

TCEQ DOCKET NO. 2024-1820-AIR

APPLICATION BY	§	BEFORE THE TEXAS
CAPROCK PRECAST,	§	COMMISSION ON
LLC TO USE STANDARD	§	ENVIRONMENTAL
PEMRIT FOR	§	QUALITY
CONCRETE BATCH	§	
PLANT	§	

**CAPROCK PRECAST, LLC’S RESPONSE TO REQUESTS FOR CONTESTED CASE
HEARING**

Caprock Precast, LLC (“Caprock Precast”) files this Response to the Requests for a Contested Case Hearing submitted in connection with the above-captioned permitting matter and would respectfully show the Texas Commission on Environmental Quality (the “Commission” or “TCEQ”) the following:

I. INTRODUCTION

On March 13, 2024, Caprock Precast filed an application for an Air Quality Standard Permit, Registration No. 175658 (the “Permit”), which will authorize construction of a concrete batch plant located at 1 State Highway 160, Whitewright, Grayson County, Texas 75495 (“Facility”). The TCEQ Executive Director declared the application administratively complete on March 14, 2024. The Consolidated Public Notice of Receipt and Intent to Obtain an Air Quality Permit and Notice of Application and Preliminary Decision for this permit application was published in English on April 25, 2024, in *The Whitewright Sun*. The public comment period ended on May 28, 2024. TCEQ received eighteen comments, two public meeting requests, and two requests for a contested case hearing on the permit application. On Monday, July 8, 2024, and on Friday, July 12, 2024, the Permit Applicant, Mr. Paul Black, confirmed with the TCEQ Executive Director’s Staff that the proposed Facility was located greater than 440 yards from the Hearing Requesters.

The Executive Director prepared a Response to Public Comments (“RTC”) that addressed all of the written comments submitted regarding Caprock Precast’s Permit. On September 19, 2024, the TCEQ Chief Clerk sent a letter to each person who submitted a contested case hearing request or other comments. That letter enclosed the RTC, stated that the Executive Director had made a decision that Caprock Precast’s application meets the requirements of applicable law, including the Standard Permit, and gave instructions regarding how people who believe they are affected persons could request a contested case hearing regarding Caprock Precast’s application. That letter triggered another 30-day period, ending on October 21, 2024, during which no additional comments, including from any elected state official, or contested case hearing requests were submitted.

For the reasons set forth below, Caprock Precast respectfully urges the Commission to deny the requests for a contested case hearing, adopt the Executive Director’s RTC, approve the Applicant’s permit application, and issue the Permit.

II. THE EVALUATION PROCESS FOR HEARING REQUESTS

The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, Public Interest Counsel, and Applicant may each submit written responses to a hearing request. *See* 30 Tex. Admin. Code § 55.209(d). Responses to a hearing request must specifically address:

- (1) whether the requester is an affected person;
- (2) whether issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director’s response;
- (6) whether the issues are relevant and material to the decision on the application; and

(7) a maximum expected duration for the contested case hearing.

30 Tex. Admin. Code § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements. The request for a contested case hearing by an affected person must be made in writing, must be timely filed with the chief clerk, may not be based on an issue that was raised solely in a public comment that was withdrawn by the requester prior to the filing of the Executive Director's RTC, and must be based solely on the requestor's timely comments. 30 Tex. Admin. Code § 55.201(c). A hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) for applications filed:
 - (A) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 Tex. Admin. Code § 55.201(d).

C. Requirement that the requestor be an Affected Person

To grant a contested case hearing, the Commission must determine that a requestor is an “affected” person. 30 Tex. Admin. Code § 55.203 sets out who may be considered an affected person:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Except as provided by §55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
 - (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the executive director; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

30 Tex. Admin. Code § 55.203.

III. THE HEARING REQUESTS SHOULD BE DENIED

A. None of the hearing requestors are an affected person because the permanent residence of each hearing requestor is located more than 440 yards from the Facility.

According to 30 Tex. Admin. Code § 55.203(a), an affected person “has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.” Additionally, Tex. Health & Safety Code § 382.056(b)(5) provides that “a person who may be affected by emissions” from the proposed facility is entitled to request a contested case hearing regarding the application for the proposed facility.

This permit application is for the construction of a concrete plant under a standard permit. Section 382.058(c) of the Tex. Health & Safety Code states that “only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected.” Therefore, a person residing beyond 440 yards from the proposed facility is not an affected person under the statute, and that person may not request a contested case hearing.

Caprock Precast owns both parcels 136489 and 436952, and the proposed Facility will be located on parcel 436952 at 1 State Highway 160. *See Attachment A*. As demonstrated by Attachment A: none of the hearing requestors permanently reside within 440 yards of the proposed Facility. In a hearing request, dated May 10, 2024, Mr. and Mrs. Warford stated that they reside at 797 Desert Lake Road, Whitewright, Grayson County, Texas. Mr. and Mrs. Warford represented in Exhibit A of their hearing request that Caprock Precast intended to locate the proposed Facility on parcels 136489 and 436952 without acknowledging that the Facility will only be located on parcel 436952, which is much further southwest of the Warford’s property than parcel 136489. Measuring from the site of the proposed Facility on parcel 436952, 1 State Highway 160, the

Warford's residence is located approximately 5,092 feet or 1,697 yards from where Caprock Precast's proposed Facility will be located. *See Attachment A.* Because the Warford's permanent residence is located beyond 440 yards from the proposed Facility, the Warford's are not affected persons pursuant to Tex. Health & Safety Code § 382.058. Their request for a contested case hearing should be denied.

Ms. Sarah Beth Owen, Mayor of Whitewright, also submitted a hearing request. Her hearing request was submitted on May 24, 2024. She requested "a public hearing be scheduled and held to allow the public from Whitewright and the surrounding area an opportunity to voice and address their concerns." In the final decision letter from the Executive Director, Mayor Owen listed her address as a P.O. Box. According to the Grayson County Appraisal District website and public records, Mayor Owen's permanent residence is located at 102 W Grand Street, Whitewright, Texas—approximately eight miles away from the proposed Facility.¹ For that reason, she does not live within 440 yards of the proposed Facility, and therefore she is not an affected person pursuant to Tex. Health & Safety Code § 382.058. Assuming her request for a public hearing is deemed to be an actual request for a contested case hearing before SOAH, such request should be denied because Mayor Owen lacks standing to contest the air quality permit since she does not permanently reside within 440 yards of the proposed Facility.

B. There will be no impact of the regulated activity on the health, general welfare, and physical property of any hearing requestor.

Caprock Precast's permit application demonstrates the projected emissions from the proposed Facility, and the emissions will likely not impact the health, safety, or property of any hearing requestor. 30 Tex. Admin. Code § 55.203(c)(4). Caprock Precast represented that its

¹ Mayor Sarah Beth Owen's permanent residence is not shown on Attachment A because it is much too far away from Caprock Precast's proposed concrete batch plant to be seen on the map.

operations will be protective of human health and the environment and meets the protectiveness requirements of the January 24, 2024, Air Quality Standard Air Permit for Concrete Batch Plants. The hearing requestors—both of whom live well beyond 440 yards from the proposed Facility and not on any road or thoroughfare where the entrance to the plant exists—have not provided any evidence that suggests otherwise.

During the development of the standard permit, the Executive Director conducted an extensive protectiveness review to ensure protectiveness of human health and the environment. The Executive Director determined that the emissions authorized by the standard permit are protective of human health and the environment. *See* RTC at p. 2. Additionally, TCEQ reviewed ambient air crystalline silica levels measured near aggregate production operations similar to this proposed Facility across the United States and determined that no adverse health effects from crystalline silica are expected. *See* RTC at p. 2.

C. Caprock Precast complied with sign-posting notice requirements.

Caprock Precast complied with 30 Tex. Admin. Code § 39.604, which requires that signs be placed at the site of the existing or proposed facility and the manner in which the Commission may be contacted for further information. Caprock Precast's notice was posted on a 24 x 30-inch sign at the entrance of the proposed Facility at 1 State Highway 160, which is well south and west of the Warford property. As noted, the Warford's failed to identify the true location of the proposed batch plant in their hearing request. The posted sign included all relevant information, as required under the regulations. Additionally, after completing their administrative and technical review of the application, the TCEQ Executive Director's staff concluded that the notice was posted in accordance with 30 Tex. Admin. Code § 39.604. *See* RTC at p. 7.

D. The Executive Director concluded Caprock Precast has met the requirements of applicable law for the Commission to approve the application.

The Executive Director concluded in the letter dated September 19, 2024, that Caprock Precast's permit application met the requirements of applicable law. Further, the Executive Director's preliminary determination did not change after filing the RTC. Therefore, a contested case hearing regarding Caprock Precast's permit application would be a waste of both TCEQ's and Caprock Precast's resources.

E. While there is no basis for the Commission to grant a contested case hearing for Caprock Precast's application, if one was to be granted, its maximum expected duration should be six months.

Caprock Precast believes that while this Response demonstrates there is no basis for the Commission to grant a contested case hearing for the standard air permit in response to any of the hearing requests, if the Commission was to nevertheless grant a contested case hearing, it should last no more than six months.

IV. PRAYER

The Applicant respectfully urges the Commission to deny the hearing requests, adopt the Executive Director's Response to Public Comment, approve the Applicant's permit application that is the subject of this proceeding, and issue Permit No. 175658. There is no right to a contested case hearing on Applicant's permit application as no requestor resides within 440 yards of the proposed Facility.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 2, 2024, a true and complete copy of the foregoing Caprock Precast, LLC's Response to Requests for Contested Case Hearing was sent to each of the following parties by email or first class mail, as is indicated below.

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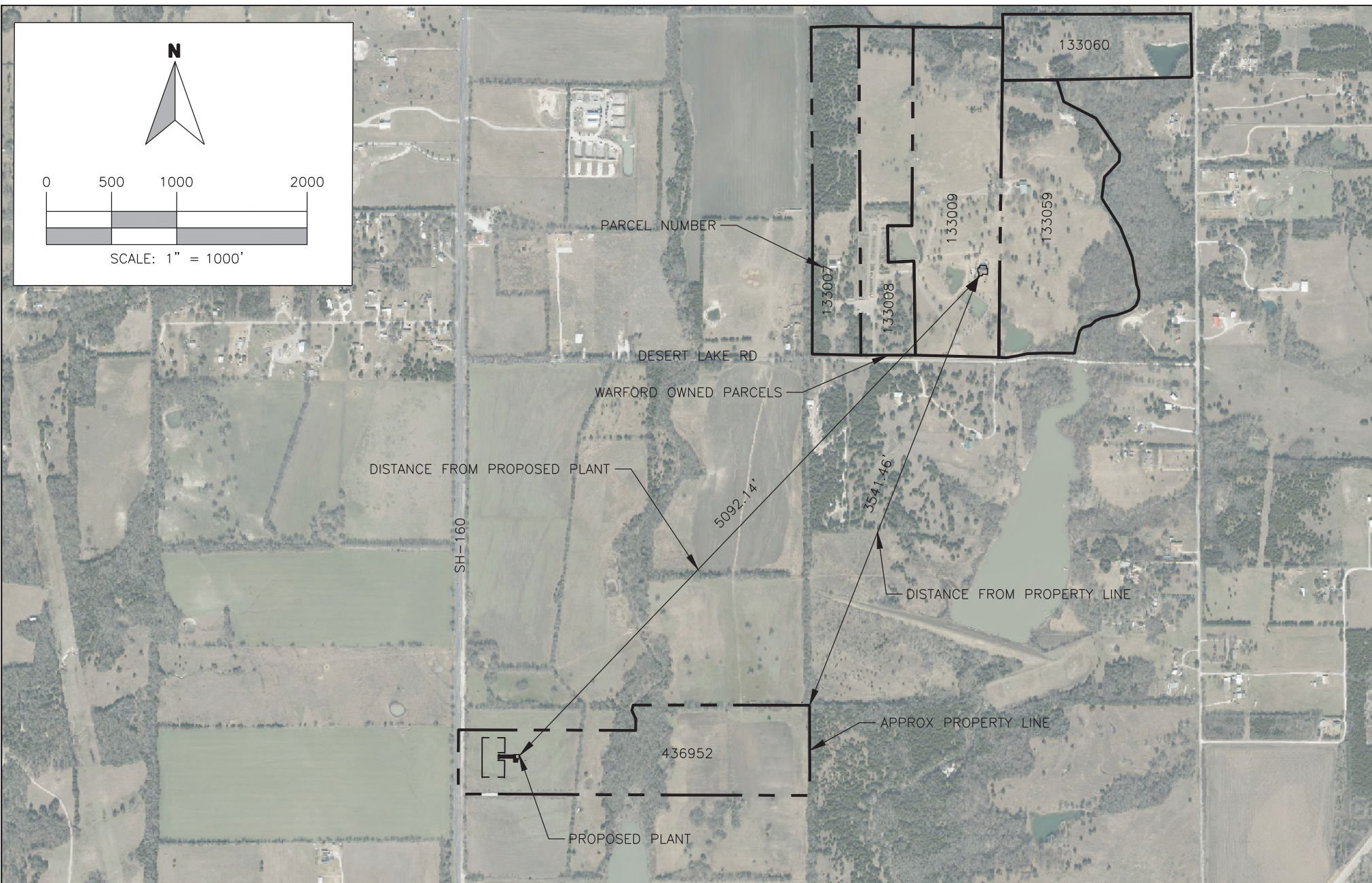
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ATTACHMENT A

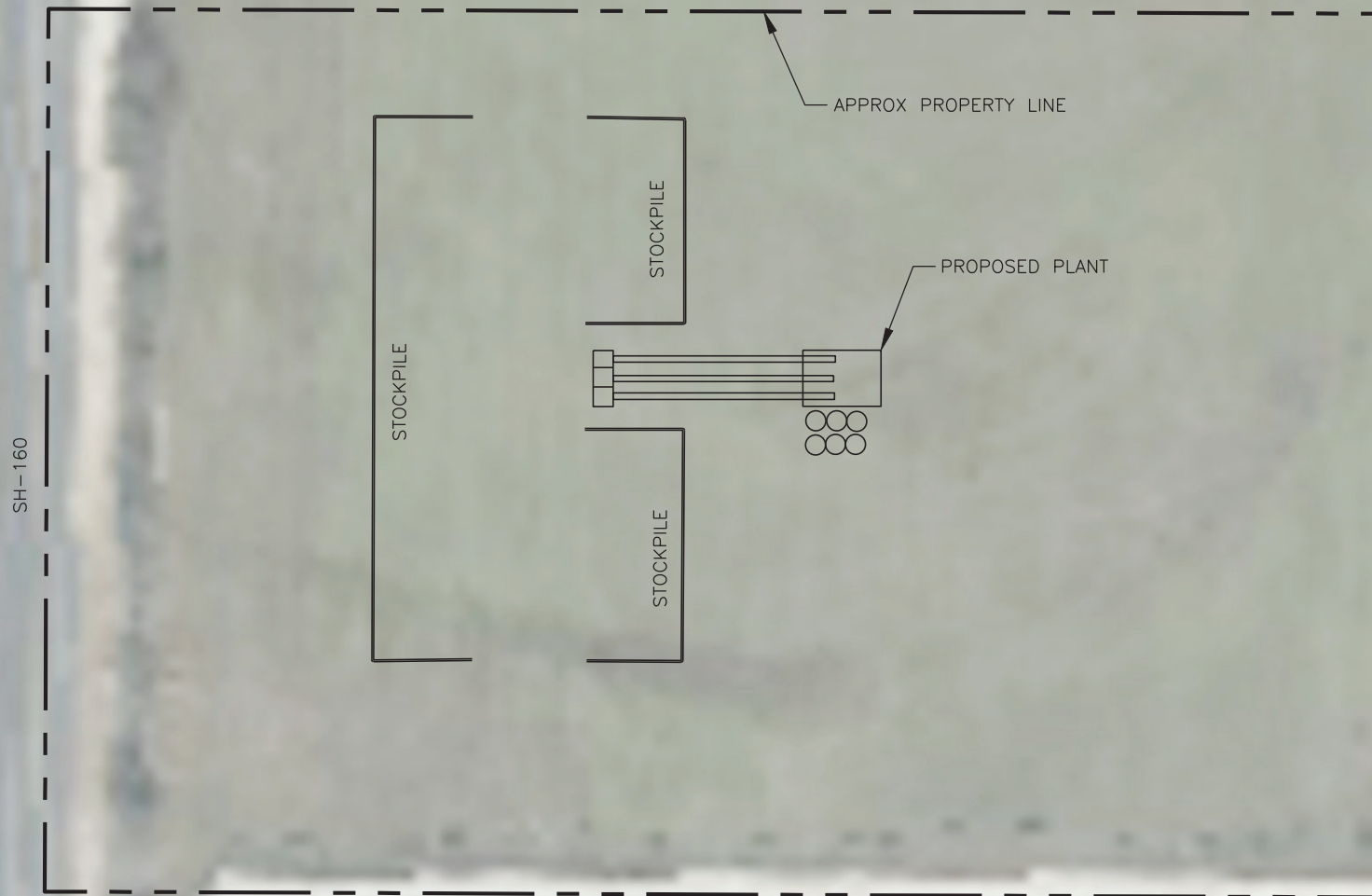
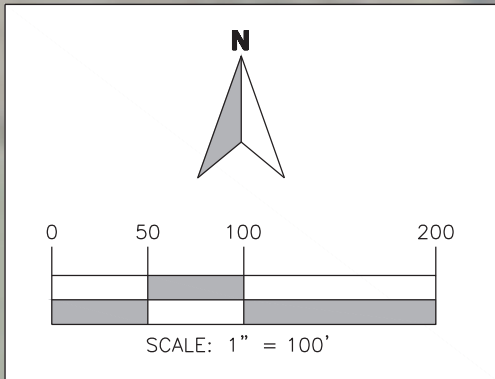


SHEET NO.: 01 OF 02	IMAGE: BING AERIAL	
	ISSUE DATE:	11/25/2024
	DRAWN BY:	ES
	CHECKED BY:	MF
	SCALE: 1" =	1000'
	JOB NO.:	11235.005

PLOT PLAN			
SP CBP			
CAPROCK PRECAST LLC			
WHITEWRIGHT, GRAYSON COUNTY, TEXAS			
REV.	DESCRIPTION	BY	DATE

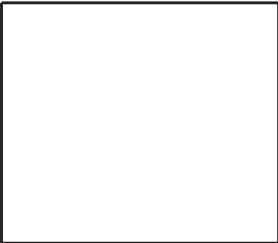
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TBPE REG. NO.: F-4524
TBPGE REG. NO.: 50112



SHEET NO.: 02 OF 02	IMAGE: BING AERIAL	
	ISSUE DATE:	11/25/2024
	DRAWN BY:	ES
	CHECKED BY:	MF
	SCALE: 1" =	100'
	JOB NO.:	11235-005

PLOT PLAN DETAILED			
SP CBP			
CAPROCK PRECAST, LLC			
WHITEWRIGHT, GRAYSON COUNTY, TEXAS			
REV.	DESCRIPTION	BY	DATE





WESTWARD

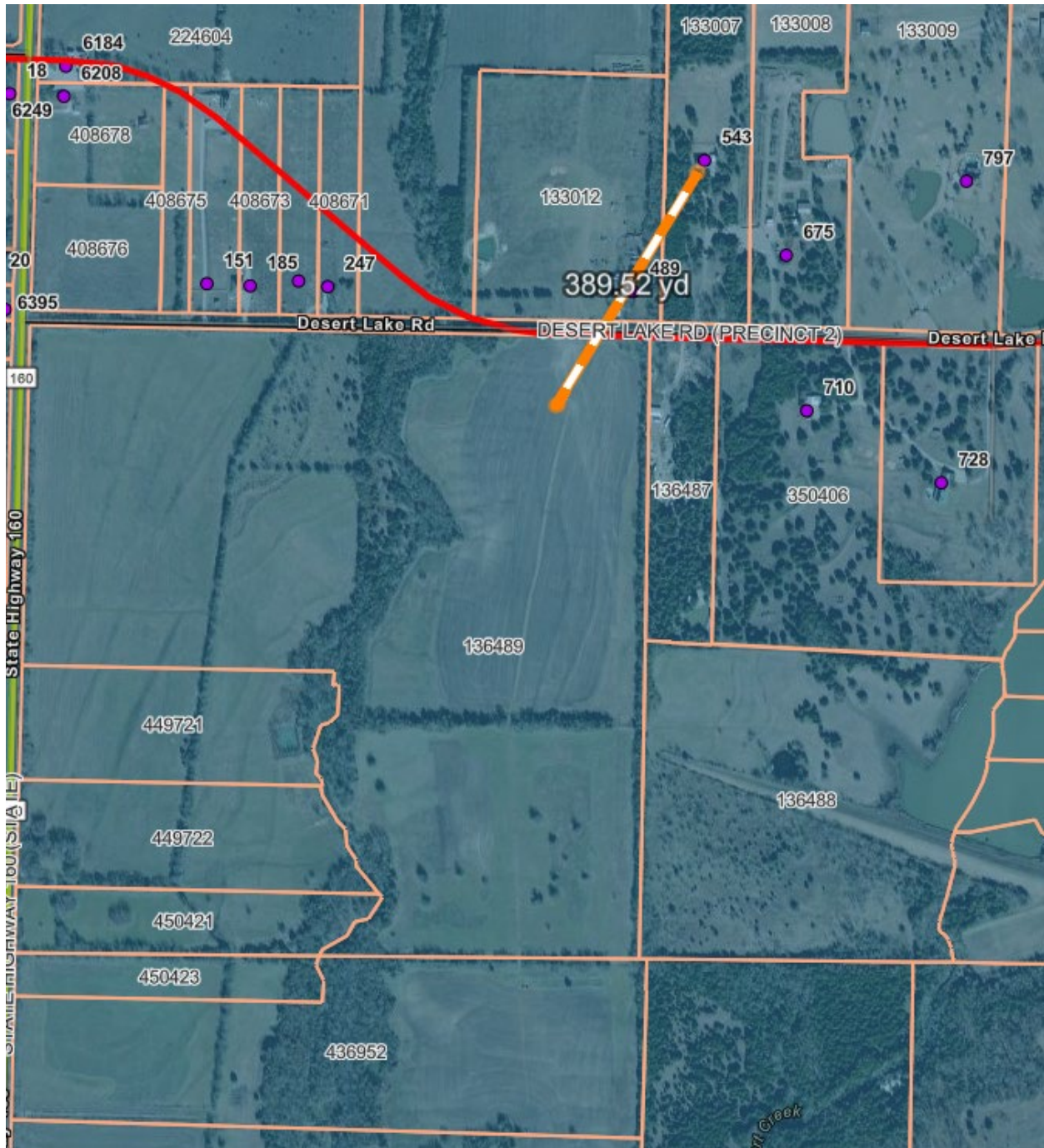
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 TBPE REG. NO.: F-4524
 TBPB REG. NO.: 50112

EXHIBIT A FROM KURT AND AMBER WARFORD'S HEARING
REQUEST

EXHIBIT A

Distance from Caprock Tract to Mr. Warford's Mother's Residence at 543 Desert Lake Road



Note: Parcel Identification Nos. 136489 and 436952 are the tracts upon which Caprock intends to locate the Proposed Plant.

Distance from Caprock Tract to Warfords' Residence at 797 Desert Lake Road

