TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

January 3, 2000

Mr. Don West
West & Associates
P.O. Box 159
Austin, Texas 78652

Re: EDWARDS AQUIFER, Bexar County
Project: Gruene Cypress Rapids (Miss Nessa's Bakery), Project number -371.01, Located 1308 Gruene Road, New Braunfels, Texas
Type: Exception to Submitting a Water Pollution Abatement Plan (WPAP), 30 Texas Administrative Code (TAC), §213.9

Dear Mr. West:

The Texas Natural Resource Conservation Commission (TNRCC) has completed its review of the WPAP request for exception for the referenced project that you submitted to the San Antonio Regional Office on December 16, 1999. The request for exception proposed in the submittal is in general compliance with 30 TAC § 213.9; therefore, the exception is hereby granted subject to applicable state rules and the conditions in this approval letter.

Under 30 TAC §213.9(a),

> Exceptions to any substantive provision of this chapter related to the protection of water quality may be granted by the executive director if the requestor can demonstrate equivalent water quality protection for the Edwards Aquifer. Requests for exceptions will be reviewed by the executive director on a case-by-case basis. Prior approval under this section must be obtained for the exception to be authorized.

BACKGROUND

In 1989, Mr. West constructed a retail building and associated parking on 1.006 acres. The site is located within the currently defined boundary of the Edwards Aquifer recharge zone. Mr. West has presented information [a copy of the Texas Water Quality Board Order 75-0128-20 with boundary maps, a supporting road map, certificate of occupancy, and utility receipts] which indicates a good faith effort to comply with rules and regulations he thought were current at the time of construction.

The boundary of the Edwards Aquifer recharge zone in the Gruene, Texas area appears to have been relocated between 1975 and 1988. The relocation could have occurred with rule changes which were effective on December 5, 1984, and July 2, 1986. However, no record of those boundary changes are included with copies of the rules on file in the San Antonio Regional Office and the Austin Regional Office.

A request for exception to the fee for requesting an exception was also made, and is based on the applicant's dispute with the location of the Recharge Zone boundary at the time of construction.

PROJECT DESCRIPTION

The proposed project is for the construction of one 1,440 square foot building for office/retail use. No additional parking or driveway will be constructed. Wastewater will be disposed of by lateral connection to an existing sewage collection system for treatment and disposal at the Gruene Road Sewage Treatment Plan owned by New Braunfels Utilities.

GEOLOGY ON SITE

A fax and map from the U.S. Geologic Survey was submitted in lieu of a geologic assessment for the subject site. The Region 13 site inspection of November 23, 1999, revealed that the site is underlain by thick alluvial deposits, and that surface water runoff from the site would drain directly into the Guadalupe River.

EXCEPTION JUSTIFICATION

As understood, and confirmed by the U.S. Geologic Survey (copy enclosed), the site is located on alluvial fill material on the southeast side of the Comal Springs Fault and not on the geologic formations of the Edwards Aquifer. Also, surface water runoff from the site drains directly into the Guadalupe River. All wastewater generated by the existing and proposed building will be directed to an existing sewage collection system by a lateral connection.

A request for exception to the fee for requesting an exception was also made, and is based on the applicant's dispute with the location of the Recharge Zone boundary.

SPECIAL CONDITIONS

1. Based on the geologic conditions of the site, the existing building and associated parking lot located at 1308 Gruene Road, New Braunfels, Texas, a WPAP will not be required.

2. Temporary erosion and sedimentation controls (silt fences and rock berms) shall be installed

prior to initiation of any other construction.

3. There shall be no new or additional road or driveway construction associated with this project.

4. Within 60 days of receiving written approval of an Edwards Aquifer protection plan, the applicant must submit to the San Antonio Regional Office, proof of recordation of notice in the county deed records, with the volume and page number(s) of the county deed records of the county in which the property is located. A description of the property boundaries, covered by the Edwards Aquifer protection plan, shall be included in the deed recordation in the county deed records. A suggested form (Deed Recordation Affidavit, TNRCC-0625) that you may use to deed record the approved WPAP is enclosed.

If you have any questions or require additional information, please contact John Mauser of the Edwards Aquifer Protection Program of the San Antonio Regional Office at 20/403-4024.

Sincerely,

Jeffrey A. Saitas, P.E.
Executive Director
Texas Natural Resource Conservation Commission

JAS/JKM/eg

Enclosure: U.S. Geologic Survey fax and map dated 12/7/99
Deed Recordation Affidavit, Form TNRCC-0625

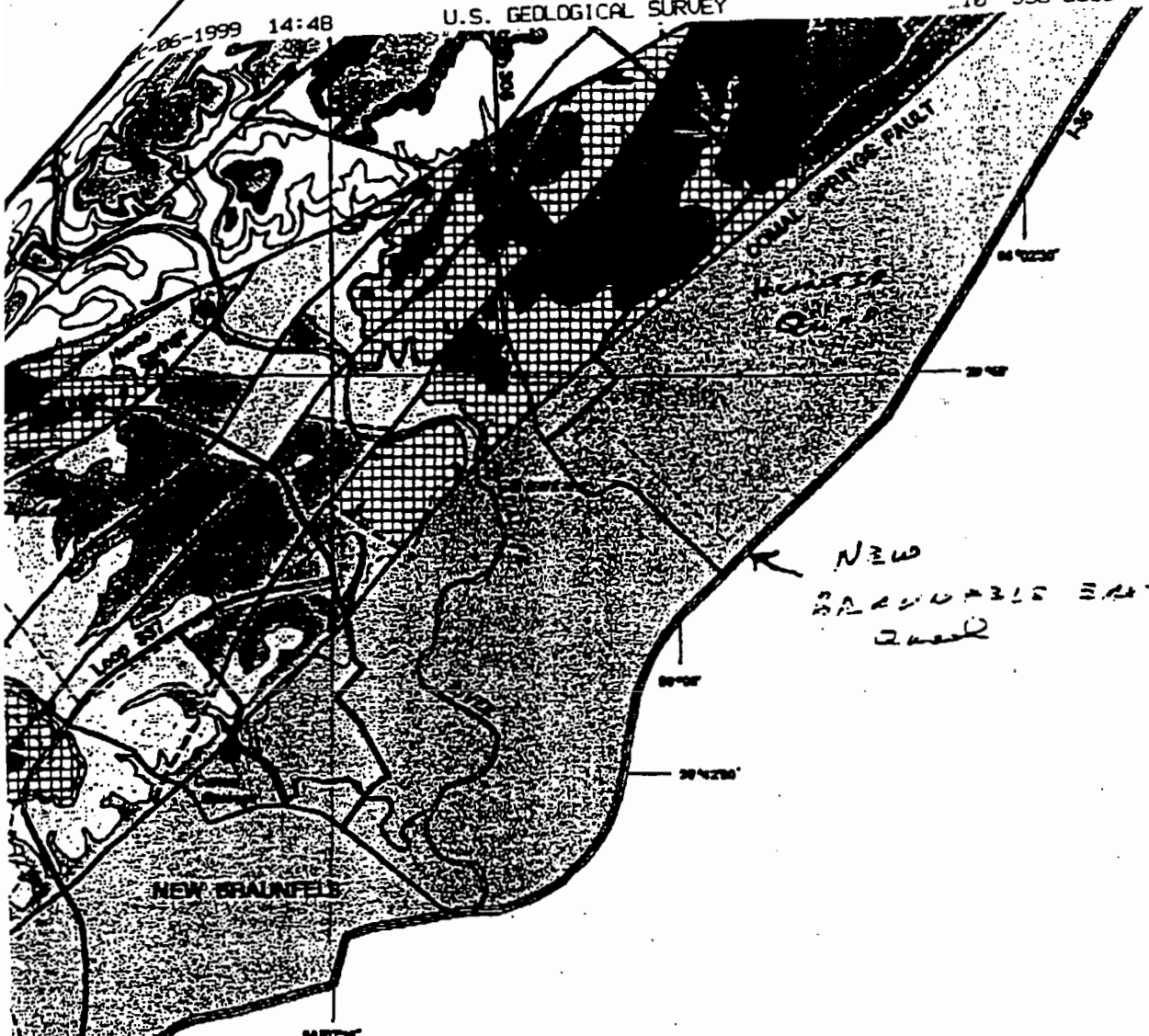
cc with U.S. Geologic Survey fax and map dated 12/7/99:
Alan Clark, U.S. Geologic Survey, San Antonio, TX
Mr. Harry Bennett, City of New Braunfels
Mr. Tom Hornseth, Comal County
Mr. Greg Ellis, Edwards Aquifer Authority
TNRCC Field Operations, Austin

Gruene, Texas
Don West lot near the city of Gruene in Comal County, Texas near the low water crossing on Gruene Road

The lot in question is on the northeast side of the low water bridge across the Guadalupe River, just west of the city of Gruene. According to the geologic map in the USGS Water-Resources Investigations Report 94-4117, the lot is on Del Rio Clay, on the northwest side of the Comal Springs Fault and in the Edwards Aquifer Recharge Zone. Mr. West furnished logs of soil borings on, or near the lot in question, that indicated that the surface soil is mostly tan, silty, sandy clay with a trace of gravel. Very clayey gravel was encountered at about 18 ft. and the boring was discontinued at 20 ft. still in clayey gravel. The borings did not go deep enough to determine what age rock was beneath the clayey gravel surface soil; Del Rio Clay, Taylor Marl or what ?
An on site inspection on Dec. 4th with Mr. West, Mr. ???, Mr. Allan Cark of the USGS and Ted Small (USGS retired) indicated that the surface soil was mostly relatively porous, clayey, sandy, silt. Possibly the soil was eroded Del Rio Clay, but no identifying fossils were found and the soil was not like any Del Rio Clay the writer has seen. In order to determine the age of the surface soil, borings of sufficient depth to locate the top of the Georgetown Formation seem to be neceessary. A thickness of about 30/40 ft. of Del Rio Clay overlying the Georgetown Formation would probably be satisfactory for Mr. West's needs. However, if there is only a thin veneer of Del Rio Clay overlying the Georgetown formation, further studies would be needed. If the borings indicate the rock underlying the surface soil belongs to the Taylor Marl, or the Austin Group, then the lot is on the southeast side of the Comal Springs Fault and not in the Edwards Aquifer recharge zone.

enclosures (copy of USGS geologic map in the vicinity of Gruene, copy of BEG geologic map in the vicinity of Gruene, copy of Mr. West's sketch of location of lot in question

12/ 07/99
A geologic map of the area in question was just found this morning. According to the map, the trace of the Comal Springs Fault is north of Mr. West's lot. Therefore, Mr. West's lot is on the downthrown side of the Comal Springs Fault and not in the Edwards Aquifer recharge zone



EXPLANATION

UPPER CRETACEOUS — UPPER CONFINING UNITS

- NAVARRO AND TAYLOR GROUPS, UNDIVIDED
- AUSTIN GROUP
- EAGLE FORD GROUP
- BUDA LIMESTONE
- DEL RIO CLAY

LOWER CRETACEOUS — EDWARDS AQUIFER — EDWARDS GROUP — KAINER FORMATION

- I GEORGETOWN FORMATION
- II CYCLIC AND MARINE MEMBERS, UNDIVIDED
- III LEACHED AND COLLAPSED MEMBERS, UNDIVIDED
- IV REGIONAL DENSE MEMBER
- V GRAINSTONE MEMBER
- VI KIRSCHBERG EVAPORITE MEMBER
- VII DOLOMITIC MEMBER
- VIII BASAL NODULAR MEMBER
- UPPER MEMBER OF THE GLEN ROSE LIMESTONE (LOWER CONFINING UNIT)

HYDROGEOLOGIC SUBDIVISIONS I - VIII—Modified from Maclay and Small (1976)

U/D — PRIMARY FAULT—U, upthrown, D, downthrown

INFERRED FAULT