

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

Regional and Local Review of MSW Facility Applications



FINAL REPORT

AUGUST 2005

R·W·BECK



This study was funded through a solid waste management grant provided by the Texas Commission on Environmental Quality through the North Central Texas Council of Governments. The funding does not necessarily indicate endorsement or support of the study's findings and recommendations.

August 31, 2005



Mr. John Promise
Department of Environmental Resources
North Central Texas Council of Governments
616 Six Flags Drive, Centerpoint Two Building
Arlington, TX 76011

Subject: Regional and Local Review of MSW Facility Applications Study

Dear Mr. Promise:

R. W. Beck, Inc. in association with Chiang, Patel & Yerby, Inc. (project team) is pleased to provide the North Central Texas Council of Governments (NCTCOG) and the Resource Conservation Council (RCC) with the Regional and Local Review of MSW Facility Applications Study.

We would like to express our appreciation to the many people throughout the North Central Texas region who contributed to the development of this study. We appreciate the time and effort taken by these individuals to provide valuable information. R. W. Beck would also like to thank staff at NCTCOG and members of the Assuring Capacity for Trash subcommittee, who provided significant input and ideas for the project.

Should you have any questions or comments regarding the study, please do not hesitate to contact Mr. Scott Pasternak at (512) 450-0991.

Sincerely,

R. W. BECK, Inc.

A handwritten signature in blue ink, appearing to read "Scott Pasternak", is written over the typed name.

Scott Pasternak
Manager

NCTCOG

Regional and Local Review of MSW Facility Applications

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Section 1

Executive Summary

1.1 Project Purpose

The Texas Commission on Environmental Quality (TCEQ) has required the State's 24 Councils of Governments (COGs) to update their regional solid waste management plans. As the entity designated by the Governor to be the regional planning agency for solid waste management, the North Central Texas Council of Governments (NCTCOG) is responsible for regional solid waste management planning in the North Central Texas Region. The NCTCOG must comply with TCEQ's direction in order to participate in and benefit from TCEQ's regional solid waste grants program.

TCEQ has directed the COGs to develop a process for review of municipal solid waste (MSW) facility applications in the regional solid waste management plan for the review of solid waste facility permit or registration applications. TCEQ has decided to use the regional solid waste management plans and the COGs plan conformance evaluation process as an opportunity to better deal with land use compatibility issues and local community concerns pertaining to a proposed solid waste facility. In this guidance, TCEQ has directed that the COGs' regional plans "should identify those factors that will be used by the applicant to evaluate whether a proposed MSW facility application will demonstrate conformance with the regional plan."¹ NCTCOG already has a process in place to review solid waste facility permit or registration applications.

It is important to note that the regional solid waste plans are advisory and non-regulatory. Therefore, the recommendation of the NCTCOG is provided to the TCEQ to assist the TCEQ Commission in making a decision on the permit application.

In February 2004, NCTCOG retained the services of R. W. Beck, Inc., in association with Chiang, Patel & Yerby, Inc., (project team), to conduct a regional and local review of MSW facility applications study. The purpose of this study is to update the existing evaluation process to meet the requirements of the TCEQ regarding the regional process for review of MSW facility applications. The project team's focus during this study was to assist NCTCOG and the Resource Conservation Council (RCC) in accomplishing the following goals:

- Research options for a regional process for review of MSW facility applications;
- Assist in developing the regional process for review of MSW facility applications and criteria for municipal solid waste facilities in the North Central Texas Region, as required by the Texas Commission on Environmental Quality (TCEQ);

¹ Source: TCEQ Correspondence from the Executive Director to each COG, March 4, 2003.

- Identify and evaluate potential options for county decision making in land use and facility siting;
- Work with interested counties to examine potential implementation of the identified county options; and
- Develop a case study by providing technical assistance to one county (Navarro County) in the region to implement a facility siting ordinance.

1.2 Project Approach

The project team developed a series of several key tasks that provided the foundation for this study. The following tasks were utilized to conduct the study in a method that ensured sufficient time for research and allowed for the disbursement of important information to all parties as well as maximizing the opportunity to receive input from the participating stakeholders.

1.2.1 Conduct Project Kick-off and County Roundtable Subcommittee Meetings

The project team conducted the project kick-off meeting with NCTCOG staff and the Assuring Capacity for Trash (ACT) Subcommittee on March 3, 2004.² The meeting served as a forum to confirm the scope of work and to initiate discussion between the project team and the ACT Subcommittee.

The project team also met with the County Roundtable Subcommittee on March 17, 2004. During this meeting the project team provided an overview discussion of the main tasks of the study and outlined the county involvement in the regional process of review of MSW facility applications. The project team also received contacts for those counties interested in participating in the study.

1.2.2 Research Options for a Regional Process for Review of MSW Facility Applications

The project team conducted extensive research of existing regional reviews of MSW facility applications and current TCEQ rules to obtain a critical understanding of the various options available to NCTCOG. As part of this task, the project team evaluated the process of four COGs that have already developed a facility siting review process and conducted interviews with the COGs' staff. The four COGs include Capital Area Planning Council (CAPCO), Houston-Galveston Area Council (H-GAC), Middle Rio Grande Development Council (MRGDC) and Panhandle Regional Planning Commission (Panhandle). The project team examined the various elements of each of these plans in order to assist NCTCOG in determining their role in the regional process for review of MSW facility applications.

² The ACT Subcommittee is a subcommittee of the RCC that is responsible for the consideration of disposal-related issues.

The project team also interviewed TCEQ staff to gain a greater understanding of the background and goals of the regional process for review of MSW facility applications from TCEQ's perspective. The project team summarized the information and conducted a workshop for the Assuring Capacity for Trash (ACT) Subcommittee for initial discussion on May 6, 2004.

1.2.3 Conduct Survey

Based on comments provided during the discussion with the ACT Subcommittee, the project team developed a written survey that was sent to all members of the Resource Conservation Council (RCC), which represents:

- Local governments (e.g. counties, cities, special districts);
- Private and public sector landfill developers, owners and operators;
- Citizens and representative organizations; and
- Industry trade associations (e.g. Solid Waste Association of North America (SWANA), Texas Association of Counties (TAC), National Solid Wastes Management Association (NSWMA)).

The project team received 19 completed surveys out of the 28 members of the RCC, which resulted in a response rate of 68%. As a part of conducting the survey, the project team conducted follow-up interviews with members of the RCC in order to clarify some of the input received through the survey.

1.2.4 Conduct ACT Subcommittee Meetings/Workshops

To continue soliciting input from the ACT Subcommittee, the project team facilitated a series of meetings involving the ACT Subcommittee members. The purpose of these meetings was to gain consensus among the various stakeholders on the recommended process of review of MSW facility applications. The project team worked closely with the ACT Subcommittee and NCTCOG staff to draft the regional process for review of MSW facility applications that would be appropriate for the North Central Texas Region.

1.2.5 Public Response Comments

Following receipt of the draft report, NCTCOG requested public comments and held a public meeting to receive comments. Appendix D includes copies of the two written responses NCTCOG received. After reviewing the comments received, the ACT Subcommittee decided that they would not further address the comments because they were consistent with issues that were addressed during the course of the project.

1.2.6 County Meeting Results

Following the development of the draft report, NCTCOG staff contacted elected officials and staff at each of the 16 counties in the North Central Texas Region to determine their interest in discussing county level facility siting options with

NCTCOG staff and project team. Appendix E summarizes the results of these meetings concerning how each county would like to proceed.

1.3 Regional Process for Review of MSW Facility Applications Analysis

In Section 2, “Regional Process for Review of MSW Facility Applications Analysis,” the project team focused on the evaluation of the options for a regional review of MSW facility applications. Section 2 provides a detailed analysis of NCTCOG’s options for updating the current regional process for review of MSW facility applications in order to comply with TCEQ’s directions. Based on this analysis, the project team has provided recommendations for the development of the NCTCOG’s regional process for review of MSW facility applications. This process, which can be included in the *SEE Less Trash Regional Solid Waste Management Plan*, is located in Appendix A of this study. The basic steps for the review of MSW facility applications process are presented in Table 1-1.

Table 1-1
Recommended Step-by-Step Process

Steps	Description of Steps
1: Voluntary Pre-Application Review	Opportunity for applicant to obtain an understanding of the process from NCTCOG staff.
2: Submit Request for a Facility Application Review	Applicant provides required materials to the NCTCOG.
3: ACT Subcommittee Facility Application Review	The Review Committee (ACT Subcommittee and up to three ad hoc land use experts) evaluate materials and meet to provide applicant with opportunity to present application.
4: Plan Review Recommendations	The Review Committee reaches one of several recommendations and presents findings to the RCC for approval.
5: Appeals Process	Applicant may file appeal to the NCTCOG’s Executive Director.
6: Report on RCC Evaluation Findings	NCTCOG submits recommendation to TCEQ.

In addition, Section 2 provides the results of the survey discussed in Section 1.2.3. The results of the survey provided the project team with guidance on how to develop an appropriate process to evaluate land use and regional plan conformity. Based on the responses from the survey, there is a strong consensus for the regional review of MSW facility applications to address both the land use and regional plan conformance issues.

Land use questions addressed in the process will primarily focus on land use issues that are included in the TCEQ rules since TCEQ has directed each of the COGs to

specifically address “land use compatibility and local facility siting concerns”³ as a part of the plan regional review of MSW facility applications. Land use questions have also been included for transportation, landfill height and aesthetics.

While there was a consensus to include questions concerning regional goals, there was a need to determine which specific questions would be included in the process. Rather than include a lengthy list of questions concerning regional goals, facility applicants will need to describe how their proposed facility will contribute to the attainment of the regional goals included in the *SEE Less Trash Regional Solid Waste Management Plan*. Under this approach, there would be a need to recognize that individual facilities alone will not be held responsible to meet these goals. However, solid waste facilities represent an important component of an integrated solid waste management system, and can contribute to the attainment of regional goals. Under this concept, facilities would be expected to make a good faith effort to contribute to the attainment of the regional solid waste goals.

The project team developed the following materials, located in the Appendix, to be used during the regional process of review of MSW facility applications:

- Appendix A “Regional Process for Review of MSW Facility Applications” – detailed instructions on the process for all participating individuals. In addition, the document provides guidelines for the Review Committee to consider during the evaluation of each of the land use conformance questions;
- Appendix B “Regional Review of MSW Facility Application Evaluation Form” – form for the applicant to complete and submit to the NCTCOG; and
- Appendix C “Regional Review of MSW Facility Application Recommendation Form” – form to be completed by the Review Committee, approved by the RCC and then submitted to the TCEQ.

1.4 Local Land Use Options

Over the course of the study, questions emerged regarding whether NCTCOG needs to conduct a regional process for review of MSW facility applications if either of the following two scenarios exists:

- The county has adopted a solid waste facility ordinance consistent with the requirements of §364.012 of the Texas Health and Safety Code; or
- A city’s zoning regulations apply to the solid waste facility.

The requirements and procedures for adopting a county siting ordinance are addressed in §364.012 of the Texas Health and Safety Code. This law states that the TCEQ may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance, unless the ordinance affects an area where a permit application (or other authorization) has been filed or a permit (or other

³ Source: TCEQ Correspondence from the Executive Director to each Council of Governments, March 4, 2003.

authorization) has been issued by the TCEQ. This law does reinforce the finding from the survey that the NCTCOG should defer to a local government's ordinance. This law also states that an ordinance cannot apply to areas of the county located in a municipality or the extraterritorial jurisdiction (ETJ) of a municipality.

In cases where the facility is located within the limits of a city, the city may have developed zoning regulations that would affect the land use compatibility of the facility. In these cases, the NCTCOG would defer to and accept the local zoning regulations for the land use conformance recommendation.

However, there will be some scenarios where the NCTCOG will need to make recommendations concerning land use. For example, when a city does not have local zoning or a county does not have a facility siting ordinance, the NCTCOG will need to develop a land use conformance recommendation. Also, in cases where a facility is located within the ETJ of a municipality, the NCTCOG will need to develop a land use conformance recommendation since cities do not have zoning authority in their ETJ and county siting ordinances can not apply to an ETJ.

1.5 County MSW Facility Siting Options

In Section 3, "County MSW Facility Siting Options," the project team has focused on addressing the options that may be available to Texas counties to address the siting of municipal solid waste (MSW) facilities. These options include:

- County solid waste facility ordinance;
- Local solid waste management plan;
- Pre-application review process by a local review committee; and
- "No action" by a Commissioner's Court.

During the research for this section, the project team found that the county solid waste facility ordinance is the only option where a county can designate suitable and unsuitable MSW facility locations within the county. With a properly implemented, ordinance the NCTCOG will defer to and accept the county's ordinance when making a land use conformance recommendation.

1.5.1 Navarro County Case Study

Navarro County, as part of the North Central Texas Region, has decided to take steps toward developing and adopting a local siting ordinance. Using solid waste grant funds, NCTCOG retained the services of R. W. Beck, in association with Chiang, Patel & Yerby, Inc., to assist Navarro County. The Navarro County Solid Waste Facility Siting Ordinance Case Study is provided in Appendix F.

Upon adoption, this ordinance will give the county greater control over potential solid waste siting issues within its jurisdiction by allowing the county to prohibit the disposal of municipal or industrial solid waste within the county where disposal would represent a threat to public health, safety and welfare.

1.6 How to Use This Study

The project team developed this study with the intention that it would serve as a reference for entities involved in the siting of municipal solid waste facilities in the North Central Texas Region. The project team would especially encourage MSW facility applicants and members of the RCC and ACT Subcommittee to reference Section 2 to gain an understanding of the process required to complete and evaluate the regional process for review of MSW facility applications. County officials can use Section 3 to understand viable options to address siting issues at the county level.

1.7 Acknowledgements

The project team would like to express its appreciation to the many people throughout the North Central Texas Region who contributed to the development of this study. To conduct this study, the project team conducted surveys and interviews with solid waste industry professionals. The project team appreciates the time and effort taken by these individuals to provide valuable information. The project team would also like to thank staff at NCTCOG who provided significant input, data and coordination efforts for the project.

This study was funded through a solid waste management grant provided by the Texas Commission on Environmental Quality through the North Central Texas Council of Governments. This funding does not necessarily indicate endorsement or support of the study's findings and recommendations.

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Section 2

Regional Process for Review of MSW Facility Applications Analysis

2.1 Responsibility of COGs

The TCEQ has required the State's 24 Councils of Governments to update their regional solid waste management plans. As the entity designated by the Governor to be regional planning agency for solid waste management, the North Central Texas Council of Governments (NCTCOG) is responsible for regional solid waste management planning in the North Central Texas Region. The NCTCOG must comply with TCEQ's direction in order to participate in and benefit from TCEQ's regional solid waste grants program.

TCEQ has directed the COGs to develop a process for review of municipal solid waste (MSW) facility applications in the regional solid waste management plan for the review of solid waste facility permit or registration applications. TCEQ has decided to use the regional solid waste management plans and the COGs plan conformance evaluation process as an opportunity to better deal with land use compatibility issues and local community concerns pertaining to a proposed solid waste facility. In this guidance, TCEQ has directed that the COGs' regional plans "should identify those factors that will be used by the applicant to evaluate whether a proposed MSW facility application will demonstrate conformance with the regional plan."¹

NCTCOG already has a process in place to review solid waste facility permit or registration applications. The purpose of this study is to update the existing evaluation process to meet the requirements of the TCEQ regarding the regional process for review of MSW facility applications. It is important to note that the regional solid waste plans are advisory and non-regulatory. Therefore, the recommendation of the NCTCOG is provided to the TCEQ to assist the TCEQ Commission in making a decision on the permit application.

This section describes the analysis employed by the project team and provides associated recommendations. In addition, the project team developed the following materials, located in the Appendix, to be used during the regional process of review of MSW facility applications:

- Appendix A "Regional Process for Review of MSW Facility Applications" – detailed instructions on the process for all participating individuals. In addition, the document provides guidelines for the Review Committee to consider during the evaluation of each of the land use conformance questions;

¹ Source: TCEQ Correspondence from the Executive Director to each COG, March 4, 2003.

- Appendix B “Regional Review of MSW Facility Application Evaluation Form” – form for the applicant to complete and submit to the NCTCOG; and
- Appendix C “Regional Review of MSW Facility Application Recommendation Form” – form to be completed by the Review Committee, approved by the RCC and then submitted to the TCEQ.

2.1.1 Project Approach

To ensure the development of a logical and acceptable regional process for review of MSW facility applications, there was a need to conduct research and gather input from the multiple stakeholders in the NCTCOG region. The first step included researching the current processes for review of MSW facility applications already established by other COGs in Texas. The R. W. Beck project team (project team) summarized the information and presented it to the Assuring Capacity for Trash (ACT) Subcommittee for initial discussion.

Based on comments provided during the discussion with the ACT Subcommittee, the project team developed a survey that was sent to members of the Resource Conservation Council (RCC), which represents:

- Local governments (e.g. counties, cities, special districts);
- Private and public sector landfill developers, owners and operators;
- Citizens and representative organizations; and
- Industry trade associations (e.g. Solid Waste Association of North America (SWANA), Texas Association of Counties (TAC), National Solid Wastes Management Association (NSWMA)).

Of the 28 members of the RCC, 19 completed the survey, which resulted in a response rate of 68%. The project team also conducted further research and analysis including literature reviews, follow-up interviews with members of the RCC and other solid waste industry experts, and further discussions with other COGs.

The project team found that several key elements needed to be addressed when developing a regional process for review of MSW facility applications for NCTCOG. These key elements will be discussed throughout this section of the report:

- Step-by-Step Process;
- Application Content;
- Factors for Consideration;
- Evaluation of the Factors for Consideration;
- Review Committee; and
- Timeline.

2.2 Overview of the Processes Utilized by the Other COGs

Currently, four COGs have developed a regional process for review of MSW facility applications. The four COGs include Capital Area Planning Council (CAPCO), Houston-Galveston Area Council (H-GAC), Middle Rio Grande Development Council (MRGDC) and Panhandle Regional Planning Commission (Panhandle). The project team examined the elements and the processes in place by these COGs to assist NCTCOG in determining its potential options for a regional process for review of MSW facility applications. This section compares the regional processes of the four COGs, and is organized by the primary parts of a review of MSW facility applications.

2.2.1 Step-by-Step Process

The four COGs have implemented the same basic steps for conducting the regional process for review of MSW facility applications in their regions. The specific approach to conducting some of these steps may vary between COGs. These differences are discussed later in this section. The basic steps utilized are presented in Table 2-1.

Table 2-1
Step-by-Step Process

Steps	Description of Steps
1: Voluntary Pre-Application Review	Opportunity for applicant to obtain an understanding of the process from COG staff.
2: Submit Request for a Facility Application Review	Applicant provides required materials to the COG.
3: Facility Application Review	Reviewing body evaluates materials and meets to provide applicant with opportunity to present application.
4: Report on Findings	COG reaches one of several recommendations and may present findings to COG Board for approval.
5: Appeals Process	Applicant may file appeal to the COG's Executive Director.
6: Submittal of Findings	COG submits recommendation to TCEQ.

2.2.2 Application Content

During the comparison of the COGs' processes, the project team found that certain basic information is required by all of the COGs. This information includes:

- Cover letter with contact information;
- Parts 1 and 2 of TCEQ MSW permit application filing forms; and

- Conformance checklist or form.²

Some additional information is requested by some, but not all, of the COGs. This information includes:

- Map of physical location;
- Compliance history within region and/or Texas;
- One page summary assessing compatibility with regional plan; and
- Complete TCEQ permit application.

2.2.3 Factors for Consideration

Multiple factors for consideration are included by the other COGs in the MSW facility application evaluation form to provide a basis for the recommendation that the COGs will provide to the TCEQ. Factors for consideration addressed by the other COGs include the following general categories:

- Land use;
- Waste minimization (e.g. recycling);
- Solid waste management system efficiency and effectiveness;
- Capacity and disposal operations;
- Use of local resources; and
- Illegal dumping.

Among the four COGs researched, there are two basic approaches used to determine the factors to be included in the evaluation process for the siting of a solid waste facility.

- The first approach is a predominantly land use focus, but does address regional goals at a planning level.
- The second approach focuses on both land use factors and more detailed conformance with regional goals.

One of the most debatable decisions that the COGs must make in developing the process for review of MSW facility applications is the identification of the appropriate factors to be considered in the evaluation.

2.2.4 Evaluation of the Factors for Consideration

The process used to evaluate regional plan conformity is not consistent between the COGs. In general each of the COGs has developed a checklist that is used to identify the issues that will be addressed during the process. To date, each COG has evaluated facility applications based on an overall evaluation, without developing extensive

² A conformance checklist or form provides an applicant with all of the questions that need to be answered through the regional process for review of MSW facility applications.

specific evaluation criteria. Two COGs, H-GAC and CAPCO, have tried varying approaches to standardize the evaluation process in an effort to reduce the potential for subjectivity and make the evaluation more objective.

Recognizing the need to clarify or improve H-GAC's process, the H-GAC's Solid Waste Management Committee established a Landfill Siting Criteria Subcommittee.³ In 2002, this committee examined H-GAC's process and tried to find an objective process for evaluating the siting of a solid waste facility in the region. The subcommittee was not able to develop specific numerical evaluation criteria for a number of factors for consideration due to the multiple and complex issues that must be considered. For example, the subcommittee did not believe that there should be a maximum height review criteria, but that evaluations should focus on screening and visibility issues. At the end of their review, the subcommittee recommended changes to H-GAC's process, and developed some guidelines to assist staff in their decision making.

Due to concerns expressed to CAPCO regarding its evaluation process, CAPCO is currently in the process of considering revisions to its evaluation process. Based on information provided by CAPCO staff, CAPCO is working on the development of some type of score sheet to be used in the evaluation process. CAPCO expects to present this score sheet in November 2004.

Several of the other COGs include public input as a part of their process of review of MSW facility applications. Specifically, H-GAC and CAPCO include in their review considerations the right to solicit comments from local governments, individual and organizations located within the proposed facility's impact area when considering the general land use compatibility factor.

2.2.5 Review Committee

The review committee is responsible for evaluating the solid waste facility to determine conformance with the regional plan. Again, the four COGs have basically taken two different approaches to creating the review committee.

- The first model places a great deal of responsibility for the review process on the COG staff. The Executive Board or a subcommittee of the Executive Board votes on the approval of the staff recommendation.
- The second model relies on the COG's Solid Waste Advisory Committee (SWAC) or equivalent committee (e.g. RCC for the NCTCOG) to conduct the evaluation and recommendation for the facility siting in their region. The Executive Board may or may not be a part of the recommendation process.

2.2.6 Timeline

The timeline for an applicant to request a regional review of MSW facility is primarily based on where the applicant is in the TCEQ permitting process. Once the application

³ This subcommittee included representation from private solid waste management companies, local government staff, elected officials and citizens.

is submitted, TCEQ conducts a general review of completeness and determines if the application is deficient in any manner. After this review and any deficiencies are corrected, the application is considered “administratively complete.” The next step in the TCEQ process is a technical review with an estimated timeframe of 54 days to complete the initial review. Once TCEQ completes its technical review, and the applicant has corrected any deficiencies, the application is considered to be “technically complete.” The final stage of the TCEQ process includes completing a final draft permit, publishing notices and conducting hearings, if requested.

H-GAC is currently the only COG that has directly specified that they conduct their evaluation after the application is deemed “technically complete.” Per discussions with H-GAC staff, their process includes sending a letter to TCEQ stating that they have received notice of the application but they will not conduct the review until after it is “technically complete.” At the point that the application is “technically complete,” H-GAC staff have 30 days to complete the review and make a recommendation to the H-GAC Board. All of the other COGs have not distinguished between “technically” and “administratively complete” for their review. They have only detailed that Parts 1 and 2 of the TCEQ Application need to be completed and provided as a part of the application packet.

The recommended NCTCOG review committee is comprised of the ACT Subcommittee and ad-hoc land use experts as discussed in Subsection 2.3.5. This make-up of a review committee provides for greater representation of solid waste professionals; however, it does tend to require more time to conduct an evaluation compared to H-GAC, in which the staff is responsible for the evaluation. Therefore, the project team believes that NCTCOG’s review should occur earlier than H-GAC.

2.3 Analysis of NCTCOG Options

After evaluating the processes in place by the other four COGs, the project team conducted a workshop for members of the ACT Subcommittee to receive input and direction on next steps. Based on the results of this workshop, the project team developed a written survey to seek input on the development of a MSW facility applications review process for the NCTCOG region. This survey was sent to all members of the RCC.

During preliminary analysis of the completed surveys, the project team observed distinctions between the responses from the operators of public/private landfills (landfill participants) that participated in the survey compared to the non-landfill operator survey participants (non-landfill participants). Therefore, the project team analyzed the survey results in multiple ways, as follows:

- Public/private landfill survey participants;
- Non-landfill survey participants; and
- All survey participants.

The survey was essential in providing a method that the stakeholders could easily use to communicate their comments and concerns regarding the regional process for

review of MSW facility applications. It also provided the project team with a basic understanding of the various issues and opinions that surround the implementation of a regional process for review of MSW facility applications. However, the project team did not rely exclusively on the survey results as the only basis in determining the recommendations for the development of NCTCOG's regional process of review of MSW facility applications. In cases where the project team recognized the need to conduct further analysis, the following types of research were completed:

- Interviews with members of the RCC and other solid waste industry experts;
- Review of correspondence, policy papers and regulations from the TCEQ that address the regional siting issue;
- Review of Texas statutes;
- Further discussions with other COGs to clarify issues; and
- Literature review of efforts outside of the State of Texas to develop a regional process of review of MSW facility applications.

Based on this comprehensive review, the project team thoroughly evaluated all of the options, and developed the recommendations for the process of review of MSW facility applications that are most appropriate for the NCTCOG. The project team would emphasize that there were multiple issues where a majority of survey participants responded one way, but the project team's final recommendation is not completely consistent with the survey majority. These recommendations are detailed in Subsection 2.4.

2.3.1 Step-by-Step Process

The project team found that a vast majority of all survey participants agreed with the steps of the regional process of review of MSW facility applications, previously identified in Subsection 2.2.1. Approximately 85% of the survey participants would accept the regional review process, if it is decided that the NCTCOG must conduct its own regional process of review of MSW facility applications. Table 2-2 summarizes the survey results for the proposed steps of the process.

Table 2-2
Step-by-Step Process Survey Responses

	Voluntary Pre-Application Review	Submit Request for Review	Facility Application Review	Report on Findings to Executive Board	Appeals Process	Submittal of Findings to TCEQ
Strongly Agree	32%	47%	50%	42%	42%	47%
Agree	47%	47%	44%	42%	42%	47%
Disagree	11%	0%	0%	11%	11%	0%
Strongly Disagree	11%	5%	6%	5%	5%	5%

The only step of the process that received a material percentage of “disagree” or “strongly disagree” responses from the landfill participants was the Voluntary Pre-Application Review. Upon further discussion with several survey respondents during interviews, they generally stated that they did not believe that they should be required to participate in this step. However, after emphasizing that the step is voluntary, they were more inclined to include this step in the process.

2.3.2 Application Content

The survey asked participants to evaluate whether the proposed application content, as identified in Subsection 2.2.2, would be acceptable. A vast majority of survey participants “agreed” or “strongly agreed” with including the following application content:

- Cover letter with contact information;
- Parts 1 and 2 of TCEQ MSW permit application filing forms;
- Conformance checklist or form;
- Map of physical location; and
- One page summary assessing compatibility with regional plan.

For two issues, survey responses varied substantially when comparing the landfill and non-landfill participants, as follows:

- Full TCEQ permit application: Overall, 67% of all survey participants agreed with including the full application. Of the landfill participants, 57% responded that they “disagreed” or “strongly disagreed” with including the full TCEQ permit application. Through further analysis, including an evaluation of which factors for consideration to include, it appears that requiring permit applicants to only submit Parts 1 and 2 of the TCEQ MSW permit application filing forms should be

sufficient to address the issues that are recommended to be reviewed through the regional process of review of MSW facility applications.

- Compliance history within region and/or Texas: Overall, 79% of survey participants “agreed” or “strongly agreed” with including this information. However, 57% of landfill participants “disagreed” or “strongly disagreed.” During interviews, several RCC members voiced concerns about including this information since it is already evaluated by the TCEQ in the permitting process. Within Title 30 of the Texas Administrative Code (TAC) Chapter 60: Compliance History addresses the issue of compliance history for various types of facilities regulated by the TCEQ, including the issuance and amendment of MSW permits.

2.3.3 Factors for Consideration

Subsection 2.3.3.1 details the survey responses regarding NCTCOG’s role in the review of MSW facility applications when local zoning or siting ordinances exist. The project team’s next step was to conduct an analysis of the factors for consideration to determine what issues or factors should be included in the regional process for review of MSW facility applications.

This evaluation included questions to obtain a fundamental understanding of whether to focus only on land use issues or to include regional goals, or other detailed questions concerning specific topics to include (e.g. maximum landfill height, composting operation, public education programs).

Responses from all survey participants were relatively consistent concerning the overall approach whether to focus only on land use issues or to include land use and regional goals.

- Of all participants, 84% (71% of landfill participants and 92% of non-landfill participants) “disagreed” or “strongly disagreed” that “land use factors should be the only consideration in the recommendation process of a solid waste facility siting review.” Based on this response, there was a strong preference for the factors for consideration to address regional goals in addition to land use.
- Concerning goals from the regional solid waste management plan, 95% of all participants (86% of landfill participants and 100% of non-landfill participants) “agreed” or “strongly agreed” to include these goals as a part of the conformity evaluation process.

Based on the responses to these two survey questions, it appears that there is a strong consensus for the regional process for review of MSW facility applications to address both land use and regional goal issues. After reaching an understanding on this issue, the next task was to determine how to specifically develop questions concerning land use and goals from the regional plan.

2.3.3.1 Local Land Use Options

Over the course of the study, questions emerged regarding whether NCTCOG needs to conduct a regional process for review of MSW facility applications if either of these two scenarios exists:

- The county has adopted a solid waste facility ordinance consistent with the requirements of §364.012 of the Texas Health and Safety Code; or
- A city's zoning regulations apply to the solid waste facility.

The project team included questions in the survey to help clarify what process the stakeholders would want to implement in this situation.

Approximately 56% (29% of landfill participants and 73% non-landfill participants) of the survey participants responded that the NCTCOG should still conduct its own regional review of MSW facility applications even if the city or county provides a recommendation. In addition to being a fairly split response for NCTCOG conducting its own evaluation, the project team could not determine to what detail the evaluation should be conducted. The next question asked the survey participants to agree or disagree with the following statement: "NCTCOG should defer to and agree with the city's or county's recommendation."

Overall, 67% (71% of landfill participants and 63% non-landfill participants) of the survey participants "strongly agreed" or "agreed" that the NCTCOG should defer to and agree with the city's or county's recommendation. This response provided a clearer picture that the applicant should still submit a request for a regional MSW facility applications review along with the requested application materials. However, the NCTCOG should defer to and agree with the city's or county's recommendation related to zoning or siting as long as it is verified that the zoning or county ordinance was developed in accordance with state law. A county ordinance can not be adopted to affect facilities where a facility application has already been filed with the TCEQ or where a facility already exists.

It is important to emphasize that NCTCOG can have a role in educating cities and counties on the reasons for developing local siting criteria or facility siting ordinances. TCEQ has stated that it "would not be appropriate for the plans (regional solid waste plans) to include strict siting criteria, since that is the role of the cities and counties through zoning or land use siting ordinances."⁴ TCEQ has recommended that the COGs "encourage land use siting ordinances, especially in these regions where limited land use control in counties may be a priority issue."⁵

The requirements and procedures for adopting a county siting ordinance are addressed in §364.012 of the Texas Health and Safety Code. This law states that the TCEQ may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance, unless the ordinance affects an area where a

⁴ Source: TCEQ Correspondence from the Executive Director to each Council of Governments, March 4, 2003.

⁵ Source: Ibid.

permit application (or other authorization) has been filed or a permit (or other authorization) has been issued by the TCEQ. This law does reinforce the finding from the survey that the NCTCOG should defer to a local government's ordinance. This law also states that an ordinance cannot apply to areas of the county located in a municipality or the extraterritorial jurisdiction (ETJ) of a municipality.

In cases where the facility is located within the limits of a city, the city may have developed zoning regulations that would affect the land use compatibility of the facility. In these cases, the NCTCOG would defer to and accept the local zoning regulations for the land use conformance recommendation.

However, there will be some scenarios where the NCTCOG will need to make recommendations concerning land use. For example, when a city does not have local zoning or a county does not have a facility siting ordinance, the NCTCOG will need to develop a land use conformance recommendation. Also, in cases where a facility is located within the ETJ of a municipality, the NCTCOG will need to develop a land use conformance recommendation since cities do not have zoning authority in their ETJ and county siting ordinances can not apply to an ETJ.

In addition to local zoning authority and solid waste facility siting ordinances, the project team evaluated other potential options that cities and counties have to address the siting of municipal solid waste facilities, which include:

- Local solid waste management plan that would address land use goals/objectives and siting criteria (§363.063 of the Health and Safety Code); and
- Voluntary pre-application process by a local review committee (§361.063 of the Health and Safety Code and Rule §330.50 of the 30 Texas Administrative Code).

Both of these options can provide opportunities for the cities and/or counties to become involved in the facility siting process. The pre-application process has not been used to date and may not address the land use issues to the specification that needs to be undertaken. In addition, both the local solid waste management plan and the pre-application process are advisory and non-regulatory. Therefore, unlike the county solid waste facility ordinance, TCEQ is not obligated to follow these recommendations. Section 3 County MSW Facility Siting Options provides more detailed information on these options.

2.3.3.2 Land Use

Survey participants recognized the importance of addressing many of the land use issues presented in the survey. Table 2-3, which presents those responses, shows that a majority of survey participants “strongly agreed” or “agreed” with including all of the questions addressed.

Section 2

Table 2-3
Land Use Survey Responses

Land Use Issue	Strongly Agree	Agree	Disagree	Strongly Disagree
Existing Zoning or Siting Restrictions	58%	42%	0%	0%
Impact of Operational/Management Practices on Adjacent and Surrounding Land Uses	42%	42%	11%	5%
Height: Maximum Fill Height, Comparison to Surrounding Elevations	47%	32%	11%	11%
Impact on Traffic	42%	37%	16%	5%
Existing or Proposed Development Plans	26%	42%	26%	5%
Description of Current Land Use	26%	74%	0%	0%
Aesthetically Acceptable	21%	42%	32%	5%
Environmentally Sensitive Features	32%	58%	5%	5%
Underground / Surface Water Documentation	37%	42%	11%	11%
Airport Concerns	16%	63%	5%	16%

However, among the landfill survey participants, the following land use factors were marked as “disagree” or “strongly disagree” by a majority:

- Height: Maximum Fill Height and Comparison to Surrounding Elevations;
- Impact on Traffic;
- Existing or Proposed Development Plans; and
- Aesthetically Acceptable.

In addition the landfill participants appear to be split on including the factors that discuss impact of operational/management practices on adjacent and surrounding land uses and underground/surface water documentation.

Based upon interviews with some survey participants and responses provided during the survey, the project team found that some of these items were marked “disagree” or “strongly disagree” by the landfill participants because they believed that the information is already required to be provided to TCEQ through the application process. To address this concern, the project team conducted further research to understand which land use review responsibilities are to be addressed by the COGs through the process of review of MSW facility applications versus the TCEQ through the permitting process.

The TCEQ has directed each of the COGs to specifically address “land use compatibility and local facility siting concerns”⁶ as a part of the plan MSW facility applications review. TCEQ has specifically directed each COG to address the following land use issues that are included in §330.53(b)(8) of the TCEQ’s rules:

⁶ Source: TCEQ Correspondence from the Executive Director to each Council of Governments, March 4, 2003.

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- (A) Zoning at the site and in the vicinity. 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;
- (B) Character of surrounding land uses within one mile of the proposed facility;
- (C) Growth trends of the nearest community with directions of major development;
- (D) Proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.). Give the approximate number of residences and business establishments within one mile of the proposed facility including the distances and directions to the nearest residences and businesses; and
- (E) Description and discussion of all known wells within 500 feet of the proposed site.

While not specifically mentioned in the directive from TCEQ to the COGs, §330.53 (9), as follows, includes issues that seem to be appropriate for the COGs to address since they focus on transportation, which is related to land use:

- (A) Provide data on the availability and adequacy of roads that the applicant will use to access the site;
- (B) Provide data on the volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the proposed facility; and
- (C) Project the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility.

The survey results reinforce including transportation questions in the evaluation, as 79% of all survey participants “strongly agreed” or “agreed” with the need to address the impact on traffic.

There are several technical siting issues that TCEQ must address as a part of its permit application review, as required by Subtitle D. In an effort to reduce redundancy and opportunities for inconsistency between NCTCOG and the TCEQ, the following issues are addressed by the TCEQ and do not need to be included in the regional MSW facility applications review:

- Airport Safety;
- Floodplains;
- Wetlands;
- Fault Areas;
- Seismic Impact Zones; and
- Unstable Areas.

The only land use issues that are not specifically addressed in the TCEQ rules or Subtitle D relate to landfill height and aesthetics. The project team concluded that

these issues should still be included in the review process since they are key factors in determining land use conformance.

2.3.3.3 Regional Goals

Throughout the survey, RCC members recognized the need for the regional review of MSW facility applications to address regional goals. While there was consensus concerning the need to address regional goals, there was significant disparity among survey participants concerning which specific factors related to regional goals to include in the MSW facility applications review process. In the survey, the project team provided a list of factors for consideration addressing conformance with regional goals compiled from the other COGs. Based on the fact that the focus on regional goals must be specific to the goals in NCTCOG's regional solid waste management plan, the project team removed any factors for consideration that are not specific to NCTCOG's goals.

The following portions of this section present evaluations of potential factors for consideration based on the NCTCOG's three regional solid waste management goals: Time to Recycle; Stop Illegal Dumping and Assuring Capacity for Trash.

Time to Recycle

Survey participants were divided concerning how to address waste minimization issues. In general, non-landfill participants "strongly agreed" or "agreed" with including questions about specific waste minimization activities (e.g. recycling, composting, public awareness, etc.) while landfill participants "strongly disagreed" or "disagreed." Furthermore, 58% of the landfill participants also noted that they "disagree" or "strongly disagree" that the solid waste facility should "take a proactive role in assisting the NCTCOG in meeting their regional waste minimization goals."

Stop Illegal Dumping

Responses to the illegal dumping questions were somewhat similar to the answers to the waste minimization questions. Again, there was a disparity in the responses from landfill and non-landfill survey participants for most questions. There were, however, some questions where a majority of both landfill and non-landfill participants agreed to include in the MSW facility applications review process, as follows:

- Participation/Sponsorship of Community Clean-up Events; and
- Public Education.

Assuring Capacity for Trash

Responses to the disposal questions were somewhat similar to the answers to the waste minimization and illegal dumping questions. Again, there was a disparity in the responses from landfill and non-landfill survey participants for most questions. There was, however, one question where a majority of both landfill and non-landfill participants agreed to include in the MSW facility applications review process. This question focused on public participation in the siting and permitting process.

The project team furthered the research on this topic to understand TCEQ's policy concerning capacity issues. Based on discussions with TCEQ staff, capacity issues can be considered to demonstrate the need for a facility, but cannot be used as a basis against a facility.

With a significant disparity of responses between landfill and non-landfill survey participants, the project team focused on how to include questions concerning the regional goals in a manner that would ideally result in consensus. The primary concern from the landfill participants focused on how a facility applicant would be evaluated with respect to issues involving waste minimization, illegal dumping and capacity. For example, questions were raised about how a landfill can be responsible for stopping illegal dumping activities that occur in the general community or should a landfill be held accountable for recycling materials that are already commingled with the waste stream.

Rather than include a lengthy list of questions concerning regional goals, the NCTCOG could ask facility applicants to describe how their proposed facility will contribute to the attainment of the regional goals. Under this approach, there would be a need to recognize that individual facilities alone will not be held responsible to meet these goals. However, solid waste facilities represent an important component of an integrated solid waste management system, and can contribute to the attainment of regional goals. Under this concept, facilities would be expected to make a good faith effort to contribute to the attainment of the regional solid waste goals.

To assist in the completion of this information, examples of activities/programs that could be implemented to assist in the attainment of these regional goals could be listed for each of the regional goals. These examples would be based directly on objectives included in the *SEE Less Trash Regional Solid Waste Management Plan*. Please refer to the "Regional Review of MSW Facility Application Evaluation Form" provided in Appendix B for an example of how to address this issue.

2.3.4 Evaluation of Factors for Consideration

The review committee must determine whether the application is in conformance with the regional plan. The goal of the evaluation is to be as fair and objective as possible given the nature of the evaluation. The project team included a question in the survey to determine if there was one particular evaluation method that is favored by the survey participants. The survey respondents were evenly split between the options described in the survey, as noted in Table 2-4.

The biggest challenge for NCTCOG and its committees will be determining the appropriate method for evaluation of the identified factors for consideration. Based on the survey results, interviews and research, there is no conclusive preferred method. Without consensus from the options provided, the project team reexamined some of the other COGs' current evaluation processes in order to develop a process that provides for an objective review. However, the project team did recognize that there will still be some subjectivity.

**Table 2-4
Methods to Evaluate Factors for Consideration Survey Responses**

Method	Percentage in Favor
Majority of Factors for Consideration are met	22%
Weighted average of Factors for Consideration that are met exceed a specified level (i.e. numerical score)	22%
Specific (previously identified) Factors for Consideration are met	33%
Majority vote of review committee (no specific criteria for evaluation)	22%

Some of the other COGs have implemented an evaluation of the application based on the overall merits of the application content. The project team recognizes that some may interpret this as being too subjective. H-GAC has limited its evaluation to focus primarily on land use related factors for consideration. In addition, H-GAC’s Landfill Siting Criteria Subcommittee developed some guidelines for H-GAC staff to use during the evaluation process. Finally, CAPCO is working on developing a score sheet that would be used to evaluate a facility’s conformance with the regional plan.⁷

Based on the efforts of both CAPCO and H-GAC, the project team recognizes that NCTCOG may benefit from developing specific guidelines for use during the evaluation process. The development of objective criteria would provide an applicant with an understanding of what must be done to meet the conformance requirements. The project team has provided some basic guidelines for the ACT Subcommittee to consider during the evaluation of each of the land use conformance questions in the “Regional Review of MSW Facility Application Evaluation Form.” The guidelines assist the ACT Subcommittee and applicants with understanding the focus and issues for each question.

Another important aspect of the evaluation process is to solicit information from local governments and individuals who will potentially be impacted by the siting of a solid waste facility. Based on discussions with interested stakeholders, the project team recommends that the NCTCOG include public input as a part of the regional review of MSW facility applications. While the TCEQ permitting process allows for formal public input, the TCEQ has directed the COGs to determine conformance with the regional plan (including land use conformance from a regional perspective). Therefore, it is important for the COGs to receive written public input during the regional process for review of MSW facility applications.

In addition, the ACT Subcommittee decided that posting a notice for public input would be important to include in the process. One of the suggestions was to include the NCTCOG public input notice with the already established TCEQ public input

⁷ The project team has concerns regarding the development of a score sheet as it may allow the applicant or opponents to find “loop-holes” in the score sheet and be able to receive a positive recommendation when they may not necessarily meet the land use and regional goals of the NCTCOG, or vice versa.

notice.⁸ The project team discussed this possibility with TCEQ staff. Staff from TCEQ stated that it would be confusing for the public to know where to send comments. In addition, TCEQ staff noted that the NCTCOG public input notice was not in the TCEQ rules and therefore, the applicant should not have to fund the cost of publishing the notification. Based on comments from TCEQ staff, if the NCTCOG wanted to post a notice, then the NCTCOG would be responsible for the cost.

2.3.5 Review Committee

There are five different roles in the regional process for review of MSW facility applications, which include:

- Facilitate – ensures that the review process is handled effectively and efficiently;
- Evaluate – evaluates the application and determines an appropriate recommendation;
- Recommend – determines whether to approve the recommendation of the evaluator;
- Appeal – handles the appeals process and determines if there is validity to the appeal; and
- Final – renders final decision on the appeal.

Based on discussions during the initial workshop with the ACT Subcommittee, a list of potential committees or individuals were identified. This list of individuals was included in the survey in order to analyze the preferences of the stakeholders. The individuals or committees identified included:

- NCTCOG staff;
- ACT Subcommittee;
- RCC;
- Land Use Experts Committee;
- Government Applications Review Committee;
- NCTCOG Executive Director; and
- NCTCOG Executive Board.

Based on the survey results, 95% of the participants agreed that the NCTCOG staff should facilitate the regional process of review of MSW facility applications. A total of 89% of the survey participants marked that they want multiple entities involved in the role of evaluator with 89% for the involvement of the ACT Subcommittee and 79% for the involvement of the Land Use Experts Committee. The Land Use Experts Committee would be created specifically to address the land use issues associated with the regional process of review of MSW facility applications. The committee would consist of land use experts in the region.

⁸ TCEQ requires notification via §39.418 of the 30 Texas Administrative Code when the permit application is filed and declared “administratively complete.”

The highest percentage of votes for an entity to be involved in the recommendation piece of the review was 68% for the ACT Subcommittee and the RCC.

In addition, approximately 53% of the survey participants wanted to see the Government Applications Review Committee also involved in both the evaluation and recommendation pieces of the review.

The NCTCOG Executive Director received the highest percentage of participants who want that position to lead the appeals process of the MSW facility application review. Finally, the NCTCOG Executive Board received the majority of the votes for the Board to be involved in the final recommendation of the appeals process.

A few of the survey questions were included to assist the project team in determining the desired rules and policies of the review committee. The first question asked the survey participant on whether they agree or disagree with the following statement, “Facility siting review committee should be limited to asking questions that are listed on the factors for considerations identified within NCTCOG’s review process.” Overall, the survey respondents were evenly divided on this response. The landfill survey participants did have a higher percentage of respondents that agreed with the statement.

Another survey question was to determine whether it should be necessary for the review committee to be required to have a quorum before holding a solid waste facility review evaluation. A total of 95% of the survey respondents are of the opinion that “a quorum must be present for the facility application review committee to decide upon a recommendation.”

During the initial information gathering for the project, concerns regarding the issue of review committee members having a potential “conflict of interest” were voiced. The survey participants unanimously agreed that “conflict of interest” is an issue that needs to be taken into consideration. However, the responses were split on how to solve the potential “conflict of interest” and provide a fair and objective evaluation. The majority of the survey participants were in agreement that the committee review members are to make recommendation based on only the factors for consideration identified during this process and that committee members should recuse themselves if they feel that they have a conflict of interest with the application. The survey respondents were split on whether or not it was appropriate to allow the other committee members the right to recuse another member.

2.3.6 Timeline

The survey results did not provide the project team with a clear preference for the timeline of the evaluation process in reference to the TCEQ process. TCEQ has encouraged the COGs to conduct the evaluation as soon in the TCEQ application process as possible.⁹ The project team recognizes that based on the recommended application content and the factors for consideration analysis, the NCTCOG only needs to have the portions of Parts 1 and 2 of the permit application that includes general information, land use and transportation issues. Table 2-5 provides the

⁹ Source: TCEQ Correspondence from the Executive Director to each COG, March 4, 2003.

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outcomes of project team’s analysis of the pros and cons of receiving the application before or after it is deemed “technically complete.”

Table 2-5
Methods to Evaluate Factors for Consideration Survey Responses

Before Technically Complete		After Technically Complete	
Pros	Cons	Pros	Cons
Applicant receives decision earlier	COG may lack all necessary information	COG receives completed permit application	COG must review within timeframe set by TCEQ
Land use is finalized prior to TCEQ’s review	Information subject to change		Limited opportunity to change permit application
Greater ability to influence permit application			Politics may have greater opportunity to influence recommendation
COG not as restricted by TCEQ for evaluation time			

2.4 Key Findings and Recommendations

2.4.1 Step-by-Step Process

The project team would recommend that the NCTCOG implement the step-by step process that is described in Subsection 2.2.1. The project team has developed a draft “Regional Process for Review of MSW Facility Applications” in Appendix A that includes each of these steps.

2.4.2 Application Content

The project team would recommend that the following items be included in the application content.

- Cover letter with contact information;
- Parts 1 and 2 of the application to the TCEQ for permit or registration;
- A map or digital photograph that shows (1) the physical location of the proposed or existing facility; and (2) land uses of the surrounding area within one mile of the facility;
- NCTCOG Regional Review of MSW Facility Application Evaluation Form; and

- Additional information that the applicant wishes to provide to facilitate the evaluation process.

This information has been included in the draft “Regional Process for Review of MSW Facility Applications” in Appendix A.

The project team recommends excluding the full TCEQ permit application and compliance history within region and/or Texas since these requests focus on more technical issues that are already addressed through the TCEQ’s permitting process.

2.4.3 Factors for Consideration

2.4.3.1 Local Land Use Options

Based on the survey results and existing legislation, the project team would recommend that the NCTCOG develop its process so that it defers to and accepts the decision from an applicable local zoning regulation or a local solid waste facility siting ordinance, as discussed in Section 2.3.3.1. NCTCOG must verify that an ordinance was developed in accordance with state law, as a county ordinance can not be adopted to affect facilities where a facility application has already been filed with the TCEQ or where a facility already exists.

If a facility is in a city or county which conducted a pre-application review process or has a local solid waste management plan, the project team recommends that NCTCOG should still conduct a regional process of review of MSW facility applications. The pre-application review process and local solid waste management plan can be used by the review committee to provide valuable information during the evaluation process.

2.4.3.2 Land Use

The MSW facility application evaluation form should include the land use and transportation issues that are specifically included in TCEQ regulations, since the TCEQ has directed the COGs to provide recommendations to the agency concerning land use compatibility.

To assist NCTCOG is developing a land use conformity recommendation, the project team would also recommend that the MSW facility application evaluation form include additional land use questions that will assist ACT members in their decision making process. These questions should be based on the survey responses where a significant majority of participants “strongly agreed” or “agreed” with including questions in the MSW facility application evaluation form.

There are some technical land use issues (e.g. airport safety, flood plains, wetlands, fault areas, seismic impact zones and unstable areas) that TCEQ will address through the permitting process. Since TCEQ already addresses these issues, there is not a need for NCTCOG to include them in its regional process for review of MSW facility applications.

2.4.3.3 Regional Goals

The project team recommends that NCTCOG ask facility applicants to describe how their proposed facility will contribute to the attainment of the regional goals. Under this approach, there will be a need to recognize that individual facilities will not be held responsible to meet these goals on their own. However, solid waste facilities represent an important component of an integrated solid waste management system, and should contribute to the attainment of regional goals.

2.4.4 Evaluation of Factors for Consideration

At this point, without clear direction from the legislature or TCEQ, this issue of how to evaluate conformance to the regional plan will remain somewhat subjective. The project team recommends that NCTCOG take the following measures to limit the potential confusion and to lessen the potential for a legal challenge to the evaluation process. The project team has included, in the proposed “Regional Process for Review of MSW Facility Applications,” a description of a proposed evaluation process that is primarily focused on land use issues with some emphasis on the applicant’s ability to assist in achieving broad regional goals.

The project team recommends that the NCTCOG solicit comments from local governments, organizations and individuals located within the facility’s area when considering the application. The NCTCOG should send letters to all property owners that are located within 500 feet of the facility.¹⁰ Comments from these entities must be provided in writing and should only address the issues that are considered in the “Regional Review of MSW Facility Application Evaluation Form.”

The project team recommends that if the ACT Subcommittee continues to feel strongly that there needs to be some type of notification to the public, then there are several potential alternatives to pursue, including:

- Work with other COG’s to suggest that the TCEQ include this notification requirement in the rewritten 330 rules, as a part of the Applicant’s responsibility;
- Encourage the TCEQ to change their current assumption that including this notification as a part of the TCEQ notification would cause confusion. The project team recommends seeking support from other COG’s or from potential permit applicants through SWANA or NSWMA; or
- NCTCOG take on the responsibility and cost of publishing the notification.

In addition, the project team has provided some basic guidelines for the ACT Subcommittee to use during the evaluation of each of the land use conformance questions in the “Regional Review of MSW Facility Application Evaluation Form.”

¹⁰ The distance of 500 feet from the facility was used in order to be consistent with existing TCEQ regulations. Information concerning property owners located within 500 feet of a facility must be submitted by the applicant in the TCEQ permit.

2.4.5 Review Committee

The project team recommends that the make-up of the review committee and policies/rules be consistent with the responses from the survey participants, as discussed in Subsection 2.3.5. The draft “Regional Process for Review of MSW Facility Applications” in Appendix A describes the specific roles and responsibilities for the review committee.

2.4.6 Timeline

Based on the previous analysis, the project team recommends that the MSW facility applications review process begin as soon as the TCEQ application is deemed “administratively complete” by TCEQ. The NCTCOG will receive the information that the ACT Subcommittee needs to conduct its review from the completed sections of Parts 1 and 2 as well as from the additional information requested from the applicant.

One of the concerns of reviewing an “administratively complete” application is that there could be material changes to the application before the permitting process is completed. The project team recommends that when there are material changes to the land use and transportation section of the TCEQ permit application, it is the applicant’s responsibility to forward the information to NCTCOG staff. It will be at the discretion of the NCTCOG staff and/or ACT Subcommittee Chairperson to decide if the committee needs to reconsider its recommendation.

Section 3

County MSW Facility Siting Options

3.1 Introduction

Several options may be available to Texas counties to address the siting of municipal solid waste facilities (e.g. landfills and transfer stations) at the county level. The purpose of this section is to evaluate the feasibility of the following options:

- County solid waste facility ordinance (e.g. designating areas within the county as suitable for solid waste disposal facilities);
- Local solid waste management plan that would address land use goals/objectives and siting criteria;
- Pre-application process by a local review committee; and
- “No action” by a Commissioner’s Court.

To assist counties compare the merits of each option, the following factors were evaluated:

- Description;
- Pros and cons;
- Process to develop;
- Legal issues;
- Timeline to develop;
- Costs to develop;
- Implementation timeline; and
- Case studies.

3.2 Summary Guidelines Concerning Each Option

The following section provides a summary of guidelines concerning how each of the four options can be used at the county level to address facility siting issues.

3.2.1 County Solid Waste Facility Ordinance

A county solid waste facility ordinance represents the only option where a county can designate suitable and unsuitable MSW facility locations within the county. With a properly implemented ordinance, the North Central Texas Council of Government

(NCTCOG) will accept and defer to a county's ordinance when making a facility conformance recommendation to the Texas Commission on Environmental Quality (TCEQ). This option is further discussed in Section 3.3.

3.2.2 Local Solid Waste Management Plan

A local solid waste management plan can be used to evaluate siting issues at the local level. However, the TCEQ has stated that local plans should not establish specific land use requirements, as a local plan does not have regulatory authority. Local plans should be used as a planning tool to determine whether there is a need to develop a county solid waste facility ordinance. This option is further discussed in Section 3.4

3.2.3 Pre-Application Review Process by a Local Review Committee

The purpose of a pre-application local review committee process is to provide an opportunity for solid waste facility applicants to enter into agreements with affected persons to resolve issues of concern. Participating in this process is voluntary for the permit applicant. While TCEQ will consider findings from the committee report during the permit application, the TCEQ is not obligated to follow these recommendations. Due to these issues, this option can have limited effectiveness. This option is further discussed in Section 3.5.

3.2.4 "No Action" by a Commissioner's Court

Under this option, a Commissioner's Court would not take any formal action under any previously discussed options. Several counties have expressed that by implementing a siting ordinance there is no opportunity for any future flexibility. However, if a county does not take any formal action, it will mean that recommendations concerning land use conformance will be completed by the NCTCOG, as required by the TCEQ. This option is further discussed in Section 3.6.

3.3 County Solid Waste Facility Ordinance

3.3.1 Description

Under this option, a county may prohibit the disposal of municipal or industrial solid waste in the county if the disposal of the municipal or industrial solid waste is a threat to the public health, safety, and welfare. In order to prohibit the disposal of solid waste, the Commissioner's Court must adopt an ordinance in the general form prescribed for municipal ordinances specifically designating the area of the county in which municipal or industrial solid waste disposal is not prohibited. This legislation is included in §364.012 of the Texas Health and Safety Code.

3.3.2 Pros and Cons

The following section describes the pros and cons associated with this option.

Pros

- Allows land use issues to be decided at the county level.
- Provides delineation of areas that are either acceptable or unacceptable for a solid waste facility.
- Only option that allows a county to implement process independent of the TCEQ or NCTCOG.
- TCEQ cannot approve a solid waste facility in areas where the county has legally prohibited the disposal of waste by ordinance.

Cons

- Adopting an ordinance may be difficult due to political pressures.
- Suitable areas must be identified in the ordinance, which could limit the development of facilities in other suitable locations.
- Acceptable areas may be defined based on political, instead of land use or technical, issues.
- Cannot apply to areas that are within the city limits or in the extraterritorial jurisdiction of a city.
- Limits the ability to oppose facilities that are located within the areas allowed in the ordinance.

3.3.3 Process to Develop

The process to develop an ordinance, described in §364.012 of the Texas Health and Safety Code, is summarized as follows.

An ordinance may be passed on first reading, but the proposed ordinance must be published in a newspaper of general circulation in the county for two consecutive weeks before the Commissioner's Court considers the proposed ordinance. The publication must contain:

- A statement of the time, place, and date that the Commissioner's Court will consider the proposed ordinance; and
- Notice that an interested citizen of the county may testify at the hearing.

A public hearing must be held on a proposed ordinance before it is considered by the Commissioner's Court, and any interested citizen of the county shall be allowed to testify.

The Commissioner's Court of a county may not prohibit the processing or disposal of municipal or industrial solid waste in an area of that county for which:

- An application for a permit or other authorization under Chapter 361 has been filed with and is pending before the commission; or
- A permit or other authorization under Chapter 361 has been issued by the commission.

In contrast, the TCEQ may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance.

3.3.4 Legal Issues

Counties must recognize that this ordinance cannot be used to prohibit the siting of solid waste facilities throughout the entire county. The ordinance must designate one or more areas where municipal or industrial waste disposal is not prohibited.

Again, this ordinance can not be adopted to affect cases where a facility application has already been filed with the TCEQ or where a facility already exists.

3.3.5 Timeline to Develop

As stated in the statute, the primary timing requirement is to provide a two week notice of the intent to adopt the ordinance. Prior to drafting the ordinance, a county would need some time to research areas of the county where it would be suitable to site a municipal or industrial waste facility. This amount of time would vary from county to county.

3.3.6 Cost to Develop

The cost to develop this type of ordinance can vary based on the level of research needed to identify areas of the county where it would be suitable to site a municipal or industrial facility. A county can complete this research using county staff. In cases where the county believes that there is a need to develop a sophisticated analysis to determine suitable locations, there may be a need to retain outside assistance from a qualified solid waste or land use planning consulting firm. The county can request funding for a technical study from the NCTCOG Solid Waste Grants Program to research this issue.

3.3.7 Implementation Timeline

After implementing an ordinance, a county should not need to spend significant amounts of time for implementation. The county will only spend the time necessary to properly enforce the ordinance.

From an applicant's perspective, there will always be a need to check with a county very early in the facility development stage to determine whether a siting ordinance exists. However, the applicant must also consider the potential of opposition to the site. They may not wish to present detailed location information to the county until they are prepared to submit the application to the TCEQ. If the opposition is strong,

the county may be forced to pass a siting ordinance based upon political pressure prior to the submittal, and thus prohibit the site location from consideration by TCEQ.

3.3.8 Case Studies

Pursuant to the provisions of §364.012 of the Texas Health and Safety Code, several counties in Texas have adopted ordinances concerning the siting of solid waste facilities. Counties in Texas that have adopted ordinances include: Brazoria, Chambers, Fort Bend, Grimes, Kerr and Travis. Summaries of efforts by Chambers and Fort Bend Counties follow as examples of typical efforts to implement an ordinance. Appendix G includes ordinances developed by these counties, which can be used as examples for other counties that are considering adopting an ordinance.

- Chambers County adopted an ordinance in March 1998 to prohibit waste disposal in specific locations of the County. Through this ordinance, the County designated 10,400 acres in the center of the County as suitable for future landfills. The basis for this ordinance was concern over threats to public health, safety and welfare, as well as the belief that sufficient disposal capacity existed. The County expressed concerns about the impact from landfills due to geology and proximity to groundwater.
- In 2002, Fort Bend County adopted a siting ordinance to prohibit the disposal of solid waste in the county except for seven designated areas. The basis for this ordinance was that the Commissioner's Court thought that the further development or establishment of landfills in other areas of the county would represent an unacceptable risk and threat to public health, safety and welfare. Future facilities could also negatively affect property values and hamper economic development.

3.4 Local Solid Waste Management Plan

3.4.1 Description

§363.063 of the Health and Safety Code provides local governments (including counties) with the opportunity to develop local solid waste management plans. The purpose of these local plans is to develop recommendations and implementation plans to address key solid waste management issues, such as disposal, collection and waste minimization. §361.062 of the Health and Safety Code requires that TCEQ must consider whether a solid waste facility or the proposed site for the facility are compatible with the TCEQ approved county solid waste management plan prior to the issuance of a permit for the facility.

Through a local solid waste management plan, a local government can identify the need for and outline the steps to address facility siting issues. However, based on information received from the TCEQ, local plans do not have regulatory authority to establish specific land use requirements. If a county wants to implement specific

policies concerning facility siting issues, then they must adopt a county siting ordinance.

3.4.2 Pros and Cons

The following section describes the pros and cons associated with this option.

Pros

- Allows counties the opportunity to consider land use issues at a planning level when developing a local solid waste management plan.
- Provides an opportunity to strategically evaluate the need to develop more specific land use policies (e.g. develop an ordinance) relative to future disposal needs.
- Planning process provides opportunity for input from multiple types of stakeholders.

Cons

- In recent years, the TCEQ has not yet adopted by rule local solid waste management plans submitted by local governments. This negatively affects a county's ability to officially implement a plan.
- A plan cannot establish specific land use requirements because it is only a "plan" and does not have regulatory abilities.
- The TCEQ's Executive Director may grant a variance from an adopted local solid waste management plan, which could limit a plan's effectiveness.
- County may lack adequate staff or financial resources to develop and implement a solid waste management plan.

3.4.3 Process to Develop

The initial decision to develop a local solid waste management plan is to decide whether to use county staff or outside assistance from a solid waste consulting firm to develop the plan. The actual process is the same regardless of whether the plan is developed internally or with consultant assistance.

§330.561 - §330.568 of 30 Texas Administrative Code provides guidance concerning the process to develop a plan. The following summarizes the key steps involved in the development of a local solid waste management plan:

- Data collection and review;
- Needs assessment of the waste management system;
- Identification of needs and challenges;
- Development of local goals and objectives;
- Development of an action plan;

- Preparation of the local solid waste management plan;
- Public participation from an advisory committee and through a public hearing;
- Adoption by the Commissioner's Court;
- Review and approval from the NCTCOG; and
- Review and approval by the TCEQ.

During the course of this process, the county would have an opportunity to evaluate and address issues related to the siting of solid waste facilities. It would be the county's option to determine how it will address siting issues (e.g. develop a siting ordinance).

3.4.4 Legal Issues

The primary legal issues associated with a local solid waste management plan focus on the extent to which the plan can address facility siting issues. The Health and Safety Code does specifically mention some issues related to landfill siting, as follows:

- encourage cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;
- consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; and
- allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction.

However, local plans should not establish specific land use requirements. Also, a local plan does not have regulatory authority.

3.4.5 Timeline to Develop

Counties should typically expect to spend six to nine months developing a local solid waste management plan. This timeframe provides a sufficient planning period to complete detailed evaluations with necessary public input. After completion at the local level, the plan would need to be submitted to the NCTCOG and TCEQ for approval and adoption.

Thus, another key aspect of the timeline involves receiving approval from the NCTCOG and the TCEQ. Historically, NCTCOG has acted quickly and responsively to approve and forward local solid waste management plans to the TCEQ. While the TCEQ has been responsive at the staff level in approving plans, the TCEQ has not adopted any submitted plans in recent years.

3.4.6 Cost to Develop

The cost to develop a local solid waste management plan varies based on a number of factors, such as issues to be addressed, level of detail and amount of public participation. Several local governments in the North Central Texas planning region have developed local solid waste management plans in recent years with the assistance of solid waste consulting firms. Costs to develop these plans have ranged from \$50,000 to \$150,000. Funding has been available in the past and may be available in the future from the NCTCOG Solid Waste Grants Program to develop local solid waste management plans.

3.4.7 Implementation Timeline

The key to a successful plan is ensuring that all recommendations are implemented in a timely manner. The plan should include an implementation timeline associated for all recommendations, including facility siting issues.

3.4.8 Case Studies

Many local governments have developed local solid waste management plans in Texas. Within the North Central Texas planning region, Kaufman County is one county that developed a plan. With respect to addressing landfill siting issues, the Kaufman County plan does mention the issue of landfill siting. The plan recognizes the need to develop specific selection criteria for landfills, but does not provide further detail. The discussion within the plan primarily focuses on options for the county to implement a county solid waste facility siting ordinance. The plan does not include discussion that would serve as a basis to determine whether a proposed site is compatible with the local solid waste management plan.

3.5 Pre-Application Review Process by a Local Review Committee

3.5.1 Description

The purpose of a pre-application local review committee process is to provide an opportunity for solid waste facility applicants to enter into agreements with affected persons to resolve issues of concern. A preapplication review process may be useful in situations where opposition to an application is likely to exist. The statutory basis for this is in §361.063 of the Health and Safety Code and Rule §330.50 of the 30 Texas Administrative Code.

A preapplication review should serve to identify issues of concern, facilitate communication between a potential applicant and persons who would be affected by an application, and resolve as many points of conflict as possible prior to the submission of an application. A local review committee shall:

- interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process, raise and attempt to resolve both technical and nontechnical issues of concern; and
- produce a fact-finding report documenting resolved and unresolved issues and unanswered questions. The applicant shall submit this report to the TCEQ.

3.5.2 Pros and Cons

This section describes the pros and cons associated with this option.

Pros

- Provides opportunity for applicant and local community to resolve issues early in the permitting process (prior to expending significant costs to prepare a permit application).
- Provides a forum for local input and the ability to enter into agreements with affected persons.
- Political pressure can shift from the Commissioner's Court to the local review committee.

Cons

- An elected official cannot serve on the review committee if the official is elected by the constituency wholly or partly within the localities surrounding the site being reviewed.
- The process is very cumbersome and structured.
- The process has not been used effectively to date to resolve issues by applicants and local interest groups.
- Committee report cannot recommend approval or denial of the proposed facility permit. It can only include a summary of the committee's findings.
- Committee findings are not within the control of the county commissioners and could conflict with any future Commissioner's Court action.
- While TCEQ will consider findings from the committee report during the permit application, the agency is not obligated to follow these recommendations.

3.5.3 Process to Develop

The process for a pre-application local review committee is defined by the TCEQ in Rule §330.50 of the 30 Texas Administrative Code. The following information summarizes this rule.

If an applicant decides to participate in a local review committee process, the applicant shall file three copies of a notice of intent to file an application with the executive director of the TCEQ. The filing of this notice initiates the preapplication review process.

Upon receipt of the notice of intent to file, the executive director shall forward a copy of the notice and an explanation of the local review committee process by certified mail to:

- the appropriate mayor and county judge if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city; or
- the appropriate county judge if the proposed facility is to be located within an unincorporated area of the county; and
- the appropriate regional solid waste planning agency/council of governments.

Local review committees shall be composed of representatives of both local and regional interests and shall consist optimally of 12 individuals. However, an applicant may request a larger committee to better represent all interest groups present in a community or a smaller committee for economic reasons. However, committees shall maintain a 2:1 ratio of regional appointments to local appointments. Appointments to the local review committee shall be made according to guidelines included in the rule.

The local review committee shall meet within 21 days after the notice of intent is filed. The TCEQ will provide manuals to committee members that will orient them as to what the committee's activities should be (i.e., the production of a report detailing issues resolved, issues unresolved, and questions not able to be answered).

The preapplication review process shall continue for a maximum of 90 days unless it is shortened or lengthened by mutual agreement between the applicant and the local review committee.

Any report produced by a local review committee set up under this section shall be submitted to the TCEQ with the applicant's permit application. The TCEQ may consider the report as an additional source of information concerning the application and at the public hearing, if one is held, the hearing examiner shall give the report all the legal consideration merited.

The report shall not recommend approval or disapproval of the proposed facility. Rather, it shall describe the committee's work and summarize the committee's findings. The findings shall include issues resolved, issues unresolved, and questions not able to be answered.

3.5.4 Legal Issues

There are no specific legal issues associated with this option.

3.5.5 Timeline to Develop

There are no steps that need to occur in order to develop a process, as the process itself has been described in §330.50.

3.5.6 Cost to Develop

Costs associated with this process can be relatively minimal, as the primary contribution is in the form of committee members' time, who are not compensated for their participation. The potential applicant shall provide resource support that may include clerical and technical assistance, a facilitator, meeting space, and/or other items that may be necessary to aid the committee in its work.

If necessary, there may be a need for technical studies and/or expert witnesses to address unresolved issues. The TCEQ may pay up to \$25,000 of costs associated with this analysis, but is not obligated to provide funding. The TCEQ will apply specific criteria to determine whether to award funds for this purpose. Refer to §361.063(f) of the Health and Safety Code for further detail.

3.5.7 Implementation Timeline

The total length of time required to complete the process is approximately 111 days, as follows:

- Organization of the local review committee and the first meeting must occur within 21 days of TCEQ receiving notice from the applicant to initiate the pre-application review process.
- Pre-application review process shall continue for a maximum of 90 days, unless it is shortened or lengthened by mutual agreement between the applicant and the local review committee.

3.5.8 Case Studies

As this is a cumbersome process and the end product is not a defined recommendation for approval, applicants have been reluctant to use the process. Instead they have attempted to work informally with individual concerned parties to resolve issues. As a result this pre-application review process by a local review committee has not been used by any applicant to date.

3.6 "No Action" by a Commissioner's Court

3.6.1 Description

Under this option, a Commissioner's Court would not take any formal action. Several counties have expressed concerns that implementing a facility siting ordinance, limits the opportunity for any future flexibility. However, if a county does not take any formal action, it will likely mean that recommendations concerning siting conformance will be completed by the NCTCOG, without specific direction from the county where the proposed facility is located as required by the TCEQ.

3.6.2 Pros and Cons

This section describes the pros and cons associated with this option.

Pros

- Commissioners Court can avoid direct political pressure by putting the decision to others such as the NCTCOG and the TCEQ.
- County can avoid the need for staff resources to implement and administer a defined solid waste ordinance or plan.

Cons

- Lack of any control in decisions pertaining to local issues.
- NCTCOG will make the determination of local conformity without specific direction from county officials.¹
- Applicant must rely on the NCTCOG process without any guidance pertaining to local acceptability in the areas of the county outside of the cities.

3.6.3 Process to Develop

There is no process associated with this option.

3.6.4 Legal Issues

In the absence of any formal action by the county in terms of siting ordinances or local plans, the county is not precluded from developing resolutions and submitting comments at a public hearing. However, TCEQ is under no legal obligation to comply with a county's resolutions or comments.

3.6.5 Timeline to Develop

There is no timeline associated with this option.

3.6.6 Cost to Develop

There is no cost to develop associated with this option.

3.6.7 Implementation Timeline

There is no implementation timeline associated with this option.

¹ However, both NCTCOG and TCEQ's evaluation processes include receiving public input from interested stakeholders. During this time, the county could choose to provide public input.

3.6.8 Case Studies

In past permitting applications some counties have not taken any timely formal action in terms of adopting a siting ordinance. However, at the time of the public hearing, they have presented testimony in favor of, or in opposition to, particular permit applications. Historically this testimony alone has not been weighed heavily by the TCEQ Commissioners in their permit issuance decisions. As an example Fort Bend County opposed a controversial landfill permit application without having a siting ordinance in place. Their primary input was their stated opposition at the public hearing. The permit was issued by TCEQ over the objection of the County.

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Appendix A

Regional Process for Review of MSW Facility Applications

State regulatory activities require solid waste facilities that need a permit or registration must be in conformance with an adopted regional solid waste management plan. Under current Texas Commission on Environmental Quality (TCEQ) policy, each council of governments (COG) is required to provide a recommendation to TCEQ regarding whether a municipal solid waste (MSW) permit or registration application conforms to the regional plan. This section provides guidance concerning the process to evaluate conformance and describes the specific steps to complete individual facility reviews. The regional process for review of MSW facility applications detailed in this document updates the NCTCOG's existing process.

The applicant for a permit or registration must demonstrate conformity with the adopted regional solid waste management plan. In the past this has been accomplished through a request for a regional conformance evaluation from NCTCOG.

If there is an applicable local city zoning regulation or county solid waste facility siting ordinance in place, the NCTCOG by policy will defer to and accept the land use recommendation of the local city or county. The NCTCOG will undertake a complete regional review of MSW facility applications unless:

- A city's zoning regulations apply to the solid waste facility; or
- The county has adopted a solid waste facility ordinance consistent with the requirements of §364.012 of the Texas Health and Safety Code.

In order to complete the regional process for review of MSW facility applications, the applicant will be required to submit the relevant information required for a facility application evaluation, as described in Step 2 of this process. The application review of the solid waste facility site will be based on the following scenarios:

- If there is no applicable zoning or siting ordinance, NCTCOG will develop its conformance recommendation based on all information required to be submitted by the applicant in Step 2.
 - If there is an applicable local city zoning regulation or county solid waste facility siting ordinance in place, NCTCOG will defer to and accept the recommendation of the local city or county for the land use conformance. However, NCTCOG will use the regional MSW facility application review information requested in Step 2 to develop a regional conformance recommendation based on how the proposed facility will affect the regional solid waste management goals of the NCTCOG.
-

The Assuring Capacity for Trash (ACT) Subcommittee will review permit and registration applications submitted to the NCTCOG to assess conformance to the regional plan. The ACT Subcommittee's recommendation will be presented to the Resource Conservation Council (RCC) for approval. Upon approval by the RCC and following any appeal, the recommendation will then be forwarded to the TCEQ for consideration in the permitting process.

Step 1: Voluntary Pre-Application Review

All applicants are encouraged, but not required, to request a voluntary pre-application review. The purpose of this review will be to provide the applicant an opportunity to discuss the impending application with the NCTCOG staff. Through this pre-application review, the applicant will be able to obtain a thorough understanding of the region's solid waste planning goals and the steps required to complete the regional process for review of MSW facility applications. While this step is voluntary, applicants are encouraged to meet with the NCTCOG staff to answer relevant questions.

Step 2: Submit a Request for a MSW Facility Application Review

It is the applicant's responsibility to demonstrate conformance with the regional solid waste plan, per §330.51(b)(10) of the 30 Texas Administrative Code. The applicant is also responsible for initiating a regional process for review of MSW facility application. In order for the NCTCOG to conduct the application review, the applicant must submit the following items:

1. A cover letter requesting a regional review of MSW facility applications and the names, phone numbers, mailing addresses, and e-mail addresses for the following:
 - a. Chief contact person for the application;
 - b. Applicant's engineer; and
 - c. TCEQ staff person to whom all review-related correspondence should be mailed.
2. One "administratively complete" copy of Parts 1 and 2 of the application to the TCEQ for permit or registration.¹
3. A map or digital photograph that shows (1) the physical location of the proposed or existing facility; and (2) land uses of the surrounding area within one mile of the facility.²
4. One signed original and 15 copies of the completed NCTCOG Regional Review of MSW Facility Application Evaluation Form.³

¹ Parts 1 and 2 must be considered "administratively complete" by the TCEQ before submitting the documents to NCTCOG for review.

² NCTCOG staff can provide an electronic base map to the applicant, if requested.

5. Any additional information the applicant wishes to provide to facilitate the evaluation process.
6. An electronic (.pdf) file of all information requested in items one through five of the application content.

Requests for a regional review of a MSW facility application shall be submitted to:

Regional Solid Waste Plan MSW Facility Application Review
Department of Environment and Development
North Central Texas Council of Governments
P.O. Box 5888
Arlington, Texas 76005-5888
(817) 695-9217

After receiving a complete regional MSW facility application evaluation package, the NCTCOG staff will notify the applicant in writing to confirm receipt of the request for evaluation. At this time, the NCTCOG staff will also schedule a meeting of the ACT Subcommittee to review the application. The meeting will be scheduled within 30 days after the receipt of a complete evaluation package. The applicant will be notified of the meeting date in writing and is strongly encouraged to attend in order to present the application and address any questions that may arise.

Regional Review of MSW Facility Application Evaluation Form

The purpose of the “Regional Review of MSW Facility Application Evaluation Form” is to provide guidance for the review committee during the regional process for review of MSW facility applications. The form includes questions that focus on land use and regional goals. A copy of this form is included at the end of this section.

Step 3: ACT Subcommittee MSW Facility Application Review

The ACT Subcommittee will evaluate the applicant’s conformance to the regional plan based on the information contained within the application materials, as described in Step 2. The review committee is comprised of all members of the ACT Subcommittee and up to three ad hoc land use experts.⁴

Process and Rules

The ACT Subcommittee must have a quorum of voting members in order to conduct the application review meeting and develop a recommendation.

³ Applicants who have already received a recommendation of compliance from the local authority based on compliance with local zoning or county siting ordinances will be directed to skip Section 3 Land Use Conformance – Key Issues on the evaluation form.

⁴ The chairperson of the ACT Subcommittee, with assistance from NCTCOG staff, will appoint up to three individuals to serve as ad hoc members of the ACT Subcommittee to provide opinions concerning land use conformance issues. These land use experts could be land use planners from local governments, universities and/or consulting firms. The land use experts will be voting committee members.

Due to the nature of the review, some review committee members may have a conflict of interest. Those members who have a potential conflict of interest should recuse themselves from the review. If this situation arises, the quorum will be determined based on the number of non-recused members.⁵ The chairperson of the ACT Subcommittee has the right to recuse a member who may have a potential conflict of interest. Other review committee members may anonymously submit a request to the chairperson that a committee member should be recused because of a conflict of interest.

Evaluation Considerations

The evaluation of the application will be based on information that is requested in Step 2, including the content of the completed “Regional Review of MSW Facility Application Evaluation Form.” In addition, the NCTCOG will solicit comments from local governments, organizations, individuals and land owners (or current occupants) located within the facility’s area when considering the application. The NCTCOG should send letters to all property owners that are located within 500 feet of the facility.⁶ Comments from these entities must be provided in writing and should only address the issues that are considered in the “Regional Review of MSW Facility Application Evaluation Form.”

During the evaluation process, members of the ACT Subcommittee will not be allowed to ask questions of the applicant that are outside of the topics included in Step 2 or in the “Regional Review of MSW Facility Application Evaluation Form.”

The recommendation developed by the ACT Subcommittee will be based on a combination of land use factors and an assessment of the applicant’s good faith effort to assist in the achievement of the NCTCOG’s regional goals. The specific recommendation will be based on the overall merits of the application form.

To assist applicants and members of the ACT Subcommittee concerning how land use factors should be evaluated, the following serves as basic guidelines that should be considered when evaluating each of the land use questions included in Section 3 of the “Regional Review of MSW Facility Application Evaluation Form.”

3.1 Character of Surrounding Land Uses

- This question serves to provide a baseline understanding of the character of surrounding land uses.

3.2 Proximity to Residences and Other Uses within One Mile of Facility Boundary

- This question serves to provide a baseline understanding of the proximity of major residential development, schools and churches that are adjacent to or within one mile of the site.

⁵ For example, if two members recuse themselves and the review committee now has seven possible participants, then the quorum will be calculated with the number of members present divided by seven instead of nine.

⁶ The distance of 500 feet from the facility was used in order to be consistent with existing TCEQ regulations. Information concerning property owners located within 500 feet of a facility must be submitted by the applicant in the TCEQ permit.

3.3 Compatibility with Current Land Uses Surrounding the Site

- Applicant should demonstrate that the facility is compatible with current land uses surrounding the site.
- Consideration of historical and current land uses such as major residential development, schools and churches that are adjacent to or within one mile of the site will be evaluated in the process.
- Mitigating measures by the applicant (e.g. buffers, screening, odor control, traffic control, etc.) may be considered by the ACT Subcommittee. The burden is on the applicant to demonstrate that these mitigating measures will be effective.
- *This question should be considered the most important concerning surrounding land use since it is based on existing land use.*

3.4 Existence of Plats on File within One Mile of the Facility Boundary

- This question serves to provide a baseline understanding of the existence of plats on file within one mile of the facility boundary.
- This evaluation should be based on plats that are already on file (prior to permit or registration application).
- Plats on file provide information regarding major residential development, schools and churches that are adjacent to or within one mile of the site, which will be evaluated in the process.
- Mitigating measures by the applicant (e.g. buffers, screening, odor control, traffic control, etc.) may be considered by the ACT Subcommittee. The burden is on the applicant to demonstrate that these mitigating measures will be effective.
- *This question should be considered the second most important concerning surrounding land use since it is based on existing plats and is likely to be a relatively realistic indicator of future land use surrounding the facility.*

3.5 Consistency with Long-term Development Plans or Initiatives

- The applicant should demonstrate that the facility is consistent with the overall land-use planning in the area.
- Examples of long-term development plans or initiatives may include comprehensive land use plans, annexation plans, site development plans, etc.
- *This question should be considered the third most important concerning surrounding land use since it is based on potential future land use.*

3.6 Consistency with Growth Trends of the Nearest Community or Communities

- Consistency should be evaluated based on whether the site is compatible with the growth trends of the land surrounding the facility.
- *This question should be considered the least important concerning surrounding land use since it is based on general trends, as opposed to existing land use, plats or long-term development plans or initiatives.*

3.7 Impact to all Known Water Wells within 500 Feet of the Facility Boundary

- The applicant should demonstrate that the facility and operation of the facility will not negatively affect water wells used for human or animal consumption.

3.8 Available and Adequate Access to the Facility

- The applicant should demonstrate the following:
 - the facility should be accessible from major roadways or thoroughfares;
 - the roadways leading into and out of the facility should be usable in all weather conditions;
 - the roadways leading into and out of the facility should be able to accommodate existing and future traffic;⁷ and
 - the roadways leading into and out of the facility should be designed to maximize safety.

3.9 Impact to Current Traffic Patterns within One Mile of the Facility

- The applicant should demonstrate that facility traffic will not significantly impact current traffic patterns.

3.10 Developmental and Operational Compatibility with Surrounding Land Uses

- This is an optional opportunity for the applicant to provide additional information specific to land use issues beyond the information provided in previous questions.

3.11 Trash, Odor and Nuisance Control

- The applicant should demonstrate how the facility will minimize the potential impacts from trash, odors and other nuisances.

3.12 Maximum Fill Height and Compatibility of Fill Height to General Terrain of Area

- This question serves to provide a baseline understanding of potential maximum fill height for the facility and compatibility of fill height to the general terrain of the area.

3.13 Measures to Screen and/or Blend the Facility

- The applicant should demonstrate what measures will occur to screen and/or blend the facility with earthen berms and/or vegetation to minimize the impacts to adjacent landowners.

3.14 Landscaping Measures

- The applicant should detail how the site will use various landscaping measures to improve the aesthetics of the facility (including fences, berms, plantings, or other landscaping).

⁷ Future traffic is defined as either 20 years or the projected site life, whichever is fewer.

Step 4: Plan Review Recommendations

The ACT Subcommittee will determine whether the proposed facility conforms to the NCTCOG Regional Solid Waste Management Plan and recommend a course of action to the RCC. The RCC will convene and determine if they agree with the recommendation. The NCTCOG staff will be responsible for communicating the RCC's recommendation in writing to all affected parties.⁸

It is important to note that the NCTCOG does not approve or deny applications. Rather, it provides a means for the TCEQ to obtain qualified opinions from local governments in the affected region through the NCTCOG.

The following are the recommendation choices that NCTCOG can send to the TCEQ for both land use and regional conformance. In cases when the committee defers to the local land use, the committee will notify the TCEQ of that decision and the basis for that decision. The chairperson of the ACT Subcommittee will communicate the recommendation by completing and signing the "Regional Review of MSW Facility Application Recommendation Form," which is included at the end of this section.

1. The permit or registration conforms to the land use/regional plan.
 - a) The committee recommends TCEQ approval of the permit or registration.
 - b) The committee recommends TCEQ approval with specific conditions attached.
2. The permit or registration does not conform to the land use/regional plan.
 - a) The committee recommends TCEQ denial of the permit or registration.
 - b) The committee recommends TCEQ withhold approval until specified deficiencies are corrected.
3. The committee lacks sufficient information to make a qualified land use/regional conformance recommendation.

Step 5: Appeals Process

A local entity, including the applicant, may appeal the RCC's recommendations if the application evaluation is not processed and treated in accordance with the procedures set forth in this section. Appeals must be submitted to the NCTCOG Executive Director in writing, including the specific alleged procedural violation(s). The Executive Director will investigate the allegation, forward it to the Executive Board and place the appeal on the agenda of the next Executive Board meeting.

RCC members will receive copies of the appeal and select a representative to attend the Executive Board meeting. The protesting entity and applicant will be notified of the time and date for consideration of the appeal. At this time, the entity appealing the recommendation may present its case directly to the Executive Board, which will render a decision on the matter.

⁸ The applicant will receive the recommendation via certified mail.

An appeal can be filed at any time during the 10 calendar day period after the applicant receives official notice via certified mail of RCC's recommendation decision. Any appeals received after that date will not be considered and the RCC recommendation letter will be immediately forwarded to the TCEQ.

Step 6: Report on RCC Evaluation Findings

Once either a decision has been made regarding an appeal or the date for an appeal has passed, the NCTCOG will send a letter signed by the RCC chairperson or its designee to the TCEQ, relating the RCC's finding, recommendation and comments. The information sent to the TCEQ will include:

- “Regional Review of MSW Facility Application Recommendation Form;” and
- Sections 2 and 3 of the “Regional Review of MSW Facility Application Evaluation Form.”

North Central Texas Council of Governments
Regional Review of MSW Facility Application Evaluation Form

Section 1: General Applicant Information

1.1 Applicant's Name: _____
Mailing Address: _____
City, State, Zip Code: _____

1.2 Site Location
Address: _____
Zip Code: _____
Nearest City: _____
County: _____

1.3 Is this a new facility or an amendment to a current permit/registration?
 New Facility Amendment to current permit/registration

1.4 Is this a permit or a registration application?
 Permit No. _____ Registration No. _____

1.5 What type of MSW facility is being registered or permitted?
 Type I Landfill Type IV AE Landfill
 Type I AE Landfill Type V Facility
 Type IV Landfill Other (please describe)

Describe "Other" below:

1.6 What types of waste(s) are currently or will be accepted at your facility?
 Municipal Waste Industrial Class III
 Industrial Class I Special Waste (please describe)
 Industrial Class II Other (please describe)

Describe "Special Waste" and/or "Other" below:

North Central Texas Council of Governments

Regional Review of MSW Facility Application Evaluation Form

Section 2: Land Use Conformance – Compliance with Local Zoning or Ordinance

2.1 Is the site of your facility subject to local zoning or ordinances regarding the siting of solid waste facilities?

Yes No **(please proceed directly to Section 3)**

If yes, which government zoning or siting standards does this facility have to comply?

2.2 Is the site in compliance with the zoning or local ordinance?

Yes No

If yes, please attach documentation from the local zoning or siting entity indicating that the facility is in compliance with the standards or that a formal variance has been granted. If applicable, provide maps detailing all boundaries of the areas included in the ordinance and the location of the facility.

If documentation is provided to NCTCOG proving the facility is in compliance with the local city zoning or county siting ordinance (per §364.012 of the Texas Health and Safety Code), then the applicant does not need to answer the remaining land use questions in Section 3. Please proceed to Section 4 and continue completing the application. Once the application is complete, please return the MSW facility application evaluation form and requested documentation to NCTCOG.

North Central Texas Council of Governments

Regional Review of MSW Facility Application Evaluation Form

Section 3: Land Use Conformance – Key Issues

Texas Commission on Environmental Quality Rule 330.53 defines key land use and transportation issues that need to be addressed as a part of the regional MSW facility application evaluation process. The following questions are based on the rules, and are intended to provide information for NCTCOG to develop its conformance recommendation.

- 3.1 Describe the current character of surrounding land uses within one mile of the facility boundary. Please provide map(s) of the area.

To the North: _____

To the South: _____

To the East: _____

To the West: _____

- 3.2 Provide 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 boundary. Please provide approximate number of residences and business establishments.

To the North: _____

To the South: _____

To the East: _____

To the West: _____

North Central Texas Council of Governments
Regional Review of MSW Facility Application Evaluation Form

3.3 Is the facility compatible with land uses surrounding the site?

Yes No

Please explain.

3.4 Are there any plats on file in state or local government offices for development within one mile of the facility boundary?

Yes No

If yes, please describe and provide contact information.

3.5 Does any entity (e.g. local governments, property owners, developers, etc.) in the planning region have proposed long-term development plans or initiatives near the facility?

Yes No

If yes, how is your proposal compatible with such plans or initiatives?

3.6 Is the facility consistent with growth trends of the nearest community or communities with directions of major development?

Yes No

Please explain.

North Central Texas Council of Governments
Regional Review of MSW Facility Application Evaluation Form

3.7 Explain how the facility will be designed to avoid any impact to all known water wells within 500 feet of the facility boundary.

3.8 Will roads be available and adequate for access to the facility?

Yes No

Please explain.

3.9 Will traffic into and out of the facility impact traffic patterns, within one mile of the facility, that currently exist and will occur over the expected life of the facility?

Yes No

Please explain.

The remaining questions refer to land use issues that NCTCOG feels are important for the regional MSW facility application evaluation.

3.10 Describe any additional information that will be beneficial regarding how the facility will be built and operated to be compatible with the current land uses of adjacent properties. (Optional)

North Central Texas Council of Governments

Regional Review of MSW Facility Application Evaluation Form

3.11 Describe measures to minimize the impact from trash, odor and any other potential nuisances related to your operation on surrounding land use.

3.12 If the facility is a landfill, what will be the maximum fill height of the facility? (Please provide a final contour map or graphic representation of the facility.)

_____ Feet above grade

When the maximum fill height is reached, how will the facility compare to the general terrain of the area, within two miles of the facility boundary?

3.13 Describe any measures that you will implement to screen and/or blend the facility with surrounding features.

3.14 Describe any landscaping measures that you will implement to improve the aesthetics of the facility. (Please attach any landscaping plans.)

Section 4: Regional Conformance

Another component of evaluating conformance includes how the facility will affect the regional solid waste management goals of the North Central Texas Council of Governments that are included in the regional solid waste management plan, *See Less Trash Regional Solid Waste Management Plan*. In order to complete this evaluation, please provide a description of how your facility will contribute to the attainment of these goals.

In requesting this information, NCTCOG recognizes that individual facilities alone will not be held responsible to achieve these regional goals. However, solid waste facilities

North Central Texas Council of Governments

Regional Review of MSW Facility Application Evaluation Form

represent an important component of a regional integrated solid waste management system, and can contribute to the attainment of regional goals. Facilities will be expected to make a good faith effort to contribute to the attainment of the regional solid waste goals.

To assist in the completion of this section, examples of activities/programs that could be implemented to assist in the attainment of these regional goals are listed for each of the three goals. These examples are based directly on objectives included in the *See Less Trash Regional Solid Waste Management Plan*. However, they are intended to only serve as examples, as individual facilities need to determine how they will contribute to regional goals.

Goal No. 1: Time to Recycle

The regional goal for Time to Recycle is that purchased materials are reused and recycled wherever possible, while increasing waste prevention and reduction throughout the region.

Examples for Facilities to Consider

- Assist in the development of outreach and education programs to facilitate long-term changes in attitudes about source reduction, reuse and recycling.
- Contribute to efforts to expand commercial recycling efforts by businesses and governments across the region.
- Contribute to efforts to increase citizen participation in reuse and recycling through the following types of programs:
 - Facility has a drop-off site to accept materials for recycling; or
 - Facility diverts clean loads of brush/yard waste for alternative uses (e.g. mulching, composting, daily cover, surface stabilization for landfill traffic and equipment due to wet conditions).
- Assist efforts to expand the collection and management of special waste, which includes materials such as household hazardous waste, tires and sludge.
- Promote innovative technologies to reduce waste.

4.1 Please describe any services or activities that you can provide, or are currently providing, to the region to assist with meeting this regional goal.

North Central Texas Council of Governments
Regional Review of MSW Facility Application Evaluation Form

Goal No. 2: Stop Illegal Dumping

The regional goal for Stop Illegal Dumping is to see that illegal dumping is significantly reduced in the North Central Texas region.

Examples for Facilities to Consider

- Contribute to efforts to facilitate public awareness and education opportunities to reduce littering and illegal dumping.
- Use public awareness materials (e.g. signs, brochures, etc.) developed by NCTCOG to help stop illegal dumping.
- Participate in community clean-up efforts to reduce illegal dumping.
- Support efforts to increase enforcement against illegal dumping crimes.

4.2 Please describe any services or activities that you can provide, or are currently providing, to the region to assist with meeting this regional goal.

Goal No. 3: Assuring Capacity for Trash

The regional goal for Assuring Capacity for Trash is that remaining waste be handled in a safe manner at permitted facilities.

Examples for Facilities to Consider

- Facility helps efforts to maintain a minimum of 10 years of capacity for that area of the NCTCOG planning region.¹
 - Landfills may specifically contribute to this by increasing capacity.

¹ Capacity issues can be considered to demonstrate the need for a facility, but cannot be used as a basis against a facility.

North Central Texas Council of Governments
Regional Review of MSW Facility Application Evaluation Form

Section 5: Certification

I certify that the information contained in this form is complete and accurate and that the information in fact represents the MSW facility for which this entity is requesting a TCEQ permit or registration.

Type or Printed Name of Applicant's Chief Administrative Officer

Title of Chief Administrative Officer

Signature of Chief Administrative Officer

Date

NOTE:

Please complete this form as fully and as accurately as possible. Responses to Sections 2 and 3 of the evaluation form that address the issue of land use compatibility will be submitted to the Texas Commission on Environmental Quality along with the NCTCOG's regional review of MSW facility application recommendation form.

**North Central Texas Council of Governments
Regional Review of MSW Facility Application
Recommendation Form**

General Applicant Information

Applicant's Name: _____

Mailing Address: _____

City, State, Zip Code: _____

Site Location

Address: _____

Zip Code: _____

Nearest City: _____

County: _____

Is this a new facility or an amendment to a current permit/registration?

New Facility Amendment to current permit/registration

Is this a permit or a registration application?

Permit No. _____ Registration No. _____

1. Land Use Conformance Recommendation by NCTCOG

(Check one of the following four boxes and sub-boxes, if applicable.)

The committee defers to and accepts the local land use decision based on:

City Zoning Regulations County Solid Waste Facility Ordinance

Attach supporting documentation from either city zoning regulations or county solid waste facility ordinance.

The permit or registration conforms to the land use.

The committee recommends TCEQ approval of the permit or registration.

The committee recommends TCEQ approval with specific conditions attached. (*Attach additional information*)

The permit or registration does not conform to the land use.

The committee recommends TCEQ denial of the permit or registration.

The committee recommends TCEQ withhold approval until specified deficiencies are corrected. (*Attach additional information*)

The committee lacks sufficient information to make a qualified land use conformance recommendation.

2. Regional Plan Conformance Recommendation by NCTCOG

(Check one of the following three boxes and sub-boxes, if applicable.)

- The permit or registration conforms to the regional plan.**
 - The committee recommends TCEQ approval of the permit or registration.
 - The committee recommends TCEQ approval with specific conditions attached. (*Attach additional information*)

- The permit or registration does not conform to the regional plan.**
 - The committee recommends TCEQ denial of the permit or registration.
 - The committee recommends TCEQ withhold approval until specified deficiencies are corrected. (*Attach additional information*)

- The committee lacks sufficient information to make a qualified regional conformance recommendation.**

Signature of NCTCOG Representative

Date

Printed Name of NCTCOG Representative

TO: Kathleen Graham, North Central Texas Council of Governments (NCTCOG)

DATE: April 19, 2005

SUBJECT: Comments for Public Meeting on the County Solid Waste Facility Siting and Service Needs Study

The Dallas group Sierra Club (SC) wants to thank the NCTCOG for this opportunity to comment on the County Solid Waste Facility Siting and Service Needs Study conducted by R.W. Beck and CP & Y. The following are our concerns:

The SC does not support the Texas Commission on Environmental Quality (TCEQ) requiring the COGs to address land use issues in their regional conformance evaluation process. This study points out several very disturbing facts related to siting municipal solid waste (MSW) facilities in an extraterritorial jurisdiction (ETJ) of a municipality. Cities do not have zoning authority in an ETJ and county ordinances can not apply to an ETJ. Facilities located in an ETJ would come under a COG land use conformance review. COGs have no regulatory authority, therefore, these conformance reviews are only recommendations that the TCEQ commissioners may or may not take into consideration when approving a MSW permit or registration.

This study is a positive step toward helping the NCTCOG 16 counties deal with MSW facility siting ordinances. Currently, there are no counties in the NCTCOG that have a MSW siting ordinance.

It is the responsibility of the TCEQ to determine if an MSW permit complies with the rules and regulations of Chapter 330 Texas Health and Safety Code and any other issues related to that permit that have not been resolved by a city zoning board or a county siting ordinance.

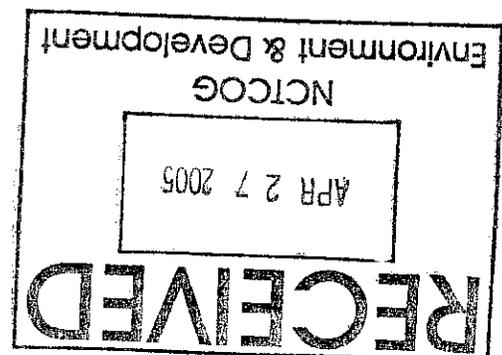
The SC does not support the recommendation that the COGs review process include only parts 1 and 2 of the TCEQ MSW permit application filing forms. Does this mean that only parts 1 and 2 must conform with the MSW regional plan? The law states that the COG shall review permit applications for conformance with regional MSW plans. Regardless of what the other COGs in Texas are doing, the SC believes that the NCTCOG should review the full permit application and this should be reflected in the final draft of the study.

Thank you,



Shirley L. Holland, Solid Waste Issues Coordinator
Dallas group Sierra Club

cc: Vance Kemler, Chairman
Assuring Capacity for Trash (ACT) Sub-committee



John A. Riley jriley@velaw.com
Tel 512.542.8520 Fax 512.236.3329

April 21, 2005

Ms. Kathleen Graham
Solid Waste Program Coordinator
Mr. Rudy Niño, Jr.
Environment and Development Planner II
North Central Texas Council of Governments
616 Six Flags Drive
P.O. Box 5888
Arlington, Texas 76005-5888

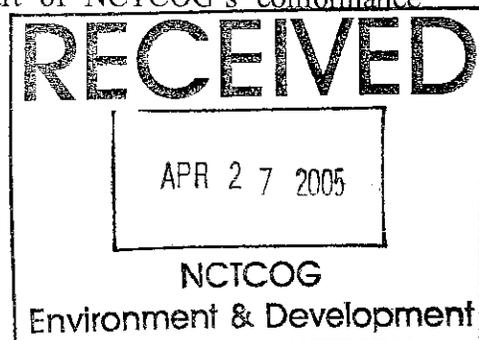
*By Facsimile (817.640.7806)
& First Class Mail*

Re: Waste Management of Texas, Inc.'s Comments on January 20, 2005 Draft Report –
“County Solid Waste Facility Siting and Service Needs Study”

The following comments regarding the January 20, 2005 draft report – “County Solid Waste Facility Siting and Service Needs Study” – prepared by R.W. Beck, Inc. (the “Draft Report”), are submitted on behalf of Waste Management of Texas, Inc. (“WMTX”), 820 Gessner, Suite 940, Houston, Texas 77024.

These comments principally concern certain of the questions and considerations proposed for inclusion in the North Central Texas Council of Governments’ (“NCTCOG’s”) “Regional Conformance Evaluation Process” and “Regional Conformance Evaluation Form.” As set forth more fully below, WMTX respectfully submits that these questions and considerations are contrary to the laws and regulations governing regional solid waste planning in Texas and, therefore, exceed the COGs’ role in the permitting process.

These comments also address proposals in the Draft Report regarding public input, the timing of NCTCOG’s conformance evaluation process, the selection of ad hoc land use experts for the evaluation committee, and the level of information conveyed to the Texas Commission on Environmental Quality (“TCEQ”) as part of NCTCOG’s conformance recommendation.



1. Proposed Conformance Evaluation Questions and Considerations

The content of regional solid waste management plans is specifically prescribed by statute and regulation. *See* Tex. Health & Safety Code § 363.064(a); Tex. Admin. Code § 330.563(a)(3). The applicable regulatory requirements also provide that solid waste plans must consider the solid waste program administered at the state level by TCEQ, and TCEQ's responsibilities under that program, "with the aim of avoiding duplication of effort." 30 Tex. Admin. Code § 330.564(b).

Although the foregoing regulatory provision is not cited in the Draft Report, the concern among landfill permittees regarding "duplication of effort" between NCTCOG and TCEQ is discussed on pages 2-12 and 2-13 of the Draft Report. There, the authors of the Draft Report properly conclude that certain "technical siting issues" should be excluded from NCTCOG's conformance evaluation because, by statute and regulation, TCEQ must address these issues when the agency reviews an application for a municipal solid waste permit. *See also* Draft Report at 2-20. As the authors of the Draft Report aptly reasoned, the purpose for excluding these issues is "to reduce redundancy and opportunities for inconsistency between NCTCOG and the TCEQ."

Yet despite this reasoned approach to what the Draft Report authors label "technical siting issues," the Draft Report proposes that conformance evaluations address matters such as transportation and landfill height and "aesthetics." Specifically, in the draft, stepwise Regional Conformance Evaluation Process and Regional Conformance Evaluation Form, the Draft Report authors propose the following areas of inquiry for NCTCOG's conformance evaluation: buffer zones, landscaping, visual screening, odor and nuisance controls, traffic analyses and transportation impacts, and landfill height. As expressly recognized in the Draft Report, the COGs have not been directed to address these issues. While TCEQ has requested the COGs to address the land use provisions of 30 Tex. Admin. Code § 330.53(b)(8), TCEQ has neither authorized nor asked the COGs to address transportation impacts, landfill height and aesthetic concerns, or nuisance issues. WMTX respectfully submits that there is no basis to conclude, as the Draft Report authors did, that TCEQ's directive to consider the land use provisions of § 330.53(b)(8) implies a broader authority to consider any issue that may be squeezed under the "land use" heading.

Issues such as transportation impacts, landfill height and aesthetics are far afield of the prescribed contents of regional solid waste plans and, if adopted, would result in needless duplication of the application review functions that TCEQ is required to conduct. TCEQ's regulations expressly require the agency to consider these issues in its review of solid waste permit applications, just as the regulations require TCEQ to address the "technical siting issues" singled out and excluded by the Draft Report. *See, e.g.*, 30 Tex. Admin. Code

§§ 330.5(a)(2) (nuisances), 330.53(b)(9) (transportation), 330.55(a)(2) (all-weather roads), 330.55(b)(10)(A)(ii), (D) (buffer zones), 330.56(a)(1) (maximum waste elevations, aesthetics, and visual screening), 330.56(b)(1) (maximum elevation of proposed fill), 330.56(d)(1) (maximum elevation of the facility), 330.120 (windblown waste), 330.121(b) (buffer zones), 330.123 (roadside litter), 330.125(b) (odor controls), 330.126 (vector controls), 330.127(a) (all-weather roads), 330.127(b) (nuisance controls), 330.127(c) (road maintenance), 330.128 (nuisance controls), 330.138 (visual screening).

As reflected by the foregoing regulatory citations, the vast majority of these issues are addressed by the applicant in the facility's Site Development Plan and Site Operating Plan, which comprise Parts III and IV of the application, respectively. These are technical parts of the application that applicants are not required to submit to the COGs and that the COGs should not consider. *See, e.g.*, Draft Report at 2-19 (recommending that NCTCOG exclude Parts III and IV of the application from the conformance evaluation because these parts of the application "focus on more technical issues that are already addressed through the TCEQ's permitting process").

TCEQ has committed significant resources and expertise to address these issues. Accordingly, pursuant to Tex. Admin. Code § 330.564(b), NCTCOG should avoid duplicating the efforts of TCEQ with regard to these issues. Furthermore, on a practical level, duplicative considerations by separate governmental bodies run the risk of conflicting determinations. Such an approach provides neither consistency nor clarity in the solid waste planning process. The public and the regulated community are best served by allowing TCEQ to be the arbiter of those issues that have been committed exclusively to its jurisdiction.

The need for consistency and clarity in the solid waste planning process is particularly important at this time. TCEQ is currently undertaking revisions to its municipal solid waste rules in 30 Tex. Admin. Code Ch. 330. Accordingly, there are numerous, substantive regulatory changes on the horizon. For solid waste planning to move forward consistently in the NCTCOG region and across the state, it makes sense to let the regulatory revision process at TCEQ develop the future requirements of the municipal solid waste rules without competing and potentially inconsistent regional strategies.

2. *Proposed Showing Regarding Potential Impacts to Water Wells*

The following comment is closely related to the foregoing comments in that it concerns a proposal that, if adopted, would result in a duplication of effort between NCTCOG and TCEQ and would exceed the COGs' role in the permitting process. The proposal at issue is proposed Question 3.7 in the draft Regional Conformance Evaluation

Form and the corresponding consideration in the draft Regional Conformance Evaluation Process. Question 3.7 would require the facility to show that it will not “impact [any] known water wells within 500 feet of the facility boundary.” WMTX assumes that the genesis of this proposal is the TCEQ directive to the COGs to consider the land use provisions of § 330.53(b)(8), specifically provision (b)(8)(E) which requires a “description and discussion of all known wells within 500 feet of the proposed site.”

Substantively, the “no impact” showing proposed in the Draft Report is a wholly different requirement than the requisite “description and discussion” of known wells in § 330.53(b)(8)(E). Determining whether a well will be impacted by a facility requires considerable scientific knowledge and expertise – expertise that TCEQ possesses. On the other hand, describing and discussing wells within 500 feet of a facility requires no scientific knowledge, but may require familiarity with the local area and historic land uses – something that TCEQ typically does not possess.

Thus, the logical conclusion is that TCEQ directed the COGs to consider § 330.53(b)(8)(E) to ensure that all known wells around the facility are identified and accurately described and discussed in the application. Whether those wells will be impacted by the facility is a question that TCEQ will address in its review of the application. Indeed, TCEQ’s regulations governing municipal solid waste permit applications are replete with requirements regarding impacts to groundwater. *See, e.g.*, 30 Tex. Admin. Code §§ 330.55(a)(5) (directing applicant to “provide required information on drinking water protection in accordance with §§ 330.200-330.206”); 330.56(f) (requiring applicant to submit a groundwater protection plan). Here again, these requirements are addressed in Part III of the application and, therefore, are among the “more technical issues that are already addressed through the TCEQ’s permitting process.” Draft Report at 2-19.

Accordingly, pursuant to Tex. Admin. Code § 330.564(b), NCTCOG should avoid duplicating the efforts of TCEQ with regard to considerations of groundwater protection and potential impacts. To assist TCEQ in determining whether the requirements of § 330.53(b)(8)(E) have been satisfied, NCTCOG’s conformance evaluation should focus on the question of whether all known wells around the facility have been identified and accurately described and discussed in the application.

3. Proposal to Include Public Notice as Part of the Conformance Evaluation Process

At pages 2-15 and 2-16 of the Draft Report, it is recommended that NCTCOG include public input as part of the conformance review process. While receiving input from the public is a laudable endeavor, in this circumstance it may add significant time and expense without yielding any pertinent information that will assist the NCTCOG in its conformance

evaluation. As drafted, the Regional Conformance Evaluation Process would limit public comment to only those issues that are considered in the Regional Conformance Evaluation Form. NCTCOG's conformance evaluation process is limited to only those questions and considerations that the COGs may address pursuant to statute or regulation and public comment will not illuminate the issue before the COG.

For instance, NCTCOG's consideration of the land use provisions in 30 Tex. Admin. Code § 330.53(b)(8) would not appear to benefit demonstrably from public comment. Perhaps if there is a question as to the location of wells, residences, or other sites or structures enumerated in § 330.53(b)(8)(D)-(E), such questions may be resolved with the aid of public input. However, in the absence of such questions, the cost of mailing the notice of public input, as proposed in the Draft Report, does not appear to be justified by any potential benefit to the decision process.

Furthermore, TCEQ will solicit public comment from each person that would receive the notice of public input as proposed in the Draft Report (*i.e.*, all residents within 500 feet of the facility). During the TCEQ public comment period, interested persons may submit comments on any aspect of the application that they choose. By regulation, TCEQ must review, consider, and respond to the public comments that the agency receives. *See* 30 Tex. Admin. Code § 55.156.

The public input process, as proposed in the Draft Report, is likely to delay the completion of NCTCOG's conformance evaluation, draw a significant number of irrelevant comments, and fail to provide information useful to NCTCOG's consideration of an application. Moreover, excluding public comment in the conformance evaluation process will not preclude the public's participation in the permitting process, as TCEQ will solicit and consider comments from the very persons proposed to be notified in the Draft Report.

4. Proposed Timing of the Conformance Evaluation Process

The Draft Report, at page 2-21, recommends that NCTCOG not begin its conformance evaluation process until TCEQ has determined that the application is administratively complete. This recommendation fails to take advantage of a significant window of opportunity for the applicant and the COG to identify and attempt to resolve any questions or concerns. WMTX recommends that NCTCOG allow applicants to request a conformance evaluation much earlier in the permitting process – prior to submittal of the application to TCEQ.

WMTX understands the concern expressed in the Draft Report – that there could be material changes to the application during and after NCTCOG's conformance review.

However, the Draft Report proposes a workable solution to resolve this concern – requiring the applicant to notify NCTCOG of any material changes to the land use portion of the application. While this approach may place a somewhat greater burden on NCTCOG to reevaluate revised portions of an application, the benefits greatly outweigh any additional burden. Due to the technical scope of Parts III and IV of a permit application, Parts I and II are typically the first to be completed. The period prior to completion of Parts III and IV and submittal of the entire application to TCEQ provides an excellent opportunity for NCTCOG to conduct its conformance evaluation and for the applicant and the COG to address any questions or concerns.

Significant revisions to an application may occur following a conformance evaluation to bring the application into conformance with the regional solid waste plan as determined by the COG. Thus, allowing the applicant an opportunity to receive the results of a conformance review prior to submittal of the application may avoid unnecessary delays in TCEQ's technical review of the application. Additionally, the applicant's interaction with the COG may inform the substance of Parts III or IV of the application. For instance, if the COG notifies the applicant that it has failed to identify a water well, such information may be incorporated into the application's groundwater protection plan in Part III of the application.

5. *The Selection of Ad Hoc Land Use Experts for the Review Committee*

The Draft Report proposes a conformance evaluation committee comprised of all members of NCTCOG's Assuring Capacity for Trash ("ACT") Subcommittee and up to three ad hoc land use experts. Pursuant to the proposal, these land use experts would be appointed by the ACT Subcommittee Chairperson, with assistance from NCTCOG staff, and may include land use planners from local governments, universities, or consulting firms.

Given that, as with any area of expertise, there are numerous competing and often contradictory schools of thought among land use experts, WMTX recommends that at least one of the three experts be selected by a committee of landfill or industry representatives. At the very least, industry stakeholders should have a role in the selection of the land use experts. Allowing one person to appoint the entire panel of land use experts tends to promote an homogenous and biased approach to land use issues. NCTCOG and the conformance evaluation process are best served by a diverse panel of land use experts, each of whom will approach land use issues from a different perspective and stimulate an informed discussion of these issues.

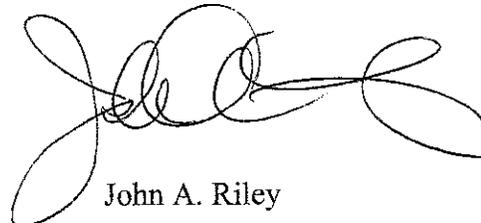
6. *Notifying TCEQ of the Grounds for a Determination of Nonconformance*

It is not clear from the Draft Report, or the "Regional Conformance Evaluation Recommendation Form" appended to the Draft Report, what level of information NCTCOG will convey to TCEQ when the COG's recommendation is that the permit application does not conform to the regional plan. For the benefit of both the agency and the applicant, WMTX recommends that NCTCOG notify TCEQ of the specific grounds for a determination of nonconformance. Absent such information, TCEQ has no way of determining whether to accept or reject NCTCOG's recommendation. Furthermore, absent such information, the applicant has little opportunity to correct any deficiency in its application that may bring it into conformance with the regional plan.

* * * * *

WMTX appreciates this opportunity to comment on the draft County Solid Waste Facility Siting and Service Needs Study. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Riley". The signature is stylized with large loops and a long horizontal stroke extending to the right.

John A. Riley

Appendix E

County Meeting Comments

E.1 Introduction

Following the development of the draft report, NCTCOG staff contacted elected officials and staff at each of the 16 counties in the North Central Texas region to determine their interest in discussing county level facility siting options with NCTCOG staff and the project team. Based on these discussions, NCTCOG staff and the project team met formally or informally with the following counties:

- Ellis;
- Hood;
- Kaufman;
- Navarro; and
- Rockwall.

This appendix summarizes the results of these meetings concerning how each county may like to proceed.

E.2 Ellis County

Following a presentation to the Ellis County Commissioners' Court on March 28, 2005, county officials stated that they may have an interest in developing a county siting ordinance in the future. County officials expressed the need to further evaluate the issue within the county and to monitor efforts by Navarro County prior to deciding whether they would specifically pursue adoption of an ordinance.

E.3 Hood County

As of the publication date of this report, the project team has not formally met with Hood County. However, the project team has conducted initial discussions with Hood County officials and staff. Based on these discussions, the county seems to have an interest in considering this issue. The project team is coordinating with Hood County officials to arrange for a time to present this issue to the Commissioners' Court.

E.4 Kaufman County

The project team presented this issue during the Environmental Law Conference in Terrell on June 3, 2005 that was attended by Kaufman County officials and staff. During this presentation, the project team provided an overview of options available to Kaufman County. Following this presentation, Kaufman County officials and staff have not indicated whether they have an interest in addressing this issue.

E.5 Navarro County

As a part of this study, the project team provided consulting services to assist Navarro County in the development of a county siting ordinance. The results of this analysis have been included in Appendix F of this report.

E.6 Rockwall County

Following a presentation to the Rockwall County Commissioners' Court on March 28, 2005, county officials stated that they would not have an interest in developing a county siting ordinance.

Section 1

Navarro County, Texas Solid Waste Facility Siting Ordinance Case Study

1.1 General Description

North Central Texas Council of Governments (NCTCOG) under the direction of the Texas Commission on Environmental Quality (TCEQ) has been instructed to develop a regional conformance evaluation process that addresses land use issues and local community concerns related to the siting of solid waste facilities in the region. The project team, in its research of options for implementation of the regional conformance evaluation process, has determined that the adoption of county solid waste facility siting ordinances (consistent with §364.012 of the Texas Health and Safety Code) is currently the most viable option for integrating specific county land use into the regional solid waste planning and decision making process. Where counties within the region have adopted a local siting ordinance, NCTCOG will defer to the county ordinance concerning land use when making facility conformance recommendations to the TCEQ.

Navarro County, as part of the North Central Texas region, has taken initiative to develop and adopt such an ordinance with technical and financial assistance from NCTCOG. Using solid waste grant funds, NCTCOG retained the services of R. W. Beck, Inc., in association with Chiang, Patel & Yerby, Inc., (project team), to assist Navarro County. The ordinance will give the county greater control over potential solid waste siting issues within its jurisdiction by allowing the county to prohibit the disposal of municipal or industrial solid waste within the county where disposal would represent a threat to public health, safety or welfare.

The county solid waste facility siting ordinance will designate particular areas of the county in which the disposal of municipal or industrial solid waste is not prohibited. To accomplish this, there is a need to identify areas that are either suitable or not suitable for the disposal of solid waste based on a variety of public health, safety and land use criteria. The ordinance cannot be used to prohibit the siting of solid waste facilities throughout the entire county and, therefore, will specifically designate one or more areas within the jurisdiction where municipal or industrial waste disposal is permissible.

1.2 Implementation Process

The project team, in coordination with staff from NCTCOG and Navarro County, used the following process in the development and implementation of the Navarro County siting ordinance.

- Conducted preliminary research to identify potentially relevant siting issues for Navarro County including legal, public health and safety and land use concerns.
- Held meeting with County staff and officials to review potential siting issues and discuss additional criteria for siting of solid waste facilities.
- Performed GIS land use analysis based on criteria of exclusionary areas, public health, safety, welfare, county land use patterns and expected future development.
- Produced maps based on the GIS analysis identifying areas of the county as either suitable or unsuitable for the development of solid waste facilities.
- Met with County staff and officials to review findings and further develop recommendations for areas considered suitable for siting of solid waste facilities.

1.2.1 Preliminary Research

In our preliminary research, the project team identified all Texas counties that currently have a solid waste facility siting ordinance. Each of these existing ordinances were reviewed to determine the particular criteria and standards utilized in their development. Based on the review of existing ordinances, our research into applicable federal and state laws and our knowledge of common land use planning practices, the project team identified the following categories of potential siting criteria to be addressed in the development of Navarro County's siting ordinance.

1.2.1.1 Exclusionary Criteria

Federal Subtitle D laws (40 CFR §258.10-15) outline a number of conditions under which a site will be considered unsuitable for the disposal of municipal or industrial solid waste. These conditions are referred to as exclusionary siting criteria and for the purposes of this analysis include the following considerations:

- Airport safety;
- Floodplains;
- Wetlands;
- Fault areas;
- Seismic impact zones; and
- Unstable areas.

The Subtitle D criteria are closely linked to public health, safety and welfare and serve as a logical starting point for the analysis.

1.2.1.2 Land Use Criteria

It is also necessary to identify general areas of the county that are unsuitable for the disposal of solid waste based on local development and land use characteristics. Both current and future land use criteria should be utilized in this process to ensure that potential solid waste facilities are sited in locations compatible not only with current local development, but also with projected future development.

Current Land Use

Current land use criteria may include local characteristics such as: population density, residential development, the locations of existing solid waste facilities and industries, areas with a significant concentration of schools or churches, the locations of recreational sites, historical sites, major roads, railroads, pipelines and environmentally sensitive natural features. It should also include the delineation of areas in which the county does not have jurisdiction (e.g. within the boundaries of a city or its extraterritorial jurisdiction). These areas may need to be excluded from the siting analysis.

Future Land Use

Future land use criteria may include factors such as: compatibility with proposed or existing local development or open space plans, projected population growth rates and the general directions of current and future development within the county.

1.3 Meeting with County Staff and Officials

Prior to beginning the analysis, the project team met with Navarro County staff and officials to discuss the various federal exclusionary siting criteria and possible local land use issues to be considered. The meeting provided valuable information on specific local solid waste facility siting concerns that needed to be addressed in the development of the county's ordinance. It also allowed the project team to assess the availability of local data sources and obtain those sources that would be helpful in the siting analysis.

Based on this meeting, the project team identified the following local land use criteria to be key issues in the development of Navarro County's siting ordinance:

- Environmental protection of the Richland-Chambers Reservoir and surrounding areas;
- Protection of Navarro Mills Lake and the surrounding area; and
- Consideration of areas of projected future residential growth and development.

1.4 Facility Siting Analysis

The project team conducted the solid waste facility siting analysis for Navarro County utilizing primarily GIS data and software. Our identification of suitable areas was achieved through a process of elimination in which certain areas of the county were

systematically identified as being unsuitable based on exclusionary criteria, public health, safety, welfare, county land use patterns and expected future development. Each area found to be unsuitable based on a particular criteria was shown as a layer on a GIS map of the county. When all layers were simultaneously laid over the county, the areas remaining represent areas of the county that are potentially suitable for the siting of a solid waste facility.

Some data for Navarro County was difficult to obtain, particularly in a GIS compatible format.¹ The scarcity of data presented certain challenges and limitations in our siting analysis. However, the project team was able to gather and use data from a wide variety of sources to conduct a planning-level GIS analysis that satisfactorily achieves the county's needs for the purposes of this siting ordinance.

The availability of data is likely to vary significantly among counties in the NCTCOG region. Where data is limited, an accurate planning-level analysis can still be achieved by making certain approximations for data as described in the following analysis.

1.4.1.1 Exclusionary Criteria

As mentioned previously, Federal Subtitle D laws outline several conditions under which a site should be considered unsuitable for the disposal of municipal solid waste. These exclusionary conditions include:

- Airport safety;
- Floodplains;
- Wetlands;
- Fault areas;
- Seismic impact zones; and
- Unstable areas.

The project team researched each of these issues as they apply to Navarro County. Our research and conclusions are discussed in detail in the following sections.

Airports

Under Federal Subtitle D location restrictions, solid waste facilities should generally not be located within 10,000 feet of any airport that is utilized by jet aircraft. This requirement was designed to improve airport safety by reducing the likelihood of bird hazards that may damage aircraft and cause injury to occupants.

Navarro County currently has one airport, Corsicana Municipal Airport, which is located just southeast of the center of the county and receives jet aircraft. The project team has identified the Corsicana Municipal Airport runway and a 10,000 foot buffer around the runway as unsuitable for the siting of a solid waste facility based on the

¹ GIS data sets published by a variety of governmental entities are currently not as readily available for Navarro County as compared to many larger and more populous counties.

standards outlined in Federal Subtitle D laws. Figure A.2 identifies the location of Corsicana Municipal Airport and the 10,000 foot buffer.

Floodplains

In order to protect human health and the environment, solid waste facilities should generally not be located within the 100-year floodplain. Navarro County, being home to Richland-Chambers Reservoir and its numerous tributaries as well as being bound on the east by the Trinity River, has a substantial amount of land lying within the 100-year floodplain.

The Federal Emergency Management Agency (FEMA) does not currently have floodplains information for Navarro County available in a GIS format. Due to this limitation, the project team consulted a printed FEMA map of floodplains. Based on a review of the floodplains map, the project team generated a reasonable approximation of Navarro County floodplains in GIS by placing a 2,500 foot buffer around all major creeks in the county. This approximation was used in the siting analysis to simulate county floodplains. Figure A.3 identifies the location of floodplains within the county.

Wetlands

Wetlands data for Navarro County are currently unavailable. The project team consulted numerous resources including NCTCOG, Navarro County staff, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers and Tarrant Regional Water District in attempts to locate county wetlands data. While a lack of available data has necessitated that wetlands not be examined as part of the present analysis, the County may wish to revise the analysis to incorporate any wetlands data that becomes available in the future.

Fault Lines

Federal Subtitle D stipulates that solid waste facilities should not be located within 200 feet of a fault that has experienced displacement within the last 10,000 years. Based on information from the Texas Bureau of Economic Geology, the three faults located in Navarro County were last active between 65 million years and 145 million years ago, and therefore, have no bearing on the siting of a solid waste facility within the county.

Seismic Impact Zones and Unstable Areas

The project team has determined that Navarro County does not have any seismic impact zones or unstable areas as defined by Federal Subtitle D.

1.4.1.2 Land Use Criteria

The project team worked closely with Navarro County staff and officials to identify specific land use issues to be addressed in the solid waste facility siting analysis. Five current land use criteria and two future land use criteria were identified as critical to the Navarro County suitability analysis. The following sections describe each of the selected suitability criteria and outline the project team's research and analysis of each issue. These criteria represent the siting issues that were most important for Navarro

Section 1

County based on specific local characteristics and concerns. Criteria selected by other counties in this process should also be tailored to the particular location and may differ from those identified by Navarro County.

Current Land Use Criteria

Areas Not Under County Jurisdiction

The first step in the land use portion of the siting suitability analysis was to exclude from the suitable area those locations that do not fall under Navarro County's jurisdiction with respect to §364.012 of the Texas Health and Safety Code. This law states that a siting ordinance cannot apply to areas of the county located within a municipality or the extraterritorial jurisdiction (ETJ) of a municipality. Therefore, all municipalities and ETJs were eliminated from the suitability analysis because the county ordinance is not legally applicable to facility siting decisions in those locations. Figure A.4 identifies the extent of all city limits and ETJs within the county.

Population Density

The project team used GIS data to analyze population densities within Navarro County. Areas found to have higher population densities and greater residential development were considered to be unsuitable for the location of solid waste facilities.

To conduct the analysis, the project team used U.S. Census data to identify county Census tracts with population densities greater than 50 people per square mile. This particular figure was selected based on two primary factors: 1) the figure represents a natural break in the population density data for the county; and 2) areas of the county where population densities are currently greater than 50 people per square mile correspond closely with areas in which county officials project significant future growth and development will occur.

While the project team recognizes that 50 people per square mile is a relatively low population density, approximately 75 percent of Navarro County has a density of less than that figure. These lower density areas are more suitable for solid waste facilities than those where growth has occurred and is expected to continue into the future.

A total of five Census tracts, closely corresponding to those areas in and around the City of Corsicana, were eliminated from the suitable area based on this criterion. Figure A.5 identifies those areas with a population density greater than 50 people per square mile.

Richland-Chambers Reservoir

The Richland-Chambers Reservoir and surrounding areas are important features of Navarro County that warrant special public health and development protections. The reservoir serves as a drinking water source for many cities in the North Central Texas region and is a popular local recreational amenity. For these reasons, the state legislature (under §231.074 of the Texas Local Government Code) has given the county authority to exercise certain zoning powers in areas within 5,000 feet of the reservoir.

In response to county staff's identification of the reservoir as an area of primary concern, the project team utilized GIS to generate a 5,000 foot buffer around the Richland-Chambers Reservoir and eliminated this region from the suitable area based on its environmental sensitivity. The Tarrant County Water Control inundation area, extending northward from the reservoir along Richland Creek, and a 5,000 foot buffer around that area were also excluded from suitable areas since Navarro County's zoning authority extends into these sensitive locations as well. Figure A.6 identifies the unsuitable areas surrounding the Richland-Chambers Reservoir.

Navarro Mills Lake

Navarro Mills Lake is another environmentally sensitive feature of Navarro County. The majority of the County's drinking water originates from the lake, making its protection of particular importance to public health and safety. In recognition of the importance of protecting Navarro Mills Lake and the surrounding areas, the project team utilized GIS to generate a 5,000 foot buffer around the lake and removed the selected region from the suitable area. Figure A.6 identifies the unsuitable areas surrounding Navarro Mills Lake.

Trinity River

The Trinity River, which runs along the eastern border of Navarro County, is also a significant environmental feature that warrants public health and safety protections due to the fact that it serves as a drinking water source for certain downstream customers. In recognition of the importance of protecting the quality of the Trinity River and those lands directly adjacent to it, the project team utilized GIS to generate a 5,000 foot buffer around the river and removed the selected region from the suitable area. Figure A.6 identifies the unsuitable areas surrounding the Trinity River.

Parks and Open Space

While there is no GIS data available detailing the locations of all current Navarro County parks, the project team reviewed a printed map of county parks and determined that all current and proposed parks are located within areas that have previously been identified as unsuitable based on other criteria.² Should additional parks or open space be planned or proposed in other areas of the County, this siting analysis may need to be adjusted to exclude new parks and open space areas from the suitable area.

Future Land Use Criteria

Recent School District Enrollment Patterns

The project team utilized recent school district enrollment data as an indicator of ongoing population and residential development changes within various areas of the county. A comparison of total student enrollment data from 2000-2005, for each of the seven independent school districts within the county, provided a measurable indicator

² All current and proposed county parks are located either within a city's corporate limits or within the 5,000 foot buffer around Richland-Chambers Reservoir or Navarro Mills Lake.

Section 1

of those areas of the county which are currently experiencing the largest share of residential population growth.

Navarro County: Total Student Enrollment by School District, 2000-2005						
District	Year					Average % change over last 5 yrs
	00-01	01-02	02-03	03-04	04-05	
Blooming Grove	749	811	842	917	901	3.8%
Corsicana	5,274	5,460	5,476	5,480	5,527	0.9%
Dawson	492	166	176	160	157	-20.4%
Frost	408	396	416	415	393	-0.7%
Kerens	709	716	705	734	728	0.5%
Mildred	624	622	653	668	675	1.6%
Rice	590	616	680	647	673	2.7%

Source: Texas Education Agency; <http://www.tea.state.tx.us/index.html>.

For the purposes of this analysis, school districts with average annual enrollment growth of 2 percent or greater over the last five years were considered to be unsuitable for the location of solid waste facilities. Consequently, the areas corresponding with two local school districts, Blooming Grove ISD and Rice ISD, were eliminated from the suitable area based on this criterion. Figure A.7 identifies these unsuitable areas.

County Growth and Development Patterns

Navarro County staff and officials have identified several additional areas of the county where future residential and commercial growth and development are expected to occur. Particular areas identified for future growth include:

- Northern Navarro County from the City of Corsicana to the Ellis County line.
- Areas immediately south and southeast of the City of Corsicana and around the Richland-Chambers Reservoir.
- Along IH-45 and US 287.
- Areas located in the northwestern and southeastern portions of the county.

The project team has utilized this information to produce GIS layers approximating the projected areas of future growth and development. These areas were eliminated from the suitable area. Figure A.8 identifies those areas of the county where significant future growth and development are expected to occur.

1.4.1.3 Maps Identifying Suitable and Unsuitable Areas

The final result of this process of elimination is a map detailing the suitable and unsuitable areas for the location of a solid waste facility in Navarro County. Figure A.9 identifies these suitable and unsuitable areas.

It is important to remember that this is a planning level analysis designed to assist the County in identifying areas that are expected to be most suitable as the location for a solid waste facility based on selected criteria for exclusionary areas, public health, safety, welfare, county land use patterns and expected future development. This map is

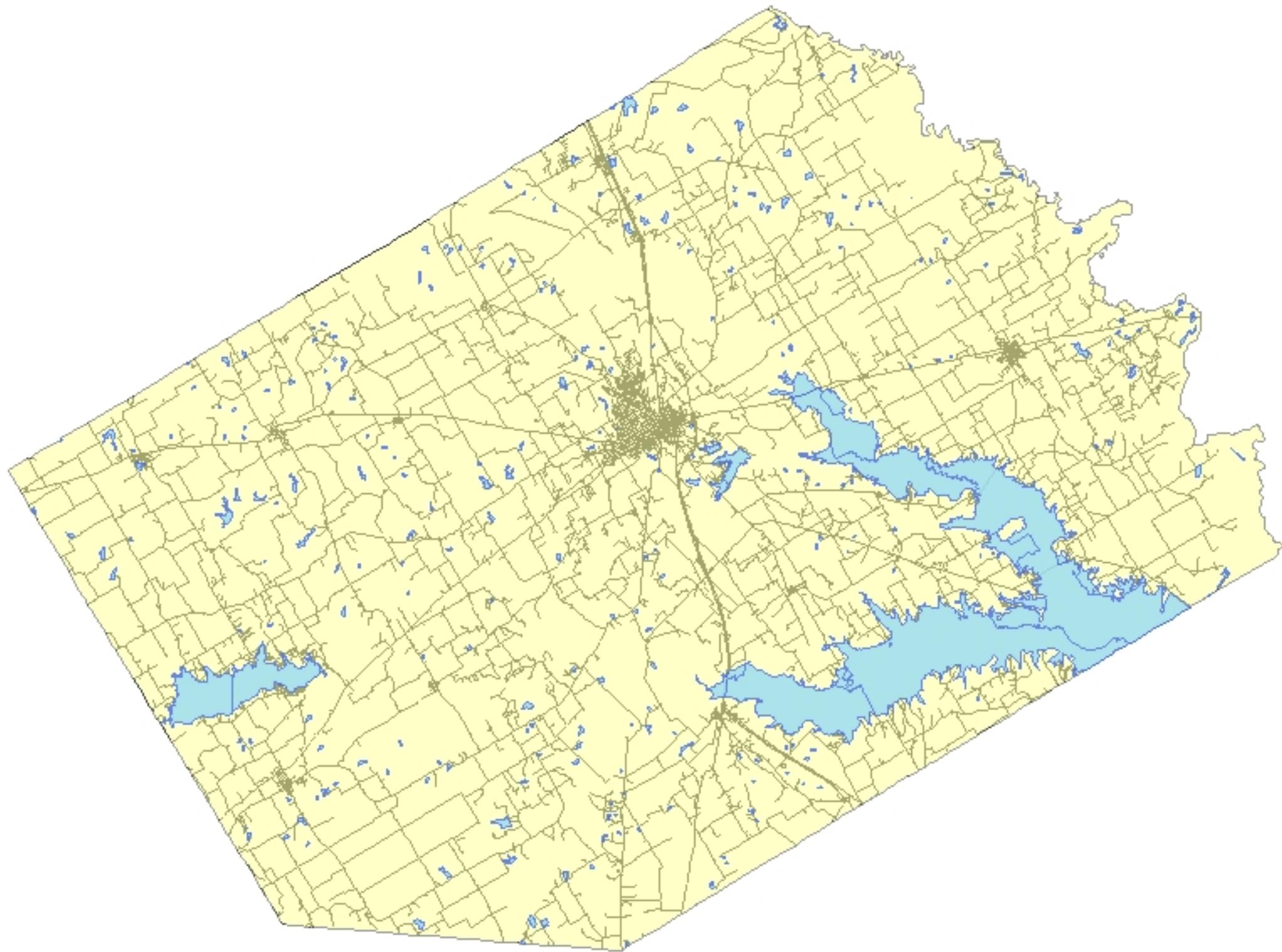
not intended to imply that all locations within the suitable area will necessarily be appropriate as the site for a solid waste facility.

The map in Figure 1.9 is designed to serve as the basis for Navarro County's solid waste facility siting ordinance. Both the process that the project team has used in defining suitable and unsuitable areas and the development of a GIS map as the basis for the ordinance represent a somewhat different approach than has been utilized by other Texas counties. However, the project team believes that the methods employed in this analysis are more comprehensive, objective and defensible than many of the methods previously utilized in the development of county solid waste facility siting ordinances and can be easily adapted to other counties in the NCTCOG region.

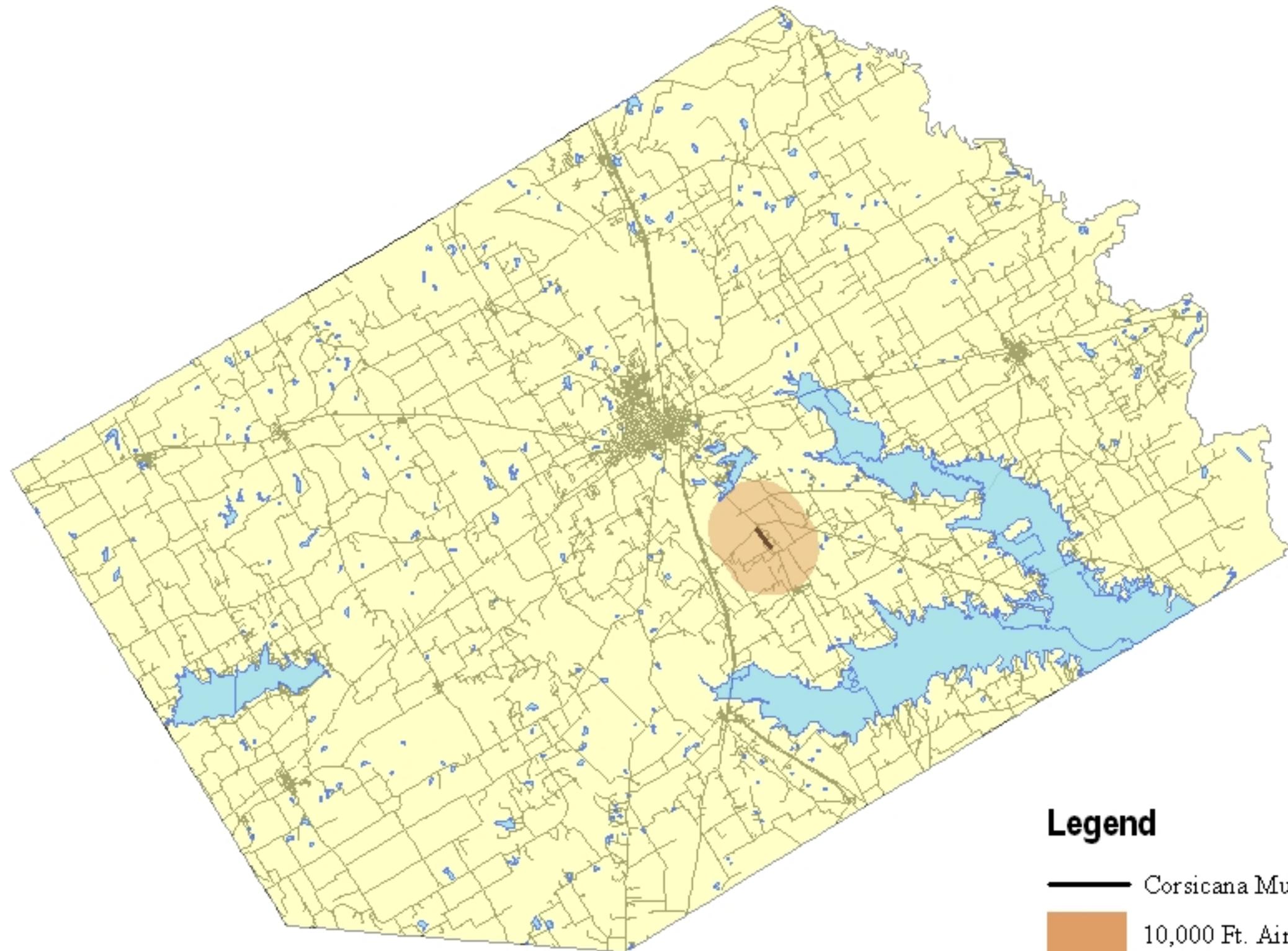
1.5 Next Steps

The next step for Navarro County is to develop and adopt an ordinance in accordance with §364.012 of the Texas Health and Safety Code based on the analysis included in this document. Information concerning how to develop and adopt an ordinance is available in Section 3 of NCTCOG's "Regional and Local Review of Municipal Solid Waste Facility Permits and Registrations."

**Figure A.1: Navarro County
Basemap**



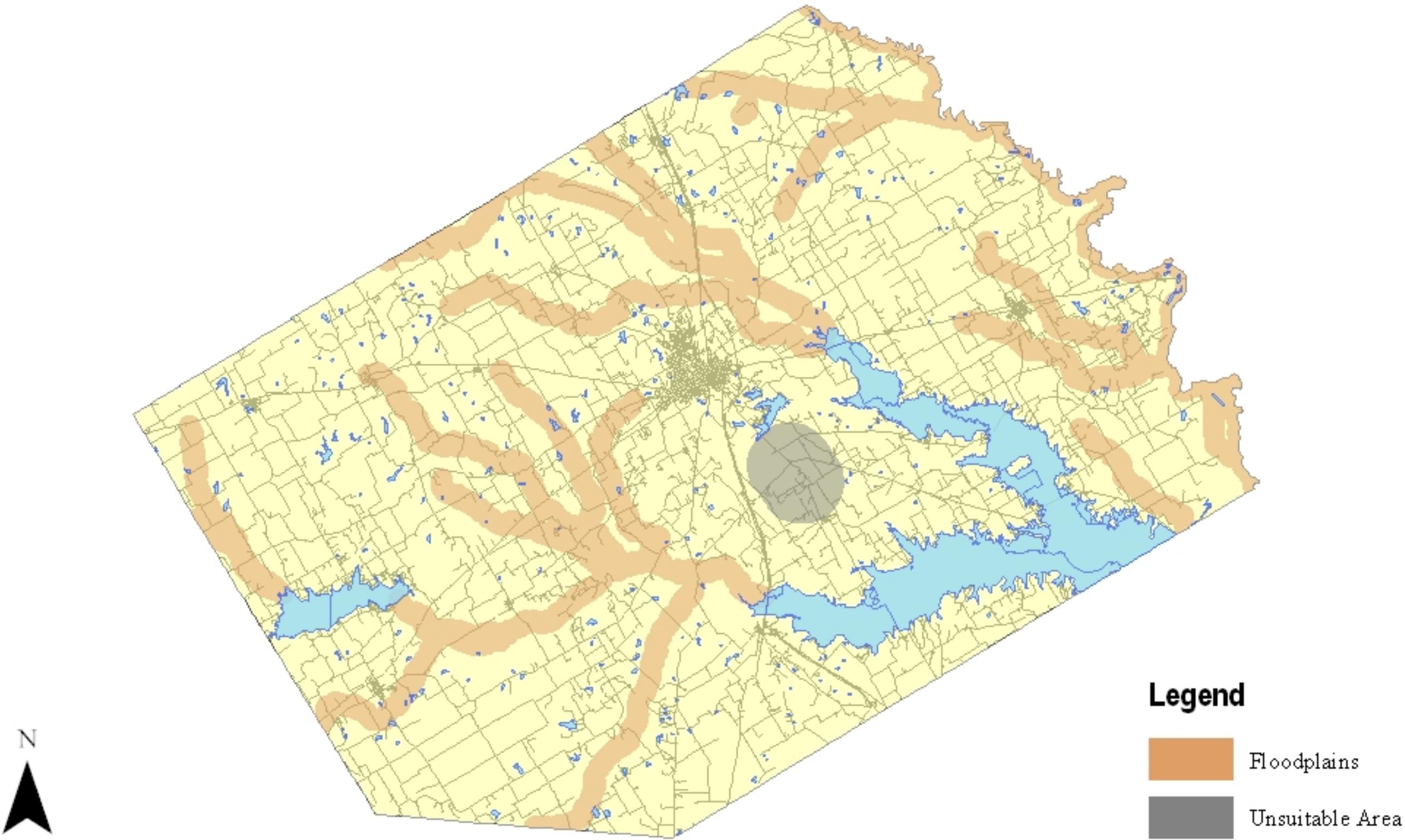
**Figure A.2: Navarro County
Corsicana Municipal Airport and 10,000 ft. Buffer**



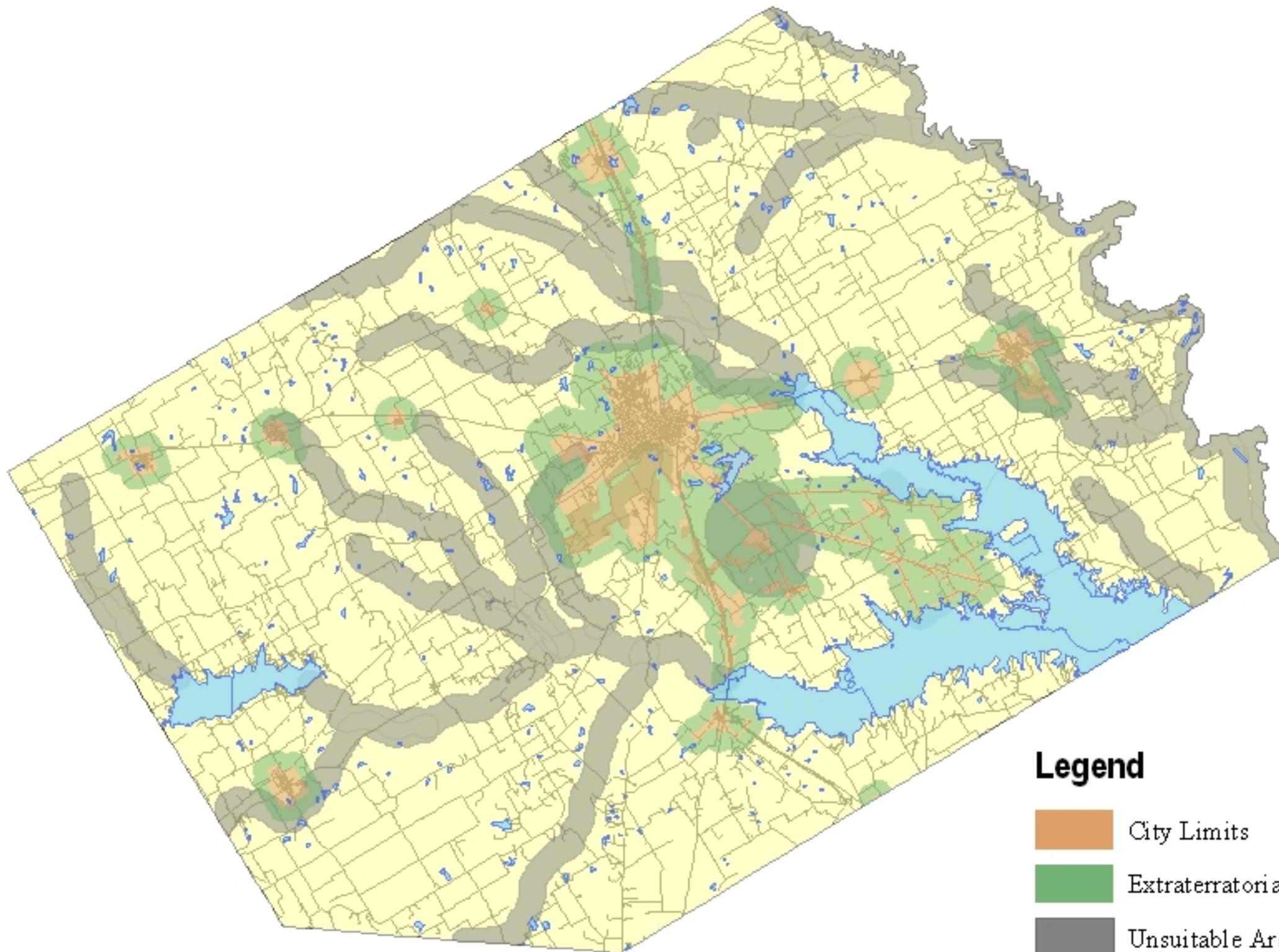
Legend

- Corsicana Municipal Airport
- 10,000 Ft. Airport Buffer

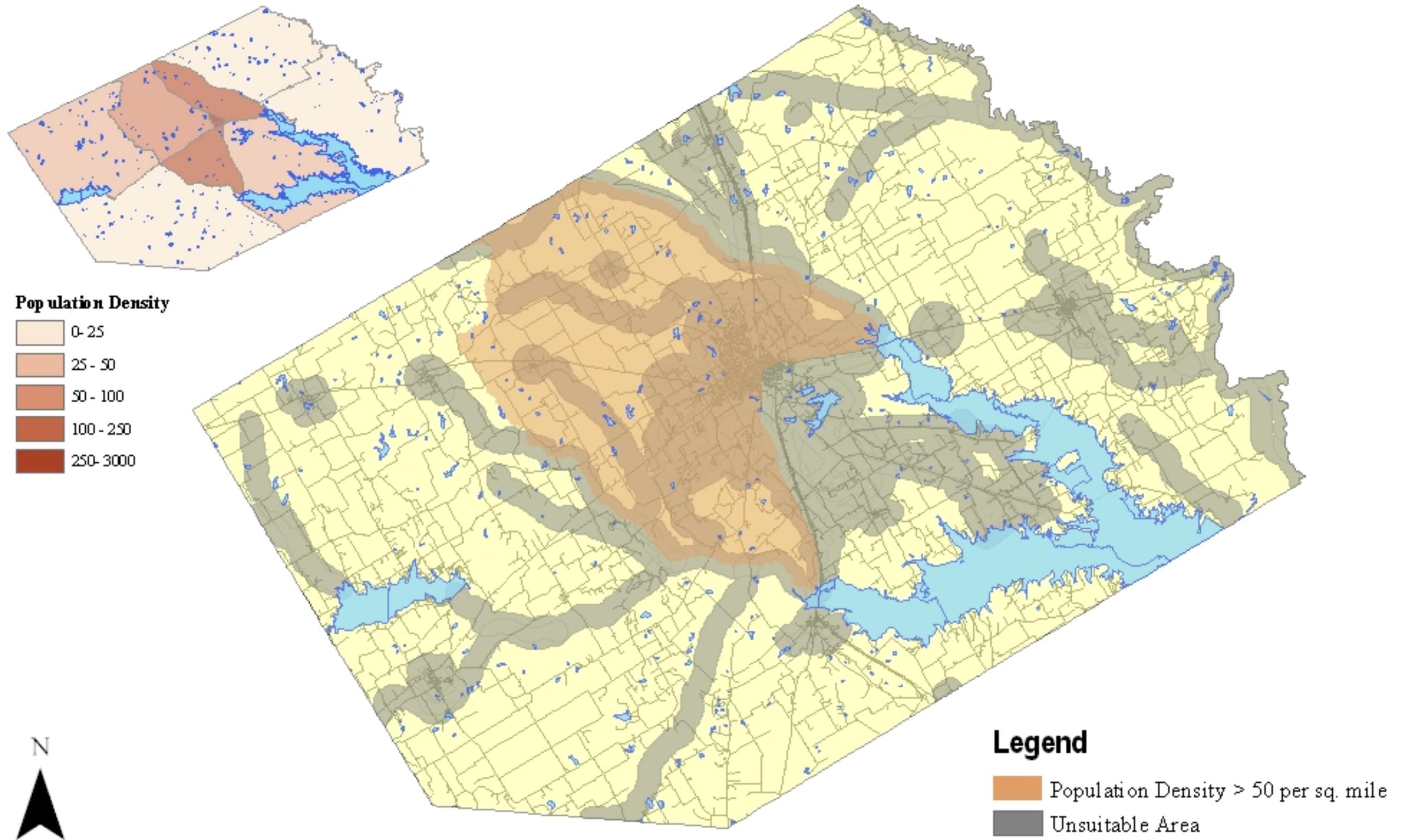
**Figure A.3: Navarro County
100-Year Floodplain Approximation**



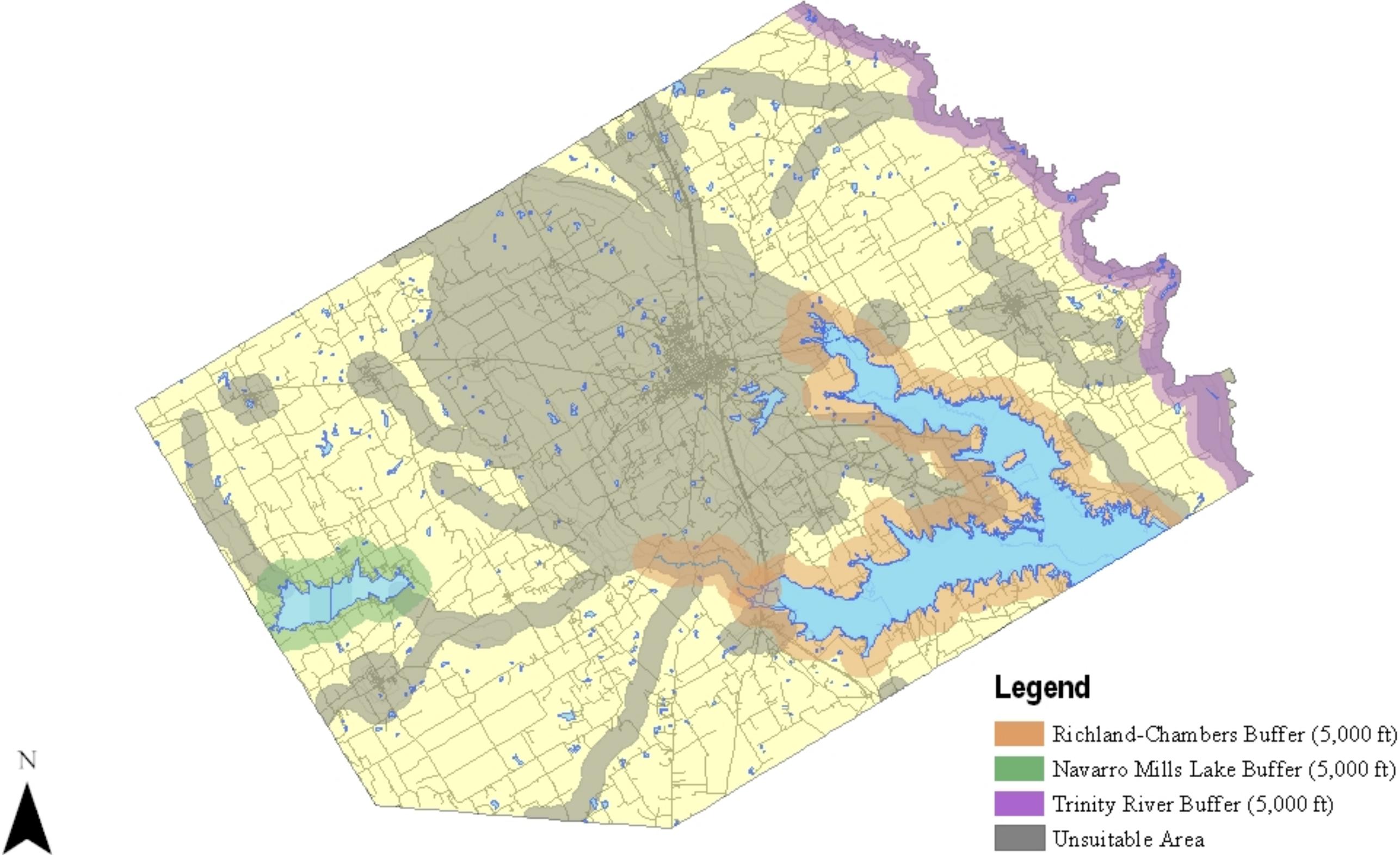
**Figure A.4: Navarro County
Areas Outside of County Jurisdiction**



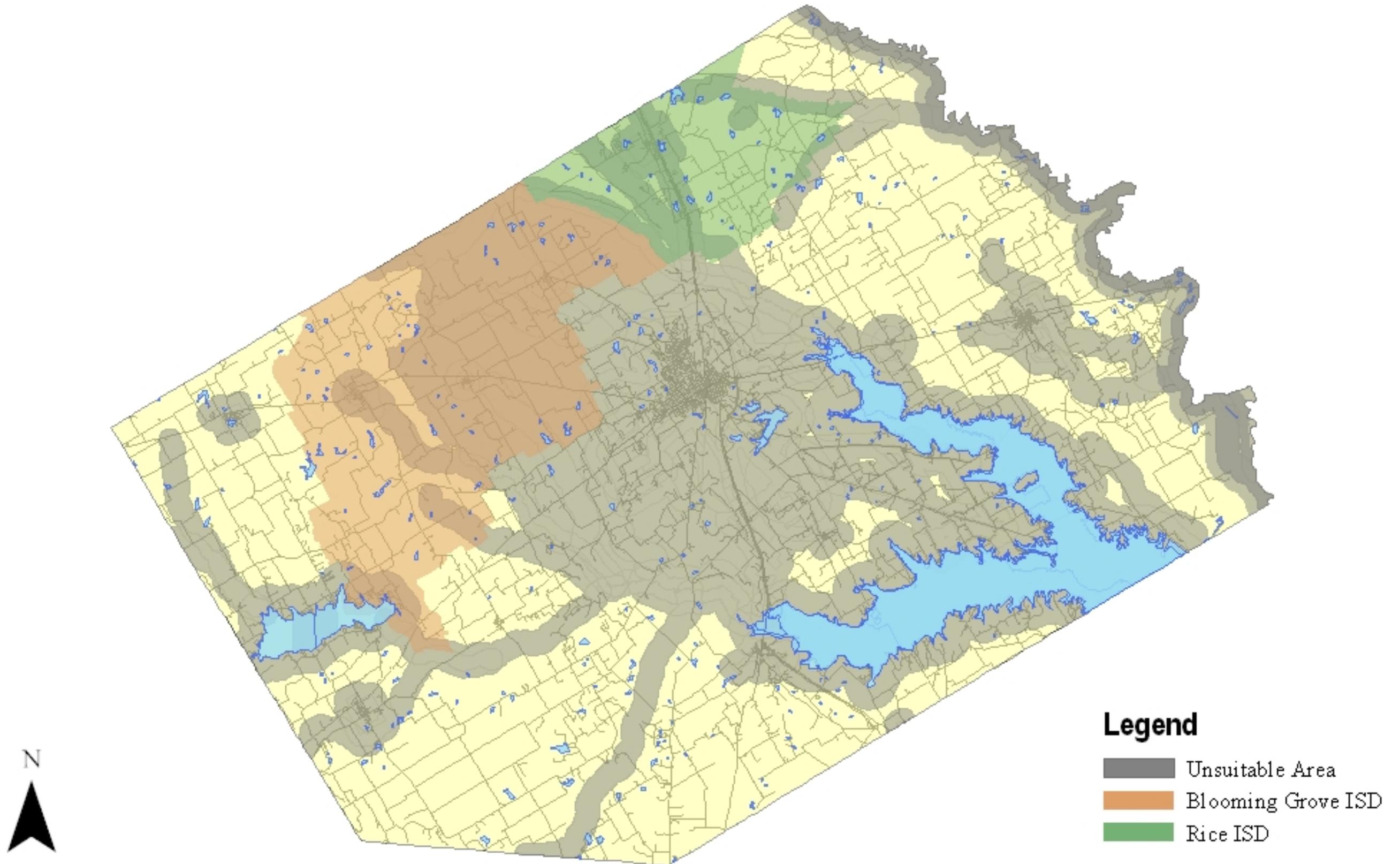
**Figure A.5: Navarro County
Population Density Greater than 50 People per Square Mile**



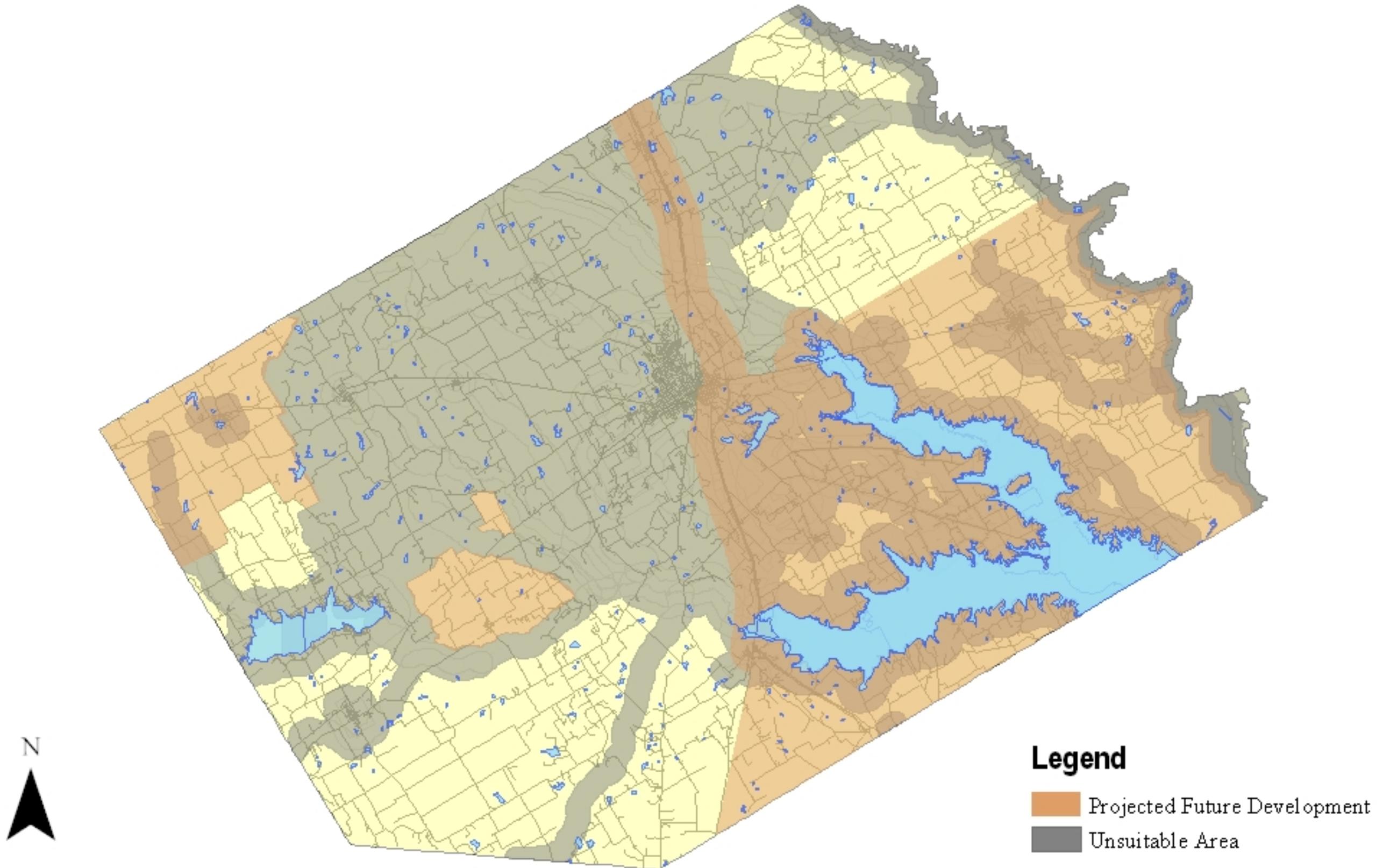
**Figure A.6: Navarro County
Richland Chambers Reservoir, Navarro Mills Lake and Trinity River Buffers**



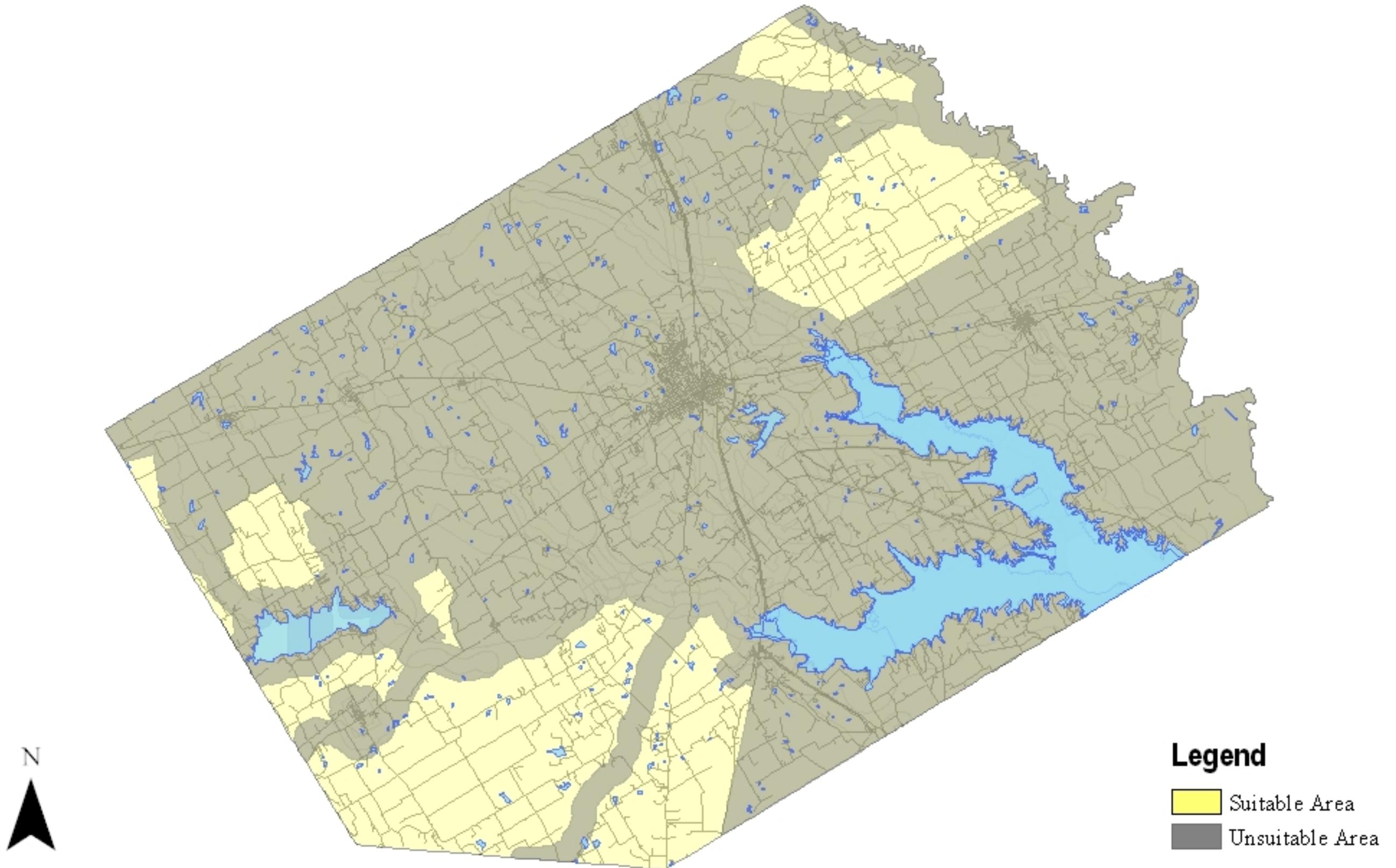
**Figure A.7: Navarro County
School Districts with Average Annual Enrollment Growth of 2.0% or Greater, 2000-2005**



**Figure A.8: Navarro County
Areas of Projected Future Development**



**Figure A.9: Navarro County
Composite of All Unsuitable Areas**



STATE OF TEXAS
COUNTY OF FORT BEND

§
§
§

**ORDER PROHIBITING SOLID WASTE DISPOSAL
IN FORT BEND COUNTY**

**SECTION I
GENERAL PROVISIONS AND FINDINGS**

Whereas, the Commissioners Court of Fort Bend County, Texas, has both the responsibility and authority to protect the public health, safety and general welfare by prohibiting solid waste disposal in the unincorporated areas of Fort Bend County, except for those areas designated as solid waste disposal sites, pursuant to the authority of the Texas Health and Safety Code § 363.112; and,

Whereas, solid waste disposal, especially the disposal of solid waste in landfills, is an activity that has high potential to negatively impact the health, safety and welfare of any community; and,

Whereas, this Court believes and hereby finds that further development or establishment of landfills in certain areas of the county would constitute an unacceptable risk and threat to public health, safety and welfare for the reasons stated below, among others, to wit:

The Court finds that the presence of solid waste disposal facilities in general may negatively influence property values; and,

The Court finds that there presently exists solid waste disposal sites in this county which are adequate for the present and future needs of the county and that no others are needed in the affected areas; and,

The Court further finds that solid waste disposal activities in the affected area could hamper economic development in the affected area; and

The Court finally finds that substances contained within a landfill, especially in a hazardous or industrial landfill, escape into the air or waterways, including subsurface waterways, significant threats to the public health, safety and welfare exist.

**SECTION II
DEFINITIONS**

The following words and terms, when used in this Ordinance, shall have the following meanings, unless the context clearly indicates otherwise.

Affected area: refers to the area of the County in which solid waste disposal is prohibited.

Industrial Solid Waste: solid waste resulting from or incidental to a process of industry or manufacturing, or mining, or agricultural operations.

Municipal Solid Waste: solid waste resulting from or incidental to municipal, community, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and other solid waste other than industrial solid waste.

Solid Waste: Subject to the limitations of 42 U.S.C. § 6903 (27) and 40 C.F.R. § 261.4 (a), garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.); and,

(B) does include hazardous substances

Solid Waste Facility: all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of processing, storage, or

disposal operational units such as one or more landfills, surface impoundment's or a combination of units.

SECTION III
APPROVED AREAS FOR DISPOSAL OF SOLID WASTE IN UNINCORPORATED AREAS
OF FORT BEND COUNTY

For the above reasons, and pursuant to the provisions of § 363.112 of the Texas Health and Safety Code, the Commissioners Court of Fort Bend County hereby **ORDAINS, RESOLVES, ORDERS and ESTABLISHES** the following **ORDINANCE**:

IT IS ORDAINED and ORDERED that the disposal of solid waste within Fort Bend County, Texas, is not prohibited in the following areas:

AREA ONE

FIELD NOTES FOR A 1194.88 ACRE TRACT OF LAND BEING A PART OF THE TEXAS GULF SULPHUR COMPANY CALLED 676.25 ACRE TRACT OF LAND (4TH TRACT) IN THE PHILO FAIRCHILD SURVEY, ABSTRACT 24, FORT BEND COUNTY, TEXAS AND BEING OF RECORD IN VOLUME 116, PAGE 337, DEED RECORDS FORT BEND COUNTY, TEXAS, AND A PART OF THE TEXAS GULF SULPHUR COMPANY CALLED 539.00 ACRE TRACT (5TH TRACT) IN THE T.F. PICKNEY SURVEY, ABSTRACT 655, FORT BEND COUNTY, TEXAS AND BEING OF RECORD IN VOLUME 116, PAGE 337, DEED RECORDS FORT BEND COUNTY, TEXAS, A PART OF THE TEXAS GULF SULPHUR COMPANY CALLED 495.7 ACRE TRACT (6TH TRACT) IN THE GEORGE WATERS SURVEY, ABSTRACT 346, FORT BEND COUNTY, TEXAS, RECORDED IN VOLUME 116, PAGE 337, DEED RECORDS FORT BEND COUNTY, TEXAS, A PART OF THE TEXAS GULF SULPHUR COMPANY CALLED 300.00 ACRE TRACT (1ST TRACT) IN THE PHILO FAIRCHILD SURVEY, ABSTRACT 24, RECORDED IN VOLUME 116, PAGE 337, DEED RECORDS FORT BEND COUNTY, TEXAS;

COMMENCING at a point in the centerline of F.M. Highway 1994 (100 foot right-of-way), said point being North 47 degrees 49 minutes, 52 seconds West, 50.00 feet from a ½ inch iron pipe found at the point of intersection of the Northeast line of Davis Estate Road (60 foot right-of-way) and the Southeast line of said F.M. Highway 1994 (100 foot right-of-way);

THENCE, South 47 degrees 49 minutes 52 seconds East along said line being the Northeast line of Davis Estate Road (60 foot right-of-way) at 50 feet pass a ½ inch iron pipe and continuing for a total distance of 547.09 feet to a point on said line intersecting with the Southeast line of the Cane Belt Railroad, 160 foot wide right-of-way, being of record in Volume 131, Page 293 and Volume 262, Page 68, Deed Records Fort Bend County, Texas, for the West corner and Place of Beginning of the herein described 1194.88 acre tract of land;

THENCE, continuing South 47 degrees 49 minutes 52 seconds East along the Northeast line of said Davis Estate Road, 899.83 feet to a ½ inch iron pipe found at the beginning of a curve to the left;

THENCE, around said curve to the left with a central angle of 14 degrees 30 minutes 44 seconds, a radius of 1148.25 feet, a length of 290.83 feet, a tangent of 146.20 feet and a chord bearing South 55 degrees 06 minutes 07 seconds East, 290.06 feet to a ½ inch iron pipe found at the tangency of said curve;

THENCE, South 62 degrees 27 minutes 55 seconds East along the Northeasterly line of Davis Estate Road, 9772.99 feet to a ½ inch iron pipe found on said line for the South most corner of the herein described 1194.88 acre tract of land;

THENCE, North 01 degree 55 minutes 18 seconds West, 4.13 feet to a ½ inch iron pipe found on the Easterly line of the aforementioned 676.25 acre tract (4th Tract) recorded in Volume 116, Page 337, Deed Records Fort Bend County, Texas for an angle point;

THENCE, North 01 degree 58 minutes 42 seconds West along the Easterly line of the aforementioned called 676.25 acre tract (4th Tract) recorded in Volume 116, Page 337, Deed Records Fort Bend County, Texas, same being the Westerly line of the adjoining William E. Sutton call 429.65 acre tract recorded in Volume 2548, Page 1497 of the Official Records of Fort Bend County, Texas 2794.23 feet to a 1 inch iron pipe found on said line for an angle point;

THENCE, North 01 degree 30 minutes 28 seconds West, 2562.50 feet to a 1 inch iron pipe found for an angle point on said line;

THENCE, North 00 degrees 15 minutes 59 seconds East along said line at 525.63 feet pass a 1 inch iron pipe found on said line and continuing for a total distance of 1033.46 feet to a point on the Southerly bank of Big Creek for the most Easterly corner of the herein described 1194.88 acre tract of land;

THENCE, along the meanders of the Southerly bank of Big Creek as follows:

North 33 degrees 28 minutes 20 seconds West, 265.68 feet
North 33 degrees 28 minutes 20 seconds West, 174.53 feet
North 41 degrees 42 minutes 28 seconds West, 200.89 feet
North 39 degrees 58 minutes 14 seconds West 301.87 feet
North 34 degrees 30 minutes 54 seconds West, 182.83 feet
North 26 degrees 25 minutes 40 seconds West, 261.38 feet
North 32 degrees 02 minutes 18 seconds West, 279.90 feet
North 30 degrees 35 minutes 39 seconds West, 260.20 feet
North 15 degrees 27 minutes 21 seconds West, 345.51 feet
North 26 degrees 02 minutes 18 seconds West, 114.71 feet
North 36 degrees 33 minutes 54 seconds West, 77.48 feet
North 51 degrees 32 minutes 26 seconds West, 132.74 feet
North 56 degrees 55 minutes 10 seconds West, 222.08 feet

North 65 degrees 46 minutes 53 seconds West, 143.33 feet
North 73 degrees 31 minutes 05 seconds West, 120.47 feet
North 78 degrees 22 minutes 48 seconds West, 387.76 feet
North 71 degrees 23 minutes 56 seconds West, 174.06 feet
North 70 degrees 57 minutes 14 seconds West, 213.55 feet
North 76 degrees 44 minutes 40 seconds West, 152.96 feet
South 89 degrees 58 minutes 16 seconds West, 118.00 feet
South 77 degrees 31 minutes 18 seconds West, 285.54 feet
South 78 degrees 17 minutes 19 seconds West, 140.82 feet
South 89 degrees 42 minutes 03 seconds West, 180.29 feet
North 59 degrees 34 minutes 12 seconds West, 168.32 feet
South 83 degrees 54 minutes 59 seconds West, 190.95 feet
North 55 degrees 09 minutes 59 seconds West, 127.06 feet
North 62 degrees 18 minutes 11 seconds West, 126.14 feet
South 45 degrees 38 minutes 28 seconds East, 218.62 feet
North 38 degrees 04 minutes 35 seconds West, 211.29 feet
North 21 degrees 55 minutes 38 seconds West, 133.83 feet
North 15 degrees 31 minutes 37 seconds West, 147.63 feet
North 08 degrees 42 minutes 27 seconds West, 283.50 feet to a point on the Southerly bank of said Big Creek intersecting with the Southeast line of the Cane Belt Railroad (200 foot wide right-of-way) for the North most corner of the herein described 1194.88 acre tract of land;

THENCE, South 46 degrees 47 minutes 23 seconds West along the Southeast line of said Cane Belt Railroad being of record in Volume 131, Page 293 and Volume 262, Page 68, Deed Records Fort Bend County, Texas, 919.11 feet to a point for corner on said right-of-way line, said right-of-way having an offset;

THENCE, North 43 degrees 12 minutes 37 seconds West, 20.00 feet to a point for corner on said railroad right-of-way line where said railroad right-of-way is 160 feet wide;

THENCE, South 46 degrees 47 minutes 23 seconds West along the Southeast line of said Cane Belt Railroad (160 foot right-of-way), 5970.34 feet to the Place of Beginning and containing 1194.88 acres of land, more or less.

AREA TWO

A 1.00 ACRE TRACT OF LAND OUT OF THE HERBERT BLASE ORIGINAL 100 ACRE TRACT (VOLUME 254, PAGE 438 OF THE DEED RECORDS), IN THE HENRY SCOTT LEAGUE, ABSTRACT 83, FORT BEND COUNTY, TEXAS.

FOR CONNECTION and Place of Beginning, commence at a point on the centerline of Klauke Road (60 feet wide) marking the Southwest corner of Rosenberg Farms Subdivision and the Southeast corner of the Herbert Blase Tract; said corner being in the South line of the Henry Scott League;

THENCE, North 89 degrees 29 minutes 40 seconds West, 114.76 feet along the centerline of said road to a Point for the Southwest corner of this 1.00 acre tract;

THENCE, North 00 degrees 00 minutes 10 seconds East, at 30.0 feet pass an iron pipe set in the North line of said road, in all 379.57 feet to an iron pipe set for the Northwest corner of this tract;

THENCE, South 89 degrees 29 minutes 40 seconds East, 114.76 feet to an iron pipe set for the Northeast corner of this tract;

THENCE, South 00 degrees 00 minutes 10 seconds West, along the West line of Rosenberg Farms Subdivision, at 349.57 feet pass an iron pipe set in the North line of said road, in all 379.57 feet to the Place of Beginning and containing 1.00 acre of land, including 0.08 acre in said road; and being the same property described in deed dated October 4, 1963 from Herbert Blase et ux to Bobbie Schramme et ux, recorded in Volume 445, at Page 24, Deed Records, Fort Bend County, Texas, to which reference is here made in aid hereof.

AREA THREE

A 44.2473 ACRE TRACT OF LAND OUT OF THE ORIGINAL ARNOLD PETER 85.6265 ACRE TRACT IN THE HENRY SCOTT LEAGUE, ABSTRACT # 83, FORT BEND COUNTY, TEXAS.

FOR CONNECTION begin at a point on the centerline of Klauke Road (60 feet wide) marking the Southwest corner of Rosenberg Farms Subdivision (Volume 3, Page 575, Deed Records);

THENCE, North 89 degrees 29 minutes 40 seconds West, 114.76 feet to the Southeast corner of and Place of Beginning for this tract;

THENCE, North 89 degrees 29 minutes 40 seconds West, 635.51 feet along Klauke Road to the Southwest corner of this Tract;

THENCE, North 0 degrees 2 minutes 26 seconds East, 2626.82 feet along a fence line to a ½ inch iron pipe set for the Northwest corner of this tract;

THENCE, East, 748.52 feet along the centerline of a 60 foot wide drainage easement on Seabourne Creek to a ½ inch iron pipe set for the Northeast corner of this tract;

THENCE, South 0 degrees 0 minutes 10 seconds West, 2253.87 feet along the West line of Rosenberg Farms Subdivision to a ½ inch iron pipe set for the Northerly Southeast corner of this Tract and Northeast corner of the Bobby Schramme 1.0 acre tract;

THENCE, North 89 degrees 29 minutes 40 seconds West, 114.76 feet to a ½ inch iron pipe set for corner;

THENCE, South 0 degrees 0 minutes 10 seconds West, at 349.57 feet pass an iron pipe, in all 379.57 feet to the Place of Beginning and containing 44.2473 acres;

TOGETHER WITH A DRAINAGE EASEMENT FOR USE IN THE RELOCATING OF SEABOURNE CREEK, HAVING A DESCRIPTION AS FOLLOWS, TO-WIT:

BEGINNING at the Northeast corner of the above described 44.2473 acre tract at an iron pipe for the Southeast corner of this easement;

THENCE, West 748.52 feet to an iron pipe at the Northwest corner of the above described 44.2473 acre tract for the Southwest corner of this easement;

THENCE, North 0 degrees 02 minutes 26 seconds East 214.73 feet to a point for the Northwest corner of this easement which is in the West line of the residue of grantor's original 85.6265 acre tract;

THENCE, East 60 feet to a point for the upper Northeast corner of this easement;

THENCE, South 0 degrees 02 minutes 26 seconds West 184.73 feet to an interior corner of this easement;

THENCE, East 688.52 feet to a point in the East line of the residue of grantor's original 85.6265 acre tract of the lower Northeast corner of this easement;

THENCE, South 0 degrees 00 minutes 10 seconds West 30 feet to the Place of Beginning.

AREA FOUR

A FIELD NOTE DESCRIPTION OF A 138.20 ACRE TRACT OF LAND (CALLED 139.91 ACRES) COMBINING THE CALL 34.7 ACRE CURRIE ESTATE TRACT (VOLUME 1641, PAGE 778, DEED RECORDS); THE CALL 11.75 ACRE EDGAR KLINGLE, ET AL TRACT (VOLUME 1146, PAGE 807, DEED RECORDS); THE CALL 7.39 ACRE CHARLES BLASE TRACT (VOLUME 1938, PAGE 709, DEED RECORDS); THE CALL 40.82 ACRE KELM ESTATE TRACT (VOLUME 1641, PAGE 677, DEED RECORDS); THE CALL 44.25 ACRE VELESTA PETTER MILLER TRACT (VOLUME 1052, PAGE 556, DEED RECORDS); AND THE CALL 1.00 ACRE ANNETTE SCHRAMME TRACT (VOLUME 1317, PAGE 490, DEED RECORDS), BEING IN THE HENRY SCOTT LEAGUE, ABSTRACT 83, FORT BEND COUNTY, TEXAS, SAID 137.13 ACRE TRACT BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO WIT:

BEGINNING AT A POINT in the North right-of-way of Klauke Road, said point being North 30 feet of the Southwest corner of the Rosenberg Farms Subdivision (Volume 3, Page 575, Deed Records), said corner lies in the South line of the Henry Scott League, Abstract 83, said corner further being the Southwest corner of the Fort Bend County 40.35 acre tract (Volume 742, Page 897, Deed Records) and the Southeast corner of the original Annette Schramme 1.00 acre tract, said point being the Southeast corner of and Place of Beginning of the herein described 137.13 acre tract;

THENCE, South 89 degrees 44 feet 24 inches West a distance of 748.54 feet along the North right-of-way of Klauke Road to a 2 inch iron pipe found for the Southwest corner of the original Velesta Petter Miller 44.25 acre tract;

THENCE, South 89 degrees 35 feet 47 inches West a distance of 111.23 feet along the North right-of-way of Klauke Road to a 2 inch iron pipe found for the Southwest corner of the original Charles Blase 7.39 acre tract and the Southeast corner of the original Currie Estate 34.7 acre tract;

THENCE, South 89 degrees 58 feet 25 inches West a distance of 1222.67 feet along the North right-of-way of Klauke Road to a 2 inch iron pipe found for the Southwest corner of the original Edgar Klinge 11.75 acre tract and the Southwest corner of the herein described tract;

THENCE, North 00 degrees 06 feet 40 inches East a distance of 3891.29 feet to a ¾ inch iron pipe found in the Southeast right-of-way of Spur 529 for the Northwest corner of the original Edgar Klinge 11.75 acre tract and the Northwest corner of the herein described tract;

THENCE, North 55 degrees 16 feet 54 inches East a distance of 157.12 feet along the Southeast right-of-way line of Spur 529 to a ¾ inch iron pipe found for corner and being the Northeast corner of the original Edgar Klinge 11.75 acre tract;

THENCE, South 00 degrees 07 feet 46 inches West a distance of 1249.76 feet to a point in the centerline of Seabourne Creek;

THENCE, North 77 degrees 13 feet 04 inches East a distance of 637.35 feet along the centerline of Seabourne Creek to a point in the Westerly line of the original Currie Estate 34.7 acre tract;

THENCE, North a distance of 510.04 feet to a 2 inch iron pipe found for the Northwest corner of the original Currie Estate 34.7 acre tract;

THENCE, North 89 degrees 56 feet 47 inches East a distance of 420.73 feet to a 2 inch iron pipe found for the Northeast corner of the original Currie Estate 34.7 acre tract;

THENCE, South 00 degrees 43 feet 07 inches East a distance of 532.70 feet to a point;

THENCE, South 89 degrees 46 feet 46 inches East a distance of 113.13 feet to a point;

THENCE, South 00 degrees 45 feet 46 inches East a distance of 253.66 feet to a 1 ½ inch iron pipe found for the Northwest corner of the original Velesta Petter Miller 44.25 acre tract;

THENCE, North 89 degrees 13 feet 14 inches East a distance of 748.52 feet to a 1 ½ inch iron pipe in the West line of the Rosenberg Farms Subdivision, found for the most Easterly Northeast corner of the herein described tract;

THENCE, South 00 degrees 45 feet 46 inches East along the West line of the Rosenberg Farms Subdivision a distance of 2601.40 feet to the Place of Beginning and containing 138.20 acres of land.

AREA FIVE

BEING 40.35 ACRES BEING THE CHARLES E. TEAT, JR., LOTS 47 AND 52, OF ROSENBERG FARMS SUBDIVISION PLAT OF WHICH IS RECORDED IN VOLUME 3, AT PAGE 574, OF THE DEED RECORDS OF FORT BEND COUNTY, TEXAS, IN THE HENRY SCOTT LEAGUE, ABSTRACT 83, FORT BEND COUNTY, TEXAS, BEING THE SAME PROPERTY CONVEYED BY CHARLES E. TEAT, JR., TO J. FRANK JUNGMAN BY DEED DATED MAY 29, 1969, RECORDED IN VOLUME 516, AT PAGE 16, OF THE DEED RECORDS OF FORT BEND COUNTY, TEXAS.

AREA SIX

BEING A 598.583 ACRE TRACT OF LAND OUT OF THE FRANKLIN HOOPER SURVEY, ABSTRACT 198, FORT BEND COUNTY, TEXAS; ALSO BEING PART OF THE WALCOTT AND SEAMANS SUBDIVISION AS RECORDED IN VOLUME 5, PAGE 378 OF THE DEED RECORDS OF FORT BEND COUNTY, TEXAS; SAID 598.583 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a found 2-inch galvanized iron pipe for corner at the Southwest corner of the said Franklin Hooper Survey;

THENCE, North 00 degrees 41 feet 23 inches West with a fence line and the West line of the Franklin Hooper Survey, 2870.71 feet to a found ½-inch iron pipe for corner;

THENCE, North 00 degrees 44 feet 37 inches West with said fence line and West line of the Franklin Hooper Survey, 1090.86 feet to a found ¾-inch iron pipe for corner;

THENCE, North 00 degrees 46 feet 41 inches West with said fence line and West line of the Franklin Hooper Survey, 1356.68 feet to a found ¾-inch iron pipe for corner;

THENCE, North 79 degrees 54 feet 45 inches East along a fence line, 3025.50 feet to a found ¾-inch iron pipe for corner;

THENCE, South 00 degrees 44 feet 09 inches East with a fence line, 997.91 feet to a found ¾-inch iron pipe for corner;

THENCE, North 89 degrees 16 feet 58 inches East with a fence line, 2867.68 feet to a found ½-inch iron rod for corner in the West Margin of the I. & G. N. Railroad right-of-way;

THENCE, South 19 degrees 48 feet 00 inches West with said West Margin, 5139.19 feet to a found ½-inch iron rod for corner in the South Line of the Franklin Hooper Survey;

THENCE, South 89 degrees 17 feet 12 inches West with a fence line and the South line of the Franklin Hooper Survey, 4051.34 feet to the Place of Beginning, containing 598.583 acres of land, more or less.

TOGETHER WITH A 1,350.8792 ACRE (58,844,299 SQUARE FEET) TRACT OF LAND OUT OF THE FRANKLIN HOOPER SURVEY, ABSTRACT 198 AND THE T. W. THOMPSON SURVEY, ABSTRACT 335, GALVESTON COUNTY, TEXAS; SAID 1,350.8792 ACRE TRACT BEING COMPRISED OF THE FOLLOWING SEVEN (7) TRACTS OF LAND: A CALCULATED 160.603 ACRES OUT OF A CALLED 272 ACRE TRACT OUT OF SAID FRANKLIN HOOPER SURVEY, AS CONVEYED FROM HERMANN HOSPITAL ESTATE TO HERMANN HEALTHCARE SYSTEM, INC. BY DEED DATED NOVEMBER 18, 1997 AS RECORDED IN FILE NUMBER 9774265 OF THE FORT BEND COUNTY OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, A CALLED 69.9992 ACRES OUT OF SAID 272 ACRE TRACT AS CONVEYED FROM THE BOARD OF TRUSTEES OF THE HERMANN HOSPITAL ESTATE TO BROWNING-FERRIS, INC. BY DEED DATED MAY 18, 1993 AS RECORDED IN VOLUME 2523, PAGE 804 OF THE FORT BEND COUNTY DEED RECORDS, A CALLED 598.583 ACRE TRACT OF LAND OUT OF THE SAID FRANKLIN HOOPER SURVEY, AS CONVEYED TO BROWNING-FERRIS, INC. BY DEED DATED SEPTEMBER 27, 1985 AS RECORDED IN VOLUME 1761, PAGE 574 OF THE FORT BEND COUNTY DEED RECORDS, A CALLED 372 ACRE TRACT AND 71.38 ACRE TRACT OUT OF THE T. W. THOMPSON SURVEY, AS CONVEYED FROM HERMANN HOSPITAL ESTATE TO HERMANN HEALTHCARE SYSTEM, INC. BY DEED DATED NOVEMBER 18, 1997 AS RECORDED IN FILE NUMBER 9774265 OF THE FORT BEND COUNTY OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, A CALLED 50.00 ACRE AND A CALLED 19.56 ACRE TRACT OF LAND AS CONVEYED FROM HOUSTON RENTAL TOWERS TO RUSSELL L. MADDEN BY DEED DATED NOVEMBER 30, 1993 AS RECORDED IN FILE NUMBER 9432343 OF THE FORT BEND COUNTY OFFICIAL PUBLIC RECORDS OF REAL PROPERTY; SAID 1,350.8792 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS WITH ALL BEARINGS BEING REFERENCED TO THE TEXAS COORDINATE SYSTEM OF 1983, SOUTH CENTRAL ZONE, BEING ESTABLISHED BY USING HARRIS GALVESTON COUNTY SUBSIDENCE DISTRICT MONUMENT NUMBERS 46, 73, 74, AND NGS CONTROL MONUMENT SOUTHPORT AZIMUTH MARK:

BEGINNING at a set 3/4-inch iron rod on the Westerly right-of-way line of the I & G.N. Railroad; said point being on the South line of said Franklin Hooper Survey, same being the North line of the A. B. Langerman Survey, Abstract 555, Fort Bend County, Texas; said point also being the Northeast corner of a called 89.3767 acre tract of land as conveyed from Charles W. Murrell, Trustee to Champion Technologies, Inc. as recorded in File Number 9055936 of the Fort Bend County Official Public Records of Real Property and also being the Southeast corner of the herein described tract of land;

THENCE, South 86 degrees 55 feet 23 inches West, along the South line of the herein described tract, at a called 2,383.03 feet, passing the Northwest corner of said 89.3767 acre tract and the Northeast corner of Magnolia Place Subdivision, as recorded in Volume 2, Page 6 of the Fort Bend County Deed Records, dated June 15, 1911, same being the Northwest corner of said A. B. Langerman Survey and the Northeast corner of the S. M. Swenson Survey, Abstract 317, in all a distance of 4,048.86 feet to a set ¼-inch iron rod with cap for corner at the Southwest corner of said Franklin Hooper Survey and the Southeast corner of said T. W. Thompson Survey; said point being on the North line of Lot 1, Block 5 of said Magnolia Place Subdivision; and also being the Southwest corner of said 598.583 acre tract and the southeast corner of said 372 acre tract of land;

THENCE, South 86 degrees 56 feet 48 inches West, continuing along the South line of said T. W. Thompson Survey, the South line of said 372 acre tract and the North line of said Magnolia Place Subdivision, 5,768.16 feet to a set ¼-inch iron rod with cap for the Southwest corner of the herein described tract of land; said point being the Southwest corner of said called 372 acre tract and also being the Southeast corner of a called 655.417 acre tract of land as conveyed to the William Carlos Morris, III, Sharon Kay Morris and Morris Children Charitable Remainder Unitrust by Deed dated December 30, 1986 as recorded in File Number 8667218 of the Fort Bend County Official Public Records of Real Property;

THENCE, North 02 degrees 34 feet 13 inches West, 2,879.71 feet along the East line of said 655.417 acre tract to a found ¾-inch iron pipe for corner; said point being the Northwest corner of said 372 acre tract and the Southwest corner of a called 71.00 acre tract of land as conveyed from Browne Botts Rice, Jr. & Kanaly Trust Company to Rice Interests, Ltd. by Deed dated June 30, 1993 as recorded in File Number 9340527 of the Fort Bend County Official Public Records of Real Property;

THENCE, North 87 degrees 01 feet 21 inches East, 2,878.18 feet along the South line of said 71.00 acre tract and the North line of said 372 acre tract to a found 1-inch iron pipe for corner at the Southeast corner of said 71.00 acre tract of land; said point also being the Southwest corner of a called 71.38 acre tract of land as conveyed from Hermann Hospital Estate to Hermann Healthcare Systems, Inc. by Deed dated November 18, 1997 as recorded in File Number 9774265 of the Fort Bend County Official Public Records of Real Property;

THENCE, North 02 degrees 38 feet 48 inches West, 1,083.53 feet along the East line of said 71.00 acres and the West line of said 71.38 acres to a found 1-inch iron pipe for corner; said point being on the South line of a called 19.998 acre tract of land as conveyed from Houston Rental Towers to Max Bowen by Deed dated April 11, 1994 as recorded in File Number 9424367 of the Fort Bend County Official Public Records of Real Property, and also being the Northwest corner of said 71.38 acre tract of land;

THENCE, North 85 degrees 23 feet 33 inches East, 38.34 feet along the South line of said 19.998 acre tract and the North line of said 71.38 acre tract to a found 5/8-inch iron rod for corner; said point also being the Southeast corner of said 19.998 acre tract and also the Southwest corner of a called 50.00 acre tract of land as conveyed from Houston Rental Towers

to Russell L. Madden by Deed dated November 30, 1993 as recorded in File Number 9432343 of the Fort Bend County Official Public Records of Real Property;

THENCE, North 03 degrees 05 feet 04 inches West, 1,074.61 feet with the East line of said 19.998 acre tract and the West line of said 50.00 acre tract to a found 5/8-inch iron rod for corner; said point being the Northeast corner of said 19.998 acre tract and also being the Northwest corner of said 50.00 acre tract of land; and being on the South line of a called 160.100 acre tract of land as conveyed from Capital Cities/ABC, Inc. to WXYZ, Inc. by Deed dated December 23, 1988 as recorded in File Number 8865564 of the Fort Bend County Official Public Records of Real Property;

THENCE, North 86 degrees 56 feet 04 inches East, along the South line of said 160.100 acre tract, at a called 2,026.00 feet passing the Northeast corner of said 50.00 acre tract and the Northwest corner of a called 19.56 acre tract of land as conveyed from Houston Rental Towers to Russell L. Madden by Deed dated November 30, 1993 as recorded in File Number 9432343 of the Fort Bend County Official Public Records of Real Property, in all a distance of 2,816.54 feet to a found 5/8-inch iron rod for corner; said point being the Southeast corner of said 160.100 acre tract, the Northeast corner of said 19.56 acre tract and also being on the West line of said 589.583 acre tract of land;

THENCE, North 02 degrees 55 feet 34 inches West, 282.68 feet along the East line of said 160.100 acre tract and the West line of said 589.583 acre tract to a set 3/4-inch iron rod with cap for corner; said point being the Northwest corner of said 589.583 acre tract and the Southwest corner of said calculated 160.603 acre tract of land;

THENCE, North 04 degrees 16 feet 42 inches West, 1,887.37 feet along the East line of said 160.100 acre tract and the West line of said calculated 160.603 acre tract to a set 3/4-inch iron rod with cap for corner; said point being the Northwest corner of said calculated 160.603 acre tract and also being the Southwest corner of a called 160.726 acre tract of land as conveyed from Wayne G. Mulloy, Trustee to Mark G. Mulloy 1987 Trust, Michael W. Mulloy 1987 Trust, Jeffrey M. Mulloy 1987 Trust and John M. Mulloy 1987 Trust by Deed dated December 29, 1987 as recorded in File Number 8774976 of the Fort Bend County Official Public Records of Real Property;

THENCE, North 86 degrees 52 feet 31 inches East, at a called 2,656.97 feet passing the Southeast corner of said 160.726 acre tract and the Southwest corner of a called 20.904 acre tract of land as conveyed from Wayne G. Mulloy & wife, Minica J. Mulloy to Mark G. Mulloy 1987 Trust, Michael W. Mulloy 1987 Trust, Jeffrey M. Mulloy 1987 Trust and John M. Mulloy 1987 Trust by Deed dated December 29, 1987 as recorded in File Number 8774975 of the Fort Bend County Official Public Records of Real Property, in all a distance of 2,824.39 feet to a set 3/4-inch iron rod with cap for corner; said point also being the Northeast corner of said 160.603 acre tract and the Northwest corner of a called 37.6136 acre tract of land as conveyed from Hahn and Clay to El Tejano Properties, Inc. by Deed dated December 20, 1991 as recorded in File Number 9168555 of the Fort Bend County Official Public Records of Real Property;

THENCE, South 03 degrees 05 feet 49 inches East, 824.26 feet along the East line of said 160.603 acre tract to a set 3/4-inch iron rod with cap for corner at the Southwest corner of said 37.6136 acre tract of land;

THENCE, Along the South line of said 37.6136 acre tract and the Easterly North line of said 160.603 acre tract as follows:

North 86 degrees 55 feet 59 inches East, 1,184.33 feet to a set 3/4-inch iron rod with cap for corner at a point of curvature;

Along the arc of a curve to the left having a chord of North 81 degrees 42 feet 22 inches East, 1,232.72 feet, a radius of 6,766.24 feet and a central angle of 10 degrees 27 feet 11 inches, a distance of 1,234.43 feet to a set 3/4-inch iron rod with cap for corner at a point of tangency;

North 76 degrees 28 feet 48 inches East, at a called 102.06 feet passing the Southeast corner of said 37.6136 acre tract and the Southwest corner of a called 12.4748 acre tract as conveyed from El Tejano Properties, Inc. to Cell-U-Foam Corporation by Deed dated February 14, 1994 as recorded in File Number 9410540 of the Fort Bend County Official Public Records of Real Property, in all a distance of 1,060.29 feet to a set 3/4-inch iron rod with cap for corner at a point of curvature;

THENCE, continuing along the South line of said 12.4748 acre tract and the Easterly North line of said 160.603 acre tract, along the arc of a curve to the right having a chord of North 87 degrees 49 feet 24 inches East, 314.70 feet, a radius of 800.00 feet and a central angle of 22 degrees 41 feet 13 inches, a distance of 316.77 feet to a set 3/4-inch iron rod with cap for the Northeast corner of the herein described tract of land; said point also being the Southeast corner of said 12.4748 acre tract and also being on the Westerly right-of-way line of said I. & G. N. Railroad;

THENCE, South 17 degrees 28 feet 11 inches West, 7,136.38 feet along the Westerly right-of-way line of said I. & G. N. Railroad and the Easterly line of the herein described tract of land to the Place of Beginning containing 1,350.8792 acres (58,844,299 square feet) of land, more or less.

AREA SEVEN

A FIELD NOTE DESCRIPTION OF 334.904 ACRES OF LAND BEING THE SPRINT FORT BEND COUNTY LANDFILL, L.P. TRACTS OF LAND BEING IN THE M.M. BATTLE SURVEY, ABSTRACT NO. 9, THE JESSE CARTWRIGHT SURVEY, ABSTRACT NO. 16, THE D.A. CONNER SURVEY, ABSTRACT NO. 158, AND THE JOHN LEVERTON SURVEY, ABSTRACT NO. 402, FORT BEND COUNTY, TEXAS.

BEGINNING at a point for the most Northerly Northwest corner of a call 187.0178 Acre Tract (Volume 2569, Page 2006; Official Records of Fort Bend County, Texas; Said corner being in

the intersection of the Southerly right-of-way line of Boss-Gaston Road (width varies) with the Easterly right-of-way line of said Boss-Gaston Road; Said corner being the most Northerly Northwest corner of this 334.904 Acre Tract;

THENCE, Easterly, along the Southerly right-of-way line of said Boss-Gaston Road with the following courses and distances:

South 88 Degrees 33 Minutes 9 Seconds East, 1329.37 feet to a point for the Northwest corner of a call 0.997 Acre Tract (Fort Bend County Clerk's File No. 9662184);

South 88 Degrees 19 Minutes 16 Seconds East, 123.44 feet to a point for the Northwest corner of a call 6.3149 Acre Tract (Parcel 2, Fort Bend County Clerk's File No. 9655320);

North 85 Degrees 10 Minutes 11 Seconds East, 1695.90 feet to a point for the Northeast corner of this 334.904 Acre Tract; Said corner being the Northeast corner of a call 16.3256 Acre Tract (Fort Bend County Clerk's File No. 9757250) and being in the intersection of the Southerly right-of-way line of said Boss-Gaston Road with the Westerly right-of-way line of Old Richmond Road (width varies);

THENCE, South 3 Degrees 51 Minutes 37 Seconds West, 1009.71 feet along the Westerly right-of-way line of said Old Richmond Road to a point for the Southeast corner of said call 16.3256 Acre Tract;

THENCE, North 89 Degrees 26 Minutes 48 Seconds West, 698.62 feet to a point for the Southwest corner of said call 16.3256 Acre Tract;

THENCE, North 89 Degrees 36 Minutes 44 Seconds West, 391.86 feet to a point for the most Easterly Northeast corner of said call 187.0178 Acre Tract;

THENCE, South 0 Degrees 18 Minutes 18 Seconds East, 897.34 feet to a point for the most Easterly Southeast corner of said call 187.0178 Acre Tract;

THENCE, North 89 Degrees 20 Minutes 42 Seconds West, 489.06 feet to a point for the Northeast corner of a call 30.17 Acre Tract (Volume 2538, Page 1316; Official Records of Fort Bend County, Texas);

THENCE, South 7 Degrees 0 Minutes 20 Seconds West, 813.87 feet to a point for corner;

THENCE, South 86 Degrees 2 Minutes 16 Seconds East, 164.26 feet to a point for corner;

THENCE, South 81 Degrees 58 Minutes 0 Seconds East, 41.55 feet to a point for corner;

THENCE, South 2 Degrees 17 Minutes 44 Seconds West, 39.50 feet to a point for corner;

THENCE, North 87 Degrees 8 Minutes 0 Seconds West, 209.24 feet to a point for corner;

THENCE, South 1 Degree 14 Minutes 6 Seconds West, 560.87 feet to a point for corner;

THENCE, South 0 Degrees 52 Minutes 29 Seconds West, 485.18 feet to a point for corner;

THENCE, North 89 Degrees 23 Minutes 55 Seconds West, 255.00 feet to a point for corner;

THENCE, South 1 Degree 44 Minutes 37 Seconds West, 469.69 feet to a point for the Southeast corner of said call 30.17 Acre Tract; Said corner being the Southeast corner of this 334.904 Acre Tract;

THENCE, North 87 Degrees 44 Minutes 41 Seconds West, 314.64 feet to a point for the Southwest corner of said call 30.17 Acre Tract;

THENCE, North 88 Degrees 10 Minutes 19 Seconds West, 1184.96 feet to a point for corner;

THENCE, North 1 Degree 25 Minutes 32 Seconds West, 19.67 feet to a point for corner;

THENCE, North 88 Degrees 5 Minutes 18 Seconds West, 1052.85 feet to a point for the Southwest corner of said call 187.0178 Acre Tract;

THENCE, North 88 Degrees 18 Minutes 50 Seconds West, 943.93 feet to a point for the Southwest corner of this 334.904 Acre Tract; Said corner being the Southwest corner of a call 57.78 Acre Tract (Fort Bend County Clerk's File No. 9837853);

THENCE, North 0 Degrees 43 Minutes 42 Seconds East, 462.51 feet to a point for the Southeast corner of a call 6.538 Acre Tract (Volume 1994, Page 1066; Official Records of Fort Bend County, Texas);

THENCE, North 89 Degrees 11 Minutes 19 Seconds West, 335.65 feet to a point for the Southwest corner of said call 6.538 Acre Tract;

THENCE, North 1 Degree 40 Minutes 28 Seconds East, 427.10 feet to a point for the Southeast corner of a call 3.312 Acre Tract (Volume 1994, Page 1066; Official Records of Fort Bend County, Texas);

THENCE, North 87 Degrees 5 Minutes 55 Seconds West, 326.31 feet to a point for the Southwest corner of said call 3.312 Acre Tract;

THENCE, North 0 Degrees 51 Minutes 42 Seconds East, 165.92 feet to a point for the Southeast corner of a call 4.027 Acre Tract (Fort Bend County Clerk's File No. 2000050814);

THENCE, North 88 Degrees 32 Minutes 34 Seconds West, 723.45 feet to a point for the Southwest corner of said call 4.027 Acre Tract;

THENCE, North 1 Degree 10 Minutes 44 Seconds East, 240.88 feet along the Easterly right-of-way line of State Farm Market Highway No. 1464 to a point for the Northwest corner of said call 4.027 Acre Tract;

THENCE, South 89 Degrees 30 Minutes 36 Seconds East, 722.87 feet to a point for the Northeast corner of said call 4.027 Acre Tract;

THENCE, North 0 Degrees 58 Minutes 7 Seconds East, 30.43 feet to a point for the Northwest corner of said call 3.312 Acre Tract;

THENCE, South 85 Degrees 26 Minutes 40 Seconds East, 327.44 feet to a point for the Northwest corner of said call 6.538 Acre Tract;

THENCE, South 86 Degrees 25 Minutes 40 Seconds East, 334.16 feet to a point for the Northeast corner of said call 6.538 Acre Tract;

THENCE, North 0 Degrees 46 Minutes 11 Seconds East, 1284.71 feet to a point for the Northwest corner of said call 57.78 Acre Tract;

THENCE, North 85 Degrees 35 Minutes 38 Seconds East, 960.90 feet to a point for the Northeast corner of said call 57.78 Acre Tract;

THENCE, South 1 Degree 14 Minutes 39 Seconds West, 452.55 feet to a point for the Northwest corner of a call 1.00 Acre Tract (Fort Bend County Clerk's File No. 9884398);

THENCE, North 89 Degrees 27 Minutes 17 Seconds East, 615.12 feet to a point for corner;

THENCE, South 89 Degrees 30 Minutes 32 Seconds East, 442.54 feet to a point for corner;

THENCE, South 89 Degrees 33 Minutes 47 Seconds East, 310.88 feet to a point for interior corner of said call 187.0178 Acre Tract;

THENCE, North 1 Degree 1 Minute 56 Seconds East, 570.96 feet to a point for the Southeast corner of a 9.787 Acre Tract;

THENCE, North 89 Degrees 1 Minute 8 Seconds West, 590.97 feet to a point for the Southwest corner of said 9.787 Acre Tract;

THENCE, North 18 Degrees 51 Minutes 35 Seconds East, 913.30 feet to a point for corner;

THENCE, South 88 Degrees 54 Minutes 13 Seconds East, 100.00 feet to a point for corner;

THENCE, North 19 Degrees 10 Minutes 3 Seconds East, 200.00 feet to a point for the Northwest corner of said 9.787 Acre Tract;

THENCE, South 89 Degrees 2 Minutes 55 Seconds East, 147.57 feet to a point for the Northeast corner of said 9.787 Acre Tract;

THENCE, North 0 Degrees 58 Minutes 41 Seconds East, 169.40 feet to the Place of Beginning and containing 334.904 Acres of Land.

SECTION IV
CIVIL REMEDIES AND PENALTIES

The Commissioners Court of Fort Bend County, Texas, may bring a legal action to enjoin violations of this ordinance and seek judgment for any civil penalties.

SECTION V
SEVERABILITY

If any portion of this ordinance is deemed to be in violation of the statutes or the constitution of this state or the United States by a court of competent jurisdiction, said portion shall be severed, and the remaining portions of the ordinance shall remain in full force and effect.

SECTION VI
WITHDRAWAL OR RETURN OF PERMIT

In the event that an application for permit or other authorization under Texas Health and Safety Code Chapter 361 which was pending before the Texas Natural Resources Conservation Commission at the time of the adoption of this Order for an area listed in Section III of this Order is withdrawn by or returned to the applicant, or if a permit is overturned by a final appeal, then such area shall be removed from Section III of this Order and unincorporated areas of Fort Bend County, Texas.

On this the 22nd day of JANUARY, 2002, the Commissioners Court of Fort Bend County, Texas, upon motion of Commissioner PATTERSON, seconded by Commissioner Meyers, duly put and carried;

IT IS ORDERED that the County Judge James C. Adolphus be, and he is hereby, authorized to execute the Order approving the Ordinance Prohibiting Solid Waste Disposal in Fort Bend County.

FORT BEND COUNTY, TEXAS

By:

J. C. R.
James C. Adolphus, County Judge

Dianne Wilson
Dianne Wilson, County Clerk

/j:ordinance solid waste disposal.doc:3170-011502