



LEGAL DEPARTMENT

October 26, 2015

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P. O. Box 13087
Austin, Texas 78711-3087

RE: DMS Real Tree, LLC Permit Application No. WQ0015293001
TCEQ Docket No. 2015-1264-MWD

Dear Ms. Bohac:

Enclosed for filing in Docket No. 2015-1264-MWD is the City of San Marcos' Response to DMS Real Tree, LLC's Response to the City's Request for a Contested Case Hearing.

Respectfully,

A handwritten signature in black ink, appearing to read "Jacqueline Cullom".

Jacqueline Cullom
Assistant City Attorney

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2015-1264-MWD

APPLICATION BY § **BEFORE THE TEXAS**
DMS REAL TREE, LLC FOR § **COMMISSION ON**
TPDES PERMIT NO. WQ0015293001 § **ENVIRONMENTAL QUALITY**

**CITY OF SAN MARCOS' RESPONSE TO DMS REAL TREE, LLC 'S RESPONSE TO
THE CITY'S REQUEST FOR CONTESTED CASE HEARING**

**TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:**

COMES NOW, the City of San Marcos, Texas ("City") and files this Response to DMS Real Tree, LLC's ("Real Tree") Response to the City's Request for a Contested Case Hearing in the above-referenced matter, and would respectfully show the Commission the following:

I. INTRODUCTION

The City owns and operates a regional wastewater utility providing wastewater service to over 55,000 customers. The City filed public comments opposing Real Tree's application for a TPDES permit raising several issues including Real Tree's failure to provide evidence that connection to the City's facility would be cost prohibitive. City timely filed a request for a contested case hearing on August 10, 2015.

The Office of Public Interest Counsel and the Executive Director have filed responses supporting the City's request for a contested case hearing and are in agreement that the City is an "affected person" pursuant to 30 TAC 55.203(a) in this matter.

**II. CLARIFICATION OF CITY'S POSITION
ON CLOSEST TIE-IN LOCATION**

The affidavit of Jeff Goebel is attached to Real Tree's Response. In his affidavit, Mr. Goebel states "Representatives of the City told me that for Real Tree to receive wastewater services

from the City, Real Tree would need to connect to the City's wastewater system at the north end of River Rd and the Rail Road Tracks". In fact, as evidenced in the affidavit of Jon Clack attached as Exhibit A, Mr. Clack informed Mr. Goebel via an email dated January 14, 2015 at 11:17 a.m. that the "nearest line with enough capacity to connect to would be the 18" on the west side of IH-35 located west of your development". The tie-in location recommended by Mr. Clack is 8,400 feet from the proposed facility, approximately 14,600 feet less than the tie-in location used by Mr. Goebel to calculate distance and proposed costs to connect to the City's facility. See Exhibit B, attached and incorporated for all purposes.

III. COST ANALYSIS

Real Tree's response also indicates that a cost analysis was provided. To date, the City has not been provided with any detailed, specific cost estimates for Real Tree to connect to either the closer tie-in location or the tie-in location further away from the proposed facility. The cost estimate offered by Mr. Goebel in his affidavit reflects projected costs to connect to the tie-in location that is 14,600 more square feet than the tie-in location recommended by Mr. Clack.

IV. CONCLUSION

As acknowledged by Real Tree, it is the Commission's policy to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." The City respectfully seeks a determination by the Commission that the City is an "affected person" entitled to a contested case hearing at the State Office of Administrative Hearings. There is a disputed fact issue in this matter relating to Real Tree's costs to connect to the City's regional wastewater facility.

Respectfully submitted,

CITY OF SAN MARCOS, TEXAS

By: 

Jacqueline Cullom

Assistant City Attorney

State Bar No. 05212050

City of San Marcos

630 W. Hopkins

San Marcos, Texas 78666

(512) 393-8157

jcullom@sanmarcostx.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2015 the City of San Marcos' Response to DMS Real Tree, LLC's Response to the City's Request for Contested Case Hearing was electronically filed with the Chief Clerk of the Texas Commission on Environmental Quality and a copy was served to all persons listed on the attached mailing list via deposit in the U.S. regular mail.

**MAILING LIST
DMS REAL TREE, LLC
TCEQ DOCKET NO. 2015-1264-MWD**

FOR THE APPLICANT:

Jeff Goebel
Quadvest, LP
P.O. Box 409
Tomball, Texas 77377-0409
Tel: 281/305-1112 Fax: 281/356-5347

Joe F. Stafford, Member
DMS Real Tree, LLC
3736 Bee Cave Road, Suite 1-122
West Lake Hills, Texas 78746

FOR THE EXECUTIVE DIRECTOR

Alicia Ramirez, Staff Attorney
TCEQ Environmental Law Division
MC-173
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Rebecca Moore, Technical Staff
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Tel: 512/239-0058 Fax: 512/239-4430

Brian Christian, Director
TCEQ Environmental Assistance
Division, MC-108
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Austin, Texas 78711-3087
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FOR ALTERNATIVE DISPUTE
RESOLUTION

Kyle Lucas
TCEQ Alternative Dispute Resolution,
MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4010 Fax: 512/239-4015

FOR THE CHIEF CLERK:

Bridget Bohac
TCEQ Office Of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311

REQUESTER:

Jacqueline Cullom
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666-6314

FOR PUBLIC INTEREST COUNSEL:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087

EXHIBIT A

TCEQ DOCKET NO. 2015-1264-MWD

APPLICATION BY	§	BEFORE THE TEXAS
DMS REAL TREE, LLC FOR	§	COMMISSION ON
TPDES PERMIT NO. WQ0015293001	§	ENVIRONMENTAL QUALITY

AFFIDAVIT OF JON CLACK

STATE OF TEXAS

COUNTY OF HAYS

On this day, Jon Clack, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

“My name is Jon Clack. I am the Assistant Director of Public Services, Water and Wastewater, for the City of San Marcos. I am more than 21 years of age and capable of making this affidavit. I have personal knowledge of the facts stated herein, which are true and correct.

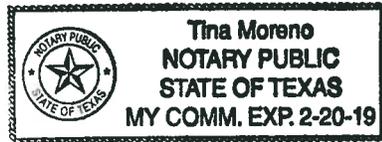
1. I have been employed in the water and wastewater operations field for over 27 years, in both the public and private sector, and have been the Assistant Director of Public Services, Water and Wastewater, with the City of San Marcos for 8 (eight) years.

2. On January 14, 2015 at 11:17 a.m. I sent Jeff Goebel, a representative of DMS Real Tree, LLC, an email to inform him of the closest tie-in location for the DMS Real Tree proposed facility located in the City of San Marcos extra-territorial jurisdiction. I informed Mr. Goebel that the closest tie-in location would be the 18” on the west side of IH-35 located west of the proposed

development. The email and attached map that I sent to Jeff Goebel are attached and incorporated as a part of this affidavit.


Jon Clack

SUBSCRIBED AND SWORN TO BEFORE ME this 26th day of October, 2015.




Notary Public, State of Texas

Clack, Jon

From: Clack, Jon
Sent: Wednesday, January 14, 2015 11:17 AM
To: Jeff Goebel (jeff@quadvest.com)
Subject: City of San Marcos WW Map
Attachments: COSM WW.pdf

Jeff,

Attached is a map showing the closest wastewater lines in the area of your development. The nearest line with enough capacity to connect to would be the 18" on the west side of IH-35 located west of your development.

Jon L. Clack
Asst. Director of Public Services
Water / Wastewater
630 East Hopkins
San Marcos, TX 78666
Office: 512.393.8003
Mobile: 512.644.9724

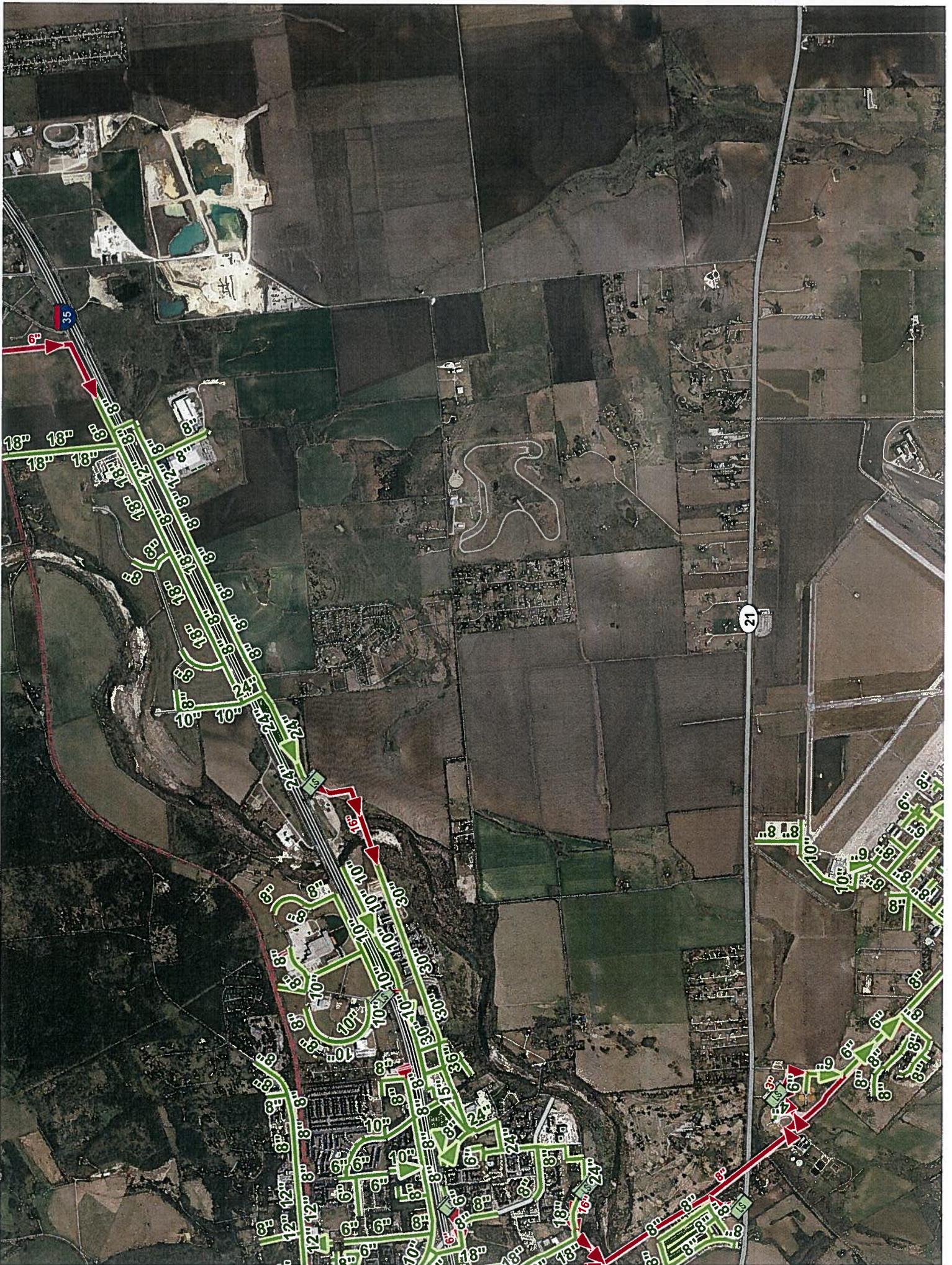
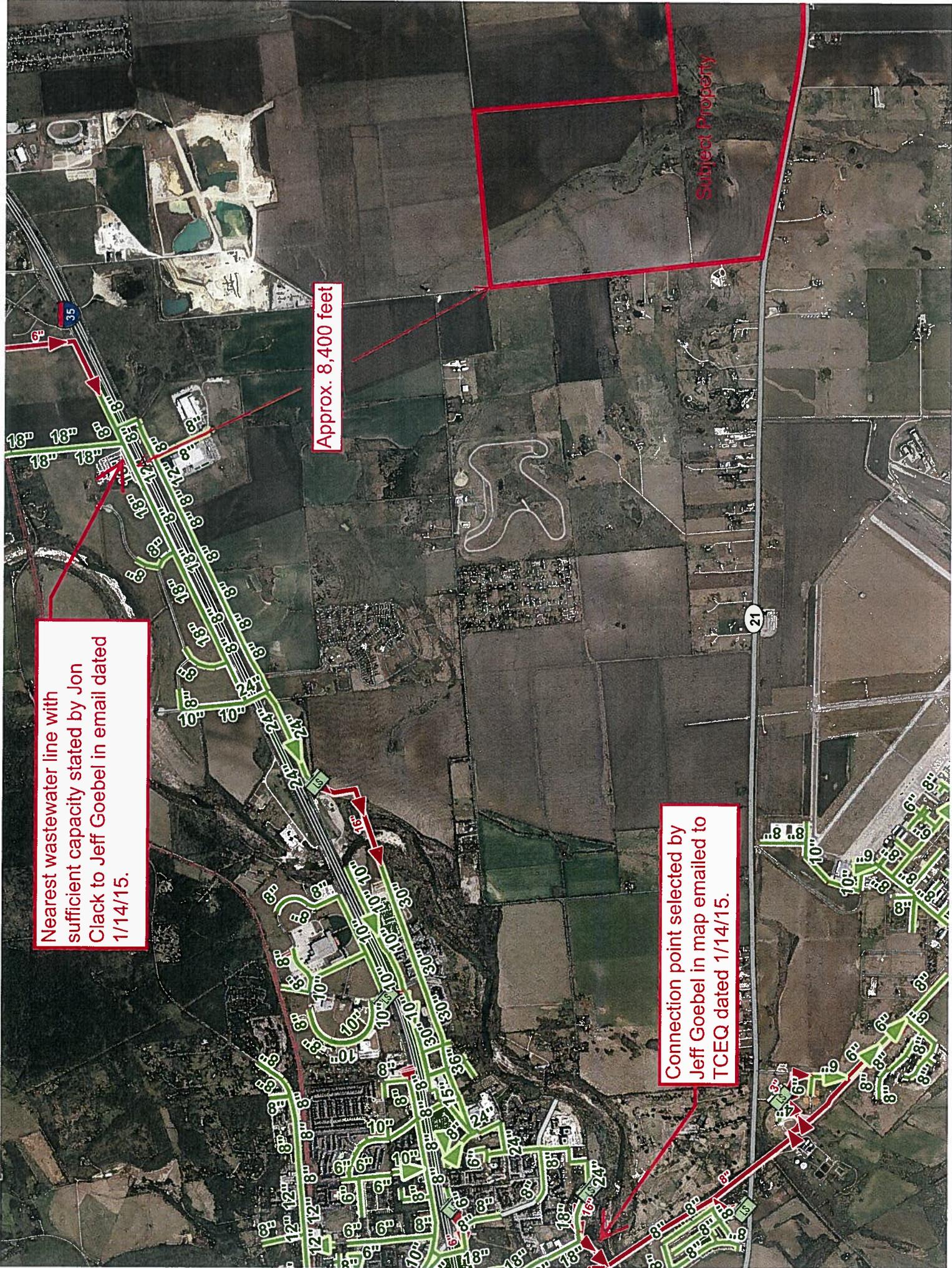


EXHIBIT B



Subject Property

Approx. 8,400 feet

Nearest wastewater line with sufficient capacity stated by Jon Clack to Jeff Goebel in email dated 1/14/15.

Connection point selected by Jeff Goebel in map emailed to TCEQ dated 1/14/15.