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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 SEP 29 PM 4:50

CHIEF CLERKS OFFICE

September 29, 2008

Ms. LaDonna Castañuela
TCEQ
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

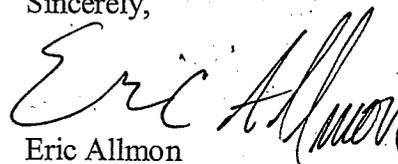
**Re: Application of Regional Land Management Services, Ltd., for a Type 1
Municipal Solid Waste Permit (No. MSW-2286); SOAH Docket No. 582-04-
0975; TCEQ Docket No. 2003-0729-MSW**

Dear Ms. Castañuela:

Please find enclosed a copy of Highway 359 Landowners Coalition and Guillermo
Cavazos's Exceptions to the Proposal for Decision.

Thank you for your consideration of this matter. If you have any questions or concerns,
please do not hesitate to contact me.

Sincerely,


Eric Allmon

CC: Service List
SOAH

2008 SEP 29 PM 4: 50

CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-04-0975
TCEQ DOCKET NO. 2003-0729-MSW

APPLICATION OF REGIONAL LAND § BEFORE THE STATE OFFICE OF
MANAGEMENT SERVICES, LTD, §
FOR A TYPE 1 MUNICIPAL SOLID §
WASTE PERMIT (NO. MSW-2286) § ADMINISTRATIVE HEARINGS

**HIGHWAY 359 LANDOWNERS COALITION AND GUILLERMO CAVAZOS'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

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

COMES NOW Highway 359 Landowners Coalition and Guillermo Cavazos and hereby files their exceptions to the ALJs' Proposal for Decision (PFD) and corresponding proposed ORDER signed September 2, 2008. The ALJ's recommendation that the Texas Commission on Environmental Quality ("TCEQ" or "the Commission") grant this permit application is factually and legally flawed and should not be accepted. Because the Applicant failed to meet its burden of proof that the application complies with all legal requirements, the above-requested permit application should be **DENIED** by the Commission.

I. Introduction & Summary

Protestants agree with and adopt the Exceptions filed by Webb County. In addition, Protestants present their exceptions on the issues of land use compatibility, groundwater monitoring, and the endangered and threatened species evaluation.

II. Whether the Proposed Facility is Compatible with Area Land Uses

A. Applicable Law

Section 330.53 of the TCEQ rules requires that the impact of a proposed landfill site upon a city, community, group of property owners, or individuals be considered in terms of compatibility of land use, community growth patterns, and other factors associated with the public interest.¹ The rule then lists a number of different types of data that an applicant must provide to the executive director to assist the ED in evaluating the impact of the site on the surrounding area.² Among the data are: zoning at the site, character of surrounding land uses within one mile of the proposed facility, growth trends of the nearest community, proximity to residences and other uses, and a description and discussion of wells within 500 feet of the proposed site.³ This list is inclusive, not exhaustive.⁴ And the emphasis is clearly on the impact of the site on the surrounding area; that is, to ensure that the proposed landfill will not adversely affect human health or the environment.⁵

The applicant bears the responsibility of providing “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.”⁶ In addition, the applicant is responsible “for determining and

¹ 30 TAC § 330.53(b)(8).

² 30 TAC § 330.53(b)(8)(A) – (E).

³ *Id.*

⁴ See Tr. p. 24, l. 22-25, p. 25, l. 1-2 (Testimony of J. Worrall: “I don’t think I would say it’s [the list of factors included in the TCEQ rules] an exhaustive list.”).

⁵ See Tex. Health & Safety Code §§ 361.069, 361.089; 30 TAC § 330.53.

⁶ 30 TAC § 330.51(b)(2).

reporting to the executive director any site-specific conditions that require special design considerations.”⁷

B. Discussion

Among the evidence and testimony presented during the contested case hearing regarding land use compatibility was evidence demonstrating the growth trends of *colonias*—or illegal residential development—in the direction of the proposed landfill. The evidence presented revealed that during the time period 1990-2003, Laredo was the third fastest growing metropolitan area in Texas.⁸ The direction of Laredo’s growth is limited by its geographical location: the U.S./Mexico border lies to the west of the City. Its growth must, therefore, occur to the north, south, and east.⁹ All of the City’s eastern growth is occurring along its only eastern highway—Highway 359.¹⁰ And much of that growth can be attributed to the expansion of *colonias* along the Highway 359 corridor.¹¹

Colonias are unincorporated communities without infrastructure such as running water, storm drainage, sewers, and paved streets.¹² They are usually developed as illegal subdivisions where lots are sold without satisfying County subdivision requirements and without commitments or plans for utility services.¹³

Guillermo Cavazos, one of the protesting parties in this matter, owns 750 acres of land east of the proposed landfill site.¹⁴ He testified that he frequently travels Highway 359 between

⁷ 30 TAC § 330.51(b)(3).

⁸ Tr. p. 17, ll. 16-25; p. 18, ll. 1-13 (testimony of Applicant’s expert witness John Worrall); *see also* Ex. A-1, p. 5 (Prefiled Testimony of John Worrall).

⁹ Tr. p. 9, ll. 7-14.

¹⁰ Tr. p. 10, ll. 1-15.

¹¹ Tr. p. 28, ll. 18-25; p. 29, ll. 1-9.

¹² Ex. A-4, p. 4.

¹³ *Id.*

¹⁴ Ex. P-1, p. 2, ll. 29-42; *see also* Ex. P-1A.

his property and the City of Laredo.¹⁵ In doing so, he has observed the construction and development of the colonias along this highway.¹⁶ In the past ten years, he has observed the expansion of at least four colonias in the area: Pueblo Norte, La Coma, Pueblo Nuevo, and Pescadito.¹⁷ He noted that some of these colonias were started in the 1970s and continue to grow.¹⁸

Similarly, Rhonda Tiffin, the Webb County Planning Director, testified that “the pre-existing colonias along this [Highway 359] corridor have experienced considerable growth.”¹⁹ And the growth has been “*exacerbated*” by the multiple dwellings constructed upon the larger tract sizes typical of the county’s colonias.²⁰

In their Proposal for Decision, the ALJs “[gave] little credence to the speculative proposition that illegal development will continue to occur and ultimately encroach upon the proposed permit boundary.” But, in fact, there is little evidence to suggest that the illegal development will not continue to occur along the Highway 359 corridor. That the City has begun annexing colonias and providing utility services does not ensure that these developments—developments characterized by the lack of infrastructure such as running water, storm drainage, and sewers—will not continue following their current growth trend.

Moreover, although Mr. Worrall, Applicant’s land use expert, included in his land use report that the City and County have adopted stringent new regulations to prevent the development of colonias.²¹ But on cross-examination, Mr. Worrall could not specifically identify any such City or County regulations. Rather, he “assumed” that the City and the County

¹⁵ Ex. P-1, p. 2, ll. 44-45; p. 3, l. 2.

¹⁶ Ex. P-1, p. 3, ll. 4-8.

¹⁷ Ex. P-1, p. 3, ll. 10-14.

¹⁸ Ex. P-1, p. 3, ll. 20-23.

¹⁹ Ex. Webb-14, p. 4, l. 30.

²⁰ Ex. Webb-14, p. 4, ll. 31-32.

²¹ Ex. A-4, p. 4.

would be taking advantage of increasingly stringent state laws that have been developed over the past decade and that apply to all cities “to try to get a handle on colonias.”²²

One need not assume that the City of County might not enforce their regulations in order to envision a situation in which the colonias continue with their current growth trends— expansion of residential developments along the Highway 359 corridor without the necessary infrastructure. The evidence reveals that colonias exist along the Highway 359 corridor; that these colonias were created without the necessary infrastructure; that the colonias’ were never “legal” developments; and that the growth trends of the colonias over the past several decades has been along the east along the Highway 359. Presumably, the City and County have tried “to get a handle on colonias” in the past, and they will continue trying to do so—utilizing state laws developed over the past decade. But without evidence that the growth trends of the colonias have ceased or slowed, there is no support for the proposition that the colonias’ current growth trends will not continue, and that the proposed landfill will likely result in a condition that is adverse to the health and safety of the colonias’ inhabitants.

III. Whether Applicant has Met Requirement for Groundwater Monitoring System

A. Applicant is Only Excused from Groundwater Monitoring When All Aquifers are Protected

The ultimate goal of TCEQ’s municipal solid waste regulations is the protection of groundwater resources. To demonstrate compliance with this goal, municipal solid waste landfills generally must implement a groundwater monitoring system.²³ This system alerts the

²² Tr. p. 29, ll. 19-25; p. 30, ll. 1-19.

²³ 30 TAC §330.230 and 231

landfill operator and TCEQ if contamination has occurred that requires action before the contamination has spread.

TCEQ allows a narrow exception to this requirement where an Applicant can demonstrate that there is *no* potential for the migration of hazardous constituents from the landfill to the “uppermost aquifer.”²⁴ The goal of this exception is to excuse a landfill operator from groundwater monitoring in situations where there is no risk of a leak from the landfill harming any important groundwater resource, or “aquifer.”

TCEQ rules define an “aquifer” as:

A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.²⁵

This definition, and TCEQ’s application of this definition, determines which groundwater resources TCEQ believes deserve of protection, and, by exclusion, what groundwater TCEQ believes does not deserve protection. Considering the growing importance of water resources in the State, a decision that a groundwater resource is undeserving of protection, by virtue of saying something is *not* an “aquifer,” can have tremendous consequences in the future for the citizens of an area because it can render that groundwater resource unusable.

Furthermore, every landfill permit application must be processed in consideration of what constitutes an “aquifer,” and so any interpretation of this term adopted by the Commission has far-reaching consequences. In this case, Applicant has proposed a definition of the term “aquifer” that is contrary to the definition set forth in TCEQ rules, and will potentially complicate the permitting process. By applicant’s interpretation, regional or statewide

²⁴ 30 TAC § 330.230(b).

²⁵ 30 TAC §330.2(6).

information is irrelevant, and a geologic formation may consider an aquifer beneath an adjacent landowner's property, but *not* an aquifer under the landfill. The Administrative Law Judge's have adopted this interpretation, but the Commission should not.

B. Undisputed Facts Establish That the Yegua is an Aquifer

Whether Applicant qualifies for the exception to groundwater monitoring requirements set forth in the TCEQ rules turns on whether the Yegua formation is considered an "aquifer." Many of the critical facts involving this formation are undisputed, and the decision by the administrative law judges is only correct if the Commission adopts the judge's legal interpretation of that word.

1. Texas Water Development Board has Designated Yegua an Aquifer

In the TEXAS GROUNDWATER PROTECTION STRATEGY, to which TCEQ contributed, the Texas Water Development Board is recognized as the state agency charged with identifying *and delineating* aquifers of the state.²⁶ In January of 2001, the Texas Water Development Board adopted the first State Water Plan, which incorporated 16 regional water plans.²⁷ By statute, this plan is intended to "provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare[.]"²⁸

No party disputes that the Texas Water Development Board has designated the Yegua as an aquifer.²⁹ Furthermore, no party disputes that the Board has also delineated the boundaries of the Yegua aquifer to include the location of the proposed landfill.³⁰

²⁶ TEXAS GROUNDWATER PROTECTION STRATEGY: PREPARED BY THE TEXAS GROUNDWATER PROTECTION COMMITTEE. Ex. P-2F, p. 10.

²⁷ WATER FOR TEXAS – 2002. Ex. A-233, transmittal page.

²⁸ TEX. WATER CODE § 16.051(a).

²⁹ WATER FOR TEXAS – 2002. Ex. A-233, p. 38.

³⁰ Ex. A-233, p. 42; Ex. A-237;

In the 2001 State Water Plan, the Water Development Board noted that the Yegua-Jackson Aquifer had more than 1,450 producing wells, and produced 11,000 acre-feet of water in 1997.³¹ While he has decided to imply a site-specific exemption from the definition of “aquifer,” Wes McCoy of the TCEQ staff agreed that the Yegua-Jackson formation is a formation capable of producing significant quantities of groundwater.³²

2. The United States Geological Survey has designated the Yegua Formation in Webb County to be an Aquifer.

Reaching the same conclusion as the Texas Water Development Board, the United States Geological Survey has designated the Yegua formation as an aquifer when specifically examining that formation in Webb County.³³ The U.S.G.S. has noted that the Yegua Aquifer receives about 36,900 acre-feet/yr of recharge in Webb County through the outcrop of the aquifer in that county.³⁴

3. Local and Site-Specific Information are Consistent with Findings by the Texas Water Development Board and the United States Geologic Survey.

Applicant’s data, and information provided during the hearing, confirms that water is present in the Yegua formation beneath the site. Applicant drilled 24 holes at the site that were intended to determine water levels beneath the site.³⁵ None of these borings reached a depth below the Yegua formation.³⁶ After these holes were drilled, water moved into the borings to establish a static groundwater level in *every* one of these borings.³⁷ Importantly, Applicant does not contend that water is not present in the Yegua, Applicant contends that only a low quantity of

³¹ Ex. A-233, p. 38.

³² Tr. p. 532, l. 11-14.

³³ R. Lambert, U.S. Geologic Survey: HYDROGEOLOGY OF WEBB COUNTY, TEXAS. Exhibit P-2E, p. 7 & Table 1.

³⁴ Ex. P-2E, p. 7.

³⁵ Ex. P-2, p. 6, l. 1 – 11.

³⁶ Ex. P-2, p. 6, l. 1. 6 – 11.

³⁷ Ex. A-32, A-69, Ex. P-2, p. 6, l. 39 – p. 7, l. 3.

water is present in the Yegua.³⁸ Applicant's expert has commented with regard to what constitutes a significant quantity of groundwater that, "A hundred gallons per day, even a thousand gallons per day is pretty low."³⁹ Rural Texans living under drought conditions in the future may be interested to learn that a thousand gallons a day of water is insignificant.

In a very real sense, the proposed landfill will be floating in the Yegua aquifer. The landfill will be excavated beneath the seasonal high water table of the Yegua formation.⁴⁰ Applicant's expert Jeffrey Reed testified that he "can't think of a situation where the groundwater level would drop below the bottom of the landfill."⁴¹ Mr. Reed notes that the landfill will need to use ballast to counteract the pressure of water in the sandstone portions of the Yegua that will be pushing against the landfill liner.⁴² This is because the sandstone areas of the Yegua generally contain water, and he anticipates that this sandstone will be encountered as the landfill is excavated.⁴³ It is difficult to understand how a formation designated as an aquifer by the Texas Water Development Board, and the United States Geologic Survey, that contains water which will be exerting pressure on the liner of the landfill, does not qualify as an "aquifer" warranting any groundwater monitoring.

Information from nearby landowners reflects significant quantities of groundwater near the surface where the Yegua formation is found. An adjacent landowner has excavated stock tanks on his property. Groundwater flowed into those tanks from the surrounding soil upon excavation, and those earthen tanks are naturally recharged by the groundwater.⁴⁴ This does not matter to the Applicant, or the Administrative Law Judges, because under their interpretation of

³⁸ Ex. A-30, p. III-A4-13

³⁹ Tr. p. 309, l. 9-13.

⁴⁰ Tr. p. 133, l. 10 - 17.

⁴¹ Tr. p. 131, l. 21-23.

⁴² Tr. p. 167, l. 10-15.

⁴³ Tr. p. 167, l. 13-15.

⁴⁴ Ex. P-1, p. 5, l. 8 - p. 6, l. 18.

TCEQ rules, the Yegua can be an aquifer at these sites only a few hundred feet from the landfill, and not be treated as an aquifer beneath the landfill site.

With regard to water quality, Applicant has made no demonstration that the quality of water in the Yegua formation at the site renders it unusable. Applicant has performed no water quality sampling for water in the Yegua formation at the site.⁴⁵ Available water quality information for other wells completed into the Yegua formation in Webb County reflects water quality in the Yegua which is appropriate for drinking, livestock or irrigation water.⁴⁶

C. Applicant Asks TCEQ to Adopt an Interpretation of the Word “Aquifer” Which is Contrary to TCEQ Rule

In a strict manner of speaking, the Applicant does not contend that the Yegua is not an aquifer. Applicant contends, and the Administrative law judge’s have agreed, that the Yegua formation is not an aquifer *beneath the landfill site*. This finding is premised on a tunnel vision interpretation of the TCEQ definition of “aquifer” that is inconsistent with that rule and TCEQ policy.

The Yegua itself is a formation capable of yielding significant quantities of groundwater. Even if it were true that the Yegua had only limited potential for groundwater production directly beneath the proposed site of the landfill, the intent of the definition of the term “aquifer” is to provide protection for the geologic *formation* that serves as a source of groundwater.

By the explicit language of TCEQ rule, a *formation* capable of yielding significant quantities of groundwater is an aquifer. Applicant, and the Administrative Law Judges, ignore this language and adopt an approach that the area of a formation directly beneath a proposed site

⁴⁵ Ex. P-2, p. 16, l. 7-14.

⁴⁶ eEx. P-2, p. 17, l. 6 – p. 18, l. 17.

must be capable of producing significant quantities of groundwater before TCEQ will grant the formation protection.

This interpretation creates several problems. First, groundwater may move within an aquifer from areas of low productivity to areas of high productivity.⁴⁷ This potential for groundwater movement is particularly of concern when dealing with the outcrop of an aquifer. The landfill site is located over an outcrop of the Yegua,⁴⁸ and outcrop areas of an aquifer warrant special protection, as noted by the Texas Water Development Board:

The surface extent, or outcrop, of each aquifer is the area in which the host formations are exposed at the land surface. This area corresponds to the principle recharge zone for the aquifers. Groundwater encountered within this area is normally under unconfined, water-table conditions and is most susceptible to contamination.⁴⁹

Thus, regardless of the ability of the Yegua at the site to produce groundwater, the water quality at that site warrants protection because water entering the ground at the site is the source of water throughout much of the remainder of the aquifer. This is why TCEQ's rules protect *formations* that qualify as an aquifer.

Additionally, a piecemeal approach to determining whether a formation is an aquifer undermines the purpose of the State Water Plan in creating a coordinated approach to groundwater management. If the Commission adopting the interpretation of the word "aquifer" that has been adopted by the Administrative Law Judges in this case, the result is a contradiction between the Texas Water Development Board's position that the Yegua is an important groundwater source, and a position by the TCEQ that the Yegua is not a groundwater water

⁴⁷ Tr. p. 1079, l. 4-8.

⁴⁸ A-237.

⁴⁹ A-232. Page 1, Texas Water Development Board Report 345. *Aquifers of Texas*.

resource deserving protection. Not only does this undermine coordination with the Water Development Board, it also overrides the process of local participation that led to development of the plan. TCEQ should not use a contested case hearing to upset this statutory process that was intended to place significant control over groundwater resources management at the local level.

D. Inclusion of Applicant's Last-Minute Groundwater Monitoring Plan Does not Remedy the Problem

When presenting its rebuttal case, Applicant for the first time proposed a groundwater monitoring plan. This plan did not undergo review by TCEQ staff, and was not available for public review for more than a single night. The materials submitted by Applicant are wholly deficient to meet TCEQ's groundwater monitoring requirements.

1. Applicant Has not Provided Required Information

TCEQ rules require substantial information to be submitted by an applicant to support a groundwater monitoring system that has not been provided in this case.

§ 330.56(b)(1) requires that Attachment 2 to the Site Development Plan in the application include fill cross-sections clearly showing the groundwater monitoring wells. This enables TCEQ to determine the relative depth of the monitoring wells to the base grade of the landfill, but no such document has been provided.

§ 330.56(d)(6) requires that an applicant provide in Attachment 4 to the Site Development Plan in the application a description of the system, and engineering drawings of a typical monitoring well and a table of data for all proposed wells that includes information such as the total depth of the well, depth to groundwater, depth to the top of the screen, and depth to the bottom of the screen. This information has not been provided and is not present in the record.

Without this information, there is no basis to find that Applicant's proposed system meets the requirements of §§ 330.230 – 330.235.

§ 330.56(e)(5) requires that Attachment 5 to the Site Development Plan in the application contain detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of § 330.231. No detailed plans for the groundwater monitoring program have been provided. § 330.231(e)(1) provides that the design of a monitoring system shall be based on site-specific technical information including a thorough characterization of the aquifer and the effect of site construction and operation on groundwater flow direction and rates. Applicant has not performed a thorough characterization of the effect of site construction on groundwater flow direction and rates.

Despite the requirement that the groundwater monitoring well spacing be based on site-specific data, Applicant has not performed a site-specific analysis for this design parameter as required by § 330.56(e)(5). Instead, Applicant has simply transferred the maximum permitted distance allowed under subsequent rules that do not apply to this application. It is important to recognize that many of TCEQ's requirements for groundwater monitoring program were made more strict by the March 2006 revisions of Chapter 330. It is not appropriate to apply a patchwork combination of the old and new groundwater monitoring rules in a way that takes the most lenient provisions of both.

§ 330.56(e)(6) and (e)(7) require that the groundwater monitoring program be subject to different requirements depending on the presence or absence of certain constituents already within the groundwater. Applicant has not provided information regarding existing water quality for each of the parameters that must be considered, so it is not possible for TCEQ to determine

which water quality monitoring requirements apply, which makes it impossible to determine if those requirements have been met.

§ 330.56(k) requires that Applicant submit a groundwater sampling and analysis plan as attachment 11 to the Site Development Plan in the application. This is the one component of the groundwater monitoring program that Applicant has sought to provide with respect to its proposed monitoring system. Even if this plan were in full compliance with TCEQ rules, the record is still devoid of the information regarding the monitoring well program design that is also required in order to support a finding that a monitoring well system meets TCEQ requirements.

IV. Whether the Applicant has adequately evaluated endangered or threatened species at the site

A. The Commission has a set precedent regarding the interpretation of its rules to protect state-listed threatened species.

Decisions by the Commission regarding at least two permit applications for municipal solid waste landfills have set a precedent with respect to the interpretation of the TCEQ's rule regarding state-listed threatened species.⁵⁰ The most recent decision by the Commission to deny a permit application, denied in part as a result of inadequate protection of a state-listed threatened species, was upheld in District Court earlier this year.⁵¹

State-listed threatened species may not be included in the Texas Endangered Species Act, but the Commission has shown its intent to protect the Texas horned lizard under the provisions in 30 TAC § 330.53(b)(13)(B) and § 330.2 (42). The Administrative Law Judges' analysis on

⁵⁰ Order Denying the Application by Blue Flats Disposal, LLC, for Permit No. 2260, TNRCC Docket No. 98-0415-MSW, SOAH Docket No. 582-98-1390 and Order Denying the Application by Tan Terra Environmental Services, Inc., LLC, for Permit No. MSW-2305, TCEQ Docket No. 2004-0743-MSW; SOAH Docket No. 582-05-0868.

⁵¹ Cause No. D-1-GN-06-002425, *Tan Terra Environmental Services, Inc., vs. Texas Commission on Environmental Quality*, 345th Judicial District, Travis County, Austin, Texas.

this issues reflects their agreement with the applicants argument on this issue that was specifically recently rejected by the Commission and a reviewing court earlier this year. Ignoring the standing precedent would result in a contradiction of the interpretations and past decisions and could be detrimental and is a contradiction and any result in confusion in the consideration of future permit applications. The Administrative Law Judge's have adopted this interpretation, but the Commission should not.

The determination that critical habitat was not designated on or near the proposed facility does not negate the fact that the site was found to be suitable for the Texas horned lizard. In fact, the Final Order by the TNRCC specifically referred the proposed landfill site as suitable to the Texas horned lizard. The rules also prohibit harassing or harming wildlife to the extent that normal behavioral patterns, including but not limited to breeding, feeding or sheltering are significantly impacted.⁵²

B. The Applicant Failed to Adequately Protect Endangered or Threatened Species on Site and Determine Suitable Habitat for Species to be Removed Off Site

The Applicant's fails to identify and include a detailed plan for the transport and removal of any Texas horned lizards found on site.

The ALJs' PFD contends that the Applicant has adequately considered and addressed state-listed threatened species in its affected species management plan, but the record shows that there are no measures included to the plan to protect species located on site or moved to the conservation area, and there is little information regarding the "preserve" to support a finding that it is a suitable destination for protected species encountered at the site. There is no way to demonstrate that the plan is adequate without providing information about the area. The only

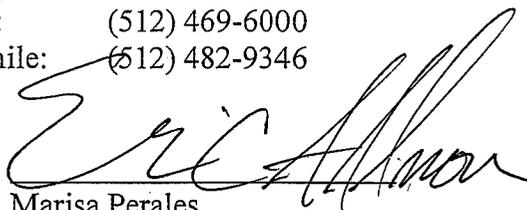
⁵² § 330.53(b)(13)(A)(iii) and (iv).

information in the record indicates that it may be at or near the same location of the colonias in the area.

Respectfully submitted,

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By:



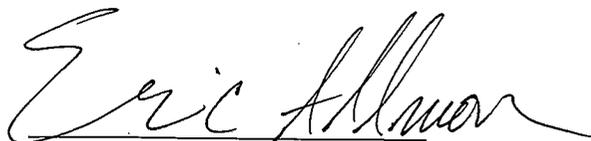
Marisa Perales
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For Hwy 359 Landowners Coalition and
Guillermo Cavazos

CERTIFICATE OF SERVICE

By my signature below, I certify that on the 29th day of September, 2008, a true and correct copy of the foregoing document was served upon the parties identified below by facsimile, first class mail, or hand-delivery.



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