

**IN THE MATTER OF
THE APPLICATION OF
CRADDOCK AVENUE PARTNERS
L.L.C. FOR AN EXCEPTION
FOR AN EDWARDS AQUIFER
PROTECTION PLAN**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

MOTION TO OVERTURN / MOTION FOR RECONSIDERATION

TO THE HONORABLE COMMISSION:

NOW COMES the San Marcos River Foundation (“SMRF”) and files this Motion to Overturn / Motion for Reconsideration of the Executive Director’s (“ED”) April 9, 2010 decision¹ to approve an Exception for the Edwards Aquifer Protection Plan of Craddock Avenue Partners, L.L.C.²

Project Site: Requestor Craddock Avenue Partners, L.L.C., seeks an Exception for its proposed development on the Buie Tract, which is located in the ETJ of the City of San Marcos. The Request states that no construction is proposed and that the purpose of the Exception is to establish protection of 16 features according to the submitted Geologic Assessment. This is the second time Craddock Avenue Partners, L.L.C., has submitted a request for an Exception. Currently, there is no approved Water Pollution Abatement Plan for the proposed development.

The 180 acre project site overlies the Edwards Aquifer Recharge Zone and is approximately 2.35 miles from San Marcos Springs. Major faults, caves, and many other

¹ Because 23 days after the ED’s approval falls on Sunday, May 2, this Motion is timely filed on May 3. See 30 TAC § 1.7.

² The ED’s April 9, 2010 letter of approval specifically regards: Edwards Aquifer, Hays County, Buie Tract, South of the Craddock Ave. and Bishop Street, San Marcos, Texas; Protection of Sensitive Features and Exception Request; 30 TAC Chapter 213 Edwards Aquifer; Edwards Aquifer Protection Program ID No. 11-09091001A Investigation No. 798488; Regulated Entity No. RN105333868.

significant recharge features occur on the site, which is located in a particularly sensitive karst area of Hays County. The site was extensively cleared of vegetation in 2007.

Movant: SMRF is a non-profit organization dedicated to preserving and protecting the flow, natural beauty, and purity of the San Marcos River. Members of SMRF live, work, recreate, and own property in the vicinity of the Buie Tract. Water quality degradation and other environmental harm caused by the Requestor's proposed development will directly and adversely affect the interests of SMRF members. SMRF submitted a letter to TCEQ regarding the Exception Request on March 12, 2010.

Basis of Motion: Craddock Avenue Partners, L.L.C., does not demonstrate equivalent water quality protection as required by 30 T.A.C. § 213.9, and the ED's decision otherwise violates the regulations, protocol, and policies applicable to Exception Requests. In support of this Motion, SMRF attaches the comments of Tom Hayes, Ph.D., Science Director of the Greater Edwards Aquifer Alliance, who has reviewed the Exception Request application and related materials.

Prayer: SMRF respectfully requests that the Commission grant this Motion and reverse the ED's decision to approve an Exception for the Edwards Aquifer Protection Plan of Craddock Avenue Partners, L.L.C.

Dated: May 3, 2010

Respectfully submitted,



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RIVER FOUNDATION**



Member Organizations

Alamo Group of the Sierra Club
Aquifer Guardians in Urban Areas
Austin Regional Sierra Club
Bexar Audubon Society
Boerne Together
Cibola Nature Center
Citizens Allied for Smart Expansion
Environmental Stewardship
Committees of the Episcopal Church
of Reconciliation & Episcopal
Diocese of West Texas
Environment Texas
First Universalist Unitarian Church of
San Antonio
Friends of Canyon Lake
Fuerza Unida
Government Canyon Natural History
Association
Hays Community Action Network
Helotes Heritage Association
Helotes Nature Center
Hill Country Planning Association
Guardians of Lick Creek
Kendall County Well Owners
Association
Kinney County Ground Zero
Medina County Environmental
Action Association
Northwest Interstate Coalition of
Neighborhoods
Preserve Castroville
Preserve Lake Dunlop Association
Preserve Our Water-Blanco County
San Antonio Conservation Society
San Geronimo Valley Alliance
San Marcos Greenbelt Alliance
San Marcos River Foundation
Santuario Sisterfarm
Save Barton Creek Association
Save Our Springs Alliance
Scenic Loop/Boerne Stage Alliance
Securing a Future Environment
Sisters of the Divine Providence
Smart Growth San Antonio
SEED Coalition
Texas Water Alliance
West Texas Springs Alliance
Wildlife Rescue & Rehabilitation
Wimberley Valley Watershed
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May 3, 2010

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**Re: Recharge and Transition Zone Exception Request for the Buie Tract
City of San Marcos, Hays County, Texas
Craddock Avenue Partners, LLC, P.O. Box 5555, Austin, Texas 78763
Received on February 10, 2010, by TCEQ Field Operations, Austin
Region 11**

Dear Mr. Hawkins:

The subject Exception Request pertains to a land development plan on the Buie Tract by Craddock Avenue Partners, LLC. The request states that no construction is proposed and that the purpose is to establish protection of sensitive features according to the submitted geologic assessment. The proposed development includes approximately 180 acres spanning the western city limits of San Marcos.

As you requested, I reviewed documents in both the regional and central files of the Texas Commission on Environmental Quality, in regard to the above Exception Request. My review includes the TCEQ letter dated April 9, 2010, approving the request. Additional references are listed at the end of this letter. I have identified the following issues in regard to TCEQ policy and water quality degradation:

Improper Application of TCEQ Policies:

The Exception Request which was approved in this case is very unusual and does not follow TCEQ policy. Considering only a subset of geological features, while not considering the development plan or Water Pollution Abatement Plan (WPAP) at the same time, is not the normal way TCEQ implements the Edwards Aquifer Rules across the region. This case is not being handled as other cases are in the Edwards Aquifer region.

Approval of the Exception Request by TCEQ Region 11 is an uneven application of the TCEQ policies. TCEQ rules state that exceptions are for minor projects or built-out projects with water quality controls already

specified. TCEQ administrative code states that exceptions must demonstrate water quality protection equivalent to the Edwards Rules (see 30 TAC §213.9). Administrative code requires that the geological assessment (GA) identify in detail both potential fluid movement and all potential pathways for contaminant movement to the Edwards Aquifer. As demonstrated below, the GA continues to circumvent TCEQ rules, including continued nondisclosure of sensitive Edwards Aquifer recharge features present on the project area.

Prior Site Development Activities:

As detailed in the San Marcos River Foundation's (SMRF) March 12, 2010, comment letter (attached), the Exception Request continues to falsely state that "no development or construction is proposed at this time." When the most recent request was filed on February 10, 2010, a revised development plan for the Buie Tract had been submitted to the City of San Marcos (COSM) and a zoning change was pending before the COSM Planning and Zoning Commission.

As also described in the March 12, 2010, SMRF comment letter, extensive site preparation for development has already occurred on the tract, with neither a WPAP nor a development plan submitted to TCEQ, again in violation of the TCEQ Edwards Rules. When the tract was scraped by bulldozers in 2007, the developer, Craddock Avenue Partners (CAP), told the TCEQ investigator Russ Alexander (TCEQ Investigation Report # 594592, 9-7-07) that the site preparation was for agricultural purposes. However, the TCEQ site investigation report states that stakes clearly identified a road layout to be followed during clearing activities. In addition, dozens of large boulder and rock piles were created, which a CAP partner, Gordon Muir, subsequently stated were for development construction purposes, while speaking for the record at the recent COSM Planning and Zoning Commission public hearing on April 13, 2010. Further evidence that the 2007 site preparation was actually for development purposes is the existence of an early development plan, dated December 17, 2008, and signed by Stephen Ramsey of Baker-Aicklen and Associates. The work on this development plan was apparently initiated shortly after site clearing was complete in late 2007. The TCEQ investigation into these intensive site preparation activities should be re-opened.

The Buie Tract completely overlies a particularly sensitive area of the Edwards Aquifer Recharge Zone (EARZ). Figure 1 shows that the Buie Tract lies completely within a limited area of generalized karst features, which is delineated by Zara (2008) as one of the most sensitive karst areas in Hays County. TCEQ requires any developer in the EARZ to submit a final GA and a WPAP prior to on-site development activities, in order to avoid non-point source contamination and protect sensitive aquifer resources. Despite extensive prior site preparation within a highly sensitive recharge zone, no WPAP has yet been submitted for the Buie Tract.

Furthermore, no USFWS permit was obtained for the taking of Golden-cheeked Warbler (GCWA) habitat determined to be occupied by the USFWS biological opinion, dated April 22, 2004, for the Wonder World Drive Extension. This unpermitted taking of GCWA habitat was documented by maps and other information submitted in the SMRF comment letter, dated March 12, 2010, regarding the subject exception request.

Geological Assessment Remains Incomplete:

Several of SMRF's March 12, 2010, comments on the GA remain unaddressed. For example, the lack of correspondence between the project boundary presented in the most recent Preliminary Conceptual Land Plan (March 24, 2010) and the Hays County CAD parcel boundaries remains unresolved. Project boundaries used in the attached figures are taken from the CAD data.

More importantly, the developer and its consultants appear to have a history of revealing on-site geological features in a piecemeal fashion and only after repeated prodding by the TCEQ and other commenters. In fact, the following information about potentially sensitive recharge features on the Buie Tract still has not been fully disclosed by the applicant:

Missing Major Faults:

The extensive site clearing on the Buie Tract enhances the visibility of faults. The most accepted geological study for the area, Grimshaw (1976), confirms the existence of a complex of nine major fault segments within the southeastern portion of the Buie Tract. These faults are not depicted in the most recent Site Geology Map (3-23-10) attached to the Exception Request's GA. This complex of major faults is delineated in relationship to this Site Geology Map in Figure 2.

In addition, a more recently mapped major fault is well known by local geologists and geographers east of the above complex of Grimshaw (1976) faults. This important fault is mapped relative to the Grimshaw (1976) complex in Figure 3. Figure 4 provides a higher resolution photograph, in order to show the clear visibility of the more recently mapped fault. Like the Grimshaw (1976) fault complex, the latter fault is well known and highly visible at road crossings and within the trenches currently excavated for the Craddock Avenue Extension on the Buie Tract. In fact, the fault underlies much of this portion of the Craddock Avenue Extension.

All faults on the Buie Tract represent highly significant recharge features. In this area of Hays County, the high transmissivity of recharge around and along faults is well documented (de la Gaza and Slade 1986; Hovorka et al. 1998). These faults should be protected by continuous buffers of sufficient width to prevent aquifer contamination.

Missing Cave and Other Recharge Features:

Provided by Jerrett Kramer of the TCEQ, Figure 5 presents a comparison of the geological feature locations found by Jackson Harper (1-12-10) to those found by Veni and Associates

(2003), which were subsequently mapped by the Texas Speleological Survey (TSS). The lack of certainty that all of George Veni's locations were found by Harper is apparent. The original GPS coordinates from Veni (Veni and Associates 2003) for the features his crew found have still not been obtained by TCEQ, the developer's consultants, or TSS.

Veni reports (email dated February 15, 2010, from Veni to Jerrett Kramer, TCEQ investigator) that the TSS coordinates are inaccurate due to a skewing of Veni and Associates' (2003) original coordinates during data processing by Hicks and Company. As recently offered by Veni in this same email, his original coordinates should be obtained to accurately address the still unresolved disparities between the cave and karst feature locations reported by Veni, TSS, and Harper. In this manner, the GA may be revised to finally resolve some of the caves, faults, and recharge feature, which were previously found but not definitively relocated.

Since cave maps produced by Hays Environmental Consulting (HEC) were included in the Buie Tract GA, the HEC geologist (Andy Grubbs) was contacted for additional information about cave and other karst features on the Buie Tract. Mr. Grubbs stated that he had produced a recent comprehensive GA for the Buie Tract, which is the property of the developer and well known by its consultants. He also said that he and many other local geologists and cavers have extensive knowledge of the Buie Tract, due to a long history of access provided by the prior landowners since at least the early 1980s. More caves and other karst features are well known to occur on the Buie Tract than are identified both in the most recent Harper GA (3-23-10) and in Veni and Associates (2003). All prior GAs and the knowledge of local geologists and cavers should be documented in detail, to obtain a complete assessment of all caves and recharge features on the Buie Tract.

On and adjacent to the Buie Tract, significant cave development (Russell 1976), and zones of enhanced porosity and high water transmission (de la Gaza and Slade 1986; Hovorka et al. 1998), are well documented in areas of contact between the Edwards and Georgetown formations, such as the fault area depicted in Figure 4. In fact, faults were directly linked to caves discovered during trenching for sewer lines along the northern boundary of the Buie Tract about six years ago. TCEQ (Heather Beatty) halted the digging of these sewer trenches in the Franklin Square development (Phase 2, Meadowview and Stoneview Drives), due to the excessive number of caves intercepted along faults on the northern boundary of the Buie Tract.

Craddock Avenue Extension:

COSM has excavated the Craddock Avenue Extension through the Buie Tract, even while discussions with TCEQ are ongoing and despite the absence of a final GA and even a draft WPAP. And the biological opinion from USFWS for the Wonder World Drive extension states that only the "federal part" of Craddock is covered under that opinion document. The federal part is the part paid for with federal funds, which is only the small part of Craddock that is within the right of way of the Wonder World Drive extension. Therefore, nearly the entire Craddock

roadway that was recently bulldozed through the Buie Tract is not covered by the USFWS biological opinion.

TCEQ should explain why this ongoing excavation is being allowed. USFWS has been alerted and an investigation has been requested.

Texas Blind Salamander:

In addition to the GCWA and the Black-capped Vireo, the other federally listed endangered species likely to be impacted by the proposed development is the Texas Blind Salamander (TBS). The level of the groundwater table and the pattern of occurrence of TBS habitat in the San Marcos area indicate that this salamander species almost certainly inhabits portions of the Buie Tract (Russell 1976, Ogden et al. 1986). TCEQ should immediately initiate consultations with USFWS concerning potential impacts to listed species on the Buie Tract during prior site preparation and any future development. San Marcos Springs, with their additional listed species, receive recharge directly from the Buie Tract and lie only 2.35 miles to the east.

Please let me know if I may provide added review or supplemental information.

Sincerely,



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Science Director
Greater Edwards Aquifer Alliance

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References:

de la Garza, L., and R. Slade. 1986. Relations between areas of high transmissivity and lineaments: The Edwards Aquifer, Barton Springs segment, Travis and Hays Counties. In Abbott and Woodruff (eds.), The Balcones Escarpment: Geology, Hydrology, Ecology, and Social Development in Central Texas, guidebook published for the 1986 Geological Society of America Annual Meeting, San Antonio, Texas, pp. 131-143.

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Grimshaw, T.W. 1976. Environmental Geology of Urban and Urbanizing Areas: A Case Study from the San Marcos Area, Texas. The University of Texas at Austin, Ph.D. dissertation, 244pp.

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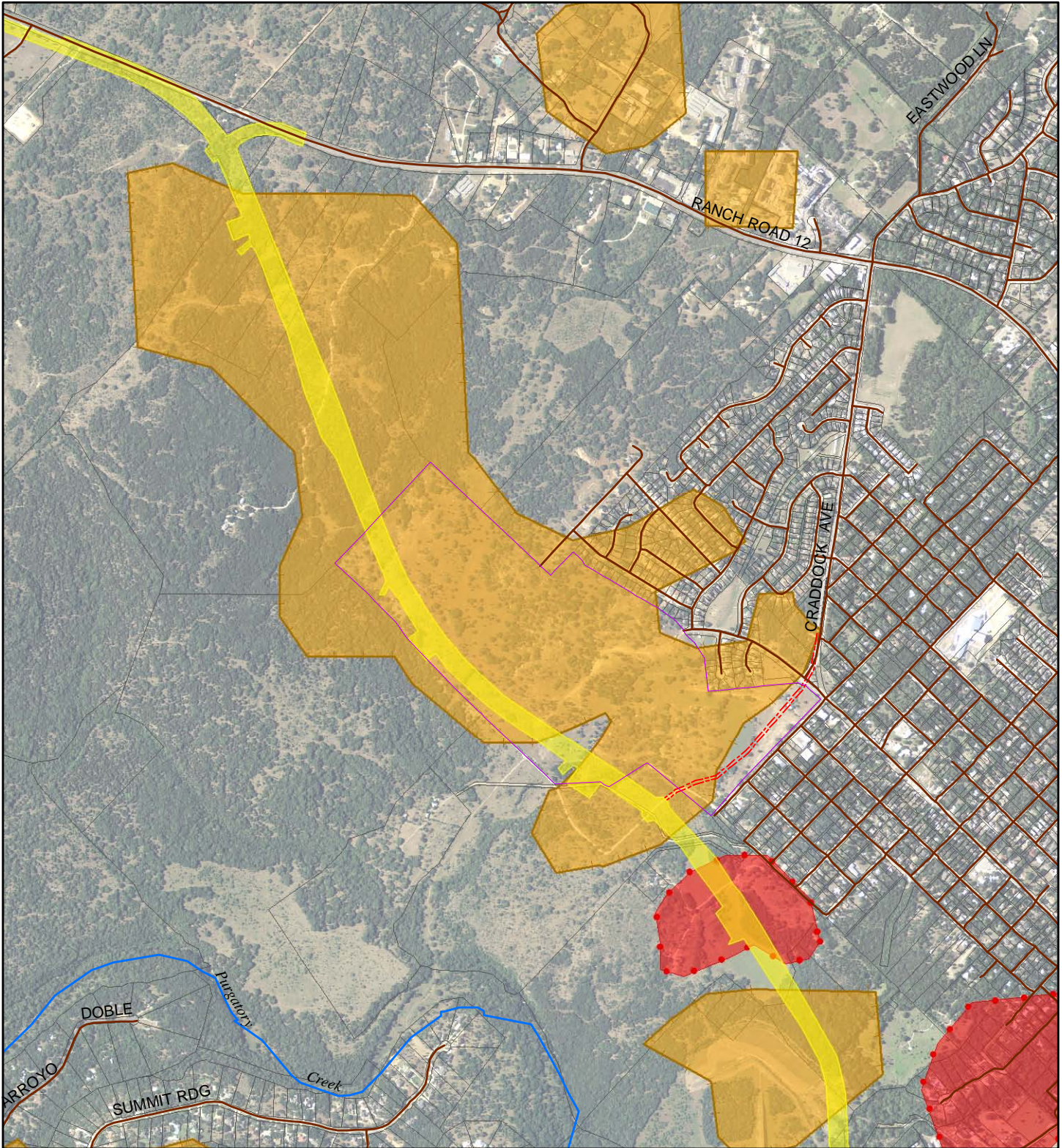
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Ogden, et al. 1986. Hydrochemistry of the Comal, Hueco, and San Marcos Springs, Edwards Aquifer, Texas. In Abbott and Woodruff (eds.), The Balcones Escarpment: Geology, Hydrology, Ecology, and Social Development in Central Texas, guidebook published for the 1986 Geological Society of America Annual Meeting, San Antonio, Texas, pp. 131-143.

Zara Environmental. 2008. Karst Sensitivity Map for Hays County. Prepared for Loomis Austin, Inc., August 2008.

Figure 1. Sensitive Karst Areas (Zara, 2008)



Legend

Background Imagery: 2008 NAIP Satellite Imagery

- | | | |
|---------------------------------|---|--------------------------------------|
| Buie Tract | Sensitive Karst Areas (Zara, 2008)** : | Streets |
| Proposed Craddock Ave extension | Karst Species of Concern Present | Rivers and Creeks |
| Proposed FM 3407 ROW* | Karst Species of Concern Not Known | Appraisal district parcel boundaries |



*U.S. Fish and Wildlife Service, 2004 Biological Opinion.
 ** Zara Environmental LLC, 2008.

Figure 2. Buie Tract: Grimshaw (1976) Faults
Superimposed on Harper's (3-23-10) Site Geology Map (Exhibit F)

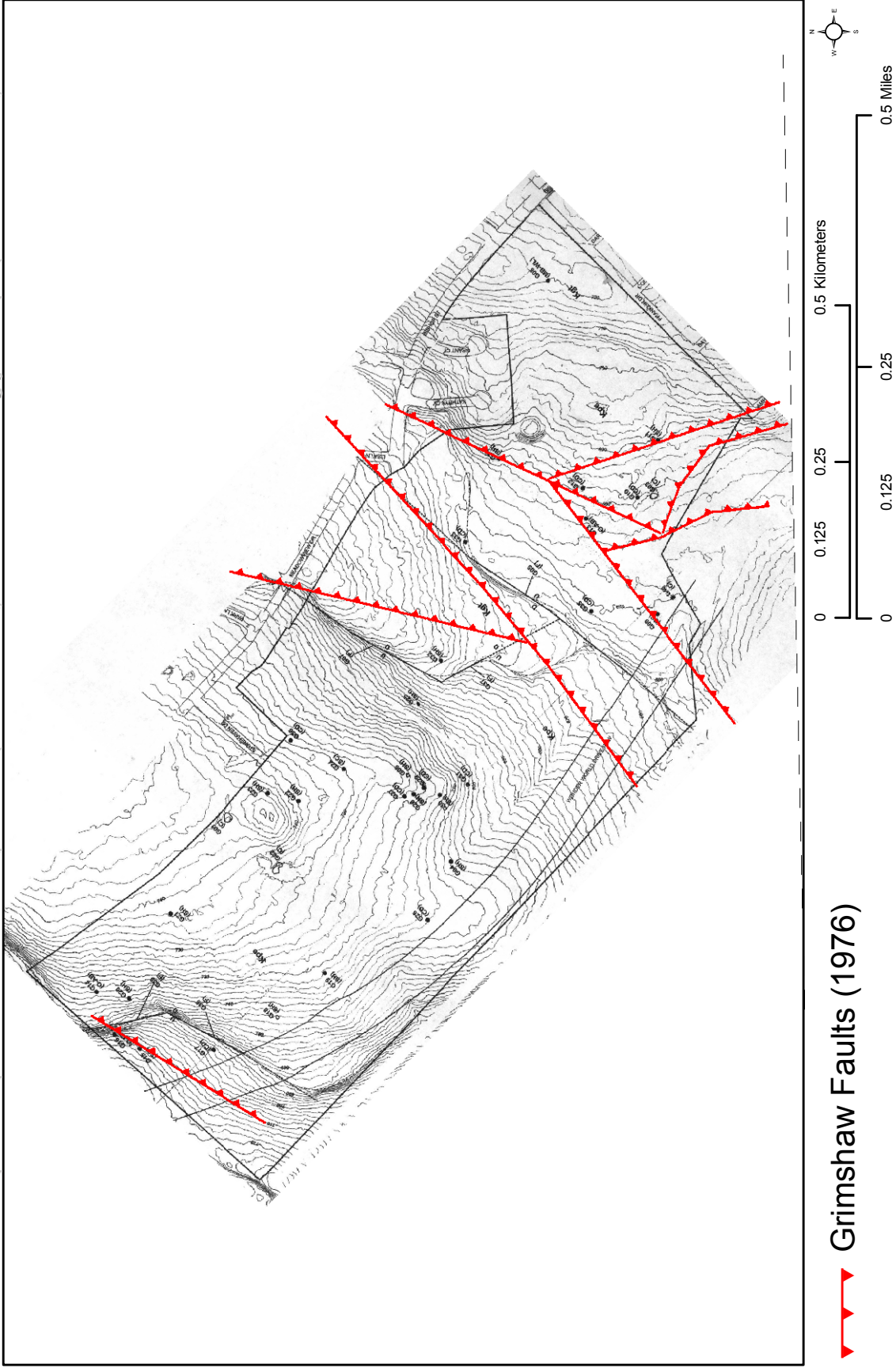
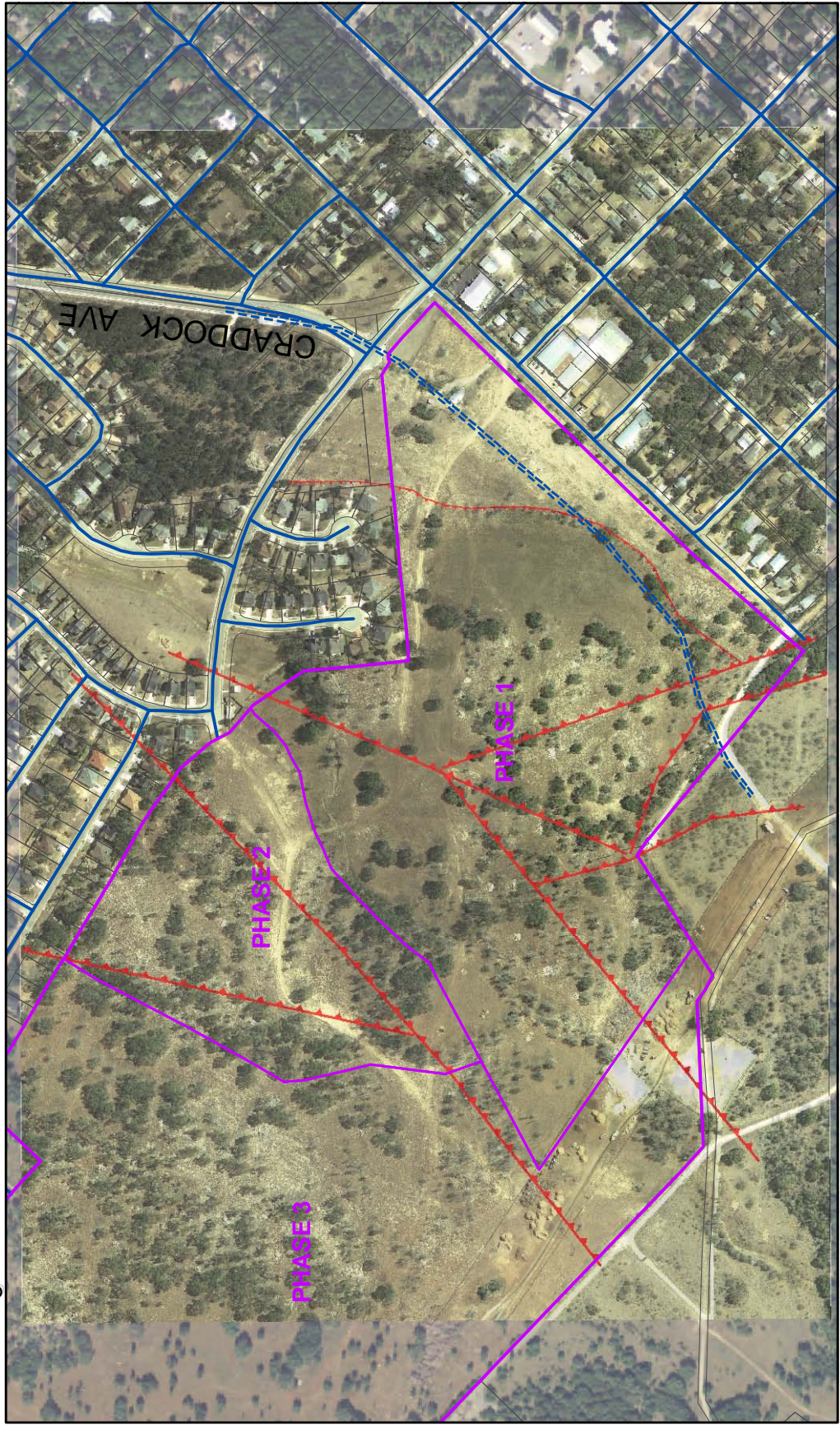
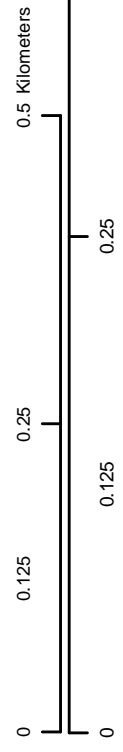



Figure 3. Buie Tract: Faults in the Southeastern Portion of the Tract




Legend

- Background Imagery: 2008 NAIP Satellite Imagery
- Buie Tract
- Streets
- Grimshaw (1976) faults
- Proposed Craddock Ave extension
- More recently identified fault
- Appraisal district parcel boundaries

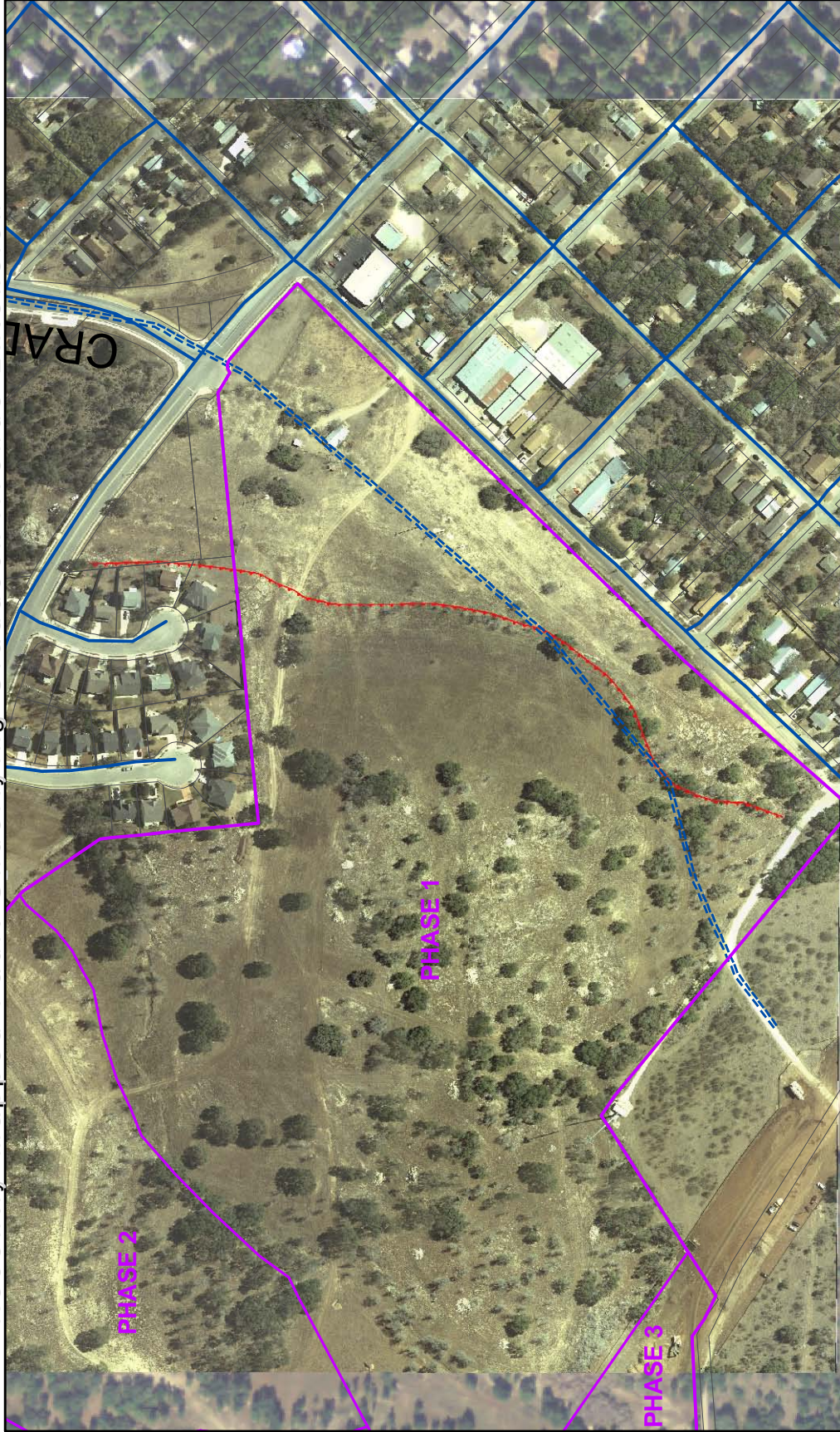






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 P.O. Box 11698
 San Antonio, TX 78212
 Buie, Phase 3.mxd

Figure 4. Buie Tract: Detail of Recently Mapped Fault Underlying Craddock Avenue Extension



Legend

Background Imagery: 2008 NAIP Satellite Imagery

- Buie Tract
- Streets
- Proposed Craddock Ave extension
- Recently identified fault
- Appraisal district parcel boundaries

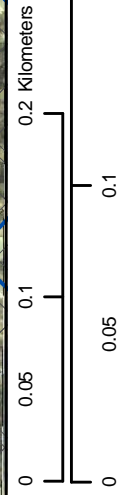
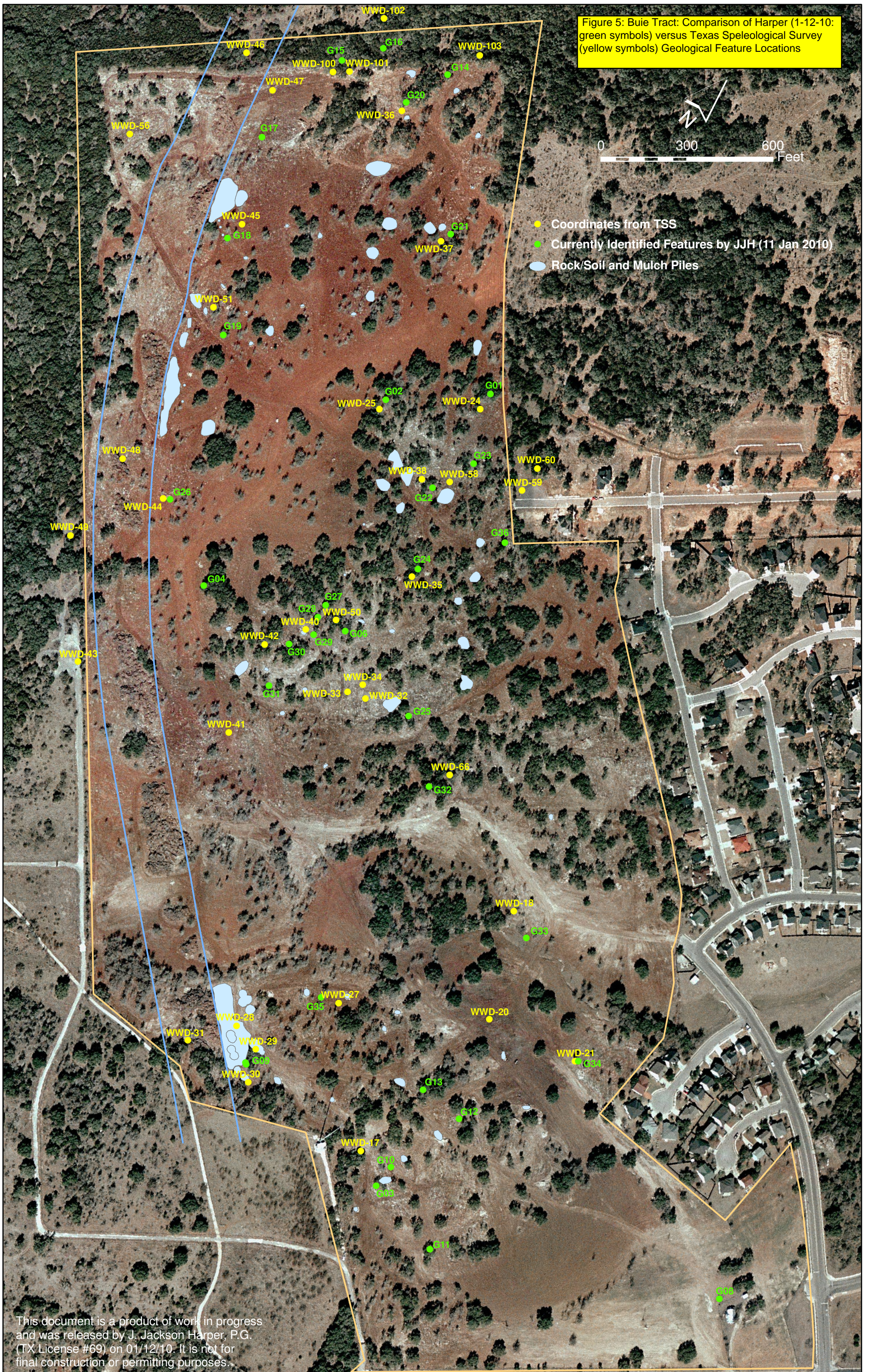


Figure 5: Buie Tract: Comparison of Harper (1-12-10: green symbols) versus Texas Speleological Survey (yellow symbols) Geological Feature Locations



- Coordinates from TSS
- Currently Identified Features by JJH (11 Jan 2010)
- Rock/Soil and Mulch Piles

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