

SOAH DOCKET NO. 582-15-2082  
TCEQ DOCKET NO. 2015-0069-MSW

APPLICATION OF § BEFORE THE STATE OFFICE  
130 ENVIRONMENTAL PARK, LLC §  
FOR PROPOSED § OF  
PERMIT NO. 2383 §  
§ ADMINISTRATIVE HEARINGS

APPLICANT’S REPLIES TO EXCEPTIONS

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

130 ENVIRONMENTAL PARK, LLC (130 Environmental Park), the Applicant in this proceeding, files this, its Replies to Exceptions, and would respectfully show as follows:

Exceptions were filed herein as follows:

- The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) filed ED's Exceptions to Proposal for Decision and Order (ED's Exceptions) on March 10, 2017.
- 130 Environmental Park filed 130 Environmental Park, LLC's Exceptions to the Administrative Law Judges' Proposal for Decision (130EP's Exceptions) on March 13, 2017.
- The Office of Public Interest Counsel (OPIC) filed OPIC's Exceptions to Proposal for Decision (OPIC's Exceptions) on March 13, 2017.
- Caldwell County, Texas (Caldwell County) filed Caldwell County's Exceptions to Proposal for Decision (Caldwell County's Exceptions) on March 13, 2017.
- TJFA, LP (TJFA) and Environmental Protection in the Interest of Caldwell County (EPICC) (collectively TJFA/EPICC) filed TJFA/EPICC's Exceptions to the Proposal for Decision (TJFA/EPICC's Exceptions) on March 13, 2017.

## **I. OPERATING HOURS AND PERMIT BOUNDARY**

### **A. Operating Hours**

In their exceptions, TJFA/EPICC and OPIC address the ALJs' recommendation regarding operating hours for the 130 Environmental Park facility. 130EP considers this to be one of the two most significant problems with the PFD (the other being the ALJs' recommendation to expand the permit boundary to include the entire site entrance road and the entire area where the screening berm will be constructed). These recommendations are significant because they were developed in response to "concerns" expressed by TJFA/EPICC and OPIC based not on their interests in addressing any real problem associated with 130EP's proposed project or in making legitimate and necessary improvements to provisions in the draft permit prepared and recommended by the Executive Director. Instead the "concerns" that gave rise to these recommendations were based on the interest of those opposed to the 130 Environmental Park facility in preventing it from being able to operate effectively and efficiently and to put it at a competitive disadvantage in relation to other landfills in the area (by unnecessarily limiting the facility's operating hours) and in encouraging the ALJs to recommend, and the Commission to agree to, significant expansion of the permit boundary proposed in the permit application for reasons that are not required by and that are, in fact, inconsistent with, TCEQ's rules, in order to create a basis upon which to challenge the Commission's issuance of a permit in a judicial appeal in an effort to further delay or prevent the 130 Environmental Park facility. The Commission should reject these recommendations.

In their exceptions, TJFA/EPICC and OPIC discuss the ALJs' recommendation to limit certain operating hours at the 130 Environmental Park Landfill to the specific hours set out in 30 TAC §135(a) (waste acceptance hours of 7 a.m. to 7 p.m., Monday through Friday, and transportation of materials and heavy equipment operation must not be conducted between the hours of 9 p.m. to 5 a.m.<sup>1</sup>) and OPIC expresses concerns about when during the development of the site the screening

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<sup>1</sup> 30 TAC §330.135(a) provides that these operating hours apply "unless otherwise approved in the authorization for

berm at the north end of the site will be constructed. TJFA/EPICC and OPIC's discussions of operating hours and the screening berm, and the ALJ's recommended limitations on operating hours, are based on stated concerns that persons living near the northern portion of the landfill site may be impacted by evening and nighttime landfill operations and that 130EP did not justify/show the appropriateness of the operating hours set out in its permit application (waste acceptance hours of 3 a.m. to 5 p.m. Monday through Friday and 5 a.m. to noon Saturday, other operations 24 hours per day, 7 days per week).<sup>2</sup> In its exceptions, 130EP asserted that TCEQ does not require justification of proposed operating hours<sup>3</sup>, but also identified the evidence in the record that does justify those hours and the evidence in the record and findings and conclusions in the ALJs' proposed order that show residences near the landfill will not be adversely impacted by operations during the hours proposed by 130EP.<sup>4</sup>

However, if the Commission determines that revisions to the draft permit are appropriate to address legitimate concerns regarding the landfill's operating hours, 130EP respectfully suggests revisions that would more appropriately limit the potential for impacts on the residences identified in the exceptions filed by TJFA/EPICC and OPIC and in the PFD: the residences near Homannville Trail north of the landfill site. As shown in the updated Land Use Analysis (*Ex. Worrall-3*, copy attached hereto as Attachment 1; see also the Landscape Screening Plan, *Hearing Exhibit Worrall-10*, copy attached hereto as Attachment 2), there are only 5 residences located within 1,000 feet of the waste disposal area (landfill footprint) for the 130 Environmental Park Landfill, all of which are located off Homannville Trail north of the site. TCEQ's municipal solid waste rules specify that a new Type I landfill (like the proposed 130 Environmental Park facility) must have a buffer zone

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the facility".

<sup>2</sup> In their exceptions, TJFA/EPICC also suggest that limiting the facility operating hours as proposed by the ALJs' recommendation is necessary to make sure daily cover is applied to the working face of the landfill "at least once per day...thus reducing windblown waste, odor, and the probability of contaminated stormwater." *TJFA/EPICC Exceptions at p.107*. This is a ridiculous assertion. TCEQ's daily cover rule, 30 TAC §330.165(a), requires, "At least six inches of well- compacted soil cover material that has not been previously mixed with garbage, rubbish, or other solid waste will be placed over all solid waste at the end of each operating day to control disease vectors, fires, odors, windblown litter or waste, and scavenging ...". (The rule even requires the use of daily cover at landfills that operate 24 hours per day: "Landfills that operate on a 24-hour basis must cover the working face or active disposal area at least once every 24 hours.") And, the Site Operating Plan for the 130 Environmental Park Landfill specifically provides for the application of daily cover: At least six inches of well- compacted soil cover material that has not been previously mixed with garbage, rubbish, or other solid waste will be placed over all solid waste at the end of each operating day..." *Ex. 130EP-5 at p.147*.

<sup>3</sup> In his exceptions, the Executive Director also asserts this position. *ED's Exceptions at pp. 5-6*.

<sup>4</sup> Explanation of and justification for the operating hours proposed in the permit application includes evidence of reasonable hourly estimates of the number and types of vehicles transporting waste to the site (waste route collection trucks, waste transfer trucks, and small waste load vehicles), and the volume of waste transported by each such vehicle, which establishes the anticipated demand for and reasonable expectation of incoming volumes of waste to the 130 Environmental Park facility during the waste acceptance hours set out in the Application. *Ex. 130EP-1 pp. 168-175 and 195-196; Ex. Hobby-1, pp.3-5*. It also includes the authorized operating hours of other municipal solid waste landfill facilities located generally within the service area from which the 130 Environmental Park Landfill is expected to receive waste, as set out in 130EP's Exceptions at pages 17-19. In addition, as discussed in 130EP's Exceptions at pages 20-21, operation of the proposed 130 Environmental Park facility during the hours set out in the Application will not create nuisance conditions or result in an incompatible land use.

extending out 125 feet from any waste management or disposal area.<sup>5</sup> 30 TAC §330.543(b)(2)(A). At the 130 Environmental Park facility, the nearest residence is approximately 345 feet from the landfill footprint; the next closest is approximately 400 feet away.<sup>6,7,8</sup> 130EP suggests the

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<sup>5</sup> 30 TAC §330.543(b)(2)(A). In 2006, the Commission adopted amendments to its municipal solid waste rules, including §330.543, that increased the buffer zone for Type I landfills from 50 feet to 125 feet. Comments submitted during that rulemaking process included:

concern that the proposed 125-foot buffer zone from a landfill was not sufficient, that super-sized landfills need bigger buffers to protect neighbors. The commenters requested that the commission impose greater buffer zones on landfills...Regional landfills should be required to have a minimum 100-yard (300-foot) buffer zone.

In its response to comments, TCEQ stated,

The commission believes that the 125-foot buffer zone distance for a Type I landfill...ensures adequate space to meet the performance requirements established in §330.543(b)(3)(B)(i) - (iv) to provide for: visual screening; access for emergency response, maintenance, and monitoring; control of odors and windblown waste; and control of drainage and sediment runoff.

31 TexReg 2502, 2579-2580.

<sup>6</sup> The entire area within one mile of the landfill permit boundary is sparsely populated. There are a total of 29 residences to the north of the site, at distances of 345 feet to more than one mile from the landfill footprint. To the east, there are 15 residences, from 1,200 to more than 6,400 feet from the footprint. To the southeast, there are 31 residences, all more than 2,700 feet from the footprint. To the south, there are 2 residences, both of which are more than 4,300 feet from the footprint. To the southwest, there are 5 individual residences and a subdivision with approximately 60 residences, all of which are more than 6,900 feet from the footprint. To the west, there is only one residence, located approximately 5,800 feet from the footprint. Nearly half (66) of the residences within one mile of the permit boundary are located to the south and southwest and are well over one mile from the footprint. Altogether, residential land use makes up only 5.3% of the area within one mile of the permit boundary. More than 93% of the land within one mile is open and agricultural use land. There are only 5 businesses within one mile of the permit boundary; the closest is approximately 5,700 feet east of the footprint. There are no churches, schools, daycare centers, or cemeteries within one mile of the permit boundary. *Ex. Worrall-3 at pp. 3, 5, 8* (copy attached hereto as Attachment 1); *Ex. Worrall-1 at p.10*; *Landscape Screening Plan, Hearing Exhibit Worrall-10* (copy attached hereto as Attachment 2).

<sup>7</sup> The residence that is approximately 400 feet from the landfill footprint was purchased by TJFA prior to and so that it could seek party status in this proceeding to oppose the permitting of the 130 Environmental Park Landfill. TJFA is an affiliate of Texas Disposal Systems (TDS), a solid waste collection and disposal entity that operates a municipal solid waste landfill several miles north of the 130 Environmental Park site. Dennis Hobbs, the president of TJFA, is also employed by TDS as an executive assistant. Bob Gregory, who is part of the TJFA limited partnership, is also the president of TDS. TJFA has purchased property near other landfills that compete with TDS's landfill and has obtained party status in hearings to oppose those landfill projects. *Testimony of Dennis Hobbs and admissions by Marisa Perales, Transcript of Prehearing Conference, March 26, 2015 pp.26-27 and 30-34*

<sup>8</sup> In his exceptions, at pages 4-6, the Executive Director discusses the Commission's 2004 and 2006 rulemakings that included revisions to the operating hours rule provisions that are now set out in 30 TAC §330.135(a) and explains that the rule does not impose on a permit applicant the burden to justify proposed operating hours:

the Executive Director interprets the rule to mean that an applicant can propose operating hours that exceed the rule, and that the Commission will generally approve those hours, unless the Commission becomes aware of information to justify restricting the proposed hours...Under the Executive Director's interpretation and practice, applicants have not been required to include justification their applications exceed the operating hours specified in the rule. As to this Application, the Executive Director is not aware of any evidence in the record to support the ALJ's finding to restrict the operating hours, other than a finding that there are residences within a short distance to portions of the facility.

In its response to comments in the 2004 rulemaking, the Commission stated: [footnote continued]

following revisions to the draft permit provision (II.A.) that specifies “Days and Hours of Operation” and the addition of a new Special Provision in Section IX. of the permit to address the screening berm (changes to draft permit provisions are shown in blackline/strikeout formatting):

**1. Revised Section II.A. (Days and Hours of Operation)**

Except as provided below, the authorized waste acceptance hours for the receipt and disposal of waste at this facility shall be 3:00 a.m. to 5:00 p.m. Monday through Friday, and from 5:00 am to 12:00 pm on Saturday, and the operating hours at this landfill, which include the use of heavy equipment, shall be 24 hours per day, seven days per week. Waste acceptance and disposal, transportation of materials, and operation of heavy equipment are prohibited between the hours of 7:00 p.m. and 7:00 a.m. in areas inside the property boundary that are within, or north and/or west of, Cells 11, 14, and 15, as shown in Part II, Drawing IIA.13 in the permit application.

The operator shall post the actual waste acceptance and operating hours on the site sign.

**2. New Special Provision (Screening Berm)**

The screening berm shall be constructed as shown in Part II, Drawings IIA.19, IIA.20, and IIA.24 in the permit application and Hearing Exhibit Worrall-10. Waste may not be disposed of: (1) in Cell 11 prior to construction of the western portion of the screening berm as shown on Drawing IIA.19, and (2) in Cells 14 or 15 prior to construction of the remainder of the screening berm.

130EP will, of course, not object to the inclusion of these provisions in a permit issued by the Commission.

The suggested revised operating hours provision would prohibit all waste acceptance and disposal, transportation of materials, and the operation of heavy equipment during evening and nighttime hours (7 p.m. to 7 a.m.) in northern portions of the landfill property. This prohibition would apply in all areas within, or north and/or west of, landfill Cells 11, 14, and 15, as shown on Application Drawing IIA.13 (*Ex. 130EP-1 p. 132*, copy attached hereto as Attachment 3). The landfill areas not subject to this prohibition would all be more than 800 feet away from the nearest residence (approximately 6½ times the 125-foot buffer zone required by TCEQ rule), approximately 1,200 feet from the next closest residence (nearly 10 times the required buffer zone), and even farther from all other residences. (*Ex. Worrall-3 at p.8*, copy attached hereto as Attachment 1; *Ex. 130EP-1 p. 132*, copy attached hereto as Attachment 3)

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The rule has not been changed in regard to comments that a variance from the operating hours designated in the rule should only be granted on a showing of good cause, and that a 24-hour operation should not be authorized in a populated area. Adding a requirement to show good cause would not add any objective criteria for making a determination. The commission will continue to make these decisions on a case-by-case basis considering the potential impact on surrounding communities. The commission can consider whether a facility is located in a residential area, downtown area, or rural area under existing rules. (emphasis added)

29 TexReg 11054, 11070. Clearly, the 130 Environmental Park site is located in a rural area.

In addition, the suggested screening berm special provision would ensure that the 30- to 50-foot tall landscaped screening berm proposed by 130EP between the landfill operating areas and residences to the north would be constructed before waste disposal operations commence in the northern Cells: 11, 14, and 15.<sup>9</sup> As shown on Application Drawing II.A.13 (*Ex. 130EP-1 p. 132*, copy attached hereto as Attachment 3), landfill development will begin in Phase 1, in the far southern portion of the site, then progress into Phase 2. Phase 3, in the northwest area of the site, will involve the development of Cells 9, 10, and 11 (in that order). Finally, the last phase will be in the northeast part of the site, where Cells 12, 13, 14, and 15 will be developed, in that order. Details for the screening berm (including 536 trees and 274 large evergreen shrubs) are shown on the Landscape Screening Plan (*Hearing Exhibit Worrall-10*, copy attached hereto as Attachment 3). As shown on Application Drawing II.A.19 (*Ex. 130EP-1 p. 138*, copy attached hereto as Attachment 4), the western portion of the screening berm (adjacent to the northern portion of Cell 11) will be constructed before waste disposal begins in that cell. And, as shown on Application Drawing II.A.20 (*Ex. 130EP-1 p. 139*, copy attached hereto as Attachment 5), the remainder of the screening berm (that wraps around the west, north and east sides of Cell 15) will be constructed before waste disposal begins in that cell.<sup>10</sup> The suggested new permit special provision will ensure that the entire screening berm is constructed before any waste disposal begins in either Cell 14 or Cell 15.

130EP is committed to being a good neighbor to nearby residents and landowners and to developing and operating the 130 Environmental Park Landfill in compliance with all applicable legal requirements, including the site development and site operating provisions in TCEQ's municipal solid waste rules and the requirement in 30 TAC §330.15(a) that prevents "operation of a solid waste facility...in such a manner that causes...the creation and maintenance of a nuisance". If the Commission determines that the draft permit prepared and recommended by the Executive Director should be changed to address concerns regarding facility operating hours, 130EP respectfully suggests that the revisions set out above would establish protections that go well beyond those required by provisions in the MSW rules, while allowing the facility to operate in an efficient and effective manner to meet its expected demand for solid waste disposal services in a competitive industry and market in which other, similar landfills (including the TDS landfill) have authorized operating hours that extend well beyond those set out in 30 TAC §330.135(a).

## **B. Permit Boundary**

In their exceptions, TJFA/EPICC and OPIC repeat their previously asserted claims that the permit boundary for the 130 Environmental Park Landfill facility must be expanded to include the entire extent of the site entrance road (southwest from the facility boundary to US Highway 183) and all of the area to the north of the currently proposed permit boundary within which the screening berm will be constructed.<sup>11</sup> The only regulatory provision referenced by TJFA/EPICC that could be

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<sup>9</sup> The prohibition in permit Section II.A. would continue to apply even after construction of the screening berm: no waste acceptance or disposal, transportation of materials, or operation of heavy equipment could occur during evening and nighttime hours (7 p.m. to 7 a.m.) in northern portions of the landfill property.

<sup>10</sup> The screening berm is also shown on the Facility Screening Plan, Application Drawing II.A.19 (*Ex. 130EP-1 p. 138*, copy attached hereto as Attachment 6).

<sup>11</sup> As shown on the Facility Screening Plan, Application Drawing II.A.19 (*Ex. 130EP-1 p. 138*, copy attached hereto [footnote continued])

viewed as support for their claim is 30 TAC §330.153 (Site Access Roads.). However, as pointed out by the Executive Director in his exceptions (at page 2), and by 130EP in its exceptions (at pages 9-10) this rule actually makes it clear that private roads used to access a permitted landfill are not required to be included within the permit boundary:

30 TAC §330.153. (Site Access Roads)

(a) All-weather roads must be provided from the facility to access public roads and within the facility to the unloading area(s) designated for wet-weather operation. Tracked mud and associated debris at the access to the facility on the public roadway must be removed at least once per day on days when mud and associated debris are being tracked onto the public roadway. The methods for controlling mud and associated debris tracked onto public roadways must be specified in the site operating plan.

...

(c) All on-site and other access roadways must be maintained 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 regraded to minimize depressions, ruts, and potholes. The frequency of regrading must be specified in the site operating plan.

(emphasis added)

This rule not only contemplates entrance/access roads both within and outside of the permit boundary, both of the quoted subsections refer specifically to site access via roadways that are not located within the facility (permit boundary). 330.153(a) addresses roads from the facility to public roads. Such a road could never be located within a facility boundary (because it is described as extending “from the facility”) and it would necessarily always be a private, not public, road (because it is described as extending “to public roads”). 30 TAC §330.153(c) requires maintenance of both on-site and other access roadways. Such “other access roadways” must necessarily be located off-site, outside of the permit boundary.

OPIC and the PFD purport to rely on the definition of “facility” in TCEQ’s MSW rules as support for the idea that a site entrance road must be located within the permit boundary. That definition, in 30 TAC §330.3(52) provides: “Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.” However, this provision certainly does not require a landfill entrance road to be located entirely within the permit boundary. In fact, it doesn’t even apply to a landfill entrance road at all because a landfill entrance road is not “used for the storage, processing, or disposal of solid waste”. In the PFD, the ALJs specifically recognized that land, structures, appurtenances, and improvements that are not “used for the storage, processing, or disposal of solid waste” are not within the scope of this definition and are not required to be included within a facility (permit) boundary:

[T]he ALJs do not agree with OPIC that the Permit Boundary should be expanded to include all of the natural wooded areas occurring on the Hunter Tract beyond the

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as Attachment OH-6, most of the screening berm will be within the currently proposed permit boundary, although it will extend onto areas that are not. The entirety of the screening berm will be within the boundary of the property to be purchased by 130EP (the Hunter Tract) for the 130 Environmental Park facility.

Permit Boundary...[T]he ALJs cannot conclude that those areas should be included within the Facility Boundary because those areas are not used for the storage, processing, or disposal of solid waste under 30 TAC § 330.3(52). (emphasis added)

There is no requirement that the site entrance road or the screening berm be included within the permit boundary. And, under the ALJs' own reasonable and appropriate interpretation of the definition of "facility", neither the site entrance road nor the screening berm "should be included with the facility boundary because those areas are not used for the storage, processing, or disposal of solid waste".

TJFA/EPICC, OPIC, and the PFD suggest that the site entrance road (and the screening berm) should be included in the permit boundary so TCEQ will have authority to enforce 130EP's construction and maintenance responsibilities regarding them. However, as the Executive Director pointed out in his exceptions (at page 3), the ED can enforce requirements related to improvements located outside the permit boundary, citing the testimony of TCEQ Engineer Steven Odil, P.E. Mr. Odil specifically referenced the requirement in 30 TAC §330.145 that a facility owner or operator "shall be responsible for at least once per day cleanup of waste materials spilled along and within the right-of-way of public access roads serving the facility for a distance of two miles in either direction from any entrances used for the delivery of waste to the facility" as an example of TCEQ's enforcement authority extending beyond the permit boundary. *Testimony of TCEQ Engineer Steven Odil, P.E. at Tr. pp. 1923-1924.* Other examples include the Site Access Roads rule provisions, 30 TAC §330.153(a) and (c), discussed above.

In addition, as the ALJs acknowledged in the PFD (at page 28), other TCEQ permits have excluded access roads from permit boundaries. And, in its exceptions (at pp. 8-10), 130EP pointed out specific examples of TCEQ-permitted landfills where significant portions of a site access road and portions of a screening berm are not within the permit boundary. Finally, undisputed evidence in the record from Mr. Kenneth Welch, P.E. shows that, with regard to other landfill permits, "TCEQ has not required the entire length of the entrance road to be within the permit structures are within the permit boundary." Mr. Welch also testified that he has "worked on other permit applications with TCEQ where the entrance road was not within the facility boundary or permit boundary", including the New Boston Landfill. *Testimony of Kenneth Welch, P.E. at Tr. pp. 1251 and 1253-1254; Ex. 130EP-45.*

TCEQ's rules do not require, and the Executive Director's position and practice have been and are that the full extent of site entrance roads and screening berms are not required to be included within the permit boundaries of MSW facilities. In *Starr County v. Starr Indus. Servs.*, 584 S.W.2d 352, 356 (Tex. Civ. App.—Austin, 1979, writ ref'd n.r.e.), a state agency denied an industrial waste facility permit to Starr Industrial Services. In its opinion, the Austin Court of Civil Appeals explained:

The appellee worked quite closely with the Board's staff, and, apparently, had complied with all of the staff's requirements for a permit when, to its surprise, the Board denied the permit citing additional requirements that had neither been expected by appellee nor proposed by the Board's staff [adamant local opposition... The major factor that runs throughout arbitrary-capricious review cases is that

parties must be able to know what is expected of them in the administrative process. We believe this notice was lacking in the present case.

Because 130EP was not given notice of a requirement that the site entrance road and screening berm would need to be included within the proposed facility's permit boundary (and was, in fact, given every reason to believe such was not the case), it would be arbitrary and capricious for TCEQ to now impose such a requirement on 130EP.

The efforts of parties opposed to the 130 Environmental Park facility in encouraging the ALJs to recommend, and the Commission to agree to, significant expansion of the permit boundary proposed in the permit application for reasons that are not required by and that are, in fact, inconsistent with, TCEQ's rules, is nothing more than an attempt to create a basis upon which the Commission's issuance of a permit can be challenged in a judicial appeal in an effort to further delay or prevent the 130 Environmental Park facility.

Expanding the permit boundary to include the entire site entrance road would extend the permit boundary all the way to US Highway 183, more than 3,500 feet to the southwest. Application Drawing II.A.8 (*Ex. 130EP-1 p. 132*, copy attached hereto as Attachment 7). This would expand the area within one mile of the permit boundary (the area within which a MSW permit application must include an evaluation of land uses) to include more than 800 additional acres and take in many additional tracts of land with varied land uses, all of which are located at least 6,200 feet from the landfill footprint area, some more than 11,000 feet away. In addition, there would be dozens more tracts located within ½-mile of the expanded permit boundary (the required distance for providing notice of a MSW permit application contested case hearing). Expansion of the permit boundary to the north to include the entire area of the screening berm would also result in increasing the area and number of tracts within ½-mile and one mile of the permit boundary, although to a lesser extent. Opponents of the 130 Environmental Park project, including TJFA and EPICC, appear to be interested in expansion of the permit boundary so they can then claim that the permit application requires significant revisions (including all drawings showing the permit boundary, the land use report that addresses land uses within one mile of the permit boundary, the adjacent landowners map that shows tracts within one-quarter mile of the permit boundary) and that additional notice and hearing regarding the application is necessary (because hearing notices must be sent to landowners, residents, and businesses within ½-mile of the permit boundary).

If there is any doubt about these motives, one need only consider various statements in TJFA/EPICC's exceptions, including this one at page 13 of the exceptions, that ends with an ominous ellipsis:

The ALJs, however, do not fully acknowledge that the failure to extend the permit boundary to include this roadway constitutes a fatal flaw in the permit. Furthermore, the ALJ's do not acknowledge that the expansion of the permit boundary constitutes a major amendment, which cannot occur without...

The Commission should refuse to expand the permit boundary.

## **II. OTHER ISSUES (in order used in PFD)**

### **A. Sufficiency of Property Rights**

In the Proposal for Decision, the ALJs find that “130EP has shown that it has acquired the necessary property rights in the Hunter Tract, including the land over which the access road will run. Accordingly, the ALJs conclude that 130EP has shown that the Application met the property rights requirements in 30 TAC §§ 330.59 and 330.67.”<sup>12</sup>

#### **TJFA/EPICC Exceptions**

TJFA/EPICC argues that 130 Environmental Park has not demonstrated sufficient property rights in all areas that should properly be included within the scope of the permitted facility.<sup>13</sup> TJFA/EPICC argues that “130 Environmental Park has not demonstrated sufficient property rights in these areas outside of the area that Ms. Hunter has committed to convey to Applicant.”<sup>14</sup> This is simply untrue. 130 Environmental Park has obtained an option to purchase all of the property on which the access road and screening berm will be constructed and will own all of the property downstream of the Facility up to and including the Site 21 Reservoir dam.<sup>15</sup> 130 Environmental Park will address TJFA/EPICC’s arguments regarding the specific features of the Facility under sections below in accordance with how they were addressed by the ALJs.

#### **Office of Public Interest Counsel Exceptions**

OPIC supports the ALJs recommendation that the facility boundary be modified to include the access road to satisfy the property rights requirements, citing 30 TAC §330.157(a).<sup>16</sup> OPIC’s arguments are not related to sufficiency of property rights and are addressed in other sections of 130 Environmental Park’s Replies.

#### **Caldwell County Exceptions**

Caldwell County invokes reasons stated in previously filed briefing in the SAOH proceeding related to its allegations of 130 Environmental Park’s failure to demonstrate and satisfy the TCEQ rules concerning sufficiency of property rights. Those arguments were considered by the ALJs in finding that the Application complies with the TCEQ rules regarding sufficiency of property rights.

#### **130 Environmental Park Reply**

130EP agrees with the ALJs that it has shown that it has acquired the necessary property rights in the Hunter Tract, including the land over which the access road will run and that it has shown that the Application met the property rights requirements in 30 TAC §§ 330.59 and 330.67. 130EP

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<sup>12</sup> PFD, p. 13.

<sup>13</sup> TJFA/EPICC Exceptions, p. 4.

<sup>14</sup> TJFA/EPICC Exceptions, p. 4.

<sup>15</sup> Ex. 130EP-18.

<sup>16</sup> 30 TAC §330.157 provides that a “facility and the operation of the facility must not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.”

addresses the issues involving the ALJs proposal to extend the permit boundary to include the access road and screening berm in other sections of this Reply.

The Application contains all information required by and complies with TCEQ's rules regarding property rights and 130 Environmental Park has demonstrated that it has sufficient property rights to operate the proposed municipal solid waste disposal facility throughout its operating life and the post-closure care period. The TCEQ has jurisdiction to enforce all permit requirements both within and outside of the permit boundary.

## **B. Legal Authority, Evidence of Competency, and Compliance History**

The ALJs find that the Application meets the requirements of the 30 TAC §330.59(e) regarding legal authority and 30 TAC §330.59(f) regarding evidence of competency.

### **Office of Public Interest Counsel Exceptions**

OPIC and TJFA/EPICC argue that 130EP did not disclose all persons and sites subject to review, and that it failed to do so by not identifying members of the limited liability company. OPIC and TJFA/EPICC cite *Tex. Health & Safety Code* §361.089(g) as requiring disclosure of owners of a majority of stock in a corporation. OPIC and TJFA/EPICC argue that Green Group Holdings, LLC owns 130 Environmental Park, LLC and GGH owns and operates nine facilities throughout the country. Similarly, OPIC and TJFA/EPICC argue that 130EP failed to identify the nine facilities operated by GGH through other limited liability companies in the biographical information regarding Mr. Kaufmann, the President of 130EP.

### **TJFA/EPICC Exceptions**

In addition to the arguments it shared with OPIC as described above, TJFA/EPICC cites *South Texas Industrial Services v. Texas Dept. of Water Resources* as a case in which the Court of Appeals upheld the Department's revocation of a permit. This reliance is misplaced as this is a proceeding for issuance - not revocation - of a permit.

TJFA/EPICC also makes an extensive argument that counsel for 130EP attempted to mislead the ALJs regarding the absence of a stationary compactor meant that there was no mobile trash compactor. The ALJs' assessment and conclusions regarding TJFA/EPICC's arguments about the non-existent stationary trash compactor is valid and appropriate:

130EP counsel's comment in objecting to questioning at the hearing in which he stated that there is no trash compactor for the Facility is not a judicial admission that the Application falsely sets forth the equipment that will be dedicated to the Facility. It appears that the question to which 130EP's counsel objected was not referring to the same type of compactor listed in the Application.

### **130 Environmental Park Reply**

The rule regarding legal authority, 30 TAC §330.59(e), requires identification of persons having over a 20% ownership in the Facility (the land and features of the permitted Facility), not in 130EP (the owner of the Facility). The Application is clear that 130EP is the sole owner of the Facility, and there is no evidence to the contrary. GGH's membership in and ownership of 130EP does not give GGH any legal ownership interest in the Facility, so 130EP was not required by 30 TAC § 330.59(e) to list GGH, or any other subsidiary of GGH, as an owner of the Facility.

Similarly, OPIC cites 30 TAC §330.59(f)(4), which requires the “names of the principals and supervisors of the owner’s and operator’ organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities. All of the facilities identified by OPIC, and the organizations that operate them report up to GGH. While 130EP would like to take credit for the operating history of the entities operated by other limited liability companies, it would be inappropriate and a violation of 30 TAC §330.59(f) for it to do so. OPIC argues in part that 130EP has not demonstrated its competency to operate a municipal solid waste landfill, but acknowledges that “no rule prohibits a new company from entering the industry.”<sup>17</sup> 130 Environmental Park, LLC is a new company that will own and operate one facility, the 130 Environmental Park Landfill Facility. Contrary to TJFA/EPICC’s and OPIC’s desire that this was a proceeding to revoke a permit, this proceeding does not concern the revocation of a permit - it involves issuance of a permit. The ALJs were correct in their statement that no rule prohibits a new company from entering the industry.

130EP provided all information required by, and satisfied all requirements of the TCEQ rules regarding legal authority, evidence of competency, and compliance history.

### **C. Transportation and Traffic**

The ALJs find that 130EP met the requirements of 30 TAC § 330.61(i), and that the Application includes the required data on the availability and adequacy of the roads, the volume of vehicular traffic on access roads within one mile of the Facility, the projected volume of traffic expected to be generated by the Facility, and documentation of coordination of the design of the proposed public roadway improvements with TxDOT. The ALJs further find that there is no evidence in the record contradicting Mr. Denholm’s opinion or the adequacy of his analysis.<sup>18</sup>

### **D. Geology and Soils**

The ALJs find that the preponderance of the record evidence proves that the Application meets all but one of the requirements of 30 TAC §330.63(e)(4) with respect to the content of the Geology Report.<sup>19</sup> The only requirement that the ALJs find was not met was that the subsurface investigation was approved after the initiation of work.<sup>20</sup> However, the ALJs note that the evidence shows that there have been situations in the past in which an applicant has drilled borings prior to receiving approval from the ED for the boring plan, and that there is no evidence that in any such case did the ED require the applicant to redrill a boring as a result of the failure to obtain pre-approval of the boring plan.<sup>21</sup> The AJs find that the evidence shows that the ED did approve the boring plan and did not require 130 Environmental Park’s geologist to redrill any borings.

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<sup>17</sup> OPIC Exceptions, p. 6.

<sup>18</sup> PFD, p. 27.

<sup>19</sup> PFD, p. 58.

<sup>20</sup> PFD, p. 71.

<sup>21</sup> PFD, p. 71.

TJFA/EPICC dedicate 44 of the 125 pages of their exceptions to the topic of geology and soils, and another 10 pages to topics of hydrogeology and groundwater monitoring. Indeed, the great focus of the discovery and the evidentiary hearing in this matter was consumed by those topics. TJFA/EPICC concede that the ALJs found that the application satisfied the requirements of 30 TAC §330.63(e), but argue that the ALJs did not consider the evidence to determine its reliability.<sup>22</sup> To the contrary, the ALJs considered a tremendous amount of evidence, much of it provided by TJFA/EPICC, and simply found TJFA/EPICC's evidence and arguments unconvincing.<sup>23</sup>

### **Leona Aquifer**

TJFA/EPICC argues that the ALJs did not resolve whether the Leona Formation was present on the site.<sup>24</sup> As noted by the ALJs, this matter was sent to SOAH on a direct referral pursuant to 30 TAC §55.210. As such, the issue is whether the application complies with all applicable statutory and regulatory requirements.<sup>25</sup> The ALJs considered the abundant evidence from all parties, including evidence submitted by TJFA/EPICC after conducting its own site investigation that included site borings, geophysical logging, slug tests, and laboratory testing. Rather than relying on their own evidence (which supported the conclusions of 130 Environmental Park's geologist), TJFA/EPICC attempt to obfuscate issues by citing to the archaeological investigation of the site, which was performed for different purposes and utilized a different set of soil classifications.<sup>26</sup> The ALJs considered all of the evidence and the same lengthy arguments of TJFA/EPICC and found that the Application complied with all applicable statutory and regulatory requirements regarding the site characterization description of regional aquifers as required by 30 TAC §330.63(e)(1).

### **130 Environmental Park's Site Investigation, Data Collection, and Evidence regarding Geology and Soils**

TJFA/EPICC argues that the process or methodology employed by 130 Environmental Park to conduct its subsurface investigation and collect the data to prepare the geology report was flawed.<sup>27</sup> TJFA/EPICC dedicated a large portion of discovery and the evidentiary hearing attempting to discredit 130 Environmental Park's witnesses. TJFA/EPICC obtained an extension of discovery and the evidentiary hearing to obtain their own evidence regarding geology, soils and hydrogeology, but were unable to persuade the ALJs, the finders of fact, that the information contained in the Application or the testimony of 130 Environmental Park's witnesses were flawed.

The one point on which TJFA/EPICC were able to convince the ALJs that there was any deficiency in the Application was that the soil borings were performed prior to receiving the ED's approval.

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<sup>22</sup> TJFA/EPICC Exceptions, p. 27.

<sup>23</sup> E.g., PFD, p. 59.

<sup>24</sup> E.g., TJFA/EPICC Exceptions, p. 30.

<sup>25</sup> 30 TAC §55.210(b).

<sup>26</sup> See, TJFA/EPICC Exceptions, p. 31.

<sup>27</sup> TJFA/EPICC Exceptions, pp. 34-52.

As discussed in 130 Environmental Park's Exceptions, this is not a substantive deficiency that would justify denying the Application.<sup>28</sup> The practice of conducting soil borings prior to receipt of the ED's approval is a common scenario and the TCEQ has never required the redrilling of a boring completed prior to the ED's approval of a soil boring plan.<sup>29</sup>

### **The Geology Report is based on Competent Evidence**

TJFA/EPICC argue that the Geology Report and expert opinions included in the report are unreliable and do not constitute legally competent evidence.<sup>30</sup> As discussed above, TJFA/EPICC consumed much of the discovery period making these arguments and obtained an extension of the discovery period to perform their own geology and soils investigation including soil borings, geophysical logging, slug testing, and laboratory analysis. The ALJs considered all of the evidence and arguments, including those regarding the credibility of witnesses and found the Geology Report to be credible, supported by the preponderance of the evidence, and that the Application satisfies all applicable requirements regarding information on geology and soils. The trial court, and the ALJs in this case, as the trier of fact is the exclusive judge of the credibility of the witnesses and the weight to be given their testimony.<sup>31</sup> Even where, as here, a party alleges spoliation, the trial court must determine, as a question of law, whether a party spoliated evidence, and if spoliation occurred, the court must assess an appropriate remedy.<sup>32</sup> The ALJs considered TJFA/EPICC's allegations of spoliation and TJFA/EPICC were granted time to develop their own evidence. The ALJs considered the allegations of spoliation, heard the testimony, and considered the credibility of all of the witnesses in finding that the Application complies with all applicable requirements. The ALJs considered TJFA/EPICC's arguments regarding the norms, professional standards, and regulatory requirements applicable (and allegedly applicable) to the collection and analysis of geology and soils and found by a preponderance of the evidence that the Application complies with all applicable requirements regarding the information on geology and soils.

### **E. Hydrogeology and Groundwater Monitoring**

The ALJs found that the evidence provided by 130EP concerning the regional aquifers and the hydrogeological conditions of the subsurface at the Site complies with the applicable regulations, 30 TAC §330.63(e)(3) and (5)(C)-(f).<sup>33</sup> The ALJs also found by a preponderance of the evidence that 130EP's Groundwater Sampling and Analysis Plan, along with the proposed groundwater monitoring system, meets the requirements of the applicable regulations, 30 TAC §§ 330.63(f) and 330.403.

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<sup>28</sup> 130 Environmental Park Exceptions, pp. 4-6. 130 Environmental Park incorporates its exceptions herein by this reference.

<sup>29</sup> Id.

<sup>30</sup> TJFA/EPICC Exceptions, pp. 52-71.

<sup>31</sup> E.g., *State ex rel. L.H.*, 183 S.W.3d 905 (Ct. App. Texarkana, 2006) (aff'd, 2006).

<sup>32</sup> *Brookshire Bros., Ltd. V. Aldridge*, 438 S.W.3d 9 (Tex. 2014).

<sup>33</sup> PFD, p. 78.

TJFA/EPICC does not contend that the Application and evidence fail to comply with these applicable regulations. Instead, TJFA/EPICC argues that the “PFD and proposed order again only search the application to make sure the required information is included, without regard to its reliability or accuracy.”<sup>34</sup> As discussed above, the ALJs as the triers of fact are the exclusive judges of the credibility of the witnesses and the weight to be given their testimony.<sup>35</sup> As with the geology and soils, the ALJs considered TJFA/EPICC’s arguments regarding the conceptual groundwater model, preferential migration pathways and hydraulic conductivity, and proximity of the aquifer and found by a preponderance of the evidence that the Application complies with all applicable requirements regarding hydrogeology and groundwater monitoring.

## **G. General Facility Design**

The ALJs find that the Application includes the information and descriptions required by 30 TAC §330.63(b) regarding the general design of the facility and addresses access to the facility and describes how the fencing and the gate will control access, and it includes the mandated flow diagrams and schematic drawings of the collection, separation, storage, processing, and disposal of waste received. The Application also sets forth proposed ventilation and odor control measures, generalized construction details of all the storage and processing units and ancillary equipment, locations and design details for containment dikes and walls, and proposed disposition of effluent from processing operations. The Application provides that no grease, oil, or sludge will be accepted or stored at the Facility and addresses how liquids will be disposed of in order to prevent surface or groundwater contamination, how the processing units will be kept sanitary and clean, and how wastewater will be properly treated and disposed of.<sup>36</sup>

### **TJFA/EPICC Exceptions**

TJFA/EPICC argue that, due to uneven topography at the site, engineered earthen fill will potentially be required in order to provide subsurface support for slabs at the storage and processing facilities.<sup>37</sup>

### **130 Environmental Park Reply**

As explained by the ALJs, there is no requirement for the geotechnical evaluations of the subsurface at the storage and processing facilities at the permitting stage.<sup>38</sup> The Application provides the general details regarding the size of the slabs, the number and size of the rebar and supports, and additional provisions for the subsurface structures. “The ED found the drawings and detail provided sufficient to meet the requirements of 30 TAC, §330.63(b), and the ALJs agree.”<sup>39</sup> As with many of their exceptions, TJFA/EPICC’s criticisms of general facility design are based

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<sup>34</sup> TJFA/EPICC Exceptions, p. 71.

<sup>35</sup> E.g., *State ex rel. L.H.*, 183 S.W.3d 905 (Ct. App. Texarkana, 2006) (aff’d, 2006).

<sup>36</sup> PDF, p. 90.

<sup>37</sup> TJFA/EPICC Exceptions, p. 81.

<sup>38</sup> PFD, p. 91.

<sup>39</sup> PFD. P. 91.

on a fabricated standard that is not in the applicable rule. The issue before the ALJs is whether the Application complies with applicable statutory and regulatory requirements,<sup>40</sup> not whether the Application complies with some standard created by TJFA/EPICC to address some concern imagined by TJFA/EPICC.

## **H. Waste Management Unit Design**

The ALJs, after development of an extensive evidentiary record, find that the preponderance of the evidence from the subsurface investigations performed by both 130 Environmental Park's and TJFA/EPICC's expert witnesses, which included the specific and intensive laboratory analysis required by 30 TAC §330.63(e)(5), indicates that the vast majority of excavated soils at the Site meet the requirements for use as source materials for liner and cover.<sup>41</sup> The ALJs further find the Liner Quality Control Plan submitted in the Application complies with Subchapter H of 30 TAC chapter 330 and that no further testing or verification is necessary.<sup>42</sup>

### **Slope Stability Analysis**

TJFA/EPICC argue that 130 Environmental Park's testifying expert did not justify his reliance on the model used for slope stability analysis, but offered conclusory testimony that the difference between the model assumption and reality did not matter. TJFA/EPICC further argue that the slope stability analysis did not account for all weight of sideslope swales in the final cover of the landfill.<sup>43</sup>

TJFA/EPICC's exceptions regarding the slope stability analysis in the Application are typical of its exceptions over-all. TJFA/EPICC's arguments are based on standards created by TJFA/EPICC to address concerns imagined by TJFA/EPICC and supported by witnesses with little experience in the subject matter of their testimony. After development of a significant evidentiary record, and considering the credibility of the witnesses, the ALJs found regarding the slope stability analysis, that the uncontroverted evidence shows that the two-dimensional model used by 130 Environmental Park's testifying expert (Mr. Adams) is (a) more conservative than the three-dimensional model (suggested by but not performed by TJFA/EPICC), (b) standard in the industry and has been for many years, and (c) successful in adequately predicting potential failures of landfill slopes. The ALJs also find that inclusion of the sideslope swales into the model would not have made a significant difference in terms of the calculated safety factors.<sup>44</sup>

Specifically regarding the credibility of witnesses, the ALJs find that Mr. Adams has extensive experience in modeling failures of landfill slopes. TJFA/EPICC did not present a witness regarding slope stability analysis. Mr. Bratton (a witness appearing on behalf of Caldwell County) has very limited experience in stability analysis, evidenced by his inability to state whether a two-

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<sup>40</sup> 30 TAC §55.210.

<sup>41</sup> PFD, pp. 99-100.

<sup>42</sup> PFD, p. 100.

<sup>43</sup> TJFA/EPICC Exceptions, p. 82.

<sup>44</sup> PFD, p. 100.

dimensional model is more conservative than a three-dimensional model. Mr. Adams's experience and ultimate decision regarding incorporation of the sideslope swales into the circular arc failure analysis carries significantly more weight than Mr. Bratton and, contrary to TJFA/EPICC's argument, no specific stability analysis was necessary for the side slope swales themselves. "Given the conservative nature of the modeling and Mr. Adams's experience in conducting such analyses, the slope stability analysis included in the Application properly evaluates the stability of the landfill and adequately predicts the failure potential of the excavation slope, liner slope, interim waste slope, final waste slope, and final cover slope."<sup>45</sup>

### **Soil Balance**

TJFA/EPICC argue that the Application should have contained a soil balance analysis. TJFA/EPICC's argument is based on a misreading of the applicable regulation and an attempt to impose a standard created by TJFA/EPICC. The ALJs properly find that a soil balance test was *not* required or warranted to meet TCEQ rules pertaining to the waste management unit design and that there is no such express requirement in the rules or in any applicable standards, nor did any qualified witness take that position.<sup>46</sup>

### **I. Landfill Gas Monitoring**

The ALJs find that the Landfill Gas Management Plan (LGMP) contained in the Application meets the requirements of the applicable rule, 30 TAC §330.371.<sup>47</sup>

### **Protection of On-Site Streams**

TJFA/EPICC concede that the TCEQ rules do not call for surface water monitoring.<sup>48</sup> Moreover, TJFA/EPICC concedes that 130 Environmental Park does not need to implement surface water monitoring in order to meet the requirements of TCEQ rules.<sup>49</sup> TJFA/EPICC argues, however, that "with respect to the on-site intermittent streams, the key deficiency is applicant's failure to include landfill gas monitoring probes that would detect landfill gas prior to the gas reaching these streams."<sup>50</sup> TJFA/EPICC cite to no rule that requires installation of landfill gas monitoring probes or other device or system to monitor landfill gas prior to reaching intermittent streams.

As properly assessed by the ALJs,<sup>51</sup> there are two specific limitations on methane concentrations that pertain to monitoring and control of landfill gas, one that applies to facility structures and one that applies to monitoring points, probes, subsurface soils, or other matrices at the facility

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<sup>45</sup> PFD, p. 100.

<sup>46</sup> PFD, p. 100.

<sup>47</sup> PFD, p. 110.

<sup>48</sup> TJFA/EPICC Exceptions, p. 88.

<sup>49</sup> TJFA/EPICC Exceptions, p. 88.

<sup>50</sup> TJFA/EPICC Exception, p. 88.

<sup>51</sup> PFD, p. 110.

boundary. In accordance with this 30 TAC §330.371(a)(1)-(2), the LGMP calls for methane monitors installed at Facility structures and probes placed at the Facility Boundary. TJFA/EPICC's argument is based on a standard it created and not contained in the rules and addresses a concern it imagined and not supported by the evidence.

### **Backup Plan**

TJFA/EPICC argue that the LGMP does not contain an adequate backup plan as required by 30 TAC §330.371(g)(3).<sup>52</sup> What TJFA/EPICC is suggesting, however, is a backup system, not a backup plan. The system contemplated by the LGMP becomes ineffective if a probe or monitor is no longer effectively detecting landfill gas or methane concentrations. The LGMP provides a backup plan by calling for the repair or replacement of any of the probes or monitors that 130EP discovers are no longer functioning properly. The collection system of pipes included in the liner is the backup plan for the Landfill liner, the soils, and the landfill gas extraction wells. A backup plan for the landfill gas collection system is not required by 30 TAC §330.371(g)(3).

### **Timelines for Installation of Extraction Wells**

TJFA/EPICC argues that the LGMP does not provide detail regarding the installation of the gas extraction wells that are to be located within the landfill footprint and no timeline is provided for installation of the wells.<sup>53</sup> TJFA/EPICC concedes that the Application contains the design of the extraction wells and, in fact, the detailed design of the extraction wells is contained in the LGMP in Drawing G3.2 - Typical Extraction Well Detail.<sup>54</sup> Timing of installation of the gas extraction wells is discussed, *inter alia*, in the LGMP in Section 6.2 - LFG Generation Model.<sup>55</sup>

The gas control and containment system (GCCS) is discussed in 3<sup>rd</sup> paragraph of the LGMP sec. 1.1, and in sec. 6.<sup>56</sup> The GCCS, including extraction wells, etc., will be installed "as needed".<sup>57</sup> The primary LFG control mechanism is "landfill liner and soil on top" and the collection system is the backup to the primary control mechanism.<sup>58</sup> LFG will also be managed and controlled as described in secs. 1.3, including monitoring and control for 30 years after closure and venting/monitoring of utility trenches<sup>59</sup>, secs. 2.1, 2.7 including monitoring probes around facility perimeter<sup>60</sup>, secs. 2.5, 2.7, 3.1 including a discussion of phased installation,<sup>61</sup> sec. 3.2 including

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<sup>52</sup> TJFA/EPICC Exceptions, p. 88.

<sup>53</sup> TJFA/EPICC Exceptions, p. 90.

<sup>54</sup> Ex. 130EP-5, p. 34.

<sup>55</sup> Ex. 130EP-5, p. 16.

<sup>56</sup> Ex. 130EP-5, pp. 9 and 21-22.

<sup>57</sup> Application, sec. 6.1, Ex. 130EP-5, pp. 21-22; Ex. Parker-1, pp. 4- 6.

<sup>58</sup> Testimony of J. Heath Parker, Tr. p.205, l. 22 - p. 207, l. 17.

<sup>59</sup> LGMP sec. 3.3.1, Ex. 130EP-5, p. 9.

<sup>60</sup> Ex. 130EP-5, pp. 11-12.

<sup>61</sup> Ex. 130EP-5, pp. 11-13.

monitoring in facility structures,<sup>62</sup> sec. 3.5 including quarterly monitoring of probes, which is continuous in facility structures,<sup>63</sup> and sec. 5.1 including remediation actions being implemented within 60 days.<sup>64 65</sup>

Also, Ex. 130EP-15 is the Standard Permit Certification and General Operating Permit Application. Sec. 5.1<sup>66</sup> provides that the GCCS will be installed within 30 months after a required report shows calculated NMOC emissions exceeding 50 Mg/yr or when site-specific studies show NMOC emissions exceeding 50 Mg/yr. Beginning then, gas must be collected from each area of waste that has been in place for 5 years or within 2 years of the area reaching final grade.

The ALJs, after consideration of the evidence and the credibility of witnesses, properly concluded that the LGMP complies with 30 TAC §330.371.

## **K. Wetlands**

The ALJs find that 130EP demonstrated compliance with 30 TAC §§330.61(m) and 330.553(b), the applicable regulations regarding wetlands.<sup>67</sup>

### **TJFA/EPICC Exceptions**

TJFA EPICC provide a complex analysis of the history of the second sentence of 30 TAC §330.61(m)(2) and argues that 130EP failed to identify state-definition wetlands within the facility or permit boundary.<sup>68</sup>

### **130 Environmental Park Reply**

This is simply not the case. As set forth in Part II, Section 13.2 - Wetlands of the Application, 130EP identified state-definition wetlands within the 520 acre permit boundary and the larger 1,229 acre Hunter Tract, specifying which of those wetlands were and were not jurisdictional:

As shown on Table IID.2-1 and Figure IID.2-1 in Appendix IID.2, there are approximately 1.46 acres of wetlands located within the facility boundary, 0.49 acre of which are jurisdictional wetlands (shown on Drawing 11A.23); and there are approximately 0.68 acre of wetlands within the area proposed for the new municipal solid waste landfill unit (landfill footprint), none of which is jurisdictional

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<sup>62</sup> Ex. 130EP-5, pp. 13-14.

<sup>63</sup> Ex. 130EP-5, p. 17.

<sup>64</sup> Ex. 130EP-5, p. 20.

<sup>65</sup> Ex. 130EP-5 page 16 is part of 4.2 (notification procedures when monitored methane concentrations exceed regulatory limits).

<sup>66</sup> Ex. 130EP-15, pp. 9-10. The Application was approved by the TCEQ. See Ex. 130EP-16 and Ex. 130EP-17.

<sup>67</sup> PFD, p. 120.

<sup>68</sup> TJFA/EPICC Exceptions, pp. 90-94.

wetlands. There are no jurisdictional wetland areas located within the limits of construction of the perimeter channels, detention ponds, entrance road gatehouse area, truck wheel wash, citizens' convenience center, Type V Transfer Station, maintenance building, leachate storage facilities, or other facility appurtenances. As required by 30 TAC §330.61(m)(2) and §330.553(a), Appendix IID-3 addresses, for these 0.68 acre wetlands areas within the area proposed for the landfill unit, each of the wetlands demonstrations identified in 30 TAC §330.553(b)(1) - (5). Refer to Appendix IIK for the wetlands location restriction statement and certification.<sup>69</sup>

TJFA/EPICC did not present any evidence of 130EP's failure to identify any wetland that meets any definition of wetlands despite taking opportunities to perform their own site investigations on the Site within the larger Hunter Tract.

TJFA/EPICC asks the rhetorical question:

Does the second sentence of Rule 330.61(m)(2) mean that the Commission and its MSW rules do not seek to separately protect state-definition wetlands, *i.e.*, waters of the State, on those properties as to which the applicant has met the Corps of Engineers' requirements for protecting waters of the U.S.?

The ED's position is that the Commission under the MSW rules does not have jurisdiction to separately protect state-definition wetlands. "TCEQ does not have authority to regulate and protect non-jurisdictional wetlands under MSW rules."<sup>70</sup>

The ALJs, after considering the evidence in the record and TJFA/EPICC's arguments, properly found that the Application complies with applicable regulations regarding wetlands.

## **L. Surface Water Drainage**

After extensive testimony and receipt of evidence on surface water drainage, the ALJs found that 130EP sufficiently demonstrated its compliance with 30 TAC §§330.63(c)(1), 330.303, and 330.305. The ALJs determined that preponderant evidence shows that development of the Facility will not adversely alter existing drainage patterns.<sup>71</sup>

### **Adverse Alteration of Drainage Patterns**

TJFA/EPICC argues that an alteration to drainage patterns can be adverse even if it is insignificant, that the analysis of whether an impact is adverse occurs at the permit boundary because it cannot be known what will occur off-site, and that the Application impermissibly relies on off-site

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<sup>69</sup> Ex. 130EP-1, pp. 109-110.

<sup>70</sup> PFD, p. 120; quoting Executive Director Closing Arguments, "Wetlands" section.

<sup>71</sup> PFD, p. 138.

mitigation of alteration of drainage at the permit boundary.<sup>72</sup> These assertions by TJFA/EPICC are incorrect and contrary to the evidence in the record.

After development of a significant evidentiary record and extended briefing, the ALJs find that the development of the Facility will not result in adverse alteration of existing drainage patterns. TJFA/EPICC focuses on a decrease in flow volume at control point CP8 (and ignores the increase in flow volume at control point CP7). The ALJs specifically find that the 16.5% reduction in volume at control point CP8 is not an adverse alteration of existing patterns at the permit boundary.<sup>73</sup>

Generally, increases in peak flows and velocities are the main concerns regarding the alteration of drainage patterns. Less volume moving downstream can potentially be an adverse alteration because of the possible reduction in downstream water supplies. However, there is no evidence in the record that the reduction in volume at CP8 would have any adverse consequences at the Permit Boundary, as there are no water supply needs at that location. Accordingly, the ALJs conclude that a 16.5% reduction in volume at CP8 is not an adverse alteration of drainage patterns at the Permit Boundary.<sup>74</sup>

Nor does the reduction in volume at CP-8 have an adverse effect on water supplies downstream of the permit boundary. No water supply function occurs at that location, so no adverse alteration would result from the decrease.<sup>75</sup> Even considering impacts downstream from CP8, the decrease in volume could not result in an adverse alteration. Without considering the reservoir or floodplains, CP7 and CP8 are both located on drainage tributaries to Dry Creek. The tributary on which CP8 is located joins Dry Creek approximately 1,100 feet downstream of CP8, and the tributary on which CP7 is located joins Dry Creek approximately 350 feet farther downstream. Because of the increased water volume at CP7 (which increase exceeds the decreased volume at CP8), the decrease in water volume from CP8 could, at most, exist only in that combined 1,450-foot portion of the CP8 tributary and Dry Creek. After that, the volume increase at CP7 would more than make up for the decrease from CP8. Because there is no water supply that occurs along that 1,450-foot stretch, a decrease in water volume there would not be an adverse alteration.<sup>76</sup>

TJFA/EPICC argue that it is improper to place the burden of proof on them that there will be an adverse effect on downstream water users from the reduction in flow volume at CP8. The PFD does not do that. As discussed above, testimony and exhibits of Johnnie Halliburton and testimony of Steven Odil establish that there will be no such adverse impact. Neither TJFA/EPICC nor any other party (including Plum Creek Conservation District) have presented any evidence to the

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<sup>72</sup> TJFA/EPICC Exceptions, pp. 94-98.

<sup>73</sup> PFD, p. 144.

<sup>74</sup> PFD, pp. 144-145.

<sup>75</sup> Testimony of Johnnie Halliburton at Tr. p.1278/l.4-17 and Ex. Haliburton-1 p.37/l.7-21; Testimony of Steve Odil, P.E. at Tr. p.1904/l.22-p.1905/l.7.

<sup>76</sup> Testimony of Johnnie Halliburton at Tr. p.1278/l.4-17 and Ex. Haliburton-1 p.37/l.7-21; Testimony of Steve Odil, P.E. at Tr. p.1904/l.22-p.1905/l.7.

contrary. The ALJs finding that the construction and development of the 130 Environmental Park Landfill will not adversely alter existing drainage patterns is supported by the evidentiary record.

### **Shallow Concentrated Flow and Mannings Roughness Coefficient**

TJFA/EPICC and Caldwell County argue that 130EP's testifying expert and author of the Drainage Analysis, Tyson Traw, PE improperly used shallow concentrated flow in many areas instead of channel flow and used in improper Mannings roughness coefficient in the drainage analysis. Regarding the shallow concentrated flow input, the ALJs find that the preponderant evidence does not demonstrate that Mr. Traw's use of shallow concentrated flows longer than 1,000 feet was in error.<sup>77</sup> Mr. Traw personally conducted field inspections to determine what type of flow to use, as recommended by TR 55. No other witness did a field investigation.

In the ALJs' opinion, Mr. Traw justified his use of the shallow concentrated flow input based on his site visits and use of topographical data. His testimony on the issue was well-reasoned and consistent. In addition, there was very little change in the floodplain map after he revised the floodplain analysis and maps submitted to the County as required by Mr. Bratton, and both the map submitted to the TCEQ and the map submitted to the County show that the Landfill footprint is located outside of the 100-year floodplain. For these reasons, the ALJs cannot agree with the County and Protestants that Mr. Traw used excessively long lengths for the shallow concentrated flow input in the drainage analysis submitted to the TCEQ.<sup>78</sup>

For the same reasons, the ALJs did not find error in Mr. Traw's use of the Manning's Roughness coefficients he used. Mr. Traw was justified in choosing the Manning's Roughness coefficient based on his site visits and aerial photographs.<sup>79</sup>

Again, Mr. Traw testified credibly and consistently on the methodology he employed to arrive at the Manning's Roughness coefficients used in his hydrology model. Based on this information, and the absence of any meaningful differences between the floodplain maps submitted to the TCEQ and to the County, the ALJs cannot say that the Manning's Roughness coefficients used by Mr. Traw in the drainage analysis were incorrect.<sup>80</sup>

The ALJs considered the evidence on drainage analysis including the extensive cross-examination of Mr. Traw and found his testimony, his methods and his conclusions persuasive. Mr. Traw used shallow concentrated flow where appropriate and used the proper Manning's Roughness coefficient in the proper places.

### **Surface Water Management System**

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<sup>77</sup> PFD, p. 139.

<sup>78</sup> PFD, pp. 140-141 (footnotes omitted).

<sup>79</sup> PFD, p. 141.

<sup>80</sup> PFD, p. 142.

TJFA/EPICC asserts that it did challenge the surface water management system in their post-hearing briefs. TJFA/EPICC refers to its discussion of slope stability analysis in under Waste Management Unit Design. 130EP also refers the Commission to its reply to TJFA/EPICC's exceptions regarding slope stability analysis in Section H. Waste Management Unit Design above.

### **Conclusion**

Based on their consideration of the evidence and the credibility of witnesses, the ALJs find that Mr. Traw properly assessed both the 25-year, 24-hour storm event, as required by TCEQ rules, and the 100-year, 24-hour storm event to determine whether development of the Facility would adversely alter existing drainage patterns. The ALJs conclude that the Application demonstrates that there will be no adverse alteration of peak discharge, volume, and velocity between the existing and postdevelopment drainage patterns for both the 25-year and the 100-year storm events at the permit boundary. The ALJs also find that the evidence shows that the development of the 130 Environmental Park Landfill will not adversely alter existing drainage patterns downstream of the permit boundary. 130EP has demonstrated that the Application complies with 30 TAC §§330.63(c)(1), 330.303, and 330.305.

### **M. Floodplains**

The ALJs find that 130EP met the TCEQ's requirements regarding floodplains. The evidence shows that the Application provides sufficient information to show compliance with 30 TAC §§330.61(m), 330.63(c)(2) and 330.547.<sup>81</sup>

TJFA/EPICC and Caldwell County argue that 130EP's modeling of the floodplain is affected by the same errors regarding shallow concentrated flow and Manning's roughness coefficient that are discussed in Surface Water Drainage above. 130EP relies on its reply to TJFA/EPICC's arguments as stated above.

TJFA/EPICC and Caldwell County also argue (as it did in Surface Water Drainage) that the ALJs improperly excuse 130EP from addressing flooding conditions that, it contends, are likely to exist in the future.<sup>82</sup> The TCEQ requires that an application provide a floodplain statement with "data on floodplains in accordance with Chapter 301, Subchapter C of this title (relating to Approval of Levees and Other Improvements) ...."<sup>83</sup> Chapter 301 focuses on existing conditions by referring to "existing flood conditions" and "existing hydraulic conditions."<sup>84</sup> Mr. Odil also stated that the TCEQ's regulatory guidance document, RG-417, focuses on on-site conditions that may change or be present in the future as a result of a landfill, but the TCEQ does not require an applicant to consider future upstream development in its drainage plans.<sup>85</sup>

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<sup>81</sup> PFD, p. 162.

<sup>82</sup> TJFA/EPICC Exceptions, pp. 100-105.

<sup>83</sup> 30 TAC §330.61(m)(1).

<sup>84</sup> Ex. ED-SO-1, p. 29.

<sup>85</sup> Ex. ED-SO-1, p. 29.

TJFA/EPICC and Caldwell County argue that future flooding issues are of primary concern in elevations above the elevation of the floodway of the Site 21 Reservoir including where the access road crosses the floodplain adjacent to a stream. Caldwell County argues that, while the TCEQ rules require that a landfill be protected from flooding by suitable levees constructed to provide protections from a 100-year frequency flood, and that no waste disposal operations shall be in the 100-year floodway, the landfill is “tightly squeezed between the landfill perimeter channels and the floodplain.”<sup>86</sup> This, in connection with potential development upstream of the Facility, causes TJFA/EPICC and Caldwell County concern.

Caldwell County never defines what it means by “tightly squeezed”, but the record is clear that no solid waste disposal operations will occur in areas that are located in a 100-year floodway as defined by the Federal Emergency Management Administration, as required by 30 TAC §330.547(a). Caldwell County argues that, because 130EP has not proposed to construct the levees required by 330.307, the Application is deficient. As explained by the ED’s witness Mr. Odil, because 130EP’s waste units would be located outside of the 100-year floodplain as required by 330.547, the levee requirements for a “facility” in Section 330.307 do not apply in this case.<sup>87</sup> Nor has Caldwell County or any other party attempted to define the 100-year floodway as opposed to the 100-year floodplain. Clearly the 100-year floodway does not extend beyond the 100-year floodplain. As no waste disposal areas or perimeter channels are within the 100-year floodplain, they cannot be located within the 100-year floodway. Indeed, no floodway is shown on the FEMA FIRM for the Site, and the ALJs properly conclude that FEMA has not designated the floodway in this area, and thus 130EP has shown compliance with 30 TAC §330.547(a).<sup>88</sup> Construction of levees under these circumstances would provide no protection and cannot be intended by the MSW rules.

The ALJs find, after consideration of the evidence and the credibility of witnesses that 130EP’s floodplain analysis is sufficient to meet the TCEQ’s requirements in 30 TAC §§330.61(m)(1) and 330.63(c)(2) and that 130EP has met the location requirements in 30 TAC §330.547.

## **N. Land-Use Compatibility**

### **Growth**

Caldwell County argues that the land use analysis is deficient in that 130EP’s land use expert, Mr. John Worrall, failed to consider County septic permits and Lockhart ISD data to determine any anticipated growth.<sup>89</sup> OPIC notes that there are over 100 residences within a mile of the Site and there has been growth in the last few years.<sup>90</sup> OPIC, however notes that there are several land use considerations in the vicinity of the Site that make it a good location in terms of land use compatibility:

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<sup>86</sup> Caldwell County Exceptions, p. 19.

<sup>87</sup> Ex. ED-SO-1, pp. 27-28.

<sup>88</sup> PFD, p. 159.

<sup>89</sup> Caldwell County Exceptions, p. 11.

<sup>90</sup> OPIC Exceptions, pp. 11, 14.

- Located in an unincorporated area of Caldwell County, several miles north of Lockhart.
- No zoning requirements would apply.
- The area around the proposed facility is mostly rural with more than 90 percent of the land use within one mile being open and agricultural.
- There are no schools, day care centers, houses of worship, or cemeteries within one mile.
- The proposed site would be located along a major transportation corridor.<sup>91</sup>

After considering the evidence, assessing the credibility of witnesses, and considering these arguments, the ALJs “conclude that Mr. Worrall properly assessed the issue of growth in his analysis as required by 30 TAC §330.61(h), and that this factor weighs in favor of a finding regarding land-use compatibility.”<sup>92</sup>

### **Site 21 Reservoir**

TJFA/EPICC argues that 130EP’s land use analysis did not consider any potential impacts on the Site 21 Reservoir and dam.<sup>93</sup> OPIC argues that the proximity of the Site 21 Reservoir “provid[es] little room for error in the event of a more significant storm event.”<sup>94</sup> Without reference or citation to any regulation or law, Caldwell County argues that landfill’s location in relation to the Site 21 Reservoir should preclude the TCEQ from issuing a permit.<sup>95</sup>

Contrary to the arguments of TJFA/EPICC, OPIC, and Caldwell County, the evidence in the record and the ALJs analysis of this issue in the PFD demonstrates that the Landfill will be compatible with the reservoir. In the PFD, at page 173, the ALJs analysis includes:

130EP thoroughly addressed potential adverse impacts of the Facility on the Site 21 Reservoir and Dam in the context of its compliance with other TCEQ rules pertaining to surface water drainage and floodplains. As previously stated in this PFD, the ALJs conclude that the Application met the requirements in the TCEQ’s rules regarding surface water drainage and floodplains, and that the preponderance of the evidence indicates that development and operation of the Facility will not adversely impact or impair the District’s easement rights or its operation of the Site 21 Dam and Reservoir. Specifically, the ALJs find that the Facility will not adversely alter the surface drainage patterns to the Site 21 Reservoir. With respect to any future rehabilitation of the Site 21 Dam, its final design will consider the then-existing upstream land uses, including the Facility should it exist. Importantly, the District, as the entity responsible for the Site 21 Dam and Reservoir, does not argue that the Facility will adversely impact human health or environment or

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<sup>91</sup> OPIC Exceptions, p. 12.

<sup>92</sup> PDF, p. 175.

<sup>93</sup> TJFA/EPICC Exceptions, pp. 19-25.

<sup>94</sup> OPIC Exceptions, p. 13.

<sup>95</sup> Caldwell County Exceptions, p. 11.

frustrate or interfere with the ability of the Site 21 Dam to protect downstream life and property. Accordingly, the ALJs conclude that in balancing all the relevant factors in 30 TAC § 330.61(h), the Facility is generally compatible with the Site 21 Reservoir and Dam.

In addition, the ALJs' proposed Finding of Fact 320 states, "Considering all relevant factors, the Facility will not adversely impact human health and the environment and will be compatible with surrounding land uses." And the ALJs' proposed Conclusion of Law 18 states, "The Facility will be compatible with surrounding land uses." The issue of the Landfill's compatibility with the Site 21 Reservoir has been appropriately evaluated in the PFD and in the referenced finding of fact and conclusion of law.

### **Caldwell County Siting Ordinance**

TJFA/EPICC and Caldwell County argue that the land use analysis did not consider the existence of Caldwell County's landfill siting ordinance. The Caldwell County Ordinance was adopted after the filing of the Application, which was then pending at TCEQ.<sup>96</sup> When the Caldwell County Commissioners Court adopted the Caldwell County Solid Waste Disposal Ordinance, the County sought to prohibit the processing or disposal of municipal or industrial solid waste in an area of the County for which an application for a permit or other authorization under Chapter 361 had been filed with and was pending before TCEQ.<sup>97</sup>

As such, the Caldwell County Ordinance violated *Tex. Health & Safety Code* §§363.112 and 364.012 and is not applicable to 130 Environmental Park's Application or requested municipal solid waste facility permit and the existence of the Caldwell County Solid Waste Disposal Ordinance does not prevent TCEQ from granting the Application and issuing the permit sought by way of the Application pursuant to *Health & Safety Code* §§363.112(d) and 364.012(f). It therefore has no bearing on land use compatibility and it would have been inappropriate for Mr. Worrall to consider the ordinance as a matter of land use compatibility analysis.

### **O. Local Regulations/Approvals**

The ALJs, after consideration of the evidentiary record and the arguments of the parties, determined that the Application was not deficient because it did not include all of the necessary local approvals that may be applicable to the Facility.<sup>98</sup>

### **Caldwell County Development Permit**

TJFA/EPICC and Caldwell County<sup>99</sup> argue that portions of the 130 Environmental Park Facility Site are located within the floodplain, and that the access road crosses the floodplain in several

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<sup>96</sup> Ex. Welch-1 p.5/1.20-23.

<sup>97</sup> Caldwell County Ex. 3 pp. D-0003 through D-0004; Ex. 130EP-8; Ex. Welch-1 p.4/1.33-p.5/1.23; Ex. 130EP-8.

<sup>98</sup> PFD, p. 180.

<sup>99</sup> TJFA/EPICC and Caldwell County discuss the landfill siting ordinance in various portions of the exceptions. 130 Environmental Park's reply is consolidated in this Section for the convenience of the Commission.

locations outside of the permit boundary. Caldwell County argues that 130 Environmental Park has not requested floodplain permits from Caldwell County, the local floodplain administrator. TJFA/EPICC and Caldwell County argue that 130 Environmental Park has not provided Caldwell County with a final plat or application for a commercial development permit for the proposed landfill.

During technical review of the Application, it became apparent that the entrance road would be constructed across a floodplain in the portion of the property outside of the permit boundary, requiring the Applicant to obtain a floodplain development permit<sup>100</sup>. 130 Environmental Park received notice of its deficiency in two Notice of Deficiency (NOD) letters dated May 6 and June 27, 2014.<sup>101</sup> After receiving the first NOD, 130 Environmental Park began the process of obtaining a floodplain development permit from Caldwell County.<sup>102</sup> By the time of the second NOD, 130 Environmental Park had begun the process, but still had not obtained the permit.<sup>103</sup> When the only remaining deficiency was obtaining a floodplain development permit, the ED determined that the use of a special provision was appropriate in these circumstances.<sup>104</sup> The ED determined that the special provisions are sufficient to ensure that the floodplain development permit authorizing construction of the entrance road as described in the Application and the commercial development permit would be acquired in harmony with TCEQ rules. The ED added two special provisions to the draft permit:

Section IX of the draft permit includes two special provisions, as follow:

A. Before physical construction may commence, the permittee must provide the Executive Director with a floodplain development permit from the city, county, or other agency with jurisdiction over improvements authorized by this permit.

B. The facility must implement all roadway improvements specified in Part II, Appendix IIC of the permit application prior to the pre-opening inspection of the facility.<sup>105</sup>

No other permit special provisions are necessary.

The ED's use of special provisions is not uncommon and that the Commissioners and staff have used special provisions to:

- (1) add things to the permit based on the specifics of the application;
- (2) remind regional enforcement teams of pending requirements or improvements; and

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<sup>100</sup> Ex. ED-SO-4, Item 20.e.

<sup>101</sup> Ex. ED-SO-4, Item 20.e. and Ex. ED-SO-5, Item 4.

<sup>102</sup> Ex. ED-SO-4, Item 20.c.

<sup>103</sup> Ex. ED-SO-5, Item 4.

<sup>104</sup> Tr. p. 1984, ln. 7-19.

<sup>105</sup> Ex. ED-SO-8 p.45.

(3) allow for coordination with other agencies to occur without effecting MSW Permits timelines.

The two special provisions proposed by the ED serve the purposes for special provisions described above. 130 Environmental Park will be required to obtain (and provide to the ED) its floodplain development permit (including floodplain crossings by the entrance road outside of the permit boundary) prior to commencement of physical construction. 130 Environmental Park will be required to implement all roadway improvements (including construction of the entrance road outside of the permit boundary) prior to the pre-opening inspection of the facility. The special provisions will be a condition that must be satisfied before 130 Environmental Park can operate the landfill.

30 TAC §330.67(d) provides that it is the responsibility of an owner or operator to obtain any permits or approvals that may be required by local agencies. The special provisions will remind regional enforcement teams of the floodplain and development permits required by Caldwell County and will allow for coordination of those requirements consistent with the MSW timelines. The conditional nature of the proposed special provisions of the draft permit ensures that the rule requirements will be met or the permit will be ineffective and enforceable.

The ED reviewed the Application, the draft permit, and the relevant testimony and recommends that the special provisions be allowed to remain as part of the permit. The ALJs considered these things and found that the Application was not deficient because it did not include all the necessary local approvals that may be applicable to the Facility. 130 Environmental Park agrees to and accepts the special provisions regarding local approvals contained in the draft permit. Based on the application, applicable testimony, and special provisions included in the permit, the ED concludes that the Applicant satisfactorily complied with the local regulation and authorization requirements necessary. The ALJs agree. The Application includes sufficient information and demonstrates compliance with TCEQ rules regarding local regulations/approvals.

## **P. Site Operating Plan**

### **SOP Minimum Level of Detail**

TJFA/EPICC argues that the case of *BFI Waste Systems of North America, Inc. v. Martinez Environmental Group*<sup>106</sup> should be applied in consideration of the level of detail that should be included in a Site Operating Plan (SOP). This argument is pervasive throughout TJFA/EPICC's arguments regarding the SOP, Odor and elsewhere in its exceptions. The ALJs properly rejected this argument, finding that:

The Austin Third Court of Appeals opinion cited by Protestants is inapplicable here given that it construed a rule regarding site operating plans that has since been repealed. The current rule (30 TAC §330.127) requires the SOP to include provisions for managing the Site and for operating personnel to meet general and site-specific requirements of Subchapter D of 30 TAC chapter 330. The SOP

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<sup>106</sup> 93 S.W.3d 570, 579 (Tex. App.—Austin 2002, pet. denied); TJFA/EPICC Exceptions, pp. 107-109.

includes the mandated provisions, and the level of specificity and detail provided is sufficient to meet the rule's requirements.<sup>107</sup>

### **Windblown Waste - Height**

TJFA/EPICC argues that the Application does not contain the necessary detail to address litter control.<sup>108</sup> This argument is necessarily based on TJFA/EPICC's misapplication of the *BFI v. Martinez* case. The level of detail desired by TJFA/EPICC is simply not required under the TCEQ's current SOP rules. TJFA/EPICC also misleads the Commission on the height of the Landfill. Throughout their Exceptions, TJFA/EPICC conflates and confuses the maximum height of the landfill over existing grades and the proximity of adjacent properties. The peak elevation of 736.00 msl. In the northern portion of the Site will be over 1000 feet from the closest neighboring property to the north. The toe of the landfill (where the elevation of the final cover meets the ground elevation) is a minimum buffer zone of at least 325 feet within and adjacent to the facility boundary on property owned or controlled by 130 Environmental Park. The vegetated screening berm will be between the toe of the landfill and the neighboring properties. The height of the Landfill is not an issue in relation to land use compatibility, provisions of the SOP, or odor.

### **Fire Control and Protection**

TJFA/EPICC argues that the Application does not contain sufficient detail regarding the availability of soil or water for fire control and protection. This argument is, again, necessarily based on TJFA/EPICC's misapplication of the *BFI v. Martinez* case. The level of detail desired by TJFA/EPICC is simply not required under the TCEQ's current SOP rules.

## **Q. Odor**

### **Alternative Daily Cover**

OPIC and TJFA/EPICC argue<sup>109</sup> that the site operating plan anticipates the use of alternative daily cover (ADC) and that the proposed use of ADC is "problematic" and OPIC recommends a permit condition prohibiting alternative daily cover since it can exacerbate odor issues.

The Application does not seek current approval of the use of ADC. If 130EP wishes to use ADC in the future, it must request authorization to use it and must first seek authorization from the TCEQ for a specific form of ADC. The specific ADC, if authorized, will be limited to a 24-hour period after which either waste or daily cover as defined in §330.165(a), and applied as described in Section 8.18.2 of this SOP, must be placed.<sup>110</sup> Pursuant to 30 TAC §330.165(d), ADC may only be allowed by a temporary authorization under 30 TAC §305.70(m) followed by a major amendment or a modification in accordance with 30 TAC §305.70(k)(1). 30 TAC §330.165(d)(2) requires:

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<sup>107</sup> PFD, p. 193.

<sup>108</sup> TJFA/EPICC Exceptions, p. 111.

<sup>109</sup> TJFA/EPICC also argues that ADC should not be approved in its discussion of the Site Operating Plan elsewhere in its Exceptions. For the convenience of the Commission, 130EP's reply to those arguments are consolidated here.

<sup>110</sup> Ex. 130EP5, pp.148-149.

A status report on the alternative daily cover must be submitted on a two-month basis to the executive director during the temporary authorization period describing the effectiveness of the alternative material, any problems that may have occurred, and corrective actions required as a result of such problems.

If the trial period demonstrates the alternative daily cover is not effective, the TCEQ may revoke the temporary authorization and may deny the major amendment or modification.

The ALJ's agree that it is unnecessary to make any determination of approval or prohibition of the use of ADC at this time. "The TCEQ prohibits the use of ADC unless 130EP obtains a temporary authorization followed by a major amendment or modification for its use. 130EP confirms its understanding of this prohibition in the SOP and states that it will seek such authorization before any ADC is used at the Facility."<sup>111</sup> It is unnecessary and would be inappropriate to prohibit the future use of ADC in the permit for 130EP's Facility.

### **Feral Hogs**

TJFA/EPICC and OPIC argue that the Odor Management Plan does not provide specific provisions for control of odor from feral hogs.<sup>112</sup> TJFA/EPICC and OPIC have identified the proximity of the landfill to properties on the northern side of the landfill as a reason not to allow the option of seeking TCEQ approval of alternative daily cover, tied to the alleged problem that alternative daily cover will not provide effect control of feral hogs as vectors. 130 Environmental Park will be required to cover waste will areas every day with well compacted clean earthen materials or a TCEQ approved alternative cover.<sup>113</sup> 130EP must comply with TCEQ rules that require a landfill owner or operator to avoid accumulating more solid waste than can be processed within an adequate time so as to preclude the creation of odors, insect breeding, or harborage of other vectors. 30 TAC §330.551 requires a landfill operator to control on-site populations of disease vectors using proper compaction and daily cover procedures and the use of approved methods when needed. 130EP must describe the general methods and performance based frequencies for disease vector control in the SOP.

In addition to the measures, (and as described above) 130EP plans an extensive buffer around the working face and the landfill itself, which will diminish much of the dust, odor and noise. 130EP will be responsible for protecting the site from feral hogs. If ADC cannot be demonstrated to control feral hogs under the conditions actually encountered at the Facility, the ADC will be disallowed or discontinued.<sup>114</sup> Scavenging will be prohibited at all times and not allowed.<sup>115</sup>

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<sup>111</sup> PFD, p. 191.

<sup>112</sup> TJFA/EPICC Exceptions, pp. 119-120. TJFA/EPICC and OPIC also argue that the Application does not adequately address feral hogs in their discussion of the Site Operating Plan elsewhere in their Exceptions. For the convenience of the Commission, 130EP's reply to those arguments are consolidated here.

<sup>113</sup> Ex. 130EP-5, p.147.

<sup>114</sup> Ex. 130EP-5, p.144.

<sup>115</sup> Ex. 130EP-5, p.145.

### **Credibility of Testifying Experts regarding Odor**

TJFA/EPICC have many complaints regarding 130EP's testifying expert witness Martha O'Brien. The Applicant offered Martha A. O'Brien as its expert on odors. Ms. O'Brien testified that the Application satisfies all requirements regarding odors, odor control, and avoidance of odors.<sup>116</sup> She also testified that if the 130 Park Environmental Landfill is developed and operated as set out in the Application, it will control odors so that nuisance odors will not be released from the facility.<sup>117</sup> Furthermore, Ms. O'Brien testified that odors from the proposed landfill will not interfere with nearby landowners' normal use of their properties.<sup>118</sup> Neither TJFA/EPICC nor any other party presented a testifying expert or other evidence regarding whether the Odor Management Plan satisfies the requirements of TCEQ rules. The only evidence in the record, and therefore the preponderance of the evidence supports the ALJs conclusion that the Odor Management Plan contains sufficient details regarding the sources of odors and general procedures for odor control and therefore meets the requirements of 30 TAC §330.149.<sup>119</sup>

### **R. Water Supply**

The ALJs properly find that the Application meets all applicable regulatory requirements concerning water supply in 30 TAC §§330.221(a) and 330.249.<sup>120</sup> TJFA/EPICC makes the grand conclusory statements that the water supply is not sufficient because it has not been demonstrated to be adequate and because "it is unreasonable to find that the potable water needs can be entirely met by bottled water."<sup>121</sup> Once again, TJFA/EPICC is implicitly basing their argument on the *BFI v. Martinez* case. After hearing the testimony and considering the evidence and these arguments of TJFA/EPICC, the ALJs properly find that the Application contains the information required by the TCEQ rules and satisfies the applicable requirements regarding water supply.

## **III. PRAYER**

WHEREFORE, premises considered, 130 Environmental Park, LLC respectfully requests that the Commission take notice of these replies, grant 130EP's permit application, and issue to 130EP a Municipal Solid Waste Landfill Type I permit as set out in the Draft Permit with the

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<sup>116</sup> Ex. O'Brien-1, p.2.

<sup>117</sup> Ex. App. O'Brien-1, p.4.

<sup>118</sup> Tr. p.971.

<sup>119</sup> PFD, p. 196.

<sup>120</sup> PFD, pp. 198-199.

<sup>121</sup> TJFA/EPICC Exceptions, pp. 120-121.

modifications set out in Item jj in 130EP's Exceptions, pursuant to an order based on the ALJs' proposed order with the changes set out in Items a through ii in 130EP's Exceptions, and

1. Admit into the record Ex. 130EP-23 or, in the alternative, take official notice of the contents of the exhibit and/or the TCEQ policy and precedent set out therein.
2. Take official notice of: (a) the documentation from TCEQ records showing that soil borings for various MSW facilities were drilled prior to ED approval of the respective boring plan, as set out in Attachment 1 to 130EP's Exceptions, (b) TCEQ's approval of each of the permit applications listed at pages 5-6 of 130EP's Exceptions, and (c) TCEQ's policy, practice, and precedent of allowing the use in MSW permit applications of soil borings completed prior to the ED's approval of a soil boring plan and approving many permit applications in which that was the case.
3. Take official notice of other municipal solid waste landfills that have improvements outside the permit boundary that are authorized by permit, including Attachment 2-5 to 130EP's Exceptions, documentation regarding IESI Jacksboro Landfill and North Texas Municipal Water District NTMWD 121 Regional Disposal Facility.
4. Take official notice of authorized operating hours for other MSW landfill facilities and documentation thereof, as set out and/or referenced 130EP's Exceptions, at pp. 17-19.
5. If the Commission determines that revisions to the draft permit are appropriate to address concerns regarding the landfill's operating hours, that it adopt appropriate revisions to the ALJs' Proposed Order and include in its Order the following suggested revisions to permit provision II.A. and the addition of the following new Special Provision in Section IX. of the permit (changes to draft permit provisions are shown in blackline/strikeout formatting):

**Revised Section II.A. (Days and Hours of Operation)**

Except as provided below, the authorized waste acceptance hours for the receipt and disposal of waste at this facility shall be 3:00 a.m. to 5:00 p.m. Monday through Friday, and from 5:00 am to 12:00 pm on Saturday, and the operating hours at this landfill, which include the use of heavy equipment, shall be 24 hours per day, seven days per week. Waste acceptance and disposal, transportation of materials, and operation of heavy equipment are prohibited between the hours of 7:00 p.m. and 7:00 a.m. in areas inside the property boundary that are within, or north and/or west of, Cells 11, 14, and 15, as shown in Part II, Drawing IIA.13 in the permit application.

The operator shall post the actual waste acceptance and operating hours on the site sign.

**New Special Provision (Screening Berm)**

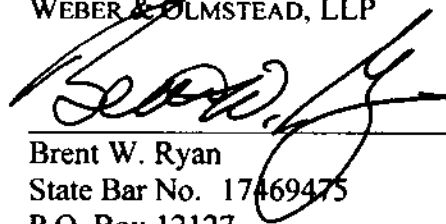
The screening berm shall be constructed as shown in Part II, Drawings IIA.19, IIA.20, and IIA.24 in the permit application and Hearing Exhibit Worrall-10. Waste may not be disposed of: (1) in Cell 11 prior to construction of the western

portion of the screening berm as shown on Drawing IIA.19, and (2) in Cells 14 or 15 prior to construction of the remainder of the screening berm.

Respectfully submitted,

McELROY, SULLIVAN, MILLER,  
WEBER & OLMSTEAD, LLP

By:

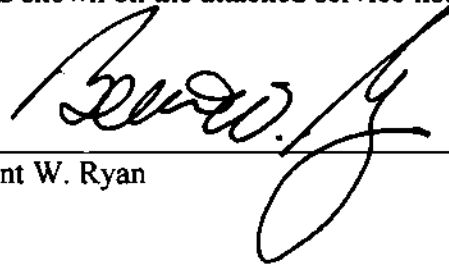


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130 Environmental Park, LLC

**CERTIFICATE OF SERVICE**

On March 23, 2017, a true and correct copy of the foregoing was sent to each party representative via email and/or first-class mail, as shown on the attached service list.

A handwritten signature in black ink, appearing to read "Brent W. Ryan", is written over a horizontal line.

Brent W. Ryan

**SERVICE LIST**

SOAH Docket No. 582-15-2082; TCEQ Docket No. 2015-0069-MSW  
Application of 130 Environmental Park Landfill, LLC for Proposed Permit No. 2383

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Aaron Vargas *via email Aaron.Vargas@Tceq.Texas.Gov*  
Texas Commission on Environmental Quality  
Environmental Law Division  
P.O. Box 13087, MC-173  
Austin, TX 78711-3087  
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**Attorney for Plum Creek Conservation District**

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Eric Allmon *via email eallmon@lf-lawfirm.com*  
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Frederick, Perales, Allmon & Rockwell, PC  
1206 San Antonio  
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**Attorneys for TJFA, L.P. and Representatives for Aligned Protestants**

Ben Pesl *via First-Class Mail*  
P.O. Box 242  
Dale, TX 78616

**Attachment 1**  
**Updated Land Use Analysis**

**SOAH DOCKET NO. 582-15-2082  
TCEQ DOCKET NO. 2015-0069-MSW**

APPLICATION BY  
130 ENVIRONMENTAL PARK, LLC  
FOR PROPOSED PERMIT NO. 2383

§  
§  
§  
§  
§

BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

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# **EXHIBIT WORRALL-3**

**Updated Land Use Analysis**

**ON BEHALF OF**

**130 ENVIRONMENTAL PARK, LLC (APPLICANT)**

**APPLICANT'S EXHIBITS VOLUME 6**

---

**LAND USE ANALYSIS**  
130 Environmental Park  
Type I & Type V Facilities

August 2013  
Updated October 28, 2015

*Prepared by:*  
John Worrall Consulting LLC  
509 Camino Barranca  
Round Mountain, TX 78663  
830.825.3029

## **Introduction**

The 130 Environmental Park facility is proposed to include a Type I municipal solid waste landfill and a Type V municipal solid waste transfer station. The proposed facility encompasses approximately 520 acres and is to be developed in a rural area in northern Caldwell County, more than two miles north of the city of Lockhart (refer also to Figure LU-1).

The purpose of this land use evaluation is to address land use issues as required by TCEQ in support of applications for TCEQ municipal solid waste facility authorizations for the 130 Environmental Park. Specifically, this evaluation addresses those portions of TCEQ rules pertaining to land use compatibility. The relevant rule portions, as excerpted from 30 TAC 330.61, are:

*(g) Land-use map. This is a constructed map of the facility showing the boundary of the facility and any existing zoning on or surrounding the property and actual uses (e.g., agricultural, industrial, residential, etc.) both within the facility and within one mile of the facility. The owner or operator shall make every effort to show the location of residences, commercial establishments, schools, licensed day-care facilities, churches, cemeteries, ponds or lakes, and recreational areas within one mile of the facility boundary...*

*(h) Impact on surrounding area. A primary concern is that the use of any land for a municipal solid waste facility not adversely impact human health or the environment. The owner or operator shall provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest. To assist the commission in evaluating the impact of the site on the surrounding area, the owner or operator shall provide the following:*

*(1) if available, a published zoning map for the facility and within two miles of the facility for the county or counties in which the facility is or will be located. If the site requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted;*

*(2) information about the character of surrounding land uses within one mile of the proposed facility;*

*(3) information about growth trends within five miles of the facility with directions of major development;*

*(4) the proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.) within one mile of the facility. The owner or operator shall provide the approximate number of residences and commercial establishments within one mile of the proposed facility including the distances and directions to the nearest residences and commercial establishments. Population density and proximity to residences and other uses described in this paragraph may be considered for assessment of compatibility...*

**List of Figures**

- LU-1 Metropolitan Context
- LU-2 Land Use—One Mile
- LU-3 Metropolitan Growth Trends

**Zoning**

Because the site is not in an incorporated area, there is no zoning at the site. Moreover, the site is more than two miles from any incorporated city; hence there is no zoning within two miles.

The site is not within the extraterritorial jurisdiction of Lockhart or any other incorporated city and is therefore not subject to the subdivision regulations of any city. The site does not require approval as a nonconforming use or a special permit from any local government.

**Character of Surrounding Land Uses**

*Open & Agricultural* land is the predominant land use within one mile of the facility boundary, comprising ~~93.3~~ 93.1% of the land area within one mile (refer also to Figure LU-2). Nearly all of this open land is agricultural pasture lands or forested floodplain lands.

Land use within one mile is specifically characterized as follows:

Land Use	Acres	Percentage	Remarks
Open & Agricultural	<del>4,094</del> <u>4083</u>	<del>93.3</del> <u>93.1</u>	
Residential	<del>217</del> <u>234</u>	<del>4.9</del> <u>5.3</u>	<del>126</del> <u>143</u> residences
Water Bodies	65	1.5	
Commercial/Industrial	<del>11</del> <u>5</u>	<del>0.3</del> <u>0.1</u>	5 establishments
Total	4,387 ac	100 %	not including facility boundary

Source: Field Inventories, June 3 and June 27, 2013, September 24, 2015

All of the *Residential* land (~~217~~ 234 estimated acres) is single family residential, consisting of ~~126~~ 143 residences and representing an estimated ~~4.9~~ 5.3% of the land area within one mile.

There are approximately 65 acres of *Water Bodies* within one mile of the facility boundary, representing approximately 1.5% of the area within one mile. Water bodies consist of stock tanks, and the Site 21 Reservoir south of the facility boundary.

*Commercial/Industrial* land use (five establishments) makes up only ~~0.3~~ 0.1% of the land area within one mile.

### **Growth Trends**

The 130 Environmental Park site is in northern Caldwell County, more than two miles north of Lockhart and 30 driving miles south of downtown Austin.

Caldwell County is one of the five counties of the Austin-Round Rock-San Marcos Metropolitan Statistical Area (Austin MSA). According to the Texas State Data Center, the Austin MSA was the fastest growing metropolitan area in the state of Texas from 2000 to 2010, growing more than 37% from approximately 1.25 million persons to more than 1.7 million.

Of the five counties of the Austin MSA, Caldwell County has the smallest population and is growing at the slowest rate.

#### **Population Growth, by County**

<b>Austin MSA Counties</b>	<b>2000</b>	<b>2010</b>	<b>% Change</b>
Bastrop County	57,733	75,660	31%
<b>Caldwell County</b>	<b>32,194</b>	<b>37,548</b>	<b>17%</b>
Hays County	97,589	157,800	62%
Travis County	812,280	1,025,127	26%
Williamson County	249,967	416,326	67%

Source: Texas State Data Center

Figure LU-3 depicts the influence of Austin metropolitan growth trends, with greater growth occurring to the north of the site, as well to the west, along I-35--all beyond five miles of the facility boundary. Within five miles of the site, population growth from 2000 through 2010 was uniformly less than 5%, except to the south, where northern Lockhart lost population. Over time, and given the recent completion of SH 130, development growth trends can be expected to continue from the north, into the five mile radius.

### **Proximity**

As of ~~June 2013~~ September 2015, there are ~~126~~ 143 residences within one mile of the facility boundary. The nearest residence to the proposed facility is on Homannville Trail, estimated to be approximately 185 feet west of the facility boundary, and approximately 345 feet from the landfill footprint.

There are five business establishments within one mile. The most proximate business establishment (which is also a recreation area) is a golf driving range on the east side of ~~SH 130-US 183, approximately 2450 feet west of the facility boundary and 3740 feet from the landfill footprint.~~ is on the US 183 frontage road west of State Highway 130, approximately 4000 southwest of the permit boundary

The Texas Historic Sites Atlas of the Texas Historical Commission does not identify any historic sites or structures or any archaeological sites within one mile of the facility boundary. Per AR Consultants, Inc., the Texas Archaeological Sites Atlas does identify sites within one mile of the facility boundary (refer to Figure 17, Appendix A of the Cultural Resources Survey, Part II, Appendix IIF.)

There are no churches, daycare centers, schools, or sites having exceptional aesthetic quality within one mile of the facility boundary.

# AUSTIN

(Population: 790,390)

# BUDA

(Population: 7,295)

# KYLE

(Population: 28,016)

# SAN MARCOS

(Population: 44,894)

# CREEDMOOR

(Population: 202)

# MUSTANG RIDGE

(Population: 861)

# NIEDERWALD

(Population: 565)

# LOCKHART

(Population: 12,698)

183

130  
TOLL

45  
TOLL

71  
TEXAS

21  
TEXAS

INTERSTATE  
35

21  
TEXAS

142  
TEXAS

Travis County  
Hays County

Travis County  
Bastrop County

Hays County  
Caldwell County

Bastrop County  
Caldwell County

5 Mile Radius

5 Mile Radius

FM 1854

Homannville Trail

FM 1185

FM 20

Facility Boundary



JOHN WORRALL CONSULTING  
Land Use  
Aesthetics  
Reclamation  
phone 830-825-3029  
email worrall.john@gmail.com

## FIGURE LU-1 METROPOLITAN CONTEXT

### LEGEND:

Incorporated Cities (2010 Population)

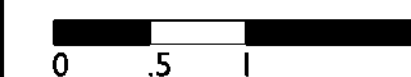
## Land Use Analysis

130 Environmental Park  
Caldwell County, Texas



NORTH

MAP SCALE: 1:63,360



GRAPHIC SCALE IN MILES

DATA SOURCES:  
Boundaries, USDA/NRCS, 2010  
Population, US Census via CAPCOG, 2010  
Transportation, TNRIS, 2012

**FIGURE LU-2**  
**LAND USE - 1 MILE**  
**UPDATED**

-  Residential - Single Family (126 Residences)  
143 Residences
-  Commercial (5 Establishments)
-  Open & Agricultural Land
-  Facility Boundary
-  Water Bodies
-  100 year Floodplain (Zone A) - partial
-  Landfill Footprint

There are no schools, day care centers, churches, or cemeteries within one mile.

**Land Use Analysis**  
 130 Environmental Park  
 Caldwell County, Texas



NORTH

MAP SCALE: 1:12,000

0 500' 1000' 2000'

GRAPHIC SCALE IN FEET

DATA SOURCES:

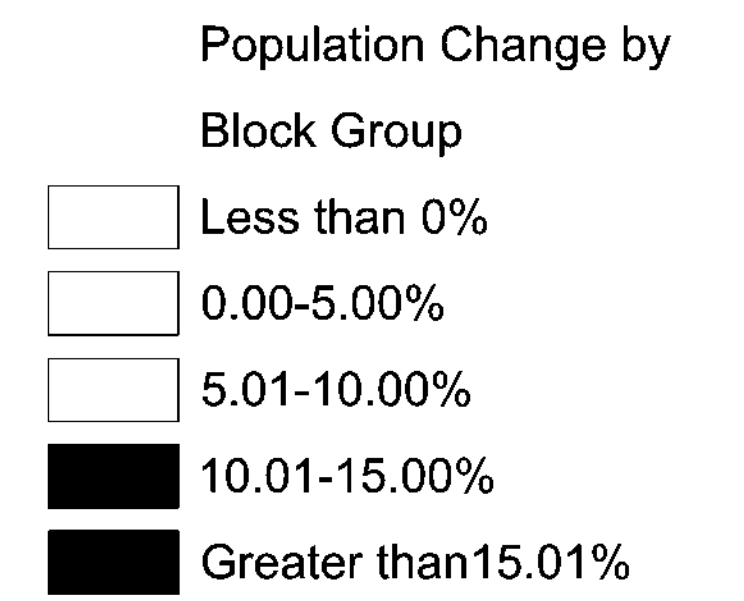
Field Inventory, June 3, 2013 & June 27, 2013  
 Field Inventory, September 24, 2015  
 Aerial Photography, Google Earth October 2, 2014

September 29, 2015

L\20131\33987\Context



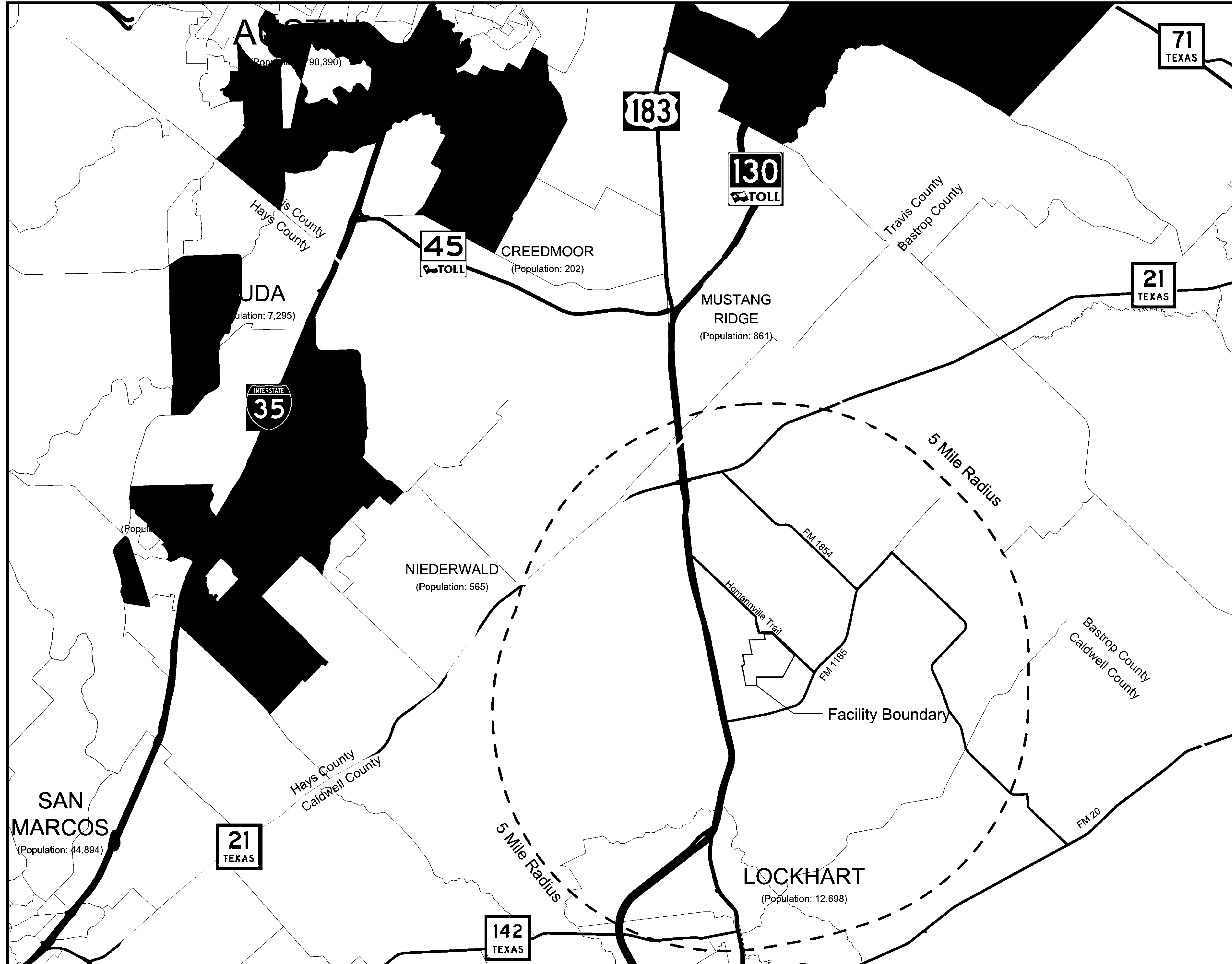
**FIGURE LU-3  
 METROPOLITAN  
 GROWTH TRENDS  
 2000-2010**



**Land Use Analysis**  
 130 Environmental Park  
 Caldwell County, Texas

NORTH  
 MAP SCALE: 1:63,360  
 GRAPHIC SCALE IN MILES

DATA SOURCES:  
 Boundaries, USDA/NRCS, 2010  
 ESRI, USA Population Change 2000-2010, 2013  
 Population, US Census via CAPCOG, 2010  
 Transportation, TNRIS, 2012



**Attachment 2**  
**Landscape Screening Plan**

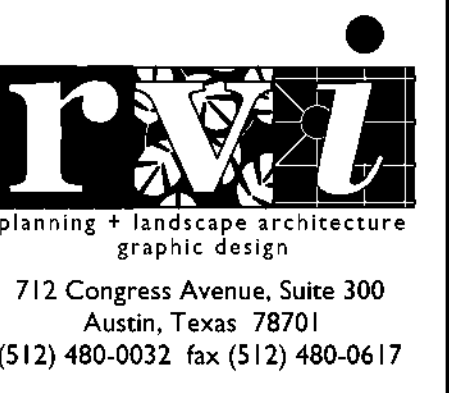
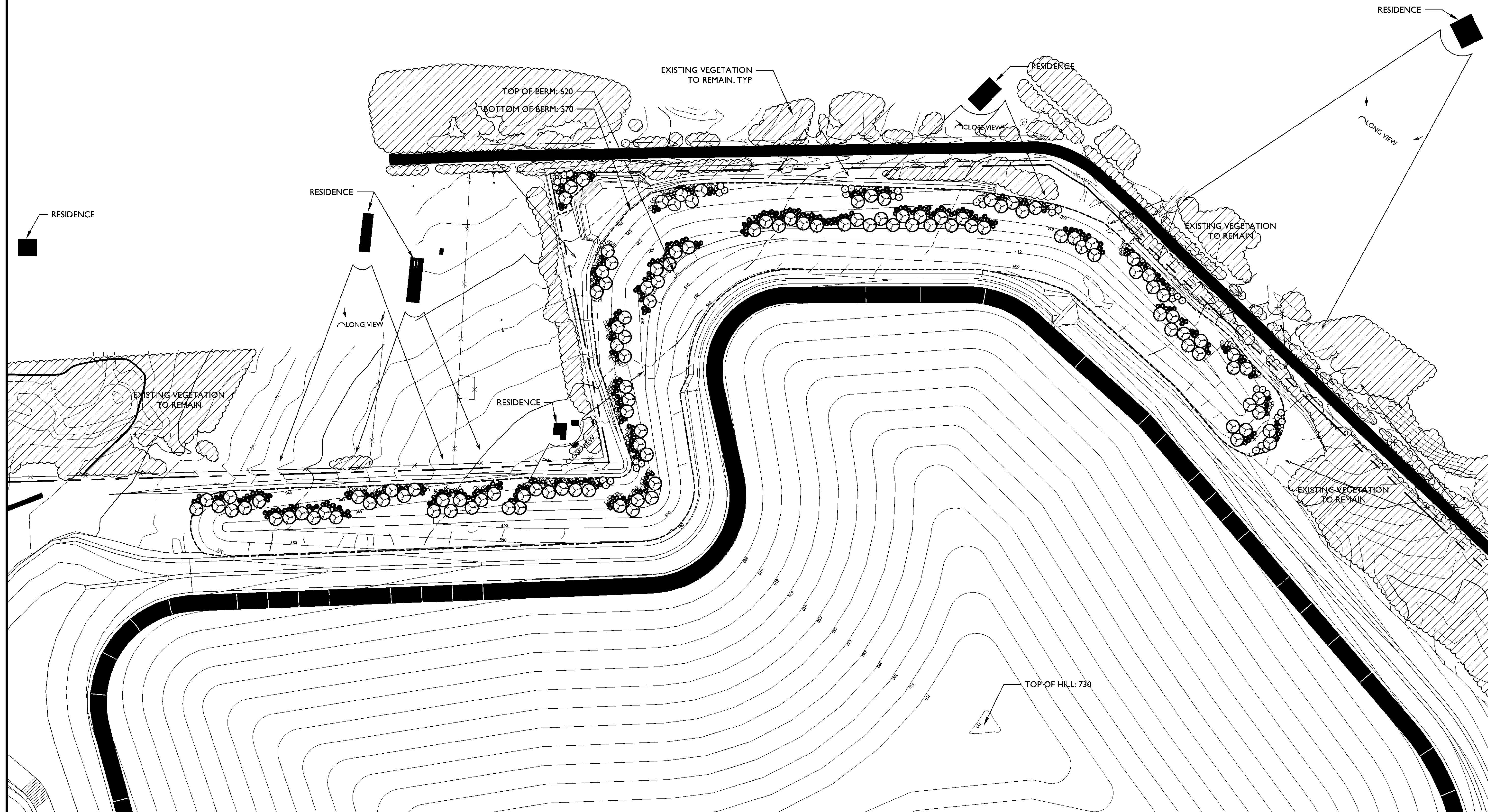
### Legend

QTY.	SYM.	NAME	EXAMPLE(S)*
493500 sf		TURF - NATIVE GRASS MIX	TXDOT AUSTIN DISTRICT MIX
126	⊙	LARGE DECIDUOUS SHADE TREE	OAKS, SYCAMORE, CEDAR ELM
372	⊙	EVERGREEN SCREENING TREES	JAPANESE BLACK PINE
38	⊙	ORNAMENTAL TREES	REDBUD, MEXICAN PLUM, CRAPE MYRTLE
274	⊙	LARGE EVERGREEN SHRUBS	WAX MYRTLE
	-----	LIMIT OF WORK	

\*ALL PLANTS TO BE NATIVE OR ADAPTED

NOTE: RECOMMENDED INSTALLATION PERIOD OCTOBER 15 - APRIL 15

2 FT. MINOR CONTOUR INTERVAL  
10 FT. MAJOR CONTOUR INTERVAL



NOT FOR CONSTRUCTION

## 130 Environmental Park

Caldwell County, Texas

ISSUED	REVISIONS
_____	▲
_____	▲
_____	▲

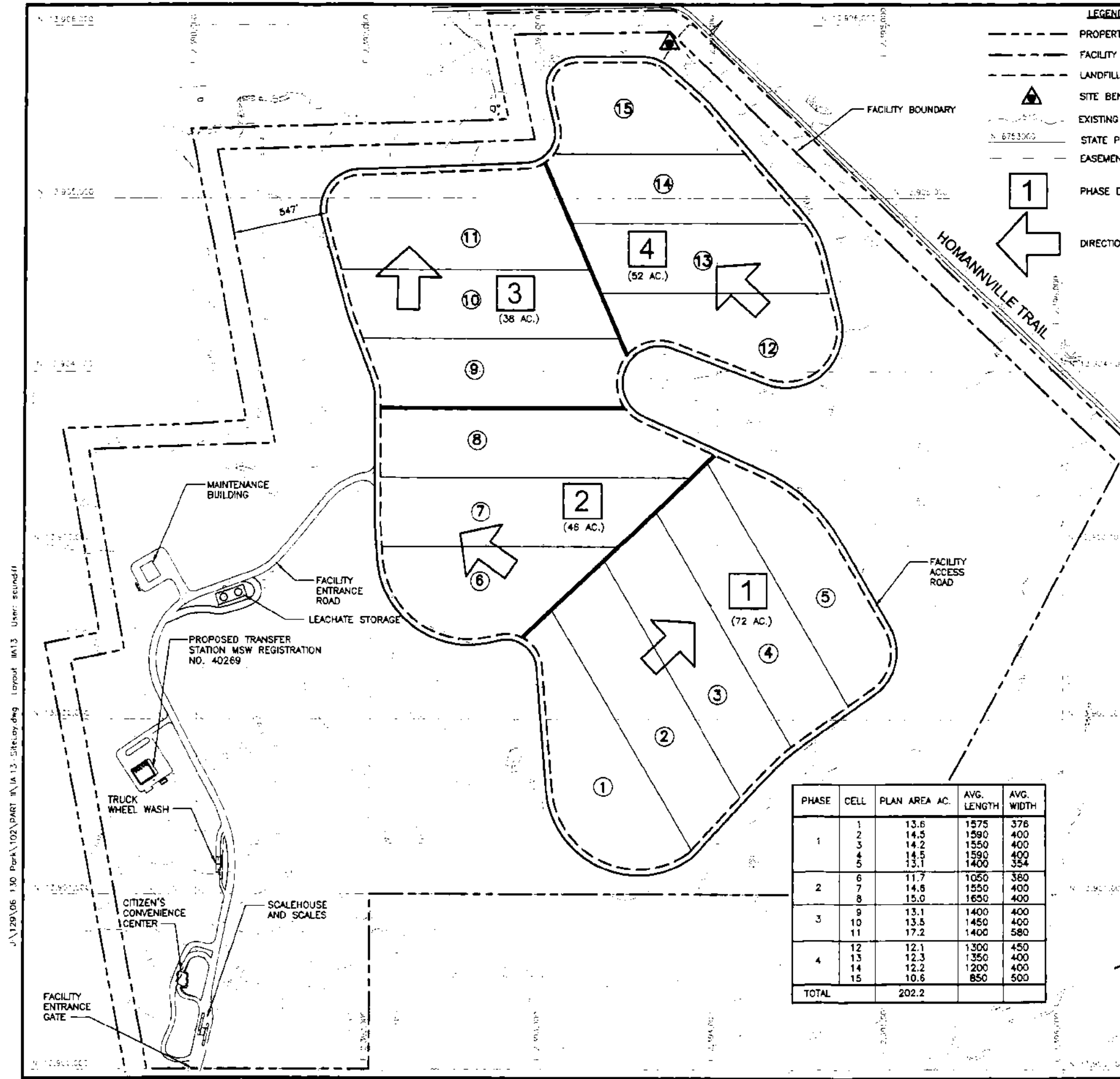
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FILE: L120131133987/SD  
REF: L120131133987/SD  
DRAW: JAE, PH  
RWW: MWS

Concept Planting Plan  
12/20/2013

LP-1  
1 of 1

SCALE: 1" = 100'  
0 50 100 200 NORTH  
Conceptual Landscape Screening Plan

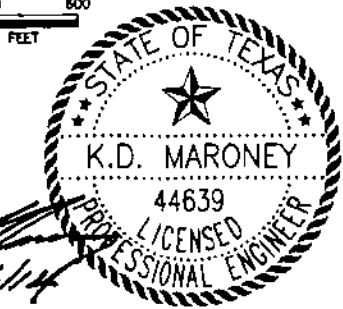
**Attachment 3**  
**Application Drawing II.A.13**



- LEGEND**
- PROPERTY BOUNDARY
  - FACILITY BOUNDARY
  - LANDFILL FOOTPRINT
  - ▲ SITE BENCHMARK
  - EXISTING 10' CONTOUR
  - STATE PLANE GRID
  - EASEMENT
  - 1 PHASE DESIGNATION
  - ← DIRECTION OF LANDFILL DEVELOPMENT

- NOTES:**
1. CONTOURS AND ELEVATIONS PROVIDED BY DALLAS AERIAL SERVICE FROM AERIAL PHOTOGRAPHY FLOWN MAY 13, 2013. HORIZONTAL DATUM IS TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83). ELEVATIONS ARE RELATIVE TO NAVD88 - GEOID 12A.
  2. PROPERTY BOUNDARY, FACILITY BOUNDARY, EASEMENT LOCATIONS, AND PERMANENT BENCHMARK PROVIDED BY HODDE & HODDE LAND SURVEYING, INC.
  3. PERMANENT BENCHMARK INFORMATION:  
 COORDINATES (NAD 83): N 13905896.44  
 E 2393722.33  
 LATITUDE: N 29°58'43.75"  
 LONGITUDE: W 97°39'24.76"  
 ELEVATION: 592.37 FT-MSL
  4. ACCESS CONTROL WILL BE PROVIDED BY FENCE ALONG FACILITY BOUNDARY. SITE ENTRANCE WILL BE GATED. PERIMETER GATE AND FENCE WILL BE CONSTRUCTED WITH SUITABLE FENCING MATERIALS.
  5. DISTURBANCE OF EXISTING NATURAL WINDBREAKS AND GREEN BELTS ON THE PROPERTY WILL BE LIMITED TO IMPROVE THE APPEARANCE OF THE FACILITY AND TO PROVIDE SCREENING FROM THE PUBLIC VIEW.
  6. VISUAL SCREENING OF WASTE DISPOSAL OPERATIONS WILL BE PROVIDED BY THE VEGETATED SCREENING BERM SHOWN ON DRAWING IA.24 AND THE FILLING SEQUENCE, DIVERSION BERMS, CONTAINMENT BERMS AND STOCKPILES.
  7. ONLY TYPE I AND TYPE IV MUNICIPAL SOLID WASTE WILL BE DISPOSED AT THE LANDFILL.
  8. EACH PHASE WILL BE DIVIDED INTO SEVERAL APPROXIMATELY 400 FEET WIDE CELLS. EACH CELL WILL HAVE A CROSS SLOPE TO A LEACHATE COLLECTION TRENCH LOCATED DOWN THE CENTERLINE OF THE CELL AND A DOWNSLOPE TO A LEACHATE COLLECTION SUMP LOCATED ALONG THE PERIMETER OF THE LANDFILL.
  9. THE LANDFILL DEVELOPMENT WILL PROCEED FROM SOUTH TO NORTH (SEQUENTIALLY FROM PHASE 1 TO PHASE 4). REFER TO DRAWINGS IA.15 THROUGH IA.20 FOR LANDFILL DEVELOPMENT PLANS.
  10. THE INITIAL SITE DEVELOPMENT WILL INCLUDE THE CONSTRUCTION OF THE ENTRANCE ROAD, PORTIONS OF THE PERIMETER ACCESS ROAD, SCALES, GATEHOUSE, MAINTENANCE BUILDING, CITIZEN'S CONVENIENCE CENTER, THE FIRST CELL, PERIMETER BERM, AND SURFACE WATER CONTROL FEATURES AROUND THE SOUTHERN END OF PHASE 1. MONITOR WELLS AND GAS PROBES WILL BE INSTALLED AROUND PHASE 1 ACCORDING TO THE INSTALLATION SCHEDULE PROVIDED ON DRAWING IA.14.
  11. AS EACH CELL IS CONSTRUCTED AND FILLED, THE ADJACENT UNDEVELOPED CELL WILL BE EXCAVATED TO PROVIDE OPERATIONAL SOIL AND TEMPORARY STORMWATER STORAGE. SURFACE WATER CONTROLS AND ACCESS ROADS WILL BE CONSTRUCTED ADJACENT TO EACH AREA AS IT IS DEVELOPED. MONITOR WELL AND GAS PROBES WILL BE INSTALLED ACCORDING TO THE SCHEDULE PROVIDED ON DRAWING IA.14.
  12. AS FILL AREAS REACH THE DESIGN GRADES FINAL COVER AND PERMANENT DRAINAGE FEATURES WILL BE INSTALLED. THE MAXIMUM ELEVATION OF SOLID WASTE WILL BE 732.5 FT MSL AND THE MAXIMUM ELEVATION OF FINAL COVER WILL BE 736.00 FT MSL.
  13. LARGE ITEM STORAGE AREA WILL BE PROVIDED WITHIN THE LANDFILL FOOTPRINT NEAR THE WORKING FACE OR NEAR THE CITIZEN'S CONVENIENCE CENTER.
  14. REUSABLE MATERIALS STAGING AREA WILL BE PROVIDED WITHIN THE LANDFILL FOOTPRINT.
  15. USED/SCRAP TIRE STORAGE AREA WILL TYPICALLY BE PROVIDED NEAR THE WORKING FACE OR NEAR THE CITIZEN'S CONVENIENCE CENTER.
  16. WOOD WASTE PROCESSING AREA WILL BE PROVIDED WITHIN THE LANDFILL FOOTPRINT.

PHASE	CELL	PLAN AREA AC.	AVG. LENGTH	AVG. WIDTH
1	1	13.6	1575	376
	2	14.5	1590	400
	3	14.2	1550	400
	4	14.5	1590	400
	5	13.1	1400	354
2	6	11.7	1050	380
	7	14.6	1550	400
	8	15.0	1650	400
3	9	13.1	1400	400
	10	13.5	1450	400
	11	17.2	1400	580
4	12	12.1	1300	450
	13	12.3	1350	400
	14	12.2	1200	400
	15	10.6	850	500
TOTAL		202.2		



**SITE LAYOUT PLAN**

**130 ENVIRONMENTAL PARK, LLC**  
**130 ENVIRONMENTAL PARK**  
**TYPE I PERMIT APPLICATION**

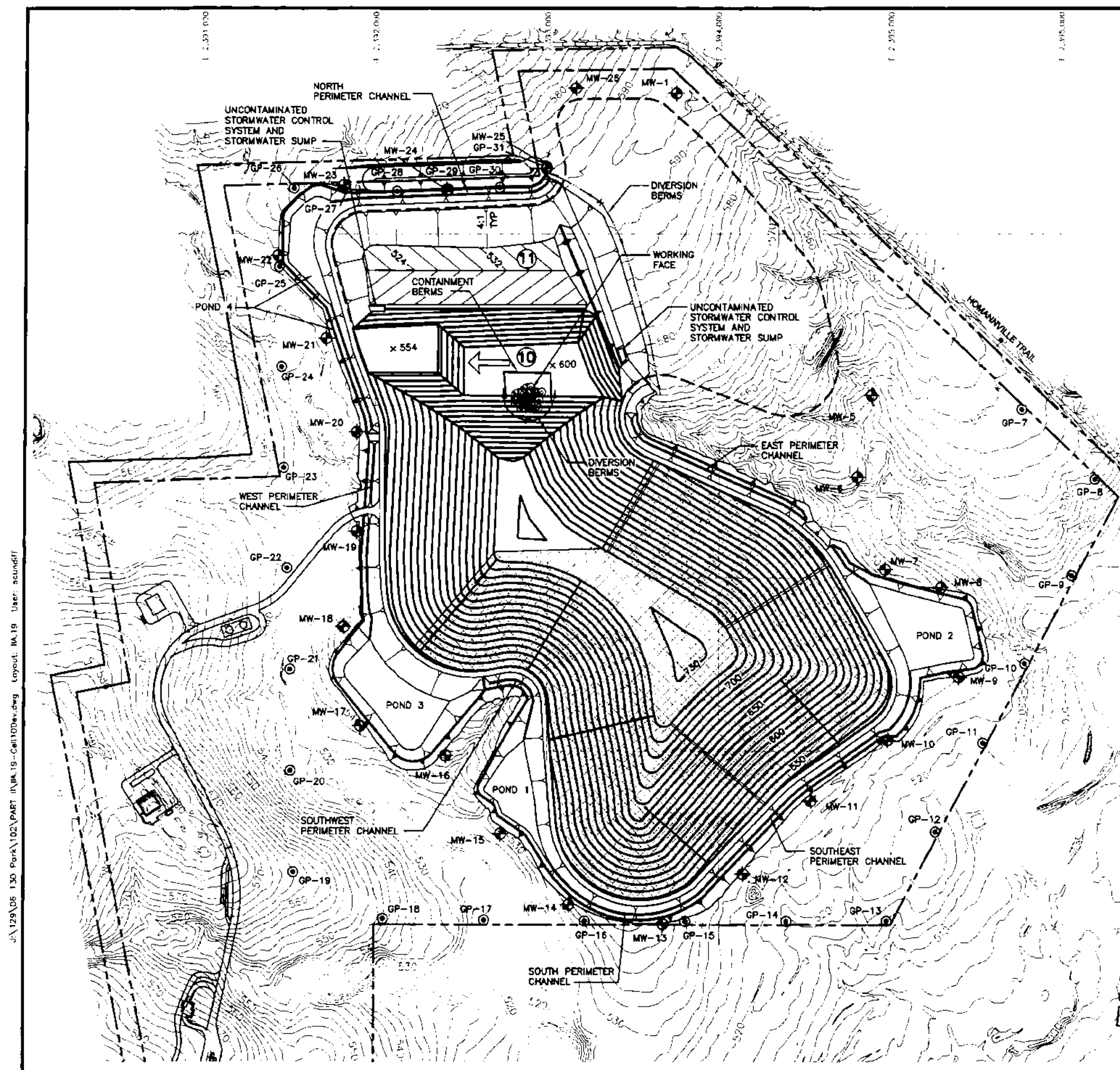
**BIGGS & MATHEWS**  
 ENVIRONMENTAL  
 CONSULTING ENGINEERS  
 MANSFIELD • WICHITA FALLS  
 817-563-1144

ISSUED FOR PERMITTING PURPOSES ONLY

REV	DATE	DESCRIPTION	DWG BY	DES BY	CHK BY	APP BY	DATE	SCALE	DWG NO.
	07/28/11	TECHNICALLY COMPLETE	GLW	KDW	KDM	KDM		GRAPHIC	IA.13-SiteLay.cwg

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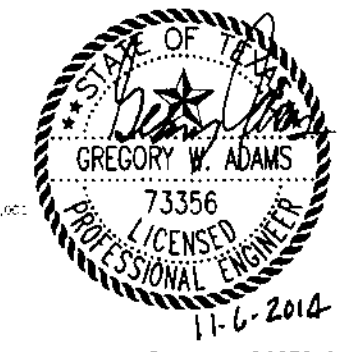
**Attachment 4**  
**Application Drawing II.A.19**



**LEGEND**

- PROPERTY BOUNDARY
- FACILITY BOUNDARY
- LANDFILL FOOTPRINT
- EXISTING CONTOUR
- STATE PLANE GRID
- MW-4 MONITORING WELL
- GP-1 LFG MONITORING PROBE
- DIRECTION OF FILL
- 630 x APPROXIMATE TOP OF WASTE SPOT ELEVATION
- APPROXIMATE LIMITS OF FINAL COVER

- NOTES:**
- CONTOURS AND ELEVATIONS PROVIDED BY DALLAS AERIAL SERVICE FROM AERIAL PHOTOGRAPHY FLOWN MAY 13, 2013. HORIZONTAL DATUM IS TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83). ELEVATIONS ARE RELATIVE TO NAVD88 - GEOID 12A.
  - PROPERTY BOUNDARY, FACILITY BOUNDARY, EASEMENT LOCATIONS, AND PERMANENT BENCHMARK PROVIDED BY HODDE & HODDE LAND SURVEYING, INC
  - THE LANDFILL ACCESS AND HAUL ROADS WILL BE SURFACED TO PROVIDE ALL WEATHER ACCESS. ROAD LOCATIONS TO BE DETERMINED DURING SITE OPERATIONS AND LOCATIONS WILL VARY.
  - THE RUN-ON STORMWATER CONTROL SYSTEM WILL CONSIST OF THE PERIMETER DRAINAGE CHANNEL, RUN-ON STORMWATER DIVERSION BERM, AND UNCONTAMINATED STORMWATER SUMP.
  - REFER TO PART III, ATTACHMENT C-DRAINAGE DESIGN REPORT FOR STORMWATER SYSTEMS AND EROSION AND SEDIMENT CONTROL PLAN. REFER TO PART III, ATTACHMENT D6-LEACHATE AND CONTAMINATED WATER MANAGEMENT PLAN FOR CONTAINMENT AND DIVERSION BERM CALCULATIONS.
  - UNCONTAMINATED STORMWATER COLLECTED IN SUMPS WILL BE PERIODICALLY REMOVED FROM EXCAVATED AREAS BY PUMPING TO PERIMETER DRAINAGE CHANNELS OR USED IN SITE OPERATIONS (DUST CONTROL, IRRIGATIONS, ROAD AND LINER CONSTRUCTION).
  - CELL 10 DEVELOPMENT DEPICTS ONGOING WASTE DISPOSAL OPERATIONS IN CELL 10 TO MAXIMUM WASTE FILL ELEVATION. EXCAVATION AND LINER CONSTRUCTION ONGOING IN CELL 11.
  - MONITORING WELLS AND PROBES TO BE INSTALLED AS SHOWN ON DRAWING IIA.14.



ISSUED FOR PERMITTING PURPOSES ONLY

**CELL 10 DEVELOPMENT**  
 130 ENVIRONMENTAL PARK, LLC  
 130 ENVIRONMENTAL PARK  
 TYPE I PERMIT APPLICATION

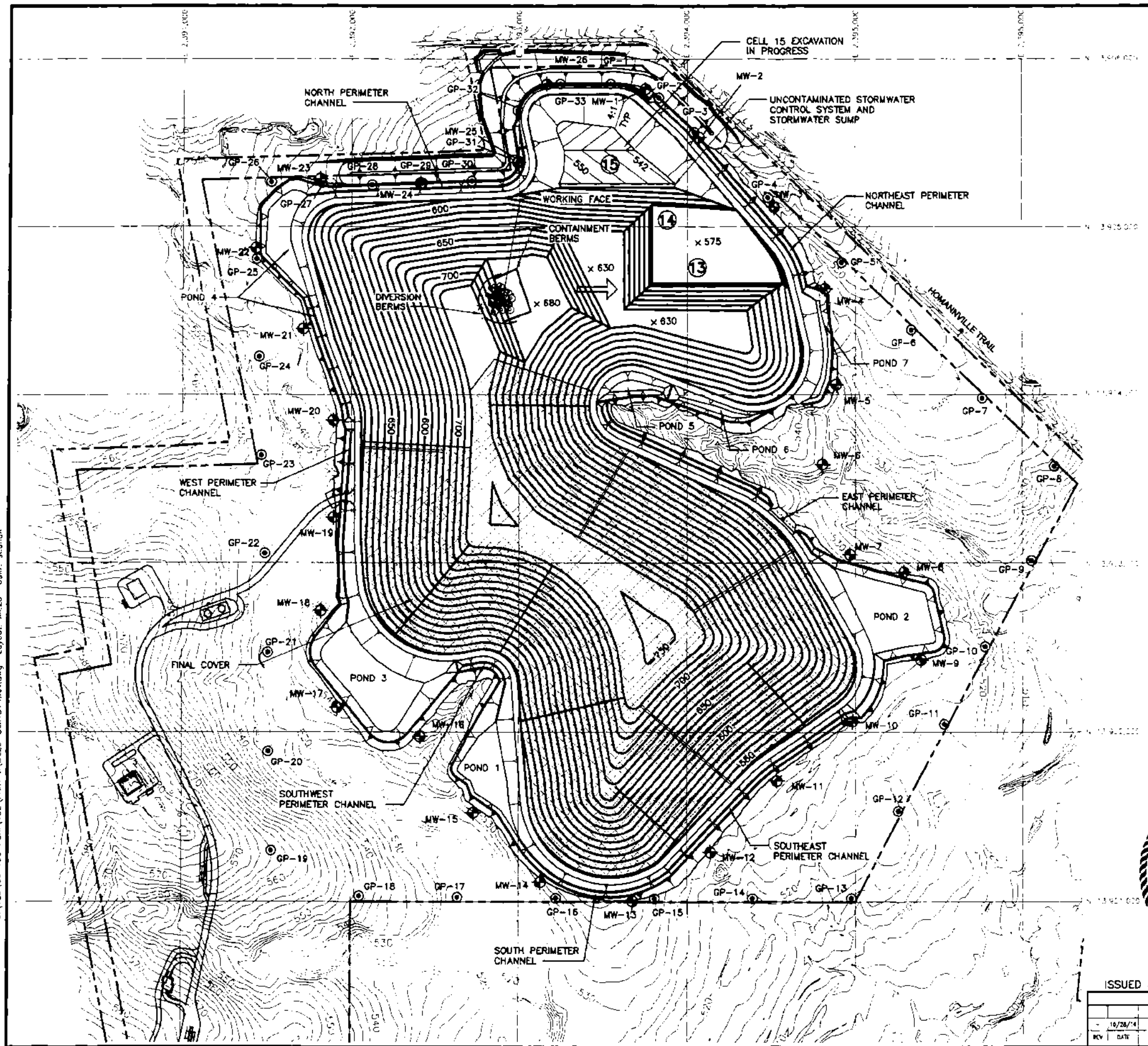
**BIGGS & MATHEWS**  
 ENVIRONMENTAL  
 CONSULTING ENGINEERS  
 WANSFIELD • MCHTA FAL.S  
 817-563-1144

REVISIONS		TSPE FIRM NO. T-256	TBPG FIRM NO. 50222
10/28/14	TECHNICALLY COMPLETE	DSH, KOM	DATE: 12/13
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		CHK. KOM	DRAWING

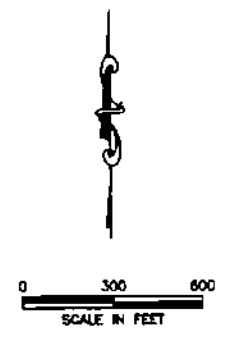
**IIA.19**

J:\129\05\_130\_Park\102\PART I\IA.19-Cell10Dev.dwg Layout: IIA.19 User: scundiff

**Attachment 5**  
**Application Drawing II.A.20**

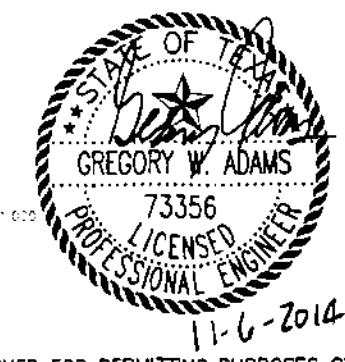


- LEGEND**
- PROPERTY BOUNDARY
  - FACILITY BOUNDARY
  - LANDFILL FOOTPRINT
  - EXISTING CONTOUR
  - STATE PLANE GRID
  - MW-4 MONITORING WELL
  - GP-1 LFG MONITORING PROBE
  - DIRECTION OF FILL
  - 630 X APPROXIMATE TOP OF WASTE SPOT ELEVATION
  - APPROXIMATE LIMITS OF FINAL COVER



**NOTES:**

1. CONTOURS AND ELEVATIONS PROVIDED BY DALLAS AERIAL SERVICE FROM AERIAL PHOTOGRAPHY FLOWN MAY 13, 2013. HORIZONTAL DATUM IS TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83). ELEVATIONS ARE RELATIVE TO NAVD88 - GEOID 12A.
2. PROPERTY BOUNDARY, FACILITY BOUNDARY, EASEMENT LOCATIONS, AND PERMANENT BENCHMARK PROVIDED BY HODDE & HODDE LAND SURVEYING, INC
3. THE LANDFILL ACCESS AND HAUL ROADS WILL BE SURFACED TO PROVIDE ALL WEATHER ACCESS. ROAD LOCATIONS TO BE DETERMINED DURING SITE OPERATIONS AND LOCATIONS WILL VARY.
4. THE RUN-ON STORMWATER CONTROL SYSTEM WILL CONSIST OF THE PERIMETER DRAINAGE CHANNEL, RUN-ON STORMWATER DIVERSION BERM, AND UNCONTAMINATED STORMWATER SUMP.
5. REFER TO PART III, ATTACHMENT C-DRAINAGE DESIGN REPORT FOR STORMWATER SYSTEMS AND EROSION AND SEDIMENT CONTROL PLAN. REFER TO PART III, ATTACHMENT D6-LEACHATE AND CONTAMINATED WATER MANAGEMENT PLAN FOR CONTAINMENT AND DIVERSION BERM CALCULATIONS.
6. UNCONTAMINATED STORMWATER COLLECTED IN SUMPS WILL BE PERIODICALLY REMOVED FROM EXCAVATED AREAS BY PUMPING TO PERIMETER DRAINAGE CHANNELS OR USED IN SITE OPERATIONS (DUST CONTROL, IRRIGATIONS, ROAD AND LINER CONSTRUCTION).
7. CELLS 13 AND 14 DEVELOPMENT DEPICTS ONGOING WASTE DISPOSAL OPERATIONS IN CELLS 13 AND 14 TO MAXIMUM WASTE FILL ELEVATION. EXCAVATION AND LINER CONSTRUCTION ONGOING IN CELL 15.
8. MONITORING WELLS AND PROBES TO BE INSTALLED AS SHOWN ON DRAWING IIA.14.



ISSUED FOR PERMITTING PURPOSES ONLY

**CELLS 13 AND 14 DEVELOPMENT**

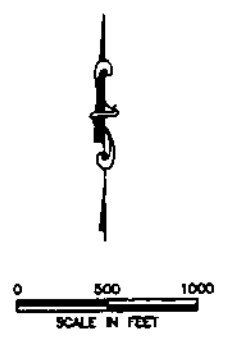
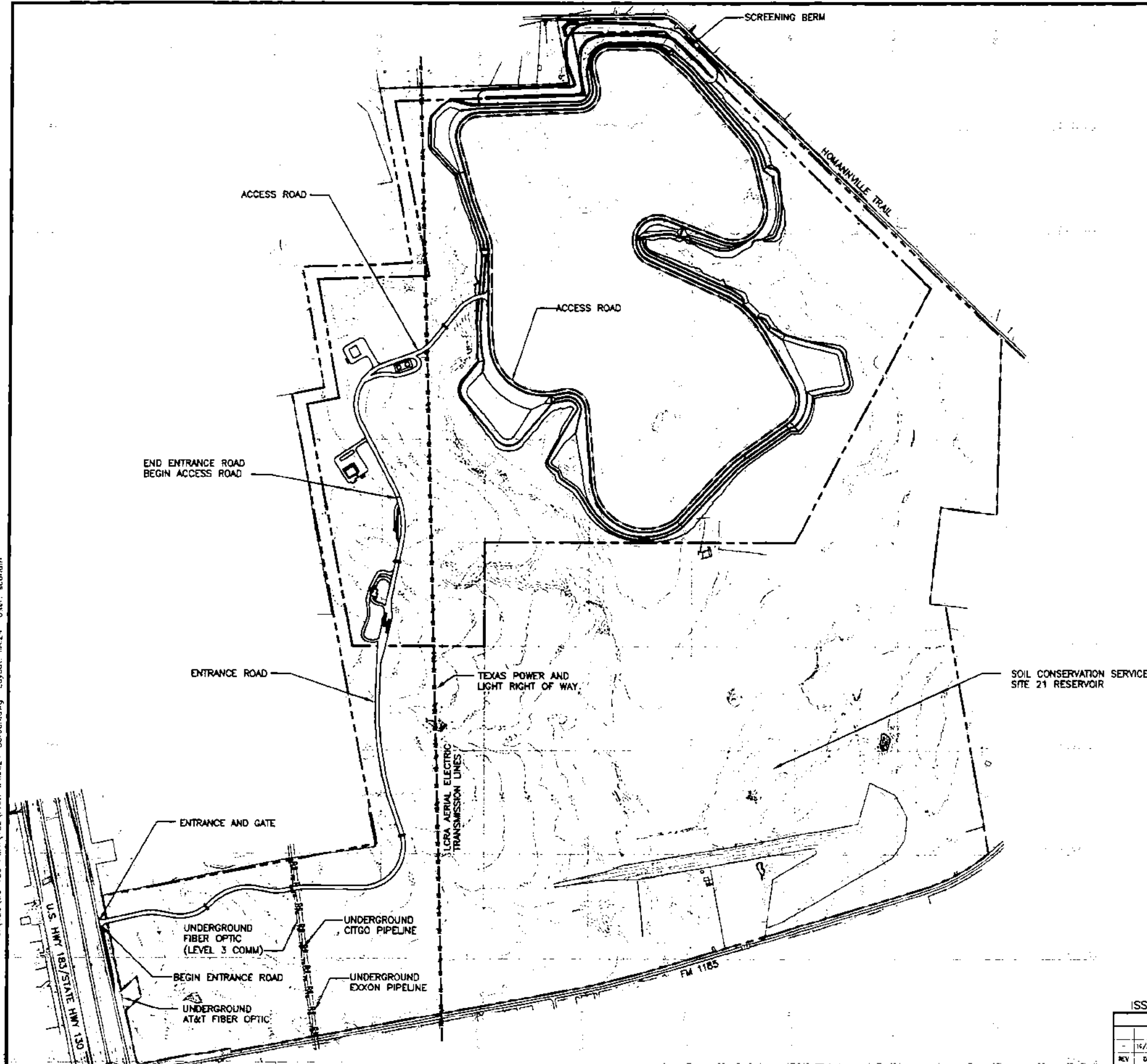
130 ENVIRONMENTAL PARK, LLC  
130 ENVIRONMENTAL PARK  
TYPE I PERMIT APPLICATION

**BIGGS & MATHEWS**  
ENVIRONMENTAL  
CONSULTING ENGINEERS  
MANSFIELD • WICHITA FALLS  
817-563-1144

REVIEWS				TBPE FIRM NO. F-256		TBPG FIRM NO. 50222	
REV	DATE	DESCRIPTION	DESIGNED BY	DRAWN BY	DATE	SCALE	DRAWING
-	10/28/14	TECHNICALLY COMPLETE	GLW	DWA	12/13	GRAPHIC	IIA.20
CHK.			DES BY	CHK BY			

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**Attachment 6**  
**Facility Screening Plan**




- LEGEND**
- PROPERTY BOUNDARY
  - FACILITY BOUNDARY
  - LANDFILL FOOTPRINT
  - ~ EXISTING 10' CONTOUR
  - STATE PLANE GRID
  - EXISTING WOODED AREA NOT DISTURBED

- NOTES:**
1. CONTOURS AND ELEVATIONS PROVIDED BY DALLAS AERIAL SERVICE FROM AERIAL PHOTOGRAPHY FLOWN MAY 13, 2013. HORIZONTAL DATUM IS TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83). ELEVATIONS ARE RELATIVE TO NAVD88 - GEOID 12A.
  2. PROPERTY BOUNDARY, FACILITY BOUNDARY, EASEMENT LOCATIONS, AND PERMANENT BENCHMARK PROVIDED BY HODDE & HODDE LAND SURVEYING, INC.
  3. VISUAL SCREENING OF WASTE OPERATIONS WILL BE PROVIDED BY THE VEGETATED SCREENING BERM TO BE LOCATED ALONG THE NORTH FACILITY BOUNDARY AND EXISTING WOODED AREAS ON THE PROPERTY.
  4. WOODED AREAS WITHIN THE FACILITY BOUNDARY AND THE PROPERTY BOUNDARY ARE DEPICTED.

J:\129\06 130 Park 102\PART 1\11A.24-Screen.dwg Layout: 11A.24 User: scundiff

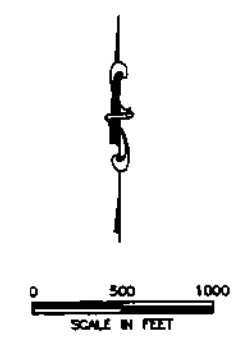
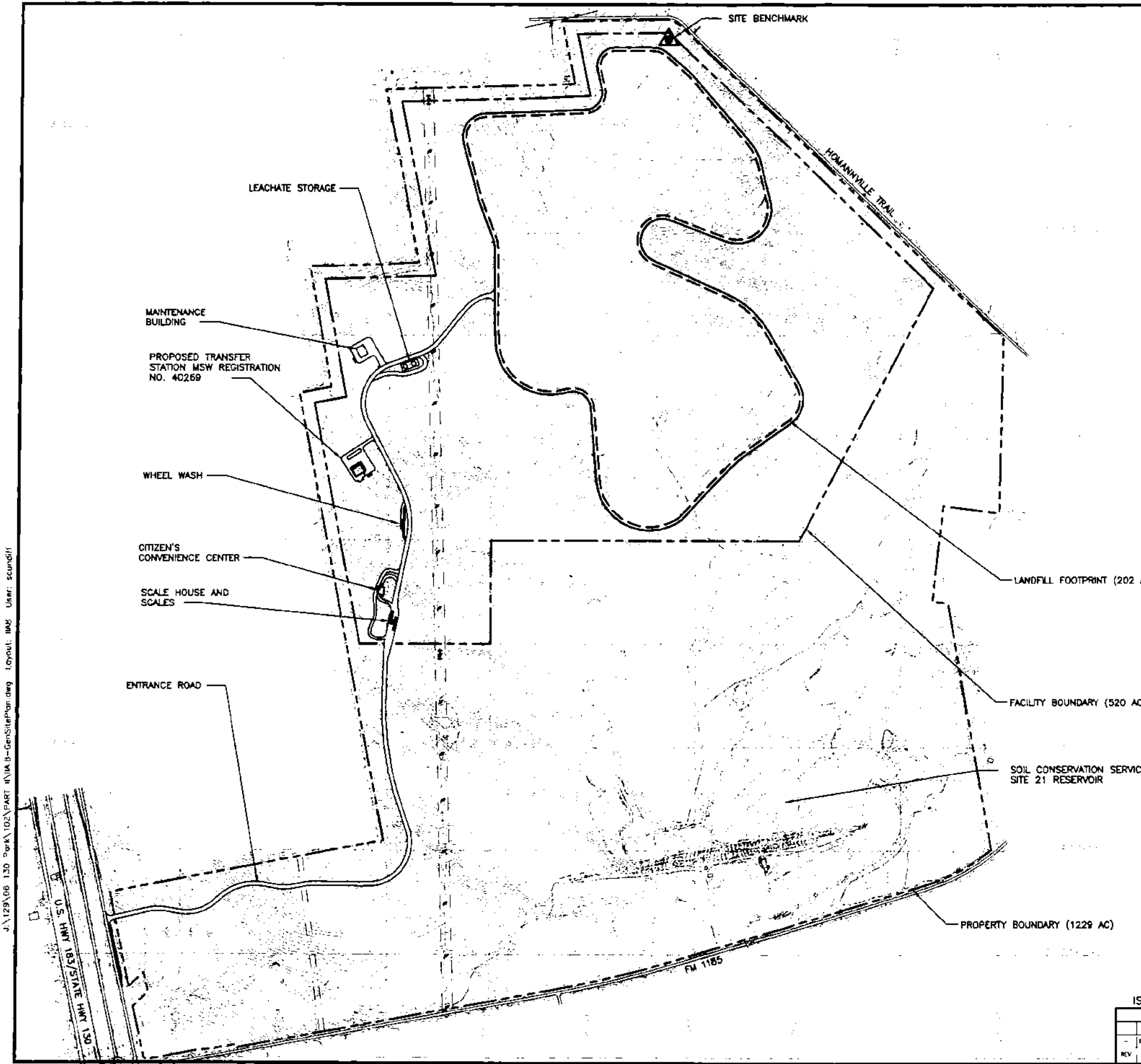


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<b>FACILITY SCREENING PLAN</b>	
130 ENVIRONMENTAL PARK, LLC 130 ENVIRONMENTAL PARK TYPE I PERMIT APPLICATION	
 BIGGS & MATHEWS ENVIRONMENTAL CONSULTING ENGINEERS MANSFIELD • WCHITA FALLS 817-563-1144	
TBPE FIRM NO. F-256 DSN. KDM DATE: 1/14	TBPG FIRM NO. 50222 DWN. GLW SCALE: GRAPHIC DRAWING <b>11A.24</b>

REV	DATE	DESCRIPTION	DRW BY	DES BY	CHK BY	APP BY
-	10/28/14	TECHNICALLY COMPLETE	GLW	KDM	KDM	KDM

**Attachment 7**  
**Site Plan**



- LEGEND**
- PROPERTY BOUNDARY
  - FACILITY BOUNDARY
  - LANDFILL FOOTPRINT
  - ▲ SITE BENCHMARK
  - EXISTING CONTOUR
  - STATE PLANE GRID
  - EASEMENT LOCATION

**NOTES:**


1. CONTOURS AND ELEVATIONS PROVIDED BY DALLAS AERIAL SERVICE FROM AERIAL PHOTOGRAPHY FLOWN MAY 13, 2013. HORIZONTAL DATUM IS TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83). ELEVATIONS ARE RELATIVE TO NAVD88 - GEOID 12A.
2. PROPERTY BOUNDARY, FACILITY BOUNDARY, EASEMENT LOCATIONS, AND PERMANENT BENCHMARK PROVIDED BY HODDE & HODDE LAND SURVEYING, INC.
3. ACCESS CONTROL WILL BE PROVIDED BY FENCE ALONG FACILITY BOUNDARY. SITE ENTRANCE WILL BE GATED.
4. PERMANENT BENCHMARK INFORMATION:  
 COORDINATES (NAD 83): N 13905898.44  
 E 2393722.33  
 LATITUDE: N 29°58'43.75"  
 LONGITUDE: W 97°39'24.76"  
 ELEVATION: 592.37 FT-MSL

J:\129\06 130 Park\102\PART 1\11A.8-GenSitePlan.dwg Layout: 11A.8 User: scundiff



*[Signature]*  
11/6/14

ISSUED FOR PERMITTING PURPOSES ONLY

<b>GENERAL SITE PLAN</b>	
130 ENVIRONMENTAL PARK, LLC 130 ENVIRONMENTAL PARK TYPE I PERMIT APPLICATION	
 BIGGS & MATHEWS ENVIRONMENTAL CONSULTING ENGINEERS MANSFIELD • WICHITA FALLS 817-563-1144	
TSPE FIRM NO. F-258	TSPE FIRM NO. 50222
DSM: KDM	DATE: 8/13
DWN: GLW	SCALE: GRAPHIC
CHK: KDM	DWG: 11A.8-GenSitePlan.dwg
DRAWING <b>11A.8</b>	

REVISIONS		GLW	KDM	KDM	KDM
REV	DATE	DESCRIPTION	DWN BY	CHK BY	APP BY
-	11/26/14	TECHNICALLY COMPLETE			