor is it a requirement for Parts I and II of the Application. The Site Operating Plan is the specific requirement for part IV of the Application.

TECHNICAL SUBJECT: LAND USE COMPATIBILITY INCLUDING "ADVERSE IMPACT", "GENERAL NUISANCE", "PROPERTY DEVALUATION" AND "BUFFERS"

In his hearing request letter of July 23, 2013, Meitzen raised this subject in a single comment:

"4. Applicant has not addressed future growth trends in the area with regard to this proposed facility's employment needs and how many employees will be necessary, where they will live and the impact of that growth on the compatibility of this proposed site."

The Meitzen comment regarding compatible land uses, buffers and adverse impact does not make a specific assertion of a deficiency in Parts I and II as a basis for requesting a contested hearing. [*do you want to keep this since you've used it elsewhere? He asserts a deficiency – but it is not related to Part I and II requirements.*]

Relevant facts, pertinent to Meitzen comment #4, found in Parts I and II of the Application regarding compatible land uses, adverse impact, general nuisance, property devaluation, and buffers:

Texas law and regulations specifically prohibit the issues of concern, i.e., "nuisance" conditions. Any permitted waste management facility that creates and maintains a nuisance can lose its permit and/or be subject to legal action in state courts. ***[do we need for Meitzen?]***

The general subject of "land use compatibility" is addressed by the entirety of Parts I and II of the Application – hence the use of the name "Land Use Only" to identify a bifurcated permit application process.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §305.45(a)(6-8), 30 TAC §330.59(b-d) and 30 TAC §330.61(a-p). The Executive Director's determination of "Technically Complete" dated July 2, 2012, and the December 12, 2011 Letter from South Texas Development Council to TCEQ, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC 305.45(a)(6-8), 30 TAC §330.59(b-d) and 30 TAC §330.61(a-p).

The actual buffer or separation distance to adjacent properties is significantly more than regulatory minimum of 125 feet because the proposed facility is located within the confines of the Yugo Ranch owned by the Applicant. Minimum buffer shown is 300 feet along the eastern half of the south side (approximately 3,000 feet of boundary) of the proposed permit boundary. The buffer around the remainder of the proposed permit boundary is over ¼ mile, i.e., 1,500 feet or greater along the east and north sides, and even greater separation distance to the west.

Parts I and II of the Permit Application provide adequate information on Buffers. Parts I and II of the Permit Application also provide adequate information on Land Use Compatibility including "Adverse Impact", "General Nuisance", "Property Devaluation" and "buffers". The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.4, page 4 ***Supplementary Technical Report [330.45(a)(8)]***

1.4.1 General Description of the Facilities

"Rancho Viejo Waste Management, LLC (RVWM) owns a 1,110 acre tract of land (site) about 20 miles east of Laredo in Webb County, Texas and proposes to establish a solid waste management facility on this site. The proposed facility is known as Pescadito Environmental Resource Center (PERC). The site is ideally located for such a facility because of the favorable soil and geological conditions, its isolation from groundwater, absence of neighbors or potentially conflicting land uses, and transportation access. The site is located entirely within the 12,194 acre Yugo Ranch that is owned by Rancho Viejo Cattle Company, Ltd. and has been family-owned for generations, and has been used for cattle ranching and oil and gas production for many years. The owners of the Yugo Ranch support the development of PERC. They view the proposed solid waste management and landfill disposal as the next stage in land use at the site, one that is fully compatible with historic and ongoing extraction of oil and gas, as well as cattle ranching."

Part II, Section 3.0, pages 15-16, ***General Location Maps [330.61 (c)]***

"The General Location Map is presented as Figure 1 in Part II. This map is used to present the following described features, to the extent they exist within the distances from the proposed facility as defined by 30 TAC 330.61(c). For clarity, certain of these features are presented elsewhere in this permit application. The prevailing wind direction with a wind rose is presented on Figure 2 of Part II.

There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II.

There are no structures and inhabitable buildings within 500 feet of the proposed facility. There are several structures and inhabitable buildings about 2,100 feet from the facility; these are shown on Figure 1 of Part II. These include one house, one mobile home, and several ranch buildings (one machine storage building and two sheds used as stables). On occasion, one travel trailer may also be temporarily parked in this area. All residents of these structures are ranch workers employed by Yugo Ranch.

There are no schools, licensed day-care facilities, churches, or cemeteries within one mile of the facility. Several man-made ponds (stock tanks) exist within one mile of the site, and these are shown on the map. There are no other residential, commercial or recreational areas within one mile of the facility, so none are shown; there also are no

hospitals in this area. The nearest known airport used for commercial or general aviation is the Laredo International Airport, located more than 20 miles west of the facility."

Part II, Section 4.0, page 17 ***Facility Layout Maps [330.61 (d)]***

"A Facility Layout Map and an Operations Area Layout Map are provided as Figures 3 and 4 of Part II. ...

The proposed facility is completely isolated from all land use except cattle ranching and oil and gas production, and is provided with an effective separation distance of more than one-quarter mile on three sides and 300 feet on the fourth side."

Part II, Section 8.0, pages 21-25 ***Impact on Surrounding Area [330.61 (h)]***

"8.1 Potential Impact on Human Health

The following discussion assesses potential human health impacts on cities, communities, groups of property owners and individuals. Due to demographic factors associated with this particular site, and the nature of the proposed landfill and waste processing operations and type of materials to be processed, the only potentially affected category that should be considered is individuals. This is because the site area has a very low population density, with no residential dwelling units within 500 feet of the proposed facility. Fewer than 10 persons live within a one-mile radius of the facility. The closest residential dwelling units are two structures at the Yugo Ranch headquarters about 2,100 feet southwest of the facility boundary. The next closest residential structures are at another ranch headquarters located approximately 2 miles away to the northwest.

There is no city, community, or group of property owners that are potential target receptors that might be subjected to adverse human health impacts from the proposed facility. This is because of the separation distances that will exist and because of the virtual lack of etiological agents or disease vectors that might result in such impacts. The individuals to be considered in the evaluation of health impacts include nearby residents, facility employees, and visitors. This evaluation will consider the potential modes of transmission of etiological agents or disease vectors that might impact human health. The modes are transport by air, surface water and ground water. Transmission by vectors, such as insects (particularly flies) and rodents (particularly rats and mice), are not being considered any further in this analysis because the waste storage and processing methods to be employed at this facility will prevent the propagation or reproduction of these species in or near the waste, and will essentially deny access to the waste to any existing members of these species. Basically, waste will be in closed containers until placed into the landfill, at which time the waste will be covered with additional waste or cover soil. Transmission by dermal contact or ingestion are not realistic modes because all persons who may come in direct contact with waste will be required to wear gloves and will be specifically trained to avoid dermal contact or ingestion of waste or waste materials.

8.1 *Air Mode*

The two nearby houses and one mobile home in the facility area are located to the southwest of the landfill, as shown on the Aerial Photograph, Figure 7. The prevailing wind direction, as shown by the Wind Rose in Figure 2, is not in this direction. In fact, Figure 2 shows that wind blows from the facility towards these two residences only about 5 percent of the time. The three factors of low incidence of wind blowing towards these residences, lack of etiological agents or vectors, and the separation distance of over 2,100 feet, combine to produce a negligible chance of adverse health effects to these residents due to the facility. ..."

8.2 Potential Impact on the Environment

No adverse impacts on the environment of the area are anticipated from the proposed landfill operation. Debris barriers will be employed to reduce the potential for wind-blown dispersal of debris and litter. Some noise will be generated by the periodic operation of the motorized equipment including waste compactors, bull dozers, hydraulic backhoes and the trucks used to bring and remove waste containers. The frequency and the intensity of the equipment noise generated on-site will be quite low in all off-site directions. This is due to the buffer zone width and the operation of most equipment within a building. Except for trucks entering and leaving, all on-site noise generation will be limited to areas of the facility that are located on private property at least ¼ mile from neighboring property."

8.3 *Compatibility with the Surrounding Area Zoning*

The facility is located more than 5 miles east of the City of Laredo and the area surrounding the site within two miles extends into unincorporated Webb County. No specific approval is required from the City of Laredo or Webb County for the proposed facility. The facility is well beyond the extra-territorial jurisdiction (ETJ) of the City of Laredo. Accordingly, the City of Laredo has no authority to establish zoning, land use planning, or other restrictions on development in the area. Similarly, the facility is not within the extra-territorial jurisdiction (ETJ) of any other incorporated city. Webb County has enacted no zoning or similar restriction on land use at the facility or surrounding area.

Character of Surrounding Land Uses:

This facility location and the area extending for many miles in all direction are obviously suitable for oil and gas production and cattle ranching. This is the current and historic land use status of the property on which the facility is proposed, and has been for many years. No other residential, recreational, commercial, agricultural or industrial land uses exist for several miles in the site area.

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned. Existing residential and several commercial properties are located at Ranchitos los Lomas, about 3.5 to 4.5 miles northwest of the proposed facility. The proposed facility is more than adequately screened from view from both of these areas by a distance of about two to four miles. The intervening areas consist of heavily wooded or brushy vegetation and rolling topography.

Commercial development within one mile of the site is non-existent. Land use is exclusively devoted to the exploration and production of oil and gas and cattle ranching, both of which are commercial ventures, but are not normally considered to be described as commercial development. Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic. A second commercial type of land use near the site it the KCS railroad, whose tracks are located within one to two miles of the site.

In addition to the residential, commercial and industrial land use described above, land use within a five-mile radius of the facility is divided between agricultural (essentially all pasture land used for cattle ranching) and dispersed oil and gas well sites.

The closest population center and only concentrated residential land use within five miles of the facility is Ranchitos Las Lomas, a community or subdivision located along Hwy 59 about 3.5 to 4.5 miles northwest of the site. This is a community of about 334 persons, according to the 2000 census. Widely scattered residences are found at several ranch headquarters in the area, but these are typically separated from each other by several miles, due to the large size of the ranches, which appear to be on the order of 10,000 acres each. Typical of these is the Yugo Ranch, within which the proposed facility is located. There are an estimated two or three active residences within one mile of the facility, all located at the headquarters of Yugo Ranch. This includes two houses, one mobile home, and occasionally one travel trailer. These nearest occupied residences house ranch hands that are employed by Yugo Ranch.

Vehicle or equipment noise that will be generated by the proposed solid waste activities may not be discernible and should not be objectionable to occupants of the residences at Yugo Ranch because of the low speeds and separation distance. Prevailing winds, which tend to carry noise in its direction of movement, should carry noise away from these residences. Noise resulting from the operation of the facility will not cause any impact to the community of Ranchitos Las Lomas, located about 4 miles northwest of the facility, due primarily to the separation distance. Also, any noise that could be perceived within a limited distance from the facility will be engine noise associated with

heavy equipment. Noise generated by truck traffic travelling to and from the facility will be similar to the noise from oil-field trucks and equipment that already travel along area roads many times a day. Truck traffic noise related to accessing the facility will be indistinguishable from the noise of truck and automobile traffic along U.S. Highway 59, which bisects this community. This highway traffic consists of many trucks and tractor-trailer units traveling at up to 70 miles per hour, 24 hours per day.

Growth Trends:

The population of Webb County (2000 Census) was 193,117, and the population estimate for 2009 is 241,438, an increase of about 25 percent in 9 years. Within a one-mile radius of the facility, the long-term population is estimated to be fewer than 10 persons, and this population has no growth or growth trend. The 2000 population for Ranchitos Las Lomas was 334, which had 148 housing units and a population density is calculated to be 15.3 persons per square mile. According to www.bestplaces.net, the population of Ranchitos Las Lomas was 409 in 2011, an increase of 22 percent in 11 years. Historic population data indicates the population of Ranchitos Las Lomas has been about 300 to 400 persons for many years. Visual observation of this community shows no evidence of recent growth, such as new homes or commercial buildings.

Proximity to Residences and Other Uses:

The proximity of the facility to residences is discussed above. There are no schools, churches, cemeteries, historic structures or sites, archaeologically significant sites, or sites having exceptional aesthetic quality within one mile of the facility. The lack of some of these sites or features has been verified. According to Texas Historical Commission (THC) records, there are no archeological or historic sites in the area of the proposed facility. There are no recreational areas within one mile. There are three residences within one mile of the facility, all located at Yugo Ranch headquarters about 2,100 feet southwest of the facility, and no commercial establishments. The estimated population density within a one-mile radius of the facility is less than one person per square mile."

The Executive Director's June 28, 2013 Response to Comments (RTC) addressed the Comments on Land Use Compatibility including "Adverse Impact", "General Nuisance", and "Property Devaluation" (including Buffers) in a number of responses. The ED's relevant responses are summarized as follows:

Responses Related to the Facility Adversely Impacting & Devaluing Property

Response 9 – Land-use compatibility and growth trends.

"An applicant must provide certain information, including an available public zoning map for the facility within two miles of the facility for the county or counties in which the facility will be located; information about the character of the surrounding land uses within one mile of the proposed facility; information about growth trends within five miles of the facility with directions of major development; information on the proximity of the facility to residences,

business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; information regarding all known wells within 500 feet of the site; and any other information requested by the Executive Director.

The required information is provided in Sections 6, 7, and 8 of Part II of the Application. ... The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding land-use compatibility and growth trends."

Response 11 – Impact on property values.

ED noted that TCEQ does not have jurisdiction to consider property value impact.

Response 54 – Economic impact.

ED noted that *"TCEQ has no rules or regulations that require applicants to consider impacts on property values, taxes, local economies, or local businesses. ... The Executive Director's review of a permit application considers whether the proposed facility meets the requirements of Chapter 330 of the Commission's rules. In addition; ... the issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulation."*

Responses Related to the Facility Creating General Nuisance Conditions

Response 12 – Area and life quality.

ED noted that "issuance of a TCEQ permit would not convey any property right or become a vested right in the permittee, nor would it authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations. ... An operator of an MSW landfill remains subject to common law principles of nuisance and trespass. TCEQ rules also generally prohibit operation of an MSW landfill in a manner that causes, suffers, allows or contributes to the creation or maintenance of a nuisance. ... an applicant for an MSW landfill must provide for visual screening of deposited waste materials. However, this information is required to be submitted with the Site Operating Plan (SOP), which is required to be included in Part IV of the application."

Response 18 – Odor control.

ED noted that Applicant is not required to submit odor control procedures/designs in a partial application for a land-use compatibility determination. Odor control information is a requirement of Parts III and IV of the Application.

Response 19 – Dust control.

ED noted that Applicant is not required to submit dust control procedures/designs in a partial application for a land-use compatibility determination. Dust control information is a requirement of Parts III and IV.

Response 20 – Vectors.

ED noted that Applicant is not required to submit vector control procedures/designs in a partial application for a land-use compatibility determination. Vector control information is a requirement of Part IV of the Application.

Response 22 – Wildlife, domestic animals, birds and scavengers.

"TCEQ does not have jurisdiction to consider the impact of an MSW landfill facility on wildlife or wildlife habitat that is not protected by state or federal statute." ED has preliminarily determined that "Application complies with all applicable requirements regarding the Wildlife and Domestic Animals, Birds and scavengers issue." Procedures for controlling vectors and scavenging animals, including birds, are detailed in the requirements of Part IV of the Application.

Response 23 – Health and environmental concerns.

ED has preliminarily determined that *"that the proposed landfill complies with the Texas Solid Waste Disposal Act (TSWDA) and 30 TAC Chapter 330, which were promulgated to protect human health and the environment. Neither the TSWDA nor Chapter 330 requires health impact studies to be conducted as a part of the MSW landfill application process. Furthermore, an Environmental Impact Statement (EIS) is not required for this permit.... However, landfill performance and potential impacts on environmental media are evaluated by monitoring programs put in place to monitor groundwater quality and landfill gas migration at the facility boundary." Environmental monitoring is detailed in the requirements for Parts III and IV of the Application.*

Response 36 – Nuisances from grease and grit trap waste.

ED noted that ED noted that TCEQ regulations specifically address these issues; however, Applicant is not required to include "nuisances control measures" in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Response 38 – General prohibitions.

ED noted that Applicant is not required to submit details on how a facility will comply with "general prohibitions" in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Response 39 – Noise.

ED noted that although there is a prohibition to causing a nuisance: *"there are no operational standards for MSW facilities that specifically relate to noise control."*

Response 40 – Windblown trash, roadside trash, and debris.

ED noted that TCEQ regulations specifically address these issues; however, Applicant is not required to submit details on how a facility will address these issues in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Although buffers weren't raised by the Meitzen's as an issue, the significant buffers provided in the Application have significant relevance to the discussions of other issues as well as to affected party status. Buffers and or "separation distance" between solid waste operations and adjacent properties are the best way to deal with "nuisance-type" issues.

Parts I and II of the Permit Application comply with, and greatly exceed, the requirements of 30 TAC §330.61(c & d) for buffers. The Executive Director's notice of "Technically Complete" determination dated July 2, 2012, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(c & d).

Responses Related to the Facility Buffer Zone Requirements

Response 30 – Buffer Zones

"TCEQ rules establish minimum buffer zone requirements at 30 TAC §330.543(b)(2). These rules require that all buffer zones must be within and adjacent to the facility boundary on property owned or controlled by the owner or operator. For a new Type I landfill, the owner or operator shall establish and maintain a 125-foot buffer zone.

The 1/4 mile cited in the Application is a description of the characteristic of the facility addressing the potential impact to the environment and not the rule required buffer zone. The Applicant must provide information describing how they will meet the buffer zone requirements of 30 TAC § 330.543 when they submit Part IV of the Application. 30 TAC §330.141."

Response 46 – Potentially Affected Landowners

"Under 30 TAC § 330.59(c)(3), applications for MSW permits must include a map that is sufficient to show the location of properly owners within 1/4 mile of the proposed facility, as well as a corresponding list of property owners. Section 3.0 of the Application provides information related to the maps required by TCEQ rules. The information provided by the Applicant was obtained from the Webb County Appraisal District deed records as listed on the date that the application was filed, which is acceptable under 30 TAC § 330.59(c)(3)(B)."

Applicant's Specific Responses to Contested Case Hearing Requests by Jordan *et al*

Nine individual hearing requests appeared to be the result of a collaborative effort. Each of the nine contained similarly, if not exactly, worded technical issues as the basis for their hearing request. In many instances, even the ordering of the issues was the same. In addition, each of the nine requests appear to have either a social, family, and/or a property ownership, relationship to the Jordan Ranch. The hearing requests were received over approximately a one- year period. The requestors and the dates of their requests are as follows:

Rosemary Jordan Contreras July 20, 2011
Miguel A. Villareal July 21, 2011
Mary L. Wied July 22,2011
Robert F. Wied (Louisiana) July 22, 2011
Robert F. Wied, Jr. (New York) August 19, 2012
Richard J. and Sharyn P. Jordan July 25, 2012
Lilia Cavazos-Keller July 30, 2012
James Robert Jordan August 1, 2012
Anna Jordan Dodier August 3, 2012

For purposes of responding to these very similar nine requests for hearing, the Applicant has prepared a consolidated summary of the technical issues. This summary is provided in the Table below and identifies:

1. each individual hearing request by name and date in order of submission;
2. the specific technical issues associated with each individual request; and
3. the listing order of the technical issues in each request.

For reference, the consolidated summary of issues in the Table will be referred to as the "Jordan *et al*" issues.

"JORDAN *et al*" ISSUES
ARRANGED BY ORDER OF MOST-RECENTLY FILED REQUEST DATE

Consolidated Jordan et al Technical Issue for Hearing Request	Rosemary Jordan Contreras 7-20-2011	Miguel A. Villareal 7-21-2011	Mary L. Wied 7-22-2011	Robert F. Wied (LA) 7-22-2011	Robert F. Wied, Jr. (NY)[1] 8-19-2012	Richard J. & Sharyn P. Jordan 7-25-2012	Lilia Cavazos-Keller 7-30-2012	James Robert Jordan 8-1-2012	Anna Jordan Dodier 8-3-2012
1. Devalue property	1	1	1	1	1	1	1	1	1
2. Pollute land and underground water and stock tanks	2	2	2	2	2	2	2	2	3
3. Create unsightly conditions	3	3	3	3	7	4		3	12
4. Cause adverse conditions for wildlife and domestic animals	4	4	4	4		3	4	4	6
5. Interfere w/ usual and acceptable use of land	5	5	6	6		5	3	5	7
6. Cause traffic congestion	6	6			5		5	6	8
7. Generate unacceptable odors	7	7			3		6	7	9
8. Introduce foreign waste material	8	8						8	10
9. Introduce rodents and pests foreign to area	9	9			6		7	9	11
10. Human health hazards			5	5	4				
11. Produce air pollution									4
12. Produce noise pollution									5
13. Interfere with enjoyment of land									2

Notes: 1. Robert F. Wied, Jr. (NY) request dated August 18, 2011 is worded significantly different from the rest of the group.

The consolidated Jordan *et al* issues can be correlated to a grouping of general Technical Subjects covering comments and issues raised in hearing requests by others and in record comments provided to the ED. This correlation is provided in the following Table:

General Technical Subject for Hearing Request	Consolidated Jordan *et al* Issue #
Conformance with regional solid waste management plan	
Interior easements, pipelines and roadways	
Presence of wetlands and related location restriction	
Presence of 100-year floodplain and related location restriction	
Potential historically significant sites	
Presence of threatened and endangered species and related location restriction	4
Waste acceptance plan including waste from Mexico	8
Availability and adequacy of access roads and traffic	6
General geology and soils information including fault areas, seismic impact zones, and unstable areas and related location restrictions	
Groundwater, surface water, drainage, and water pollution control	2
Abandoned oil, gas and water wells	
Standard Air Permit and related air issues including management plans for air pollutants, landfill gas, and nuisances (odor and dust)	7, 11
Land use compatibility including "adverse impact", "general nuisance", "property devaluation" and "buffers"	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
Groundwater monitoring	
Site Operating Plan	
Presence of threatened and endangered species and related location restriction	4
Waste acceptance plan including waste from Mexico	8
Availability and adequacy of access roads and traffic	6
Groundwater, surface water, drainage, and water pollution control	2
Abandoned oil, gas and water wells	
Standard Air Permit and related air issues including management plans for air pollutants, landfill gas, and nuisances (odor and dust)	7, 11
Land use compatibility including "adverse impact", "general nuisance", "property devaluation" and "buffers"	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

Applicant's responses to each of the Jordan *et al* issues are provided under the appropriate, Technical Subject heading below:

TECHNICAL SUBJECT: PRESENCE OF THREATENED AND ENDANGERED SPECIES AND RELATED LOCATION RESTRICTION

In nine hearing requests received over an approximately a one-year period, the Jordan *et al* group had a single issue related to this subject:

The proposed facility will "*cause adverse conditions for wildlife & domestic animals.*"

The Jordan *et al* general comment regarding "*adverse conditions for wildlife*" does not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Jordan *et al* comment, found in Parts I and II of the Application regarding Threatened and Endangered Species:

Parts I and II are clear on the subject of threatened and endangered species and demonstrates compliance with applicable regulations. Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(n) (endangered or threatened species) and 30 TAC §330.551 (endangered or threatened species). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(n) and 30 TAC §330.551.

Parts I and II of the Permit Application provide adequate information on Threatened & Endangered Species and the associated location restriction. The submitted sections of Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 1.6, page 8, under *Threatened and Endangered Species*:

"TRC has performed an initial assessment of threatened and endangered (T&E) species at the site, and subsequently conducted a more detailed biological evaluation. These studies will assure compliance with federal and state requirements for the protection of T&E species and their habitats. These studies have been submitted to the Texas Parks and Wildlife Department (TPWD) and the U.S. Fish and Wildlife Survey (USFWS), as discussed in Section 4.0 [sic, should be Section 14.0]."

Part II, Section 14.0, pages 38, *Endangered or Threatened Species [330.61(n)]*:

"A site reconnaissance and evaluation was performed ... in 2009 to assess the potential for the facility to harbor endangered and threatened species, or to provide critical habitat for such species. ... [Applicant's] report of this assessment is presented in Part II, Attachment A.

Based on the result of this evaluation, [Applicant] has concluded that the site of the proposed facility may contain habitat or range conditions that may result in the occurrence of endangered or threatened species. By comparing the characteristics of the site to surrounding areas, it is clear that habitat and environmental conditions of the site are not significantly different from conditions for many miles surrounding the site. No unique or critical habitat conditions were observed. A biological evaluation was completed and provided to TPWD and USFWS. TPWD has responded and a copy of its response letter is contained in Attachment A. TRC awaits response from USFWS."

The Executive Director's June 28, 2013 Response to Comments (RTC) #21 addressed the comments on Threatened & Endangered Species and the associated location restriction. The ED's responses are summarized as follows:

In the first paragraph of RTC #25 beginning on page 23, the ED noted that *"an application for an MSW landfill must include information about the impact of the proposed development upon endangered or threatened species (E&TS) and their critical habitat, and the criteria for the protection of any identified E&TS. Specifically, under Part II of the application, an applicant must 'submit Endangered Species Act compliance demonstrations ... and determine whether the [proposed] facility is in the range of endangered or threatened species.' 30 TAC § 330.61(n). If the proposed facility is located in the range of endangered or threatened species the Applicant must provide a biological assessment prepared by a qualified biologist in accordance with standard procedures of the USFWS and the Texas Parks and Wildlife Department (TPWD) to determine the effect of the facility on the endangered or threatened species. 30 TAC § 330.61(n). Finally, an applicant must indicate in their SOP, which is required in Part IV of the application, how the proposed facility will be operated in conformance with any endangered or threatened species protection plan required by the commission. 30 TAC § 330.157."*

In the first full paragraph of RTC #21 beginning on page 24, the ED noted that *"Section 14 of Part II of the Application includes information about E&TS and their habitat. Attachment A to Part II of the Application includes an E&TS assessment performed by a qualified scientist. The assessment concluded that the facility may contain habitat or range of conditions that may result in the occurrence of E&TS. However, by comparing the characteristics of the facility to surrounding areas, it is clear that habitat and environmental conditions of the facility are not significantly different from conditions for many miles surrounding the facility. No unique or critical habitat conditions were observed. As documented in Attachment A to Part II of the Application, the Applicant contacted the USFWS and the TPWD regarding the possible presence of threatened and endangered species in the immediate vicinity of the site. The USFWS has not provided any concerns related to the facility project. The TPWD offered general comments and recommendations regarding migratory birds and the potential impact on the state-listed threatened Texas Tortoises and Texas Indigo Snake."*

The last paragraph on page 24 of RTC #25 concludes: *"The Executive Director has preliminarily determined that the proposals in the Application relating to protection of endangered or threatened species meet the requirements of the above referenced rules."*

TECHNICAL SUBJECT: WASTE ACCEPTANCE PLAN INCLUDING WASTE FROM MEXICO

In nine hearing requests received over an approximately a one-year period, the Jordan et al group had a single issue related to this subject:

The proposed facility will "*introduce foreign waste material.*"

The Jordan *et al* general comment regarding the introduction of *"foreign waste material"* does not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Jordan *et al* comment, found in Parts I and II of the Application regarding the Waste Acceptance Plan:

With respect to the comment by Jordan et al on this issue, Parts I and II of the Permit Application comply with the requirements of 305.45 (a)(8) (technical report) and 30 TAC §330.61(b) (waste acceptance plan). The Executive Director's notice of "Technically Complete" dated July 2, 2012, the December 12, 2011, Letter from South Texas Development Council to TCEQ, and the April 8, 2011,Texas DOT Letter from Laredo District Engineer Albert Quintanilla, P.E. are all further evidence of the Permit Application's compliance with all applicable requirements of 305.45 (a)(8) and 30 TAC §330.61(b).

Parts I and II of the Permit Application provide adequate information on Waste Acceptance Including Waste from Mexico. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the Permit Application pertinent to these comments include:

Part I, Section 1.4.1, pages 4-11 *Supplementary Technical Report [305.45 (a) (8)]:*

Under subsection 1.4.1 *General Description of the Facilities*

Pages 5-6 *Transportation Access*

"One characteristic of the site that is favorable for the development of PERC is the site's access to a relatively inexpensive bulk transportation system, a nearby railroad. The majority of the waste and recyclable materials to be brought to PERC will be hauled by rail, and this waste and material will not travel on public roads in any highly populated area in or near Laredo. ...

The main line of the Kansas City Southern Railway Co. (KCS) between the United States and Mexico passes through Yugo Ranch about two miles from the site.

The rail network of KCS and the presence of the KCS main line within two miles of the site provide a significant advantage to this facility. Railroads have re-established a prominent role in the U.S. shipping industry, particularly for long-distance and bulky or heavy commodity shipping. High diesel fuel costs in recent years redefined shipping in the U.S. High fuel costs have adversely impacted the profitability of the trucking industry and made railroads much more economical than trucks hauling heavy loads long distances."

Page 7 *National Trend for Regional Landfills and Longer Hauling Distances:*

"A third factor that supports the proposed facility is the national trend to fewer but larger landfills that serve more distant waste generators through long hauling. ... potential new landfill sites that meet all the necessary criteria, including: sufficiently large land area; suitable soil, geology, and groundwater conditions; acceptable neighboring land use; and access to economical transportation."

Pages 8-10 ***Description of Facilities and Systems***

"PERC will be designed and permitted to accept a variety of waste types. However, regulated hazardous waste and regulated radioactive wastes will not be accepted. Types of wastes that will be accepted for landfill disposal include:

Municipal solid waste,
Non-hazardous industrial waste,
Construction and demolition waste,
Coal combustion ash and pollution control sludges,
Filter cake and process sludge from industrial and municipal water and wastewater treatment plants, Non-hazardous industrial waste from maquiladora industries in Mexico, and
Event-type waste from disaster clean-ups.
Materials that will be received for processing may include:
Unsorted or mixed recyclables for processing and recovery of commodities,
Scrap tires for processing and beneficial reuse,
Electronic waste for processing and beneficial reuse, and
Grease trap and grit trap wastes for processing and potentially beneficial reuse.

Materials that will be received for deep well injection include liquids from oil and gas exploration and production under the regulatory jurisdiction of the Railroad Commission of Texas (RCT).

Waste for landfill disposal at PERC is anticipated to be between 1,000,000 and 2,000,000 tons per year (tpy) in the first few years after the landfill is permitted and constructed. This is between about 2,750 and 5,500 tons per day (tpd), based on receiving waste seven days per week. Going forward, the facility might receive a higher rate of waste, and will have ample capacity to accept larger quantities, but it is difficult to estimate what the future quantity may be. It is expected that almost all incoming waste will be received based on multi-year contracts with generating sources, which will be a combination of local governmental entities, private waste companies with local hauling contracts but no local landfill, and industries. Waste sources are not yet completely determined, as the facility will need to be much closer to being ready to operate before contracts for waste disposal can be put into effect. Consequently, the points of origin of incoming waste have not yet been determined. It is anticipated that PERC will receive solid waste generated in the City of Laredo, as that city's existing landfill is reported to have less than 10 years of remaining capacity and is not likely to be expanded. The City of Laredo landfill received 378,000 tons of solid waste in FY 2008, and waste receipts should increase over the near future as the Laredo population continues to grow. For planning purposes, it is assumed that PERC will receive approximately half of Laredo's solid waste when its landfill closes in the future, and that the amount of future waste will be about 235,000 tpy, or about 750 tpd (six days

per week basis). This waste will be brought to the site by trucks. PERC intends to offer the City of Laredo the opportunity to deliver its solid waste to a proposed transfer station that PREC would construct and operate in or near the city, to facilitate transportation of the City's waste to the facility. Additionally, municipal solid waste, construction and demolition (C&D) waste, and water and wastewater treatment sludge are expected to be between 1,250 and 4,000 tpd, and various industrial wastes are estimated to average about 750 tpd, all transported by rail. Industrial waste from the maquiladora industries in Mexico will also be rail-hauled to the site. KCS owns and operates the rail line on the International Bridge between Laredo and Nuevo Laredo, Tamaulipas.

Waste from Laredo will be trucked to the site via Hwy 359. It is anticipated that a waste transfer station will be established in the city, so that the city waste collection trucks will not need to drive to and from the facility. Instead, waste will be hauled by semi-tractor trailer units dedicated to the transfer station operation. About 30 to 35 transfer truck trips per day are anticipated to carry the 750 tpd to the site. The transfer station will be subject to obtaining a permit or registration from TCEQ. Until the permit or registration is issued, waste collection trucks would haul waste directly to the landfill.

Rail-hauled waste will be transported by several methods. The most common transportation method for the municipal solid waste will involve loading the waste into intermodal shipping containers at the waste generators' transfer stations. Once they are filled, either the containers will be directly loaded onto flat-bed rail cars if the transfer station has rail access, or they will be transported on flatbed trucks to an intermodal rail yard for loading onto rail cars. This method of shipment is commonly used for shipping a wide variety of commodities across the country and internationally, and is also used in most waste-by-rail operations. Some bulk-type industrial wastes, coal combustion waste, most municipal and industrial sludges, and many C&D waste streams may be hauled by gondola cars, provided the particular waste is not subject to odors, wind-blown release of waste, or has similar restrictions. Some generators may establish waste transfer stations that employ balers. Baled waste is readily transportable, as a baler produces a cube of highly compressed waste wrapped in wires. Baled waste is quite stable, and can be moved and stacked inside intermodal containers by conventional fork-lifts, in the same manner as many commodities. Some waste baling operations include wrapping the bale in polyethylene film which seals in odors and any liquids that might be present, and keeps out rainwater and insects, making shipping the waste to the landfill very secure and unobjectionable.

Initially, PERC may receive waste in intermodal shipping containers at the new KCS container facility east of Laredo. If this option is employed, the intermodal containers with waste will be off-loaded from rail cars to flatbed tractor trailers that will be driven to the landfill. As the volume of waste received increases over time, PERC will construct a rail siding along the KCS main line on Yugo Ranch. The facility will employ a container moving equipment to off-load the intermodal containers from rail cars to flatbed tractor-trailer units which will haul the containers to the working face area of the landfill. A long boom crane with a container lifting mechanism will remove each container from the truck and place it near the working face, where a worker will unseal and open the doors. The crane operator will then tip the container to dump the waste into the working face, where the waste will be compacted into the landfill. The crane operator will remove the container for cleaning, and then replace the empty container on the

truck bed so it can be returned to the rail car and eventually returned to a waste generator for re-use. As waste volume increases, a rail spur may be constructed into the landfill area to eliminate the step of off-loading containers onto flat-bed trailers. Also, if the disposal market offers sufficient opportunity for accepting waste in gondola cars, a rail car tipper will be added to the rail siding or spur. Car tippers are commonly used to unload coal at power plants, and are also used for waste transfer at waste-by-rail landfill sites, such as at the ECDC landfill near East Carbon, Utah. . . .

Ancillary facilities proposed for PERC may include a processing facility for recyclable materials, often called a clean materials recovery facility or "clean MRF. This facility will function to separate and recover all re-usable or recyclable components that have economic value from their respective source streams. The source stream for the clean MRF will be materials collected in curbside recycling programs and citizen drop-off centers offered in most cities. ... The site's rail access will provide economical transport of the incoming recyclables and shipment of the recovered commodities to their markets. Unrecoverable materials, or materials that have no use or value as recycled commodities will be landfilled. In addition, it is proposed that grease and grit wastes from the Laredo area will be processed to reduce the water content and then landfilled, with the expectation that recovered grease may used for energy recovery in the form of methane gas production, depending on volumes and the availability of suitable equipment or technology. Landfill gas recovery will only occur after a future registration through TCEQ to authorize this activity.

PERC will seek a permit from the Railroad Commission of Texas (RRC) to construct and operate a Class 2 underground injection well at the site. This type of injection well is limited to the injection of liquids originating in oil and gas exploration and production, which basically is limited to condensate, produced water and brine. ... Discussion of this aspect of PERC is included here in the interests of providing a complete picture of the total anticipated development of the site. The Class 2 well, or a separate Class 5 well may also be used for the disposal by underground injection of shallow groundwater produced during the construction and initial operation of the landfill."

Part I, Section 1.4.1, pages 11- 12 ***Supplementary Technical Report [305.45 (a)(8)]*:**

Under subsection 1.4.2 ***Volumes, Rates and Characteristics of Waste***

"Types of wastes that will be accepted for landfill disposal, along with their volume or rate include:

Municipal solid waste by rail – estimated to be between 1,250 and 4,000 tpd,
Municipal solid waste by truck – estimated to be 750 tpd,
Non-hazardous industrial waste – estimated to be 750 tpd,
Construction and demolition waste – included with municipal solid waste,
Coal combustion ash and pollution control sludges – included with industrial waste,
Filter cake and process sludge from industrial and municipal water and wastewater treatment plants – included with municipal solid waste,
Non-hazardous industrial waste from maquiladora industries in Mexico – included

with industrial waste, and

Event-type waste from disaster clean-ups – varies from none to occasionally up to 2,000 tpd.

The types of materials that will be received for processing, along with their volume or rate, may include:

Unsorted or mixed recyclables for processing and recovery of commodities – up to 500 tpd, and grease trap and grit trap wastes for processing and beneficial reuse – up to 50,000 gallons per day.

The characteristics of these wastes and materials are provided in the definitions found at 30 TAC §330.3 (1) through (181). No regulated hazardous wastes will be accepted. Special wastes as defined by 30 TAC §330.3 (148) and Class 2 and Class 3 industrial wastes will be accepted, except for any such wastes that cannot be effectively processed, handled or disposed at this facility. Class 1 non-hazardous wastes will also be accepted. Class I Industrial Waste amounts will not exceed 20 percent of the total amount of all other waste accepted for disposal during the current or previous year.

Materials the will be received for deep well injection include liquids from oil and gas exploration and production under the regulatory jurisdiction of the RRC.

Waste for landfill disposal at PERC is anticipated to be between 1,000,000 and 2,000,000 tons per year (tpy) in the first few years after the landfill is permitted and constructed. This is between about 2,750 and 5,500 tons per day (tpd), based on receiving waste seven days per week. The facility expects to receive a higher rate of waste, and will have ample capacity to accept larger quantities. The landfill has a total disposal capacity currently estimated to be about 300-350,000,000 tons, and have a capacity to receive and dispose of as much as 10,000 tpd.

The above volumes and rates are estimates, and it should be understood that it is difficult to accurately estimate what the future volumes and rates of waste receipts may be. Almost all incoming waste will be received based on multi-year contracts with various waste generators, which will be a combination of local governmental entities, private waste companies with local hauling contracts but no local landfill, and industries."

Part II, Section 2.0, pages 10 – 14 ***Waste Acceptance Plan [330.61 (b)]:***

Under subsection 2.1, pages 10-12 ***General***

2.1.1 ***Type of Facility and Wastes to be Accepted***

"The facility will be a Type I municipal solid waste landfill, with several additional waste management units. As a Type I landfill, the facility will be designed for and will accept certain types of non-hazardous industrial wastes that are compatible with landfill disposal, and may

accept liquid industrial wastes in the future. Waste management units for liquid industrial wastes may include solidification (prior to landfill disposal) or underground injection by means of a Class 1 injection well. Design considerations will be made to ensure that storm water and wastewater management are in compliance with TCEQ regulations. All contaminated liquids resulting from the operation of the facility will be disposed of in a manner that will not cause surface water or groundwater pollution. Grease trap and grit trap wastes will be accepted for processing. Processing of recyclables, such as those collected by residential curbside collection programs, may be provided. This process will seek to recover all recyclable commodities that have a market or reuse value, coupled with landfill disposal of non-recyclable residuals.

2.1.2 *General Prohibitions*

The following wastes will not be accepted for landfill disposal at this facility:

(1) Lead acid storage batteries.
(2) Do-it-yourself used motor vehicle oil
(3) Used oil filters from internal combustion engines.
(4) Whole used or scrap tires, unless processed prior to disposal in a manner acceptable to the executive director.
(5) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC).
(6) Liquid waste, except as allowed in 30 TAC §330.177 (relating to Leachate and Gas Condensate Recirculation), and/or except household liquid waste as allowed by30 TAC §330.15(e)(6) will not be accepted for disposal in any MSW landfill unit.
(7) Regulated hazardous waste as defined in 30 TAC §330.3.
(8) Polychlorinated biphenyls (PCB) wastes, as defined under 40 Code of Federal Regulations Part 761, unless authorized by the United States Environmental Protection Agency and the MSW permit.
(9) Radioactive materials as defined in 30 TAC Chapter 336 (relating to Radioactive Substance Rules), except as authorized in Chapter 336 or that are subject to an exemption of the Department of State Health Services.

2.1.3 *Management of Industrial and Special Wastes*

The facility will accept certain Class 1 non-hazardous, Class 2 and Class 3 industrial wastes, as well as many special wastes that are regulated as municipal solid waste (MSW). Only those Class 1 non-hazardous wastes that are allowed to be disposed into Type I MSW landfills in restricted locations will be accepted, with the understanding that the facility may in the future provide on-site stabilization or solidification of certain types of industrial sludge to render these wastes suitable for landfill disposal. Grease and grit trap wastes will be accepted for processing from commercial sources (restaurants, fast food facilities, car wash and vehicle maintenance facilities), industrial sources (food processing plants, manufacturing plants) and institutional sources (hospitals, schools, prisons). Class I Industrial Waste amounts will not exceed 20 percent of the total amount of all waste accepted for disposal. Special design considerations will be made in accordance with 30 TAC §330.173 to properly manage any Class I waste that is proposed to be accepted for disposal at the landfill. Before accepting wastes that require stabilization, the facility will obtain a permit modification or amendment to add an on-site

solidification facility. Special wastes will be accepted only to the extent that any given category or type of special waste can be properly managed by the facility and/or readily disposed into the landfill.

Class I Industrial Waste will be disposed only in landfill cells lined with the industrial waste default design composite liner. The upper component shall consist of a minimum 30-mil (0.75 mm) flexible membrane liner and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10-7 cm/sec. Flexible membrane liner components consisting of high density polyethylene shall be at least 60-mil thick. The flexible membrane liner component shall be installed in direct and uniform contact with the compacted soil component. Class I Industrial Waste cells shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

Under subsection 2.2, page 12 ***Sources and Characteristics of Waste***

"The proposed facility will be a comprehensive waste treatment and disposal facility that serves municipal and industrial customers by means of truck and rail transportation. Municipal solid wastes transported by truck are expected to originate in Webb and nearby counties. The use of tractor-trailers loaded at transfer stations could extend the service area to more distant areas of South Texas such as Corpus Christi and San Antonio. Grease trap and grit trap wastes processed at this facility are expected to be generated in the same service area. Industrial wastes are expected to be generated from this service area plus the industries in the Houston-Beaumont region. Wastes transported by rail can be economically shipped from greater distances, because the transportation cost per ton-mile is much less by rail than by truck. In regions of the country where the cost of landfill disposal is relatively high and landfills are some distance away and served by trucks, the cost of solid waste disposal by rail-hauling to this facility could be less. Thus, the service area for rail-hauled waste may essentially be unlimited.

Sources of non-industrial waste that are intended to be managed at the proposed facility include local governmental entities (cities, towns, waste management districts or authorities, and counties), state institutions, federal agencies that generate waste from disaster response, commercial solid waste collection companies, and similar generators of municipal solid waste. Wastes to be received other than industrial waste can be characterized as garbage, rubbish, ashes, street sweepings, incidental dead animals, and non-recyclable residuals following the removal of recyclables from source-separated recyclable materials. Solids resulting from processing grease and grit trap wastes may also be disposed in the landfill.

A main line of the Kansas City Southern Railroad (KCS) passes within about two miles of the landfill facility and is accessible by all-weather roads on private property. Rail service to the site can be accomplished without having to transport waste over public roads. However, in the initial period of operation, waste may be transported in sealed, steel containers through the KCS intermodal shipping yard in Laredo.

KCS is an international railroad company with extensive track mileage and service in Mexico. The facility intends to provide waste disposal services to industrial generators in

Mexico. Both the maquiladora industries along the U.S. border and other industries in Mexico will be served by the facility."

Under subsection 2.3, page 13-14 ***Quantity of Waste***

Estimated Maximum Annual Waste Acceptance Rate

"The facility estimates that it will receive the following maximum annual quantities of waste for landfill disposal during the first five years of its operation, and the population equivalent represented by these quantities:

Year 1 – 1,000,000 tons (1.1 million)

Year 2 – 1,200,000 tons (1.3 million)

Year 3 – 1,400,000 tons (1.6 million)

Year 4 – 1,600,000 tons (1.75 million)

Year 5 – 1,800,000 tons (2.0 million)

It must be noted that these figures are estimates only at this time, and should not be considered either as a firm commitment of quantities to be received or as a limitation on the amount of waste to be received in any of the years shown. The actual quantities to be received are expected to be determined by contracts the owner or operator anticipates securing from waste generators after the facility is closer to being in operation. The facility will be constructed to have sufficient processing and disposal capacity available and sufficient numbers of personnel and equipment, to properly manage the waste streams that are brought to the facility.

The grease and grit trap (G&G) waste processing facility is expected to receive a maximum of 30,000 gallons per day in the first year of operation. The maximum and average lengths of time this waste will remain at the facility prior to disposal, are summarized in the following table. G&G waste will typically be delivered in commercial vacuum trucks and off-loaded into a series of storage tanks. This waste will be transferred to mixing tanks for processing, where treatment chemicals (typically polymers and flocculating agents) and possibly compressed air will be added. Following the reaction time in the mixing tanks, the G&G waste will be transferred to separation tanks, where the grease will float and the grit will settle. Grease may be shipped off-site for processing for energy recovery or dewatered on-site and landfilled. Grease decomposes to produce landfill gas. Grit will be dewatered and landfilled. Remaining water will be managed as contaminated water and treated on site by solar evaporation or solidification (in accordance with TCEQ rules). This water may be hauled off-site for disposal at a wastewater treatment plant under authorization of the plant owner. All aspects of the management of G&G waste will be in accordance with TCEQ rules (and U.S. EPA rules if offsite disposal is employed).

GREASE AND GRIT TRAP WASTE

Year after	*Maximum Receipts,*	*Maximum Receipts,*	*Maximum Storage,*	*Average Storage,*

opening	*gallons per day*	*gallons per year*	*days*	*days*
1	*30,000*	*10,800,000*	*5*	*3*
2	*33,000*	*11,900,000*	*5*	*3*
3	*36,000*	*13,000,000*	*5*	*3*
4	*39,000*	*14,000,000*	*5*	*3*
5	*42,000*	*15,100,000*	*5*	*3*

The maximum amount of grease and grit trap waste to be stored, or total storage capacity, will be 50,000 gallons. The proposed maximum daily waste acceptance rate is 50,000 gallons per day."

Part II, Section 9.0, pages 26-27 ***Transportation [330.61(i)]:***

"Vehicular traffic associated with the proposed landfill will primarily approach and leave the general area of the facility on State Highway 359, a two lane asphalt-paved road with paved shoulders. Between SH 359 and the site, traffic will travel about 5 miles on Jordan Road, which is a Webb County road, to within about two miles of the site. There is no posted vehicle weight limitation on Jordan Road. The final road leading into the site is an all-weather surfaced private road on Yugo Ranch.

Webb County was given information about the proposed Pescadito Environmental Resource Center, and has expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez stating the county's support is presented in Part II, Attachment E.

Existing and future estimated traffic volumes on SH 359 were not studied in connection with this application. SH 359 is estimated to be a minimum of 5.9 miles from the proposed facility. A review of publicly-available data on Webb County traffic did not produce existing traffic counts or future traffic projections for Jordan Road, which is about 1.1 mile from the closest portion of the proposed facility.

At the initial expected rate of 1,000,000 tons per year (tpy), the expected volume of traffic associated with the proposed landfill is expected to be approximately 260 trips per day (130 vehicles entering and leaving, including 10 passenger vehicles and 120 trucks). Ultimately for 2,000,000 tpy, the facility traffic is expected to be 520 trips per day (260 vehicles entering and leaving, including 20 passenger vehicles and 240 trucks). At this ultimate volume, truck traffic will average about 10 vehicles per hour or one every 6 minutes. This volume of site-related traffic will have no significant adverse impact on the capacity of SH 359. Because of the relatively low volume of site traffic, along with the favorable geometry, reduced speed limit and long sight distance, no turning or storage lanes would be needed to safely accommodate the proposed facility.

The applicant proposes that all site-related traffic will approach the site from the south, via SH 359 and Jordan Road.

TxDOT was provided information about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintanilla, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

TRC obtained traffic count data from TxDOT for a location on State Highway 359 (SH 359) approximately 3 miles east of Loop 20. This is the location closest to the intersection of SH 359 and Jordon Road for which traffic count data was available. For the five-year period from 1995 through 1999, the average daily traffic count was 6,080 vehicles per day. The average daily traffic count at this location in 2009 was 8,800 vehicles per day. This is an increase of 2,720 vehicles per day or about 45 percent over an average period of 12 years. Assuming a similar increase will occur over 12-year periods in the future, the 2021 average daily traffic will be 12,760 vehicles per day and the 2033 average daily traffic will be 18,500 vehicles per day. The anticipated site related traffic will not significantly impact the estimated future traffic conditions. This conclusion is shared by TxDOT's District Engineer (see Attachment B, Part II)...."

Part II, Section 16.0, page 40, *Council of Governments and Local Government Review [330.61 (p)]:*

"Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E).

Also, information letters about the proposed project were submitted to Webb County and the City of Laredo, and review letters are being requested from each entity regarding compliance with any local solid waste plans for their jurisdictions (see Part II, Attachment E).

Information about the Pescadito Environmental Resource Center was presented to Webb County Commissioners Court. The Webb County Judge and all four County Commissioners expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez affirms the support of Webb County (see Part II, Attachment E)."

Part II, Attachment E *Local Agency Coordination:*

December 12, 2011 Letter from South Texas Development Council to TCEQ

"The application for the Pescadito Environmental Resource Center under the Texas Commission on Environmental Quality (TCEQ) MSW Permit No. 2374, for a permit Type I Municipal Solid Waste Facility to be located in Webb County, Texas, was reviewed on December 8, 2011 by the South Texas Development Council's (STDC), Regional Solid Waste Management Advisory Committee (SWAC).

The review was conducted to determine the facility's conformance with the South Texas Regional SWM Plan and general land use compatibility, as found in Chapter Four, Volume II of the South Texas Development Council Regional Solid Waste Management Plan. The SWAC has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC, Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan. Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County."

April 13, 2011 Letter from Webb County

"This letter is in support of the future development of the Pescadito Environmental Resource Center, a proposed state-of-the-art solid waste management facility in Webb County, Texas. The continued population growth and economic development of Webb County requires infrastructure to meet its future needs, including proper management of solid waste. While Webb County needs an environmentally secure landfill, we recognize that landfill disposal alone is not the answer for the future. A landfill should be employed only for those wastes that cannot be recycled or put to some beneficial re-use.

We find that the Pescadito Environmental Resource Center offers Webb County a long term solid waste management facility that will include comprehensive recycling in a location that is both environmentally well-suited and compatible with surrounding land use. Because the facility is proposed to be served by rail, it can serve a broad region without causing impacts to Webb County traffic or its residential communities. Furthermore, the facility will provide significant direct economic impacts, including long-term employment, payroll and taxes. The County of Webb supports the benefits of this proposed project."

The Executive Director's June 28, 2013 Response to Comments (RTC) #31, #33 and #34 addressed comments on the Waste Acceptance Plan including waste from Mexico. The ED's responses are summarized as follows:

Response 31 -- Oil & Gas Waste, Class 1 Industrial Non-Hazardous Waste, and Hazardous Waste:

"Section 2 of Part II of the Application indicates that the facility will not accept the following wastes for landfill disposal: hazardous wastes (other than municipal hazardous waste from conditionally exempt small quantity generators), radioactive wastes (except for certain low-level radioactive wastes as allowed in writing by the Texas Department of State Health Services), PCB wastes, and other prohibited wastes pursuant to 30 TAC § 330.15. In accordance with 30 TAC § 330.3(148), Class 1 Industrial non-hazardous wastes and waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas are classified as special wastes and may be accepted at the facility with special handling and disposal to protect human health or environment. 30 TAC § 330.171. Details on special handling and disposal procedures are not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in the complete application."

Response 33 -- Out-of-State and Foreign Wastes:

"The TCEQ does not have authority to restrict the area a landfill serves and does not have authority to consider the service area in deciding whether to issue a permit.

Concerning out-of-state industrial wastes, Section 2.2 of Part II of the Application indicates that the facility will accept industrial wastes from Mexico. All out-of-state industrial waste must be handled by the facility as special waste. For more information related to the handling of special waste, please refer to Response 31."

Response 34 -- Waste Acceptance Plan:

"Applicants for MSW permits must submit a waste acceptance plan with Part II of the application. 30 TAC § 330.61(b). The waste acceptance plan must identify the sources and characteristics of waste, provide a brief description of the general sources and generation areas contributing wastes to the facility, and estimate the maximum annual waste acceptance rate for the facility for five years. Section 2.2 of Part II of the Application adequately addresses the sources and characteristics of wastes in accordance with 30 TAC § 330.61(b). This section characterizes wastes to be accepted at the facility as follows: Class 1 non-hazardous, Class 2, and Class 3 industrial wastes, special wastes, out-of-state industrial wastes, industrial sludge, grease and grit trap wastes, liquid industrial wastes, garbage, rubbish, ashes, street sweepings, incidental dead animals, and non-recyclable residuals following the removal of recyclables from source-separated recyclable materials. This section also identifies the areas that the facility proposes to serve, as follows: municipal solid wastes transported by truck are expected to originate in Webb and nearby counties, the use of tractor-trailers loaded at transfer stations could extend the service area to more distant areas of South Texas such as Corpus Christi and San Antonio, grease trap and grit trap wastes processed at the facility are expected to be generated in the same service area, industrial wastes are expected to be generated from this service area in addition to the industries in the Houston-Beaumont region, wastes transported by rail can be economically shipped from greater distances, and waste disposal services to industrial generators in Mexico (both the maquiladora industries [Mexican Corporation which operates under a maquila program] along the U.S. border and other industries in Mexico will be served by the facility).

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the Waste Acceptance Plan."

TECHNICAL SUBJECT: AVAILABILITY AND ADEQUACY OF ACCESS ROADS AND TRAFFIC

In nine hearing requests received over an approximately a one- year period, the Jordan et al group had a single issue related to this this subject:

The proposed facility will "*cause traffic congestion.*"

The Jordan *et al* general comment regarding "traffic congestion" does not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Jordan *et al* comment, found in Parts I and II of the Application regarding access roads and traffic:

With respect to the Jordan *et al* comment on this issue, it should be noted that "access roads within one mile of the site" will be on the Yugo Ranch – owned by Rancho Viejo. At face value, the Jordan *et al* comments appear to be nothing more than a "manufactured issue." Parts I and II of the Application are abundantly clear on the subject and demonstrate compliance with applicable regulations.

Parts I and II of the Permit Application provide adequate information on access roads and traffic. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

The comments ignore the clear language from the South Texas Development Council's review of Parts I and II. The STDC (1) "has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC., Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan." and (2) "Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County." It should also be noted that receipt of such a review letter is not required by TCEQ under 30 TAC §330.61(p), i.e., "A review letter is not a prerequisite to a final determination on a permit or registration application."

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.45(a), 30 TAC §330.59(b), and 30 TAC §330.61(c & i). The Executive Director's notice of "Technically Complete" dated July 2, 2012, the December 12, 2011, Letter from South Texas Development Council to TCEQ, and the April 8, 2011, Texas DOT Letter from Laredo District Engineer Albert Quintanilla, P.E. are all further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.45(a), 30 TAC §330.59(b), and 30 TAC §330.61(c & i).

The majority of the waste and recyclable materials to be brought to PERC will be hauled by rail, and this waste and material will not travel on public roads in any highly populated area in or near Laredo.

Vehicular traffic associated with the proposed landfill will primarily approach and leave the general area of the facility on State Highway 359, a two lane asphalt-paved road with paved shoulders. Between SH 359 and the site, traffic will travel about 5 miles on Jordan Road, which

is a Webb County road, to within about two miles of the site. There is no posted vehicle weight limitation on Jordan Road. The final road leading into the site is an all-weather surfaced private road on Yugo Ranch.

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned.

The main line of the Kansas City Southern Railway Co. (KCS) between the United States and Mexico passes through Yugo Ranch about two miles landfill facility and is accessible by all-weather roads on private property. Rail service to the site can be accomplished without having to transport waste over public roads. However, in the initial period of operation, waste may be transported in sealed, steel containers through the KCS intermodal shipping yard in Laredo.

Waste from Laredo will be trucked to the site via Hwy 359. It is anticipated that a waste transfer station will be established in the city, so that the city waste collection trucks will not need to drive to and from the facility. Instead, waste will be hauled by semi-tractor trailer units dedicated to the transfer station operation. About 30 to 35 transfer truck trips per day are anticipated to carry the 750 tpd to the site.

At the initial expected rate of 1,000,000 tons per year (tpy), the expected volume of traffic associated with the proposed landfill is expected to be approximately 260 trips per day (130 vehicles entering and leaving, including 10 passenger vehicles and 120 trucks). Ultimately for 2,000,000 tpy, the facility traffic is expected to be 520 trips per day (260 vehicles entering and leaving, including 20 passenger vehicles and 240 trucks). At this ultimate volume, truck traffic will average about 10 vehicles per hour or one every 6 minutes.

Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic.

Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E).

TxDOT was provided information about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintanilla, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

Information about the Pescadito Environmental Resource Center was presented to Webb County Commissioners Court. The Webb County Judge and all four County Commissioners expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez affirms the support of Webb County (see Part II, Attachment E).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.4, pages 4-11 ***Supplementary Technical Report [305.45 (a)(8)]:***

Under subsection 1.4.1 ***General Description of the Facilities***

Pages 5-6 **Transportation Access**

"One characteristic of the site that is favorable for the development of PERC is the site's access to a relatively inexpensive bulk transportation system, a nearby railroad. The majority of the waste and recyclable materials to be brought to PERC will be hauled by rail, and this waste and material will not travel on public roads in any highly populated area in or near Laredo. The site is accessible for waste hauled by truck, as it is located about four miles from U.S. Highway 59 (Hwy 59) and about five miles from Texas Highway 359 (SH 359), and about 25 miles from Interstate 35 (I-35) in Laredo. Both highways provide suitable access to the site from Laredo, Corpus Christi (110 miles), San Antonio (130 miles), Austin (250 miles) and Houston (325 miles). The access route to the site from Laredo will be SH 359 via Jordan Road, which is an all-weather surface roadway managed by Webb County. Jordan Road "dead ends" at Yugo Ranch about 5.1 miles north of SH 359. There is no vehicle weight limits posted on this road. The access road from Hwy 59 will be used only in case of emergency, not for the routine traffic by trucks hauling solid waste. The owners of Yugo Ranch will convey an easement generally along existing all-weather ranch roads to RVWM, as necessary to ensure access to the landfill site, and RVWM will improve and maintain this road as its main access route. The existing all-weather access roadway between PERC and Hwy 59 is proposed to be maintained strictly as a secondary, emergency use only, access route into the facility. In the event that road maintenance is being performed on the primary access road, or unusual weather has disrupted access, the secondary access road could be used temporarily to keep the facility in service.

The main line of the Kansas City Southern Railway Co. (KCS) between the United States and Mexico passes through Yugo Ranch about two miles from the site. ... gives KCS access to all population and industrial centers in North America, allowing it to benefit from international trade and shipping under the North American Free Trade Agreement (NAFTA)."

Pages 8-10 ***Description of Facilities and Systems***

"PERC will be designed and permitted to accept a variety of waste types. ...

It is anticipated that PERC will receive solid waste generated in the City of Laredo, as that city's existing landfill is reported to have less than 10 years of remaining capacity and is not likely to be expanded. The City of Laredo landfill received 378,000 tons of solid waste in FY 2008, and waste receipts should increase over the near future as the Laredo population continues to grow. For planning purposes, it is assumed that PERC will receive approximately half of Laredo's solid waste when its landfill closes in the future, and that the amount of future waste will be about 235,000 tpy, or about 750 tpd (six days per week basis). This waste will be brought to the site by trucks. PERC intends to offer the City of Laredo the opportunity to deliver its solid waste to a proposed transfer station that PERC would construct and operate in or near the city, to facilitate transportation of the City's waste to the facility. Additionally, municipal solid waste, construction and demolition (C&D) waste, and water and wastewater treatment sludge are expected to be between 1,250 and 4,000 tpd, and various industrial wastes are estimated to average about 750 tpd, all transported by rail. Industrial waste from the maquiladora industries in Mexico will also be rail-hauled to the site. KCS owns and operates the rail line on the International Bridge between Laredo and Nuevo Laredo, Tamaulipas.

Waste from Laredo will be trucked to the site via Hwy 359. It is anticipated that a waste transfer station will be established in the city, so that the city waste collection trucks will not need to drive to and from the facility. Instead, waste will be hauled by semi-tractor trailer units dedicated to the transfer station operation. About 30 to 35 transfer truck trips per day are anticipated to carry the 750 tpd to the site. The transfer station will be subject to obtaining a permit or registration from TCEQ. Until the permit or registration is issued, waste collection trucks would haul waste directly to the landfill."

Part II, Section 2.0, pages 10 – 14 ***Waste Acceptance Plan [330.61 (b)]***

Under subsection 2.2, page 12 ***Sources and Characteristics of Waste***

"The proposed facility will be a comprehensive waste treatment and disposal facility that serves municipal and industrial customers by means of truck and rail transportation. Municipal solid wastes transported by truck are expected to originate in Webb and nearby counties. The use of tractor-trailers loaded at transfer stations could extend the service area to more distant areas of South Texas such as Corpus Christi and San Antonio. Grease trap and grit trap wastes processed at this facility are expected to be generated in the same service area. Industrial wastes are expected to be generated from this service area plus the industries in the Houston-Beaumont region. Wastes transported by rail can be economically shipped from greater distances, because the transportation cost per ton-mile is much less by rail than by truck. In regions of the country where the cost of landfill disposal is relatively high and landfills are some distance away and

served by trucks, the cost of solid waste disposal by rail-hauling to this facility could be less. Thus, the service area for rail-hauled waste may essentially be unlimited. ...

A main line of the Kansas City Southern Railroad (KCS) passes within about two miles of the landfill facility and is accessible by all-weather roads on private property. Rail service to the site can be accomplished without having to transport waste over public roads. However, in the initial period of operation, waste may be transported in sealed, steel containers through the KCS intermodal shipping yard in Laredo."

Part II, Section 8.0, pages 21- 25 ***Impact on Surrounding Area [330.61(h)]***
8.2 ***Potential Impact on the Environment***

"Except for trucks entering and leaving, all on-site noise generation will be limited to areas of the facility that are located on private property at least ¼ mile from neighboring property."

8.3 ***Compatibility with the Surrounding Area***

*"**Character of Surrounding Land Uses** - This facility location and the area extending for many miles in all direction are obviously suitable for oil and gas production and cattle ranching. This is the current and historic land use status of the property on which the facility is proposed, and has been for many years. No other residential, recreational, commercial, agricultural or industrial land uses exist for several miles in the site area.*

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned. ...

Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic. A second commercial type of land use near the site it the KCS railroad, whose tracks are located within one to two miles of the site.

In addition to the residential, commercial and industrial land use described above, land use within a five-mile radius of the facility is divided between agricultural (essentially all pasture land used for cattle ranching) and dispersed oil and gas well sites.

The closest population center and only concentrated residential land use within five miles of the facility is Ranchitos Las Lomas, a community or subdivision located along Hwy 59 about 3.5 to 4.5 miles northwest of the site. This is a community of about 334

persons, according to the 2000 census. Widely scattered residences are found at several ranch headquarters in the area, but these are typically separated from each other by several miles, due to the large size of the ranches, which appear to be on the order of 10,000 acres each. Typical of these is the Yugo Ranch, within which the proposed facility is located. There are an estimated two or three active residences within one mile of the facility, all located at the headquarters of Yugo Ranch. This includes two houses, one mobile home, and occasionally one travel trailer. These nearest occupied residences house ranch hands that are employed by Yugo Ranch.

Vehicle or equipment noise that will be generated by the proposed solid waste activities may not be discernible and should not be objectionable to occupants of the residences at Yugo Ranch because of the low speeds and separation distance. Prevailing winds, which tend to carry noise in its direction of movement, should carry noise away from these residences. Noise resulting from the operation of the facility will not cause any impact to the community of Ranchitos Las Lomas, located about 4 miles northwest of the facility, due primarily to the separation distance. Also, any noise that could be perceived within a limited distance from the facility will be engine noise associated with heavy equipment. Noise generated by truck traffic travelling to and from the facility will be similar to the noise from oil-field trucks and equipment that already travel along area roads many times a day. Truck traffic noise related to accessing the facility will be indistinguishable from the noise of truck and automobile traffic along U.S. Highway 59, which bisects this community. This highway traffic consists of many trucks and tractor-trailer units traveling at up to 70 miles per hour, 24 hours per day."

Part II, Section 9.0, pages 26-27 ***Transportation [330.61(i)]***

"Vehicular traffic associated with the proposed landfill will primarily approach and leave the general area of the facility on State Highway 359, a two lane asphalt-paved road with paved shoulders. Between SH 359 and the site, traffic will travel about 5 miles on Jordan Road, which is a Webb County road, to within about two miles of the site. There is no posted vehicle weight limitation on Jordan Road. The final road leading into the site is an all-weather surfaced private road on Yugo Ranch.

Webb County was given information about the proposed Pescadito Environmental Resource Center, and has expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez stating the county's support is presented in Part II, Attachment E.

Existing and future estimated traffic volumes on SH 359 were not studied in connection with this application. SH 359 is estimated to be a minimum of 5.9 miles from the proposed facility. A review of publicly-available data on Webb County traffic did not produce existing traffic counts or future traffic projections for Jordan Road, which is about 1.1 mile from the closest portion of the proposed facility.

At the initial expected rate of 1,000,000 tons per year (tpy), the expected volume of traffic associated with the proposed landfill is expected to be approximately 260 trips per day (130 vehicles entering and leaving, including 10 passenger vehicles and 120 trucks). Ultimately for 2,000,000 tpy, the facility traffic is expected to be 520 trips per day (260 vehicles entering and leaving, including 20 passenger vehicles and 240 trucks). At this ultimate volume, truck traffic will average about 10 vehicles per hour or one every 6 minutes. This volume of site-related traffic will have no significant adverse impact on the capacity of SH 359. Because of the relatively low volume of site traffic, along with the favorable geometry, reduced speed limit and long sight distance, no turning or storage lanes would be needed to safely accommodate the proposed facility.

The applicant proposes that all site-related traffic will approach the site from the south, via SH 359 and Jordan Road.

TxDOT was provided information about the proposed facility, and has concurred that there will be no adverse impacts from the proposed facility on the State highway system. A letter expressing this conclusion from Albert Quintinella, P.E., TxDOT's Laredo District Engineer, is presented in Part II, Attachment B.

TRC obtained traffic count data from TxDOT for a location on State Highway 359 (SH 359) approximately 3 miles east of Loop 20. This is the location closest to the intersection of SH 359 and Jordon Road for which traffic count data was available. For the five-year period from 1995 through 1999, the average daily traffic count was 6,080 vehicles per day. The average daily traffic count at this location in 2009 was 8,800 vehicles per day. This is an increase of 2,720 vehicles per day or about 45 percent over an average period of 12 years. Assuming a similar increase will occur over 12-year periods in the future, the 2021 average daily traffic will be 12,760 vehicles per day and the 2033 average daily traffic will be 18,500 vehicles per day. The anticipated site related traffic will not significantly impact the estimated future traffic conditions. This conclusion is shared by TxDOT's District Engineer (see Attachment B, Part II).

Documentation of coordination with the Federal Aviation Administration regarding airport location restrictions is presented in Attachment F."

Part II, Section 16.0, page 40, *Council of Governments and Local Government Review [330.61 (p)]*

"Part I and Part II of this permit application were submitted to the South Texas Development Council (STDC) for review for compliance with the regional solid waste plan. TRC completed the STDC Checklist for Review to describe the proposed PERC facility and discussed ways this facility will conform to the regional plan. STDC has determined the proposed facility conforms to the regional plan, and is compatible with land use in the area (see Part II, Attachment E).

Also, information letters about the proposed project were submitted to Webb County and the City of Laredo, and review letters are being requested from each entity

regarding compliance with any local solid waste plans for their jurisdictions (see Part II, Attachment E).

Information about the Pescadito Environmental Resource Center was presented to Webb County Commissioners Court. The Webb County Judge and all four County Commissioners expressed support for the project. A copy of a letter from Webb County Judge Danny Valdez affirms the support of Webb County (see Part II, Attachment E)."

Part II, Attachment B

Texas Department of Transportation, Laredo District, Letter Dated April 8, 2011, from District Engineer Albert Quintanilla, P.E.

"The Texas Department of Transportation (TxDOT) Laredo District has met with your client, Mr. Carlos Y. Benavides, to discuss this proposed municipal solid waste landfill. As mentioned in our discussion, the proposed site is approximately 5 miles north of State Highway 359 (SH 359) near the north end of Jordan Road.

As noted in our discussion, this proposed site does not conflict with any traffic or location restrictions of the department. As a part of TxDOT's long range plans, projected developments along SH 359 east of Laredo has been anticipated to continue in the future, thus our long range plan includes widening along SH 359 from Laredo headed east to add passing lanes in a Super Two configuration. In addition to these planned widening projects, the district will also be studying the need for dedicated left turn lanes at state and county road intersections. Thus, while a dedicated left turn lane from SH 359 to Jordan Road does not currently exist, it is a part of our long range plan.

With the need for additional municipal solid waste landfill capacity in the Webb County area in the near future, your clients proposed site may not only provide the additional capacity, it has been planned in a manner that does not appear to negatively impact traffic operations on the state highway system. If I may be of any further assistance regarding this proposed project, please contact me at (956) 712-7405."

Part II, Attachment E Local Agency Coordination

December 12, 2011 Letter from South Texas Development Council to TCEQ: *"The application for the Pescadito Environmental Resource Center under the Texas Commission on Environmental Quality (TCEQ) MSW Permit No. 2374, for a permit Type !Municipal Solid Waste Facility to be located in Webb County, Texas, was reviewed on December 8, 2011 by the South Texas Development Council's (STDC), Regional Solid Waste Management Advisory Committee (SW AC).*

The review was conducted to determine the facility's conformance with the South Texas Regional SWM Plan and general land use compatibility, as found in Chapter Four,

Volume II of the South Texas Development Council Regional Solid Waste Management Plan. The SWAC has determined that the application of Pescadito Environmental Resource Center, Rancho Viejo Waste Management, LLC, Solid Waste Disposal Facility, under TCEQ MSW Permit No. 2374, is in conformance with the South Texas Regional Solid Waste Management Plan. Furthermore, that the location of the proposed facility appears to be compatible with the general land use within the given land portion of Webb County."

The Executive Director's June 28, 2013 Response to Comments (RTC) #2 addressed the comments on access roads and traffic. The ED's responses are summarized as follows:

"TCEQ rules require applications for MSW landfill permits to provide data on proposed access roads, including availability and adequacy of roads that the owner or operator will use to access the site, volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the facility, and projections on the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility. 30 TAC § 330.61(i).

When reviewing permit applications, the Executive Director defers to Texas Department of Transportation's (TxDOT) recommendations on transportation and traffic issues regarding the traffic impacts and adequacy of state-maintained roadways, and to recommendations by local authorities on transportation and traffic issues regarding the traffic impacts and adequacy of locally-maintained roadways. The Application includes information related to the adequacy of access roads and a traffic study in Section 1.4.1 of Part I and Section 9 of Part II of the Application, as well as evidence of coordination with TxDOT and local authorities in Attachments B and E to Part II of the Application. Section 1.4.1 indicates that the majority of the waste and recycling materials to be brought to the facility will be hauled by rail and will not travel on public roads in any highly populated area in or near Laredo, Section 9.0 indicates that publicly-available data on existing and projected traffic counts for Jordan Road are not available and the facility's traffic is expected to generate approximately 120-240 trucks, which includes passenger vehicles per day. The conclusion made by TxDOT is that State Highway 359 has adequate capacity to handle the predicted volumes of site traffic associated with the facility, In addition, TxDOT's letter of April 8, 2011 in Attachment B to Part II of the Application confirms that the facility would operate in a manner that does not appear to negatively impact traffic operations on the state highway system. Section 2.2 of Part II of the Application indicates that the proposed facility will serve municipal and industrial customers by means of truck and rail transportation, Wastes transmittted by rail will minimize impact to Webb County traffic. Webb County's letter of Apri113, 2012 in Attachment E to Part II of the Application indicates that the County of Webb supports the proposed facility.

Concerning the comment on compensation for damages to private roads under private easement by other landowners, the Application does not contain information on access roads located within other private easements except the portion from the north end of Jordan Road to the facility located in Yugo Ranch. TCEQ rules require that all onsite and other access roadways be maintained by the Applicant in a clean and safe condition. Litter and any other debris must be

picked up at least daily and taken to the working face. Access roadways must be re-graded to minimize depressions, ruts, and potholes. 30 TAC § 330.153(c).

In regard to the comment that general location maps do not depict the current status of the surrounding roads, 30 TAC § 330.59(c)(2) requires that the latest revision of all maps shall be used. The Application was reviewed based on information provided by the Applicant. 30 TAC § 330.57(d) specifies that it is the responsibility of an applicant to provide the Executive Director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners.

The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding availability and adequacy of roads and traffic impact and safety."

TECHNICAL SUBJECT: GROUNDWATER, SURFACE WATER, DRAINAGE, AND WATER POLLUTION CONTROL

In nine hearing requests received over an approximately a one- year period, the Jordan et al group had a single issue related to this this subject:

The proposed facility will "*pollute land and underground water and stock tanks.*"

The Jordan *et al* general comment regarding pollution of ground water and surface water does not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Jordan *et al* comment, found in Parts I and II of the Application regarding groundwater, surface water, drainage, and water pollution control, found in Parts I and II of the Application:

Surface Water Run-Off Facts

The proposed facility is essentially at the top of the drainage (topographic) divide between the Rio Grande and Nueces River basins – the landfill is in the Rio Grande drainage.

The proposed facility is in the upper reaches of the drainage for San Juanito Creek.

Drainage from the proposed facility, i.e. "run-off", flows south-southwest across Rancho Viejo property to at least the railroad spur, with the possible exception of a small component crossing the "wedge."

On the north and east side of the proposed facility, drainage is towards the landfill, i.e., "run-on" conditions.

Note that further south and east of the proposed facility (lower Jordan Road to SH 359) land is in the Reiser Creek drainage.

Waste won't be washed onto adjacent properties.

Note that average annual rainfall for the area is well below the 25-inch cutoff TCEQ uses for an "arid exemption" and for using water-balance covers without modeling.

Groundwater and Aquifer Facts

The regionally-significant Laredo Aquifer [part of the Carrizo-Wilcox Major Aquifer] is found at depths of 1,000 feet or more below the proposed facility.

Relatively impervious clay soils predominate between the surface and the Laredo Aquifer.

The shallower Yegua-Jackson Aquifer [designated as a minor aquifer in 2002 because of use much further to the north and east] has been recently mapped south into the Webb County area; however, in the area of the landfill, water in the Yegua-Jackson is very limited in quantity and highly mineralized and generally found near the base of the Yegua, i.e top of the Laredo.

No evidence of shallow ground water usage – even for stock watering – in the area of the landfill. Windmills are used for pumping surface water from tanks.

At the time the application for Parts I and II was finalized, there were only six water wells within a five-mile radius of the facility including the Ranch Viejo (Yugo Ranch) well according to state records.

Note that a five-mile radius around the facility would encompass over 60,000 acres. Most of the wells are significantly distant from the facility.

Parts I and II of the Permit Application provide adequate information about site-specific groundwater conditions (and aquifers) and adequate data about surface water at and near the site. In addition, the Permit Application addresses water pollution issues. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(k) (groundwater and surface water). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(l).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.3, page 3, under *Permits or Construction Approvals [305.4(a)(7)]*

"National Pollutant Discharge Elimination System Program under the Clean Water Act and Waste Discharge Program under the Texas Water Code, Chapter 26 – an NOI will be submitted to TCEQ for coverage by a storm water discharge general permit,"

Part I, Section 1.4.1, pages 6-7, under *Favorable Site Conditions*:

"Soil in the upper 160 feet at the site was found to be predominantly clay, occasionally interbedded with claystone, sandstone and shale, and these soil types are believed to extend much deeper. The soils exist in nearly horizontal beds that exhibit very low vertical permeability. ...

While groundwater is encountered in thin layers of sandy or silty material within otherwise highly impermeable clay, this groundwater is essentially not usable due to its very low production potential and poor water quality. The uppermost aquifer beneath the site that is capable of producing water in potentially useful quantities to wells is the Jackson-Yegua Aquifer, which is expected to be encountered in the upper 750 feet below ground surface at the facility area. Water in this aquifer is poor to very poor in quality, due to concentrations of total dissolved solids, chloride and sulfate that exceed Federal drinking water standards. The Jackson-Yegua Aquifer is classified as a minor aquifer, because it produces relatively low yields of highly mineralized water. These water quantity and quality issues limit the usefulness of Jackson-Yegua Aquifer water for human consumption and agricultural uses such as livestock watering or crop irrigation. ... Rainfall averages about 20 inches per year ...

However, the site is situated in a mostly upland area near the top of the watershed, and existing or proposed livestock watering tanks capture and store a portion of the area's storm water runoff. As a result, the quantity of storm water runoff that will flow across the site is relatively low. Such runoff volumes can be readily contained in the perimeter drainage system that will be designed to remove the entire landfill footprint from the 100-year flood plain."

Part II, Section 1.1, page 5

1.1 Soils and Geology

"A series of 56 soil borings were completed to evaluate the characteristics of soil encountered in the upper 160 feet at the site. These soils are predominantly clays, with some interbedded sand, sandstone, and claystone or shale. Based on review of published reports and geophysical logs, these or similar soils are believed to extend to much greater depths. ... These soils have very low permeability characteristics ...

The geology of the site area is also suitable for landfill development, as the soil strata are laterally very extensive with relatively thick layers of very low permeability soils that prevent vertical migration of water. Consequently, the area geology is very protective of the quality of water in the aquifers that lie below the proposed facility."

Part II, Section 1.2, pages 5-6

1.2 Groundwater

"Groundwater was encountered beneath the site within soils of the Jackson and Yegua Groups. These soils are part of the Jackson-Yegua Aquifer, which is classified as a minor aquifer by the Texas Water Development Board (TWDB). This classification is due to the relatively low yield and marginal quality of water in the aquifer. The ground water below the site was encountered in several water-bearing zones or layers that are generally characterized by gradational changes to sandy or silty soil classifications. These water-bearing zones are generally on the order of several feet thick and are found at several depth intervals across the site. These water-bearing zones may also be found layered as a transition between two highly impermeable layers of clay soil or at the top of a relatively impermeable layer of rock-like indurate material, and may also be associated with secondary porosity in the over-consolidated clay soils. These water bearing zones exhibit the characteristics of a confined aquifer. However, the hydraulic characteristics or relative thinness of these zones severely limit their ability to produce water in potentially useful quantities. The quality of this water is very poor to unacceptable for most domestic or agricultural uses. Regional aquifers exist beneath the site, but at significant depth. The Laredo Aquifer is expected to occur at a depth of about 1,000 feet or more below the ground surface. Water in this aquifer is generally slightly saline, with total dissolved solids in the range of 1,000-2,500 milligrams per liter (mg/l), about two to five times the U.S. EPA's secondary drinking water regulation (SDWR) standard of 500 mg/l. Published reports indicate the groundwater produced by some wells contain some metals and trace elements in excess of SDWR limits. This and other deeper aquifers in south central Webb County dip towards the southeast towards the Gulf of Mexico and generally crop out in relatively narrow bands that trend northeast-southwest.

Groundwater usage in the general area of the site is very limited. Only one water well is known to exist within a one-mile radius of the facility boundary. This is the private water well that is located near the Yugo Ranch headquarters buildings and serves the general needs of the ranch. This well is located roughly 900 feet southwest of the proposed facility. The ranch well was geophysically logged as part of this study and the caliper log indicates that the well is screened in the Yegua from about 1020 feet to 1136 feet where the diameter is reduced to final log depth [1160 feet], suggesting a smaller screen or sediment trap. According to TWDB records and information developed during the preparation of this permit application, there are only 6 water wells within a five-mile radius of the facility, including this ranch well.[current records now show there are eight wells] The next closest well is about 2.5 miles northwest of the facility. Four wells are located between 4.3 and 5 miles northwest of the facility, in the community of Ranchitos Las Lomas. One of these is a well located nearly 5 miles away that is owned and operated by Webb County. This well

was intended as a public water supply well to make dispensed water available to the residents of Ranchitos Las Lomas. Water quality from this well is so poor that the majority of the water dispensed at this site is hauled by tanker trucks from the Webb County maintenance facility near U.S. Highway 59 and Loop 20 in Laredo. The source of this hauled water is the Laredo public water system. Of the total quantity of water Webb County dispenses at this location, relatively little water comes from this well, and that follows extensive treatment."

Part II, section 1.4, page 7

1.4 Rainfall, Hydrology and Storm Water Runoff

"The Texas Water Atlas (Estaville, Lawrence & Earl, Richard A., River Systems Institute at Texas State Univeristy, Texas A&M Press, 2008) provides the following site-specific hydrologic information:

Average Annual Precipitation is 22-23 inches (period 1971-2000).
Annual Potential Evapotranspiration (Priestly Taylor Method) is 76 inches.
Annual Potential Evapotranspiration (Penman Method) is 106 inches.
Annual Gross Lake Surface Evaporation is 79 inches (period 1950-1979).

The site is considered an arid location and is located at the boundary of the "Subtropical Subhumid" and "Subtropical Steppe" climates. Currently-published information documents that average annual evaporation exceeds average annual rainfall by more than 40 inches."

Part II, section 2.1.4, pages 11-12

2.1.4 Soil and Groundwater –

"The soils encountered during drilling and described in the literature are dominantly clays. While the bottom and sides of the landfill excavation could encounter thin, isolated sand/silt units with a Unified Soil Classification of "SM" or "SP," these soil units do not appear to be sufficiently thick and laterally continuous to provide a significant pathway for waste migration. In addition, most of these units will not exhibit hydraulic conductivity greater than 1 x 10-5 cm/sec. However, any effect of the sand/silt units is minimized because the average annual evaporation exceeds average annual rainfall by more than 40 inches. The nearest "regional aquifer" is located approximately 1,000 feet below the site, according to regional cross-sections, the literature, geophysical log data obtained from the ranch water well located 900 feet from the facility, and geophysical log interpretations for gas wells in the site area. The ranch water well produces water from that depth. As a consequence of the prevailing soil conditions, the aquifer is protected by many hundred feet of low-permeability, clay-rich soil."

Part II, Section 3.0, page 15

3.0 General Locations Maps [330.61 (c)]

"There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. [I believe that ANB put a well in northeast of the site] This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II."

Part II, Section 8.1, Pages 22-23, under *Groundwater:*

"The facility's geological and hydrogeological setting also provides protection of public health, as water quality in the upper aquifer at the facility is too poor to be used for human consumption. Deeper aquifers are protected from possible site-related contamination by hundreds of feet of intervening very low permeability soil intervals."

Part II, Section 8.3, Page 25, under *Compatibility with the Surrounding Area*: *Wells*

"There are no known or recorded water supply wells, either active or abandoned, within 500 feet of the proposed facility."

Part II, Section 11.1, pages 32—33, under *11.0 GROUNDWATER AND SURFACE WATER [330.61 (k)]*

11.1 Groundwater [330.61(k)(1)]

"Groundwater conditions at the site are known from a combination of on-site soil boring data and the published literature. Groundwater is localized in sandier sediments encountered, but these sediments, as expected from the nature of the depositional environment, are not necessarily continuous across the site. There appears to be enough ultimate connectivity between water bearing materials, however, to allow this shallow groundwater to approach an equilibrium, or coherent potentiometric surface across the site. Water levels range from about 550 feet [msl] in the north part of the proposed landfill footprint to about 530 feet [msl] in the south--and generally follow the area slope, and consequently the drainage as well.

The near surface sediments at the site are part of the Yegua-Jackson Aquifer, a TWDB designated Minor Aquifer, and named for the geology involved. ... Water quality tests on ground water samples from six site borings were analyzed for constituents that include the maximum contaminant levels (MCLs) as established in the national primary drinking water regulations by U.S. EPA. All these ground water samples exceeded the secondary MCLs for total dissolved solids (TDS) and chloride by orders of magnitude. ... There are six water wells within about five miles of the site. The geophysical log of the Yugo Ranch well, about 900 feet from the site, indicates clays and some sands continuing to its total depth of about 1100 feet [bgs], where it is screened in the lower part of the Yegua. This well, sampled as part of the site study, also showed TDS and chloride values

somewhat above the secondary MCLs. The site is a part of this Yegua-Jackson recharge zone and is situated on or near the contact between its elements. However, soil characteristics and groundwater chemistry at the site indicate groundwater recharge in the area is limited.

The Laredo Aquifer underlies the Yegua-Jackson. ... This aquifer is an important part of Webb County, for it is capable of producing significant quantities of freshwater, particularly for the sandier lower portion of the Laredo Formation. The Laredo Aquifer provides a portion of Laredo's water supply ..."

Part II, Section 11.2, pages 33- 34

11.2 Surface Water [330.61(k)(2)]

"There are two large surface water impoundments on the proposed PERC landfill site and several smaller impoundments. For the most part surface water flow occurs as overland flow and flow in dry washes whose course is difficult to identify on available aerial photos. ... will incorporate appropriate drainage controls into the facility design that comply with all regulations including the Texas Pollution Discharge Elimination System (TPDES) and allow obtaining appropriate TPDES permits.

Currently existing drainage patterns at the proposed permit boundary will not be significantly altered by landfill development and operation. Existing flow volumes, peak discharges, and discharge points will be maintained by the landfill design. The facility will be protected from 100-year frequency flooding to prevent the washout of solid waste. Calculations and analyses will be provided to demonstrate compliance with regulatory requirements concerning surface water drainage.

The proposed facility will operate under TPDES General Permit No. TXR050000. A signed certification to this effect is presented as Attachment H in Part II,... It will also operate in accordance with a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP will be prepared as the actual design of the landfill and related facilities is completed during the preparation of Parts III and IV of this permit application.

The facility will comply with the requirements of the TPDES storm water permitting requirements by continuous operation and monitoring of its SWPPP throughout the active life of the facility. ... A Notice of Intent (NOI) to obtain coverage under TPDES General Permit No. TXR050000 (or its successor) will be submitted to TCEQ. Filing the NOI will initiate coverage of this facility under the General Permit and is one of the criteria for compliance with the TPDES and Section 402 of the CWA. Operation of the SWPPP is the other criteria for compliance with the TPDES requirements.

Surface water conditions near the site are very similar to those at the site. Due to the generally flat surface topography and low runoff, combined with the tight, cohesive surficial soils, natural drainage systems exhibit very little erosion. Relatively small artificial dams exist in the area to create "stock tanks" for livestock watering."

The Executive Director's June 28, 2013 Response to Comments (RTC) #7 and # 28 addressed the comments on groundwater, surface water, drainage, and water pollution control in separate discussions. The ED's responses are summarized by general subject as follows:

Water Pollution Control Issues

In RTC #7, the Executive Director (ED) noted that "*The rule cited by Hurd Enterprises, 30 TAC § 330.55(b), requires that all liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution and ensure that storm water and wastewater management is in compliance with the regulations of the commission. This information is required to be included in Part III of the complete application under 30 TAC § 330.63(b)(4) (relating to water pollution control). Because this Application is a partial application for determination of land-use compatibility, only Parts I and II of the Application are reqt\ired under 30 TAC § 330.57(a). The Executive Director will assess the information required in Part III of the Application when it becomes available.*"
In RTC #24, the ED noted that "*Regarding the comment that many existing receptors in the area will be exposed to polluted storm water runoff and that the river and reservoir in the area will be impacted by the facility, the facility will be required to take all steps necessary to control and prevent the discharge of contaminated water from the facility. Should the discharge of contaminated water become necessary, the facility will be required to obtain specific written authorization from the TCEQ prior to the discharge. All water coming in contact with waste or contaminated soils will be treated as contaminated water. Run-on and runoff for the 25-year, 24-hour storm event must be controlled. Temporary diversion berms will be constructed around areas of exposed waste (unloading area) to collect and contain surface water that has come into contact with waste. Contaminated water must be managed in accordance with the TCEQ regulations.*"

Surface Water and Drainage Issues

In RTC #24, the ED noted that "*TCEQ rules at 30 TAC §§ 330.63(c), 330.303, 330.305, and 330.307 require the Applicant to provide a surface water drainage report that demonstrates that the owner or operator will design, construct, maintain and operate the facility to manage run-on and runoff during the peak discharge from at least a 25-year storm and prevent the offsite discharge of waste and contaminated storm water, ensure erosional stability of the landfill during all phases of landfill operation, closure, and post-closure care, provide structures to collect and control at least the water volume resulting from a 24-hour, 25-year storm, protect the facility from washouts, and ensure that the existing drainage pattern is not adversely altered. A detailed surface water management plan (discussions, designs, calculations, and operational considerations for the collection, control, and discharge of storm water from the facility as required by the above-referenced rules) is not required to be included in the partial application for a land-use compatibility*

determination. This information will be required and addressed in Parts III and IV of the complete application.

A typical surface water management plan will basically consist of drainage swales, downchutes, perimeter channels, detention ponds, and outlet structures. The facility must be designed to prevent discharge of pollutants into waters in the state or waters of the United States, as defined by the Texas Water Code and the Federal Clean Water Act, respectively. The Applicant will be required to obtain the appropriate Texas Pollutant Discharge Elimination System (TPDES) coverage for the proposed facility to assure that storm water discharges are in accordance with applicable regulations. Storm water runoff management system must be designed to convey the 25-year runoff from the developed landfill, consistent with TCEQ regulations, and to provide the necessary storage and outlet control to mitigate impacts to the receiving channels downstream of the facility. A demonstration that existing permitted drainage patterns will not be adversely altered must be provided in Part III of the Application.

The Applicant will also be required to inspect, restore, and repair constructed permanent stormwater systems such as channels, drainage swales, chutes, and flood control structures in the event of wash-out or failure from extreme storm events. Excessive sediment will be removed, as needed, so that the drainage structures, such as the perimeter channels and detention ponds, function as designed. ...

Regarding the comment that the Application failed to provide sufficient information about groundwater and surface water as required by 30 TAC § 330.61(k), the rule requires that the applicant provide data about the site-specific groundwater conditions and data on surface water at and near the facility. Sections 1.2 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]. Likewise, Sections 1.3, 1.4, 1.5, and 11.2 of Part II of the application adequately provides data on surface water. These sections indicate that surface water conditions at or near the proposed facility are very similar, due to the generally flat surface topography and low runoff. These sections also indicate that the swales that convey drainage across the proposed facility are so wide and shallow that they are quite inefficient at conveying runoff. As a result, relatively wide areas of the site are inundated by runoff from the 100-year rainfall event.

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination regarding the Storm water Run-On, Runoff, and Contaminated Water Discharge to River and Reservoir issue."

Groundwater Issues

In RTC #24, the ED concluded that *"Sections 1.1 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that*

data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]."

TECHNICAL SUBJECT: STANDARD AIR PERMIT AND RELATED AIR ISSUES INCLUDING MANAGEMENT PLANS FOR AIR POLLUTANTS, LANDFILL GAS, AND NUISANCES (ODOR AND DUST)

In nine hearing requests received over an approximately a one- year period, the Jordan et al group had two comments related to this this subject:

The proposed facility will:

- "g*enerate unacceptable odors*"; and
- "*produce air pollution.*"

The Jordan *et al* general comments regarding air pollution and unacceptable odors do not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Jordan *et al* comment, found in Parts I and II of the Application regarding a Standard Air Permit and related air issues including management plans for air pollutants, landfill gas, and nuisances (odor and dust):

With respect to the comments by Jordan et al, Parts I and II of the Permit Application provide adequate information on the Standard Air Permit and related air issues including management plans for air pollutants, landfill gas, and nuisances (odor and dust). The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.59 (contents of Part I of the Application) and 30 TAC §330.61 (contents of Part II of the Application). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.59 and 30 TAC §330.61.

Specific, selected citations from the permit application pertinent to this comment include:

Part II, Section 4.0, page 17

"4.0 Facility Layout Maps [330.61 (d)]:

A Facility Layout Map and an Operations Area Layout Map are provided as Figures 3 and 4 of Part II. ...

Locations of gas monitoring probes are generally shown on Figure 5. In accordance with 30 TAC §330.371(h)(2), permanent gas monitoring probes are required to monitor for subsurface migration of landfill gas. Although, 1,000-foot spacing is typical, 600-foot spacing is recommended along the southwest corner of the perimeter due to habitable structures within 3,000 feet. This spacing can be accommodated at the location shown on Figure 5."

Part II, Section 8.1, Pages 22-23, under *Air Mode*:

"Air Mode - The two nearby houses and one mobile home in the facility area are located to the southwest of the landfill, as shown on the Aerial Photograph, Figure 7. The prevailing wind direction, as shown by the Wind Rose in Figure 2, is not in this direction. In fact, Figure 2 shows that wind blows from the facility towards these two residences only about 5 percent of the time. The three factors of low incidence of wind blowing towards these residences, lack of etiological agents or vectors, and the separation distance of over 2,100 feet, combine to produce a negligible chance of adverse health effects to these residents due to the facility.

The individuals to be considered with respect to potential human health impacts due to inhalation or ingestion are employees of facility and visitors to the facility."

Part II, Section 17.0, page 35, under Air Pollution Control [330.371]

"The proposed landfill will have a design capacity greater than 2.5 million megagrams (2.76 million tons) and 2.5 million cubic meters (3.27 million cubic yards). Air emissions from the landfill facility will be controlled, to the extent necessary, to qualify for a standard permit.

The owner/operator of the landfill facility will submit a certification for the initial construction of the landfill at least 120 days prior to building or installation of any equipment or structure that may emit air contaminants. The certification will be based on the capacity of the landfill for a minimum ten-year period. The certification will include supporting documentation to demonstrate compliance with TCEQ air permitting requirements and any other applicable federal and state requirements and at a minimum will include the following:

(1) The basis and quantification of emission estimates;
(2) Sufficient information to demonstrate that the facility will comply with all applicable TCEQ air permitting requirements; and
(3) A description of any equipment and related processes."

The Executive Director's June 28, 2013 Response to Comments (RTC) #17 Addressed the Comment on Standard Air Permit. The ED's responses are summarized as follows:

In the first paragraph of RTC #17, the ED first noted that *"emissions from MSW facilities are subject to applicable air quality requirements, separate and apart from MSW permits. Air*

emissions from landfills are regulated and authorized under a standard air permit, pursuant to 30 TAC, Subchapter U." The ED further noted that *"MSW permittees must claim the standard air permit by certifying compliance with Subchapter U within 120 days of initial construction of the landfill."*

In the second paragraph of RTC #17, the ED noted that *"air quality issues are generally outside the scope of review of MSW landfill applications for compliance with Chapter 330. While 30 TAC § 330.55(a) recommends that applicants consult with the TCEQ's Air Permits Division on or before the application filing date, there is no requirement in Chapter 330 that an applicant demonstrate this coordination within the MSW application."* The ED further noted that Part II, Section 17 of the Application described *"Applicant's intention to certify compliance with the standard air permit prior to construction, which is adequate for the land-use compatibility determination. Detailed management plans for air pollutants, landfill gas, and nuisances (odor and dust) are not required to be included in the partial application for a land-use compatibility determination. This information will be required and addresses in the complete application."*

TECHNICAL SUBJECT: LAND USE COMPATIBILITY INCLUDING "ADVERSE IMPACT", "GENERAL NUISANCE", "PROPERTY DEVALUATION" AND "BUFFERS"

In nine hearing requests received over an approximately a one-year period, the Jordan *et al* group had thirteen comments related to this this subject:

The proposed facility will:

- "*devalue property*";
- "*pollute land and underground water and stock tanks*";
- [create] "*unsightly conditions*";
- "cause *adverse conditions for wildlife and domestic animals*";
- "*interfere with usual and acceptable use of land*";
- "*cause traffic congestion*";
- "*generate unacceptable odors*";
- "*introduce foreign waste material*";
- "*introduce rodents and other pests foreign to area*";
- [create] "*human health hazards*";
- "*produce air pollution*";
- "*produce noise pollution*"; and
- "*interfere with enjoyment of land.*"

The Jordan *et al* general comments regarding compatible land use and adverse impact do not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Jordan *et al* comments, found in Parts I and II of the Application regarding compatible land uses, adverse impact, general nuisance, property devaluation, and buffers:

Texas law and regulations specifically prohibit the issues of concern, i.e., "nuisance" conditions. Any permitted waste management facility that creates and maintains a nuisance can lose its permit and/or be subject to legal action in state courts.

The general subject of "land use compatibility" is addressed by the entirety of Parts I and II of the Application – hence the use of the name "Land Use Only" to identify a bifurcated permit application process.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §305.45(a)(6-8), 30 TAC §330.59(b-d) and 30 TAC §330.61(a-p). The Executive Director's determination ~~notice~~ of "Technically Complete" dated July 2, 2012, and the December 12, 2011 Letter from South Texas Development Council to TCEQ, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC 305.45(a)(6-8), 30 TAC §330.59(b-d) and 30 TAC §330.61(a-p).

The actual buffer or separation distance to adjacent properties is significantly more than regulatory minimum of 125 feet because the proposed facility is located within the confines of the Yugo Ranch owned by the Applicant. Minimum buffer shown is 300 feet along the eastern half of the south side (approximately 3,000 feet of boundary) of the proposed permit boundary. The buffer around the remainder of the proposed permit boundary is over ¼ mile, i.e., 1,500 feet or greater along the east and north sides, and even greater separation distance to the west.

Parts I and II of the Permit Application provide adequate information on Buffers. Parts I and II of the Permit Application also provide adequate information on Land Use Compatibility including "Adverse Impact", "General Nuisance", "Property Devaluation" and "buffers." The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.4, page 4 ***Supplementary Technical Report [330.45(a)(8)]***

1.4.1 General Description of the Facilities

"Rancho Viejo Waste Management, LLC (RVWM) owns a 1,110 acre tract of land (site) about 20 miles east of Laredo in Webb County, Texas and proposes to establish a solid waste management facility on this site. The proposed facility is known as Pescadito Environmental Resource Center (PERC). The site is ideally located for such a facility because of the favorable soil and geological conditions, its isolation from groundwater, absence of neighbors or potentially conflicting land uses, and transportation access. The

site is located entirely within the 12,194 acre Yugo Ranch that is owned by Rancho Viejo Cattle Company, Ltd. and has been family-owned for generations, and has been used for cattle ranching and oil and gas production for many years. The owners of the Yugo Ranch support the development of PERC. They view the proposed solid waste management and landfill disposal as the next stage in land use at the site, one that is fully compatible with historic and ongoing extraction of oil and gas, as well as cattle ranching."

Part II, Section 3.0, pages 15-16, *General Location Maps [330.61 (c)]*

"The General Location Map is presented as Figure 1 in Part II. This map is used to present the following described features, to the extent they exist within the distances from the proposed facility as defined by 30 TAC 330.61(c). For clarity, certain of these features are presented elsewhere in this permit application. The prevailing wind direction with a wind rose is presented on Figure 2 of Part II.

There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II.

There are no structures and inhabitable buildings within 500 feet of the proposed facility. There are several structures and inhabitable buildings about 2,100 feet from the facility; these are shown on Figure 1 of Part II. These include one house, one mobile home, and several ranch buildings (one machine storage building and two sheds used as stables). On occasion, one travel trailer may also be temporarily parked in this area. All residents of these structures are ranch workers employed by Yugo Ranch.

There are no schools, licensed day-care facilities, churches, or cemeteries within one mile of the facility. Several man-made ponds (stock tanks) exist within one mile of the site, and these are shown on the map. There are no other residential, commercial or recreational areas within one mile of the facility, so none are shown; there also are no hospitals in this area. The nearest known airport used for commercial or general aviation is the Laredo International Airport, located more than 20 miles west of the facility."

Part II, Section 4.0, page 17 *Facility Layout Maps [330.61 (d)]*

"A Facility Layout Map and an Operations Area Layout Map are provided as Figures 3 and 4 of Part II. ...

The proposed facility is completely isolated from all land use except cattle ranching and oil and gas production, and is provided with an effective separation distance of more than one-quarter mile on three sides and 300 feet on the fourth side."

Part II, Section 8.0, pages 21-25 ***Impact on Surrounding Area [330.61 (h)]***

"8.1 Potential Impact on Human Health

The following discussion assesses potential human health impacts on cities, communities, groups of property owners and individuals. Due to demographic factors associated with this particular site, and the nature of the proposed landfill and waste processing operations and type of materials to be processed, the only potentially affected category that should be considered is individuals. This is because the site area has a very low population density, with no residential dwelling units within 500 feet of the proposed facility. Fewer than 10 persons live within a one-mile radius of the facility. The closest residential dwelling units are two structures at the Yugo Ranch headquarters about 2,100 feet southwest of the facility boundary. The next closest residential structures are at another ranch headquarters located approximately 2 miles away to the northwest.

There is no city, community, or group of property owners that are potential target receptors that might be subjected to adverse human health impacts from the proposed facility. This is because of the separation distances that will exist and because of the virtual lack of etiological agents or disease vectors that might result in such impacts. The individuals to be considered in the evaluation of health impacts include nearby residents, facility employees, and visitors. This evaluation will consider the potential modes of transmission of etiological agents or disease vectors that might impact human health. The modes are transport by air, surface water and ground water. Transmission by vectors, such as insects (particularly flies) and rodents (particularly rats and mice), are not being considered any further in this analysis because the waste storage and processing methods to be employed at this facility will prevent the propagation or reproduction of these species in or near the waste, and will essentially deny access to the waste to any existing members of these species. Basically, waste will be in closed containers until placed into the landfill, at which time the waste will be covered with additional waste or cover soil. Transmission by dermal contact or ingestion are not realistic modes because all persons who may come in direct contact with waste will be required to wear gloves and will be specifically trained to avoid dermal contact or ingestion of waste or waste materials.

8.1 ***Air Mode***

The two nearby houses and one mobile home in the facility area are located to the southwest of the landfill, as shown on the Aerial Photograph, Figure 7. The prevailing wind direction, as shown by the Wind Rose in Figure 2, is not in this direction. In fact, Figure 2 shows that wind blows from the facility towards these two residences only about 5 percent of the time. The three factors of low incidence of wind blowing towards these residences, lack of etiological agents or vectors, and the separation distance of over 2,100 feet, combine to produce a negligible chance of adverse health effects to these residents due to the facility. ..."

8.2 Potential Impact on the Environment

No adverse impacts on the environment of the area are anticipated from the proposed landfill operation. Debris barriers will be employed to reduce the potential for wind-blown dispersal of debris and litter. Some noise will be generated by the periodic operation of the motorized equipment including waste compactors, bull dozers, hydraulic backhoes and the trucks used to bring and remove waste containers. The frequency and the intensity of the equipment noise generated on-site will be quite low in all off-site directions. This is due to the buffer zone width and the operation of most equipment within a building. Except for trucks entering and leaving, all on-site noise generation will be limited to areas of the facility that are located on private property at least ¼ mile from neighboring property."

8.3 *Compatibility with the Surrounding Area Zoning*

The facility is located more than 5 miles east of the City of Laredo and the area surrounding the site within two miles extends into unincorporated Webb County. No specific approval is required from the City of Laredo or Webb County for the proposed facility. The facility is well beyond the extra-territorial jurisdiction (ETJ) of the City of Laredo. Accordingly, the City of Laredo has no authority to establish zoning, land use planning, or other restrictions on development in the area. Similarly, the facility is not within the extra-territorial jurisdiction (ETJ) of any other incorporated city. Webb County has enacted no zoning or similar restriction on land use at the facility or surrounding area.

Character of Surrounding Land Uses:

This facility location and the area extending for many miles in all direction are obviously suitable for oil and gas production and cattle ranching. This is the current and historic land use status of the property on which the facility is proposed, and has been for many years. No other residential, recreational, commercial, agricultural or industrial land uses exist for several miles in the site area.

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned. Existing residential and several commercial properties are located at Ranchitos los Lomas, about 3.5 to 4.5 miles northwest of the proposed facility. The proposed facility is more than adequately screened from view from both of these areas by a distance of about two to four miles. The intervening areas consist of heavily wooded or brushy vegetation and rolling topography.

Commercial development within one mile of the site is non-existent. Land use is exclusively devoted to the exploration and production of oil and gas and cattle ranching, both of which are commercial ventures, but are not normally considered to be described as commercial development. Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling

rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic. A second commercial type of land use near the site it the KCS railroad, whose tracks are located within one to two miles of the site.

In addition to the residential, commercial and industrial land use described above, land use within a five-mile radius of the facility is divided between agricultural (essentially all pasture land used for cattle ranching) and dispersed oil and gas well sites.

The closest population center and only concentrated residential land use within five miles of the facility is Ranchitos Las Lomas, a community or subdivision located along Hwy 59 about 3.5 to 4.5 miles northwest of the site. This is a community of about 334 persons, according to the 2000 census. Widely scattered residences are found at several ranch headquarters in the area, but these are typically separated from each other by several miles, due to the large size of the ranches, which appear to be on the order of 10,000 acres each. Typical of these is the Yugo Ranch, within which the proposed facility is located. There are an estimated two or three active residences within one mile of the facility, all located at the headquarters of Yugo Ranch. This includes two houses, one mobile home, and occasionally one travel trailer. These nearest occupied residences house ranch hands that are employed by Yugo Ranch.

Vehicle or equipment noise that will be generated by the proposed solid waste activities may not be discernible and should not be objectionable to occupants of the residences at Yugo Ranch because of the low speeds and separation distance. Prevailing winds, which tend to carry noise in its direction of movement, should carry noise away from these residences. Noise resulting from the operation of the facility will not cause any impact to the community of Ranchitos Las Lomas, located about 4 miles northwest of the facility, due primarily to the separation distance. Also, any noise that could be perceived within a limited distance from the facility will be engine noise associated with heavy equipment. Noise generated by truck traffic travelling to and from the facility will be similar to the noise from oil-field trucks and equipment that already travel along area roads many times a day. Truck traffic noise related to accessing the facility will be indistinguishable from the noise of truck and automobile traffic along U.S. Highway 59, which bisects this community. This highway traffic consists of many trucks and tractor-trailer units traveling at up to 70 miles per hour, 24 hours per day.

Growth Trends:

The population of Webb County (2000 Census) was 193,117, and the population estimate for 2009 is 241,438, an increase of about 25 percent in 9 years. Within a one-mile radius of the facility, the long-term population is estimated to be fewer than 10 persons, and this population has no growth or growth trend. The 2000 population for Ranchitos Las Lomas was 334, which had 148 housing units and a population density is calculated to be 15.3 persons per square mile. According to www.bestplaces.net, the population of

Ranchitos Las Lomas was 409 in 2011, an increase of 22 percent in 11 years. Historic population data indicates the population of Ranchitos Las Lomas has been about 300 to 400 persons for many years. Visual observation of this community shows no evidence of recent growth, such as new homes or commercial buildings.

Proximity to Residences and Other Uses:

The proximity of the facility to residences is discussed above. There are no schools, churches, cemeteries, historic structures or sites, archaeologically significant sites, or sites having exceptional aesthetic quality within one mile of the facility. The lack of some of these sites or features has been verified. According to Texas Historical Commission (THC) records, there are no archeological or historic sites in the area of the proposed facility. There are no recreational areas within one mile. There are three residences within one mile of the facility, all located at Yugo Ranch headquarters about 2,100 feet southwest of the facility, and no commercial establishments. The estimated population density within a one-mile radius of the facility is less than one person per square mile."

The Executive Director's June 28, 2013 Response to Comments (RTC) addressed the Comments on Land Use Compatibility including "Adverse Impact", "General Nuisance", and "Property Devaluation" (including Buffers) in a number of responses. The ED's relevant responses are summarized as follows:

Responses Related to the Facility Adversely Impacting & Devaluing Property

Response 9 – Land-use compatibility and growth trends.

"An applicant must provide certain information, including an available public zoning map for the facility within two miles of the facility for the county or counties in which the facility will be located; information about the character of the surrounding land uses within one mile of the proposed facility; information about growth trends within five miles of the facility with directions of major development; information on the proximity of the facility to residences, business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; information regarding all known wells within 500 feet of the site; and any other information requested by the Executive Director.

The required information is provided in Sections 6, 7, and 8 of Part II of the Application. ... The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding land-use compatibility and growth trends."

Response 11 – Impact on property values.

ED noted that TCEQ does not have jurisdiction to consider property value impact.

Response 54 – Economic impact.

ED noted that *"TCEQ has no rules or regulations that require applicants to consider impacts on property values, taxes, local economies, or local businesses. ... The Executive Director's review of a permit application considers whether the proposed facility meets the requirements of Chapter 330 of the Commission's rules. In addition; ... the issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulation."*

Responses Related to the Facility Creating General Nuisance Conditions

Response 12 – Area and life quality.

ED noted that *"issuance of a TCEQ permit would not convey any property right or become a vested right in the permittee, nor would it authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations. ... An operator of an MSW landfill remains subject to common law principles of nuisance and trespass. TCEQ rules also generally prohibit operation of an MSW landfill in a manner that causes, suffers, allows or contributes to the creation or maintenance of a nuisance. ... an applicant for an MSW landfill must provide for visual screening of deposited waste materials. However, this information is required to be submitted with the Site Operating Plan (SOP), which is required to be included in Part IV of the application."*

Response 18 – Odor control.

ED noted that Applicant is not required to submit odor control procedures/designs in a partial application for a land-use compatibility determination. Odor control information is a requirement of Parts III and IV of the Application.

Response 19 – Dust control.

ED noted that Applicant is not required to submit dust control procedures/designs in a partial application for a land-use compatibility determination. Dust control information is a requirement of Parts III and IV.

Response 20 – Vectors.

ED noted that Applicant is not required to submit vector control procedures/designs in a partial application for a land-use compatibility determination. Vector control information is a requirement of Part IV of the Application.

Response 22 – Wildlife, domestic animals, birds and scavengers.

"TCEQ does not have jurisdiction to consider the impact of an MSW landfill facility on wildlife or wildlife habitat that is not protected by state or federal statute." ED has preliminarily determined that *"Application complies with all applicable requirements regarding the Wildlife and Domestic Animals, Birds and scavengers issue."* Procedures for controlling vectors and

scavenging animals, including birds, are detailed in the requirements of Part IV of the Application.

Response 23 – Health and environmental concerns.

ED has preliminarily determined that *"that the proposed landfill complies with the Texas Solid Waste Disposal Act (TSWDA) and 30 TAC Chapter 330, which were promulgated to protect human health and the environment. Neither the TSWDA nor Chapter 330 requires health impact studies to be conducted as a part of the MSW landfill application process. Furthermore, an Environmental Impact Statement (EIS) is not required for this permit.... However, landfill performance and potential impacts on environmental media are evaluated by monitoring programs put in place to monitor groundwater quality and landfill gas migration at the facility boundary."* Environmental monitoring is detailed in the requirements for Parts III and IV of the Application.

Response 36 – Nuisances from grease and grit trap waste.

ED noted that ED noted that TCEQ regulations specifically address these issues; however, Applicant is not required to include "nuisances control measures" in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Response 38 – General prohibitions.

ED noted that Applicant is not required to submit details on how a facility will comply with "general prohibitions" in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Response 39 – Noise.

ED noted that although there is a prohibition to causing a nuisance; *"there are no operational standards for MSW facilities that specifically relate to noise control."*

Response 40 – Windblown trash, roadside trash, and debris.

ED noted that TCEQ regulations specifically address these issues; however, Applicant is not required to submit details on how a facility will address these issues in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Although buffers weren't raised by Jordan et al as an issue, the significant buffers provided in the Application have significant relevance to the discussions of other issues as well as to affected party status. Buffers and or "separation distance" between solid waste operations and adjacent properties are the best way to deal with "nuisance-type" issues.

Parts I and II of the Permit Application comply with, and greatly exceed, the requirements of 30 TAC §330.61(c & d) for buffers. The Executive Director's notice of "Technically Complete" determination dated July 2, 2012, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(c & d).

Responses Related to the Facility Buffer Zone Requirements

Response 30 – Buffer Zones

"TCEQ rules establish minimum buffer zone requirements at 30 TAC §330.543(b)(2). These rules require that all buffer zones must be within and adjacent to the facility boundary on property owned or controlled by the owner or operator. For a new Type I landfill, the owner or operator shall establish and maintain a 125-foot buffer zone.

The l/4 mile cited in the Application is a description of the characteristic of the facility addressing the potential impact to the environment and not the rule required buffer zone. The Applicant must provide information describing how they will meet the buffer zone requirements of 30 TAC § 330.543 when they submit Part IV of the Application. 30 TAC §330.141."

Response 46 – Potentially Affected Landowners

"Under 30 TAC § 330.59(c)(3), applications for MSW permits must include a map that is sufficient to show the location of properly owners within 1/4 mile of the proposed facility, as well as a corresponding list of property owners. Section 3.0 of the Application provides information related to the maps required by TCEQ rules. The information provided by the Applicant was obtained from the Webb County Appraisal District deed records as listed on the date that the application was filed, which is acceptable under 30 TAC § 330.59(c)(3)(B)."

Applicant's Specific Responses to Contested Case Hearing Request by James R. Volz

In his letter of July 18, 2011, James R. Volz ("Volz") provided five objections to the proposed permit. These issues are general complaints about potential problems, no matter how remote their possibility, and are not related to specific deficiencies in Parts I and II of the Application. All of the Volz comments would be classified as technical issues of fact. Volz's technical issues of fact can be grouped into three technical subject categories. These technical subject categories, and corresponding Volz enumerated comments, are:

1. **Presence of threatened and endangered species and related location restriction**
   Volz #4
2. **Groundwater, surface water, drainage and water pollution control**
   Volz #2
3. **Land use compatibility including "adverse impact", "general nuisance", "property devaluation" and "buffers"**
   Volz #1, #2, #3, #4, #5

Applicant's responses to each of Volz's technical issues of fact are provided under one of the technical subjects listed above.

TECHNICAL SUBJECT: PRESENCE OF THREATENED AND ENDANGERED SPECIES AND RELATED LOCATION RESTRICTION

In his letter dated July 11, 2011, Volz had a single reason for objection related to this technical subject:

[The proposed facility will cause] *"adverse conditions for wildlife and domestic animals."*

The Volz general objection regarding *"adverse conditions for wildlife"* does not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Volz comment, found in Parts I and II of the Application regarding Threatened and Endangered Species:

Parts I and II are clear on the subject of threatened and endangered species and demonstrates compliance with applicable regulations. Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(n) (endangered or threatened species) and 30 TAC §330.551 (endangered or threatened species). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(n) and 30 TAC §330.551.

Parts I and II of the Permit Application provide adequate information on Threatened & Endangered Species and the associated location restriction. The submitted sections of Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part II, Section 1.6, page 8, under *Threatened and Endangered Species*:

"TRC has performed an initial assessment of threatened and endangered (T&E) species at the site, and subsequently conducted a more detailed biological evaluation. These studies will assure compliance with federal and state requirements for the protection of T&E species and their habitats. These studies have been submitted to the Texas Parks and Wildlife Department (TPWD) and the U.S. Fish and Wildlife Survey (USFWS), as discussed in Section 4.0 [sic, should be Section 14.0]."

Part II, Section 14.0, pages 38, *Endangered or Threatened Species [330.61(n)]*:

"A site reconnaissance and evaluation was performed ... in 2009 to assess the potential for the facility to harbor endangered and threatened species, or to provide critical habitat for such species. ... [Applicant's] report of this assessment is presented in Part II, Attachment A.

Based on the result of this evaluation, [Applicant] has concluded that the site of the proposed facility may contain habitat or range conditions that may result in the occurrence of endangered or threatened species. By comparing the characteristics of the site to surrounding areas, it is clear that habitat and environmental conditions of the site are not significantly different from conditions for many miles surrounding the site. No unique or critical habitat conditions were observed. A biological evaluation was completed and provided to TPWD and USFWS. TPWD has responded and a copy of its response letter is contained in Attachment A. TRC awaits response from USFWS."

The Executive Director's June 28, 2013 Response to Comments (RTC) #21 addressed the comments on Threatened & Endangered Species and the associated location restriction. The ED's responses are summarized as follows:

In the first paragraph of RTC #25 beginning on page 23, the ED noted that *"an application for an MSW landfill must include information about the impact of the proposed development upon endangered or threatened species (E&TS) and their critical habitat, and the criteria for the protection of any identified E&TS. Specifically, under Part II of the application, an applicant must 'submit Endangered Species Act compliance demonstrations ... and determine whether the [proposed] facility is in the range of endangered or threatened species.' 30 TAC § 330.61(n). If the proposed facility is located in the range of endangered or threatened species the Applicant must provide a biological assessment prepared by a qualified biologist in accordance with standard procedures of the USFWS and the Texas Parks and Wildlife Department (TPWD) to determine the effect of the facility on the endangered or threatened species. 30 TAC § 330.61(n).*

Finally, an applicant must indicate in their SOP, which is required in Part IV of the application, how the proposed facility will be operated in conformance with any endangered or threatened species protection plan required by the commission. 30 TAC § 330.157."

In the first full paragraph of RTC #21 beginning on page 24, the ED noted that *"Section 14 of Part II of the Application includes information about E&TS and their habitat. Attachment A to Part II of the Application includes an E&TS assessment performed by a qualified scientist. The assessment concluded that the facility may contain habitat or range of conditions that may result in the occurrence of E&TS. However, by comparing the characteristics of the facility to surrounding areas, it is clear that habitat and environmental conditions of the facility are not significantly different from conditions for many miles surrounding the facility. No unique or critical habitat conditions were observed. As documented in Attachment A to Part II of the Application, the Applicant contacted the USFWS and the TPWD regarding the possible presence of threatened and endangered species in the immediate vicinity of the site. The USFWS has not provided any concerns related to the facility project. The TPWD offered general comments and recommendations regarding migratory birds and the potential impact on the state-listed threatened Texas Tortoises and Texas Indigo Snake."*

The last paragraph on page 24 of RTC #25 concludes: *"The Executive Director has preliminarily determined that the proposals in the Application relating to protection of endangered or threatened species meet the requirements of the above referenced rules."*

TECHNICAL SUBJECT: GROUNDWATER, SURFACE WATER, DRAINAGE, AND WATER POLLUTION CONTROL

In his letter dated July 11, 2011, Volz had a single reason for objection related to this technical subject:

[The proposed facility will cause] *"pollution of land and underground water"*

The Volz general objection regarding pollution of groundwater and surface water does not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Volz comment, found in Parts I and II of the Application regarding groundwater, surface water, drainage, and water pollution control, found in Parts I and II of the Application:

Surface Water Run-Off Facts

The proposed facility is essentially at the top of the drainage (topographic) divide between the Rio Grande and Nueces River basins – the landfill is in the Rio Grande drainage.

The proposed facility is in the upper reaches of the drainage for San Juanito Creek.

Drainage from the proposed facility, i.e. "run-off", flows south-southwest across Rancho Viejo property to at least the railroad spur, with the possible exception of a small component crossing the "wedge."

On the north and east side of the proposed facility, drainage is towards the landfill, i.e., "run-on" conditions.

Note that further south and east of the proposed facility (lower Jordan Road to SH 359) land is in the Reiser Creek drainage.

Waste won't be washed onto adjacent properties.

Note that average annual rainfall for the area is well below the 25-inch cutoff TCEQ uses for an "arid exemption" and for using water-balance covers without modeling.

Groundwater and Aquifer Facts

The regionally-significant Laredo Aquifer [part of the Carrizo-Wilcox Major Aquifer] is found at depths of 1,000 feet or more below the proposed facility.

Relatively impervious clay soils predominate between the surface and the Laredo Aquifer.

The shallower Yegua-Jackson Aquifer [designated as a minor aquifer in 2002 because of use much further to the north and east] has been recently mapped south into the Webb County area; however, in the area of the landfill, water in the Yegua-Jackson is very limited in quantity and highly mineralized and generally found near the base of the Yegua, i.e top of the Laredo.

No evidence of shallow ground water usage – even for stock watering – in the area of the landfill. Windmills are used for pumping surface water from tanks.

At the time the application for Parts I and II was finalized, there were only six water wells within a five-mile radius of the facility including the Ranch Viejo (Yugo Ranch) well according to state records.

Note that a five-mile radius around the facility would encompass over 60,000 acres. Most of the wells are significantly distant from the facility.

Parts I and II of the Permit Application provide adequate information about site-specific groundwater conditions (and aquifers) and adequate data about surface water at and near the site.

In addition, the Permit Application addresses water pollution issues. The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §330.61(k) (groundwater and surface water). The Executive Director's notice of "Technically Complete" determination dated July 2, 2012 is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(l).

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.3, page 3, under *Permits or Construction Approvals [305.4(a)(7)]*

"National Pollutant Discharge Elimination System Program under the Clean Water Act and Waste Discharge Program under the Texas Water Code, Chapter 26 – an NOI will be submitted to TCEQ for coverage by a storm water discharge general permit,"

Part I, Section 1.4.1, pages 6-7, under *Favorable Site Conditions*:

"Soil in the upper 160 feet at the site was found to be predominantly clay, occasionally interbedded with claystone, sandstone and shale, and these soil types are believed to extend much deeper. The soils exist in nearly horizontal beds that exhibit very low vertical permeability. ...

While groundwater is encountered in thin layers of sandy or silty material within otherwise highly impermeable clay, this groundwater is essentially not usable due to its very low production potential and poor water quality. The uppermost aquifer beneath the site that is capable of producing water in potentially useful quantities to wells is the Jackson-Yegua Aquifer, which is expected to be encountered in the upper 750 feet below ground surface at the facility area. Water in this aquifer is poor to very poor in quality, due to concentrations of total dissolved solids, chloride and sulfate that exceed Federal drinking water standards. The Jackson-Yegua Aquifer is classified as a minor aquifer, because it produces relatively low yields of highly mineralized water. These water quantity and quality issues limit the usefulness of Jackson-Yegua Aquifer water for human consumption and agricultural uses such as livestock watering or crop irrigation. ... Rainfall averages about 20 inches per year ...

However, the site is situated in a mostly upland area near the top of the watershed, and existing or proposed livestock watering tanks capture and store a portion of the area's storm water runoff. As a result, the quantity of storm water runoff that will flow across the site is relatively low. Such runoff volumes can be readily contained in the perimeter drainage system that will be designed to remove the entire landfill footprint from the 100-year flood plain."

Part II, Section 1.1, page 5

1.1 Soils and Geology

"A series of 56 soil borings were completed to evaluate the characteristics of soil encountered in the upper 160 feet at the site. These soils are predominantly clays, with some interbedded sand, sandstone, and claystone or shale. Based on review of published reports and geophysical logs, these or similar soils are believed to extend to much greater depths. ... These soils have very low permeability characteristics ...

The geology of the site area is also suitable for landfill development, as the soil strata are laterally very extensive with relatively thick layers of very low permeability soils that prevent vertical migration of water. Consequently, the area geology is very protective of the quality of water in the aquifers that lie below the proposed facility."

Part II, Section 1.2, pages 5-6

1.2 Groundwater

"Groundwater was encountered beneath the site within soils of the Jackson and Yegua Groups. These soils are part of the Jackson-Yegua Aquifer, which is classified as a minor aquifer by the Texas Water Development Board (TWDB). This classification is due to the relatively low yield and marginal quality of water in the aquifer. The ground water below the site was encountered in several water-bearing zones or layers that are generally characterized by gradational changes to sandy or silty soil classifications. These water-bearing zones are generally on the order of several feet thick and are found at several depth intervals across the site. These water-bearing zones may also be found layered as a transition between two highly impermeable layers of clay soil or at the top of a relatively impermeable layer of rock-like indurate material, and may also be associated with secondary porosity in the over-consolidated clay soils. These water bearing zones exhibit the characteristics of a confined aquifer. However, the hydraulic characteristics or relative thinness of these zones severely limit their ability to produce water in potentially useful quantities. The quality of this water is very poor to unacceptable for most domestic or agricultural uses. Regional aquifers exist beneath the site, but at significant depth. The Laredo Aquifer is expected to occur at a depth of about 1,000 feet or more below the ground surface. Water in this aquifer is generally slightly saline, with total dissolved solids in the range of 1,000-2,500 milligrams per liter (mg/l), about two to five times the U.S. EPA's secondary drinking water regulation (SDWR) standard of 500 mg/l. Published reports indicate the groundwater produced by some wells contain some metals and trace elements in excess of SDWR limits. This and other deeper aquifers in south central Webb County dip towards the southeast towards the Gulf of Mexico and generally crop out in relatively narrow bands that trend northeast-southwest.

Groundwater usage in the general area of the site is very limited. Only one water well is known to exist within a one-mile radius of the facility boundary. This is the private water well that is located near the Yugo Ranch headquarters buildings and serves the general needs of the ranch. This well is located roughly 900 feet southwest of the proposed facility. The ranch well was geophysically logged as part of this study and the caliper log indicates

that the well is screened in the Yegua from about 1020 feet to 1136 feet where the diameter is reduced to final log depth [1160 feet], suggesting a smaller screen or sediment trap. According to TWDB records and information developed during the preparation of this permit application, there are only 6 water wells within a five-mile radius of the facility, including this ranch well.[current records now show there are eight wells] The next closest well is about 2.5 miles northwest of the facility. Four wells are located between 4.3 and 5 miles northwest of the facility, in the community of Ranchitos Las Lomas. One of these is a well located nearly 5 miles away that is owned and operated by Webb County. This well was intended as a public water supply well to make dispensed water available to the residents of Ranchitos Las Lomas. Water quality from this well is so poor that the majority of the water dispensed at this site is hauled by tanker trucks from the Webb County maintenance facility near U.S. Highway 59 and Loop 20 in Laredo. The source of this hauled water is the Laredo public water system. Of the total quantity of water Webb County dispenses at this location, relatively little water comes from this well, and that follows extensive treatment."

Part II, section 1.4, page 7

1.4 Rainfall, Hydrology and Storm Water Runoff

"The Texas Water Atlas (Estaville, Lawrence & Earl, Richard A., River Systems Institute at Texas State Univeristy, Texas A&M Press, 2008) provides the following site-specific hydrologic information:

Average Annual Precipitation is 22-23 inches (period 1971-2000).
Annual Potential Evapotranspiration (Priestly Taylor Method) is 76 inches.
Annual Potential Evapotranspiration (Penman Method) is 106 inches.
Annual Gross Lake Surface Evaporation is 79 inches (period 1950-1979).

The site is considered an arid location and is located at the boundary of the "Subtropical Subhumid" and "Subtropical Steppe" climates. Currently-published information documents that average annual evaporation exceeds average annual rainfall by more than 40 inches."

Part II, section 2.1.4, pages 11-12

2.1.4 Soil and Groundwater –

"The soils encountered during drilling and described in the literature are dominantly clays. While the bottom and sides of the landfill excavation could encounter thin, isolated sand/silt units with a Unified Soil Classification of "SM" or "SP," these soil units do not appear to be sufficiently thick and laterally continuous to provide a significant pathway for waste migration. In addition, most of these units will not exhibit hydraulic conductivity greater than 1 x 10-5 cm/sec. However, any effect of the sand/silt units is minimized because the average annual evaporation exceeds average annual rainfall by more than 40 inches. The nearest "regional aquifer" is located approximately 1,000 feet below the site,

according to regional cross-sections, the literature, geophysical log data obtained from the ranch water well located 900 feet from the facility, and geophysical log interpretations for gas wells in the site area. The ranch water well produces water from that depth. As a consequence of the prevailing soil conditions, the aquifer is protected by many hundred feet of low-permeability, clay-rich soil."

Part II, Section 3.0, page 15

3.0 General Locations Maps [330.61 (c)]

"There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II."

Part II, Section 8.1, Pages 22-23, under *Groundwater:*

"The facility's geological and hydrogeological setting also provides protection of public health, as water quality in the upper aquifer at the facility is too poor to be used for human consumption. Deeper aquifers are protected from possible site-related contamination by hundreds of feet of intervening very low permeability soil intervals."

Part II, Section 8.3, Page 25, under *Compatibility with the Surrounding Area*: *Wells*

"There are no known or recorded water supply wells, either active or abandoned, within 500 feet of the proposed facility."

Part II, Section 11.1, pages 32—33, under *11.0 GROUNDWATER AND SURFACE WATER [330.61 (k)]*

11.1 Groundwater [330.61(k)(1)]

"Groundwater conditions at the site are known from a combination of on-site soil boring data and the published literature. Groundwater is localized in sandier sediments encountered, but these sediments, as expected from the nature of the depositional environment, are not necessarily continuous across the site. There appears to be enough ultimate connectivity between water bearing materials, however, to allow this shallow groundwater to approach an equilibrium, or coherent potentiometric surface across the site. Water levels range from about 550 feet [msl] in the north part of the proposed landfill footprint to about 530 feet [msl] in the south--and generally follow the area slope, and consequently the drainage as well.

The near surface sediments at the site are part of the Yegua-Jackson Aquifer, a TWDB designated Minor Aquifer, and named for the geology involved. ... Water quality tests on ground water samples from six site borings were analyzed for constituents that

include the maximum contaminant levels (MCLs) as established in the national primary drinking water regulations by U.S. EPA. All these ground water samples exceeded the secondary MCLs for total dissolved solids (TDS) and chloride by orders of magnitude. ... There are six water wells within about five miles of the site. The geophysical log of the Yugo Ranch well, about 900 feet from the site, indicates clays and some sands continuing to its total depth of about 1100 feet [bgs], where it is screened in the lower part of the Yegua. This well, sampled as part of the site study, also showed TDS and chloride values somewhat above the secondary MCLs. The site is a part of this Yegua-Jackson recharge zone and is situated on or near the contact between its elements. However, soil characteristics and groundwater chemistry at the site indicate groundwater recharge in the area is limited.

The Laredo Aquifer underlies the Yegua-Jackson. ... This aquifer is an important part of Webb County, for it is capable of producing significant quantities of freshwater, particularly for the sandier lower portion of the Laredo Formation. The Laredo Aquifer provides a portion of Laredo's water supply ..."

Part II, Section 11.2, pages 33- 34

11.2 Surface Water [330.61(k)(2)]

"There are two large surface water impoundments on the proposed PERC landfill site and several smaller impoundments. For the most part surface water flow occurs as overland flow and flow in dry washes whose course is difficult to identify on available aerial photos. ... will incorporate appropriate drainage controls into the facility design that comply with all regulations including the Texas Pollution Discharge Elimination System (TPDES) and allow obtaining appropriate TPDES permits.

Currently existing drainage patterns at the proposed permit boundary will not be significantly altered by landfill development and operation. Existing flow volumes, peak discharges, and discharge points will be maintained by the landfill design. The facility will be protected from 100-year frequency flooding to prevent the washout of solid waste. Calculations and analyses will be provided to demonstrate compliance with regulatory requirements concerning surface water drainage.

The proposed facility will operate under TPDES General Permit No. TXR050000. A signed certification to this effect is presented as Attachment H in Part II,... It will also operate in accordance with a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP will be prepared as the actual design of the landfill and related facilities is completed during the preparation of Parts III and IV of this permit application.

The facility will comply with the requirements of the TPDES storm water permitting requirements by continuous operation and monitoring of its SWPPP throughout the active life of the facility. ... A Notice of Intent (NOI) to obtain coverage under TPDES General Permit No. TXR050000 (or its successor) will be submitted to TCEQ. Filing the NOI will initiate coverage of this facility under the General Permit and is one of the criteria for

compliance with the TPDES and Section 402 of the CWA. Operation of the SWPPP is the other criteria for compliance with the TPDES requirements.

Surface water conditions near the site are very similar to those at the site. Due to the generally flat surface topography and low runoff, combined with the tight, cohesive surficial soils, natural drainage systems exhibit very little erosion. Relatively small artificial dams exist in the area to create "stock tanks" for livestock watering."

The Executive Director's June 28, 2013 Response to Comments (RTC) #7 and # 28 addressed the comments on groundwater, surface water, drainage, and water pollution control in separate discussions. The ED's responses are summarized by general subject as follows:

Water Pollution Control Issues

In RTC #7, the Executive Director (ED) noted that "*The rule cited by Hurd Enterprises, 30 TAC § 330.55(b), requires that all liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution and ensure that storm water and wastewater management is in compliance with the regulations of the commission. This information is required to be included in Part III of the complete application under 30 TAC § 330.63(b)(4) (relating to water pollution control). Because this Application is a partial application for determination of land-use compatibility, only Parts I and II of the Application are reqt\ired under 30 TAC § 330.57(a). The Executive Director will assess the information required in Part III of the Application when it becomes available.*"
In RTC #24, the ED noted that "*Regarding the comment that many existing receptors in the area will be exposed to polluted storm water runoff and that the river and reservoir in the area will be impacted by the facility, the facility will be required to take all steps necessary to control and prevent the discharge of contaminated water from the facility. Should the discharge of contaminated water become necessary, the facility will be required to obtain specific written authorization from the TCEQ prior to the discharge. All water coming in contact with waste or contaminated soils will be treated as contaminated water. Run-on and runoff for the 25-year, 24-hour storm event must be controlled. Temporary diversion berms will be constructed around areas of exposed waste (unloading area) to collect and contain surface water that has come into contact with waste. Contaminated water must be managed in accordance with the TCEQ regulations.*"

Surface Water and Drainage Issues

In RTC #24, the ED noted that "*TCEQ rules at 30 TAC §§ 330.63(c), 330.303, 330.305, and 330.307 require the Applicant to provide a surface water drainage report that demonstrates that the owner or operator will design, construct, maintain and operate the facility to manage run-on and runoff during the peak discharge from at least a 25-year storm and prevent the offsite discharge of waste and contaminated storm water, ensure*

erosional stability of the landfill during all phases of landfill operation, closure, and post-closure care, provide structures to collect and control at least the water volume resulting from a 24-hour, 25-year storm, protect the facility from washouts, and ensure that the existing drainage pattern is not adversely altered. A detailed surface water management plan (discussions, designs, calculations, and operational considerations for the collection, control, and discharge of storm water from the facility as required by the above-referenced rules) is not required to be included in the partial application for a land-use compatibility determination. This information will be required and addressed in Parts III and IV of the complete application.

A typical surface water management plan will basically consist of drainage swales, downchutes, perimeter channels, detention ponds, and outlet structures. The facility must be designed to prevent discharge of pollutants into waters in the state or waters of the United States, as defined by the Texas Water Code and the Federal Clean Water Act, respectively. The Applicant will be required to obtain the appropriate Texas Pollutant Discharge Elimination System (TPDES) coverage for the proposed facility to assure that storm water discharges are in accordance with applicable regulations. Storm water runoff management system must be designed to convey the 25-year runoff from the developed landfill, consistent with TCEQ regulations, and to provide the necessary storage and outlet control to mitigate impacts to the receiving channels downstream of the facility. A demonstration that existing permitted drainage patterns will not be adversely altered must be provided in Part III of the Application.

The Applicant will also be required to inspect, restore, and repair constructed permanent stormwater systems such as channels, drainage swales, chutes, and flood control structures in the event of wash-out or failure from extreme storm events. Excessive sediment will be removed, as needed, so that the drainage structures, such as the perimeter channels and detention ponds, function as designed. ...

Regarding the comment that the Application failed to provide sufficient information about groundwater and surface water as required by 30 TAC § 330.61(k), the rule requires that the applicant provide data about the site-specific groundwater conditions and data on surface water at and near the facility. Sections 1.2 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]. Likewise, Sections 1.3, 1.4, 1.5, and 11.2 of Part II of the application adequately provides data on surface water. These sections indicate that surface water conditions at or near the proposed facility are very similar, due to the generally flat surface topography and low runoff. These sections also indicate that the swales that convey drainage across the proposed facility are so wide and shallow that they are quite inefficient at conveying runoff. As a result, relatively wide areas of the site are inundated by runoff from the 100-year rainfall event.

The Executive Director has preliminarily determined that the Application contains sufficient information for the partial application for a land-use compatibility determination

regarding the Storm water Run-On, Runoff, and Contaminated Water Discharge to River and Reservoir issue."

Groundwater Issues

In RTC #24, the ED concluded that *"Sections 1.1 and 11.1 of Part II of the Application adequately provide groundwater conditions at the facility. It indicates that data for the groundwater conditions are known from a combination of onsite soil boring data and the published literatures [sic]."*

TECHNICAL SUBJECT: LAND USE COMPATIBILITY INCLUDING "ADVERSE IMPACT", "GENERAL NUISANCE", "PROPERTY DEVALUATION" AND "BUFFERS"

In his letter dated July 11, 2011, Volz listed five reasons for objection related to this technical subject:

- "*devaluation of property*";
- "*pollution of land and underground water*";
- "*unsightly conditions*";
- "*adverse conditions for wildlife and domestic animals*";
- "*interfere with the usual and acceptable use of land*";

The Volz general objections regarding compatible land use and adverse impact do not appear to be asserting a specific deficiency in Parts I and II as a basis for requesting a contested hearing.

Relevant facts, pertinent to the Volz comments, found in Parts I and II of the Application regarding compatible land uses, adverse impact, general nuisance, property devaluation, and buffers:

Texas law and regulations specifically prohibit the issues of concern, i.e., "nuisance" conditions. Any permitted waste management facility that creates and maintains a nuisance can lose its permit and/or be subject to legal action in state courts.

The general subject of "land use compatibility" is addressed by the entirety of Parts I and II of the Application – hence the use of the name "Land Use Only" to identify a bifurcated permit application process.

Parts I and II of the Permit Application comply with the requirements of 30 TAC §305.45(a)(6-8), 30 TAC §330.59(b-d) and 30 TAC §330.61(a-p). The Executive Director's determination ~~notice~~ of "Technically Complete" dated July 2, 2012, and the December 12, 2011 Letter from South Texas Development Council to TCEQ, is further evidence of the Permit

Application's compliance with all applicable requirements of 30 TAC 305.45(a)(6-8), 30 TAC §330.59(b-d) and 30 TAC §330.61(a-p).

The actual buffer or separation distance to adjacent properties is significantly more than regulatory minimum of 125 feet because the proposed facility is located within the confines of the Yugo Ranch owned by the Applicant. Minimum buffer shown is 300 feet along the eastern half of the south side (approximately 3,000 feet of boundary) of the proposed permit boundary. The buffer around the remainder of the proposed permit boundary is over ¼ mile, i.e., 1,500 feet or greater along the east and north sides, and even greater separation distance to the west.

Parts I and II of the Permit Application provide adequate information on Buffers. Parts I and II of the Permit Application also provide adequate information on Land Use Compatibility including "Adverse Impact", "General Nuisance", "Property Devaluation" and "buffers." The submitted Parts I and II clearly show Applicant's intent to protect human health and the environment.

Specific, selected citations from the permit application pertinent to these comments include:

Part I, Section 1.4, page 4 ***Supplementary Technical Report [330.45(a)(8)]***

1.4.1 General Description of the Facilities

"Rancho Viejo Waste Management, LLC (RVWM) owns a 1,110 acre tract of land (site) about 20 miles east of Laredo in Webb County, Texas and proposes to establish a solid waste management facility on this site. The proposed facility is known as Pescadito Environmental Resource Center (PERC). The site is ideally located for such a facility because of the favorable soil and geological conditions, its isolation from groundwater, absence of neighbors or potentially conflicting land uses, and transportation access. The site is located entirely within the 12,194 acre Yugo Ranch that is owned by Rancho Viejo Cattle Company, Ltd. and has been family-owned for generations, and has been used for cattle ranching and oil and gas production for many years. The owners of the Yugo Ranch support the development of PERC. They view the proposed solid waste management and landfill disposal as the next stage in land use at the site, one that is fully compatible with historic and ongoing extraction of oil and gas, as well as cattle ranching."

Part II, Section 3.0, pages 15-16, ***General Location Maps [330.61 (c)]***

"The General Location Map is presented as Figure 1 in Part II. This map is used to present the following described features, to the extent they exist within the distances from the proposed facility as defined by 30 TAC 330.61(c). For clarity, certain of these features are presented elsewhere in this permit application. The prevailing wind direction with a wind rose is presented on Figure 2 of Part II.

There are no water wells on the proposed site or within 500 feet of the proposed permit boundary, except for temporary piezometers and / or groundwater monitoring wells that were installed as part of the development of this permit application. There is one water well within two miles of the proposed site, located about 900 feet southwest of the site. This is the water supply well for the ranch. Its location is shown on Figure 1 in Part II.

There are no structures and inhabitable buildings within 500 feet of the proposed facility. There are several structures and inhabitable buildings about 2,100 feet from the facility; these are shown on Figure 1 of Part II. These include one house, one mobile home, and several ranch buildings (one machine storage building and two sheds used as stables). On occasion, one travel trailer may also be temporarily parked in this area. All residents of these structures are ranch workers employed by Yugo Ranch.

There are no schools, licensed day-care facilities, churches, or cemeteries within one mile of the facility. Several man-made ponds (stock tanks) exist within one mile of the site, and these are shown on the map. There are no other residential, commercial or recreational areas within one mile of the facility, so none are shown; there also are no hospitals in this area. The nearest known airport used for commercial or general aviation is the Laredo International Airport, located more than 20 miles west of the facility."

Part II, Section 4.0, page 17 ***Facility Layout Maps [330.61 (d)]***

"A Facility Layout Map and an Operations Area Layout Map are provided as Figures 3 and 4 of Part II. ...

The proposed facility is completely isolated from all land use except cattle ranching and oil and gas production, and is provided with an effective separation distance of more than one-quarter mile on three sides and 300 feet on the fourth side."

Part II, Section 8.0, pages 21-25 ***Impact on Surrounding Area [330.61 (h)]***

"8.1 ***Potential Impact on Human Health***

The following discussion assesses potential human health impacts on cities, communities, groups of property owners and individuals. Due to demographic factors associated with this particular site, and the nature of the proposed landfill and waste processing operations and type of materials to be processed, the only potentially affected category that should be considered is individuals. This is because the site area has a very low population density, with no residential dwelling units within 500 feet of the proposed facility. Fewer than 10 persons live within a one-mile radius of the facility. The closest residential dwelling units are two structures at the Yugo Ranch headquarters about 2,100 feet southwest of the facility boundary. The next closest residential structures are at another ranch headquarters located approximately 2 miles away to the northwest.

There is no city, community, or group of property owners that are potential target receptors that might be subjected to adverse human health impacts from the proposed facility. This is because of the separation distances that will exist and because of the virtual lack of etiological agents or disease vectors that might result in such impacts. The individuals to be considered in the evaluation of health impacts include nearby residents, facility employees, and visitors. This evaluation will consider the potential modes of transmission of etiological agents or disease vectors that might impact human health. The modes are transport by air, surface water and ground water. Transmission by vectors, such as insects (particularly flies) and rodents (particularly rats and mice), are not being considered any further in this analysis because the waste storage and processing methods to be employed at this facility will prevent the propagation or reproduction of these species in or near the waste, and will essentially deny access to the waste to any existing members of these species. Basically, waste will be in closed containers until placed into the landfill, at which time the waste will be covered with additional waste or cover soil. Transmission by dermal contact or ingestion are not realistic modes because all persons who may come in direct contact with waste will be required to wear gloves and will be specifically trained to avoid dermal contact or ingestion of waste or waste materials.

8.1 ***Air Mode***

The two nearby houses and one mobile home in the facility area are located to the southwest of the landfill, as shown on the Aerial Photograph, Figure 7. The prevailing wind direction, as shown by the Wind Rose in Figure 2, is not in this direction. In fact, Figure 2 shows that wind blows from the facility towards these two residences only about 5 percent of the time. The three factors of low incidence of wind blowing towards these residences, lack of etiological agents or vectors, and the separation distance of over 2,100 feet, combine to produce a negligible chance of adverse health effects to these residents due to the facility. ..."

8.2 Potential Impact on the Environment

No adverse impacts on the environment of the area are anticipated from the proposed landfill operation. Debris barriers will be employed to reduce the potential for wind-blown dispersal of debris and litter. Some noise will be generated by the periodic operation of the motorized equipment including waste compactors, bull dozers, hydraulic backhoes and the trucks used to bring and remove waste containers. The frequency and the intensity of the equipment noise generated on-site will be quite low in all off-site directions. This is due to the buffer zone width and the operation of most equipment within a building. Except for trucks entering and leaving, all on-site noise generation will be limited to areas of the facility that are located on private property at least ¼ mile from neighboring property."

8.3 ***Compatibility with the Surrounding Area Zoning***

The facility is located more than 5 miles east of the City of Laredo and the area surrounding the site within two miles extends into unincorporated Webb County. No specific approval is required from the City of Laredo or Webb County for the proposed facility. The facility is well beyond the extra-territorial jurisdiction (ETJ) of the City of Laredo. Accordingly, the City of Laredo has no authority to establish zoning, land use planning, or other restrictions on development in the area. Similarly, the facility is not within the extra-territorial jurisdiction (ETJ) of any other incorporated city. Webb County has enacted no zoning or similar restriction on land use at the facility or surrounding area.

Character of Surrounding Land Uses:

This facility location and the area extending for many miles in all direction are obviously suitable for oil and gas production and cattle ranching. This is the current and historic land use status of the property on which the facility is proposed, and has been for many years. No other residential, recreational, commercial, agricultural or industrial land uses exist for several miles in the site area.

The site is about two miles north of the north end of Jordan Road. This is the closest area to the site that is accessible to the general public, as the access road into the site from Jordan Road is privately owned. Existing residential and several commercial properties are located at Ranchitos los Lomas, about 3.5 to 4.5 miles northwest of the proposed facility. The proposed facility is more than adequately screened from view from both of these areas by a distance of about two to four miles. The intervening areas consist of heavily wooded or brushy vegetation and rolling topography.

Commercial development within one mile of the site is non-existent. Land use is exclusively devoted to the exploration and production of oil and gas and cattle ranching, both of which are commercial ventures, but are not normally considered to be described as commercial development. Oil and gas activity occurs somewhat randomly, but extensively, throughout the general area of the site. One feature of this commercial use is that it requires frequent access to well sites by large, heavy vehicles, such as well drilling rigs, work-over trucks, and tank trucks that haul produced liquids. These heavy vehicles regularly traverse the roads in the site area, and testify to the adequacy of these all-weather surfaced roads to support such truck traffic. Landfill-related traffic will employ vehicles that are similar in many respects to this existing traffic. A second commercial type of land use near the site it the KCS railroad, whose tracks are located within one to two miles of the site.

In addition to the residential, commercial and industrial land use described above, land use within a five-mile radius of the facility is divided between agricultural (essentially all pasture land used for cattle ranching) and dispersed oil and gas well sites.

The closest population center and only concentrated residential land use within five miles of the facility is Ranchitos Las Lomas, a community or subdivision located along Hwy 59 about 3.5 to 4.5 miles northwest of the site. This is a community of about 334 persons,

according to the 2000 census. Widely scattered residences are found at several ranch headquarters in the area, but these are typically separated from each other by several miles, due to the large size of the ranches, which appear to be on the order of 10,000 acres each. Typical of these is the Yugo Ranch, within which the proposed facility is located. There are an estimated two or three active residences within one mile of the facility, all located at the headquarters of Yugo Ranch. This includes two houses, one mobile home, and occasionally one travel trailer. These nearest occupied residences house ranch hands that are employed by Yugo Ranch.

Vehicle or equipment noise that will be generated by the proposed solid waste activities may not be discernible and should not be objectionable to occupants of the residences at Yugo Ranch because of the low speeds and separation distance. Prevailing winds, which tend to carry noise in its direction of movement, should carry noise away from these residences. Noise resulting from the operation of the facility will not cause any impact to the community of Ranchitos Las Lomas, located about 4 miles northwest of the facility, due primarily to the separation distance. Also, any noise that could be perceived within a limited distance from the facility will be engine noise associated with heavy equipment. Noise generated by truck traffic travelling to and from the facility will be similar to the noise from oil-field trucks and equipment that already travel along area roads many times a day. Truck traffic noise related to accessing the facility will be indistinguishable from the noise of truck and automobile traffic along U.S. Highway 59, which bisects this community. This highway traffic consists of many trucks and tractor-trailer units traveling at up to 70 miles per hour, 24 hours per day.

Growth Trends:

The population of Webb County (2000 Census) was 193,117, and the population estimate for 2009 is 241,438, an increase of about 25 percent in 9 years. Within a one-mile radius of the facility, the long-term population is estimated to be fewer than 10 persons, and this population has no growth or growth trend. The 2000 population for Ranchitos Las Lomas was 334, which had 148 housing units and a population density is calculated to be 15.3 persons per square mile. According to www.bestplaces.net, the population of Ranchitos Las Lomas was 409 in 2011, an increase of 22 percent in 11 years. Historic population data indicates the population of Ranchitos Las Lomas has been about 300 to 400 persons for many years. Visual observation of this community shows no evidence of recent growth, such as new homes or commercial buildings.

Proximity to Residences and Other Uses:

The proximity of the facility to residences is discussed above. There are no schools, churches, cemeteries, historic structures or sites, archaeologically significant sites, or sites having exceptional aesthetic quality within one mile of the facility. The lack of some of these sites or features has been verified. According to Texas Historical Commission (THC) records, there are no archeological or historic sites in the area of the proposed facility. There are no recreational areas within one mile. There are three residences within one mile of the facility, all located at Yugo Ranch headquarters about 2,100 feet

southwest of the facility, and no commercial establishments. The estimated population density within a one-mile radius of the facility is less than one person per square mile."

The Executive Director's June 28, 2013 Response to Comments (RTC) addressed the Comments on Land Use Compatibility including "Adverse Impact", "General Nuisance", and "Property Devaluation" (including Buffers) in a number of responses. The ED's relevant responses are summarized as follows:

Responses Related to the Facility Adversely Impacting & Devaluing Property

Response 9 – Land-use compatibility and growth trends.

"An applicant must provide certain information, including an available public zoning map for the facility within two miles of the facility for the county or counties in which the facility will be located; information about the character of the surrounding land uses within one mile of the proposed facility; information about growth trends within five miles of the facility with directions of major development; information on the proximity of the facility to residences, business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; information regarding all known wells within 500 feet of the site; and any other information requested by the Executive Director.

The required information is provided in Sections 6, 7, and 8 of Part II of the Application. ... The Executive Director has preliminarily determined that the Application complies with all applicable requirements regarding land-use compatibility and growth trends."

Response 11 – Impact on property values.

ED noted that TCEQ does not have jurisdiction to consider property value impact.

Response 54 – Economic impact.

ED noted that *"TCEQ has no rules or regulations that require applicants to consider impacts on property values, taxes, local economies, or local businesses. ... The Executive Director's review of a permit application considers whether the proposed facility meets the requirements of Chapter 330 of the Commission's rules. In addition; ... the issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulation."*

Responses Related to the Facility Creating General Nuisance Conditions

Response 12 – Area and life quality.

ED noted that *"issuance of a TCEQ permit would not convey any property right or become a vested right in the permittee, nor would it authorize any injury to persons or property or an*

invasion of other property rights, or any infringement of state or local law or regulations. ... An operator of an MSW landfill remains subject to common law principles of nuisance and trespass. TCEQ rules also generally prohibit operation of an MSW landfill in a manner that causes, suffers, allows or contributes to the creation or maintenance of a nuisance. ... an applicant for an MSW landfill must provide for visual screening of deposited waste materials. However, this information is required to be submitted with the Site Operating Plan (SOP), which is required to be included in Part IV of the application."

Response 18 – Odor control.

ED noted that Applicant is not required to submit odor control procedures/designs in a partial application for a land-use compatibility determination. Odor control information is a requirement of Parts III and IV of the Application.

Response 19 – Dust control.

ED noted that Applicant is not required to submit dust control procedures/designs in a partial application for a land-use compatibility determination. Dust control information is a requirement of Parts III and IV.

Response 20 – Vectors.

ED noted that Applicant is not required to submit vector control procedures/designs in a partial application for a land-use compatibility determination. Vector control information is a requirement of Part IV of the Application.

Response 22 – Wildlife, domestic animals, birds and scavengers.

"TCEQ does not have jurisdiction to consider the impact of an MSW landfill facility on wildlife or wildlife habitat that is not protected by state or federal statute." ED has preliminarily determined that *"Application complies with all applicable requirements regarding the Wildlife and Domestic Animals, Birds and scavengers issue."* Procedures for controlling vectors and scavenging animals, including birds, are detailed in the requirements of Part IV of the Application.

Response 23 – Health and environmental concerns.

ED has preliminarily determined that *"that the proposed landfill complies with the Texas Solid Waste Disposal Act (TSWDA) and 30 TAC Chapter 330, which were promulgated to protect human health and the environment. Neither the TSWDA nor Chapter 330 requires health impact studies to be conducted as a part of the MSW landfill application process. Furthermore, an Environmental Impact Statement (EIS) is not required for this permit.... However, landfill performance and potential impacts on environmental media are evaluated by monitoring programs put in place to monitor groundwater quality and landfill gas migration at the facility boundary."* Environmental monitoring is detailed in the requirements for Parts III and IV of the Application.

Response 36 – Nuisances from grease and grit trap waste.

ED noted that ED noted that TCEQ regulations specifically address these issues; however, Applicant is not required to include "nuisances control measures" in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Response 38 – General prohibitions.

ED noted that Applicant is not required to submit details on how a facility will comply with "general prohibitions" in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Response 39 – Noise.

ED noted that although there is a prohibition to causing a nuisance; *"there are no operational standards for MSW facilities that specifically relate to noise control."*

Response 40 – Windblown trash, roadside trash, and debris.

ED noted that TCEQ regulations specifically address these issues; however, Applicant is not required to submit details on how a facility will address these issues in a partial application for a land-use compatibility determination. This information is a requirement of Parts III and IV of the Application.

Although buffers weren't raised by Volz as an issue, the significant buffers provided in the Application have significant relevance to the discussions of other issues as well as to affected party status. Buffers and or "separation distance" between solid waste operations and adjacent properties are the best way to deal with "nuisance-type" issues.

Parts I and II of the Permit Application comply with, and greatly exceed, the requirements of 30 TAC §330.61(c & d) for buffers. The Executive Director's notice of "Technically Complete" determination dated July 2, 2012, is further evidence of the Permit Application's compliance with all applicable requirements of 30 TAC §330.61(c & d).

<u>Responses Related to the Facility Buffer Zone Requirements</u>

Response 30 – Buffer Zones

"TCEQ rules establish minimum buffer zone requirements at 30 TAC §330.543(b)(2). These rules require that all buffer zones must be within and adjacent to the facility boundary on property owned or controlled by the owner or operator. For a new Type I landfill, the owner or operator shall establish and maintain a 125-foot buffer zone.

The l/4 mile cited in the Application is a description of the characteristic of the facility addressing the potential impact to the environment and not the rule required buffer zone. The Applicant must provide information describing how they will meet the buffer zone requirements of 30 TAC § 330.543 when they submit Part IV of the Application. 30 TAC §330.141."

Response 46 – Potentially Affected Landowners

"Under 30 TAC § 330.59(c)(3), applications for MSW permits must include a map that is sufficient to show the location of properly owners within 1/4 mile of the proposed facility, as well as a corresponding list of property owners. Section 3.0 of the Application provides information related to the maps required by TCEQ rules. The information provided by the Applicant was obtained from the Webb County Appraisal District deed records as listed on the date that the application was filed, which is acceptable under 30 TAC § 330.59(c)(3)(B)."