

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 16, 2013

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **RANCHO VIEJO, LLC**
TCEQ DOCKET NO. 2013-1506-MSW

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink that reads "Vic McWherter".

Vic McWherter, Senior Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2013-1506-MSW

**IN THE MATTER OF THE
APPLICATION OF RANCHO
VIEJO, LLC FOR MUNICIPAL
SOLID WASTE PERMIT
NO. 2374**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO
REQUESTS FOR HEARING**

To the Honorable Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter and respectfully shows the following.

I. Introduction

A. Background of Facility

Rancho Viejo, LLC ("Applicant" or "Rancho Viejo") seeks to permit a new Type I municipal solid waste landfill, a Type V grease and grit processing facility, and a recycling facility to be located approximately five miles southeast of U.S. Highway 59 at Ranchitos Las Lomas, Laredo, Webb County, Texas. At this time, the Applicant has submitted only Parts I and II of the application --the parts necessary for the executive director to make a preliminary determination as to the proposed facility's compatibility with surrounding land use. Under Texas Health & Safety Code §361.069, the Commission may make a separate determination on the question of land use compatibility, and, if the Commission determines that the site location is acceptable, may at another time consider other technical matters concerning the remaining parts of the permit application. Furthermore, 30 TAC § 330.57(a) provides applicants the

option to bifurcate the MSW permitting process. An applicant may submit the entire application for review, but may also request a determination of land-use compatibility only. The Executive Director may process a partial application to the extent necessary to determine land use compatibility. If the Executive Director determines that a determination of land use compatibility only is appropriate, the applicant must submit a partial application consisting of Parts I and II of the application.

Parts I and II of the MSW permit application relate to the applicant, existing site conditions, and the characteristics of the facility and surrounding area. Parts III and IV, to be submitted subsequently, would be required to contain more detailed information related to the site, design information, investigative reports, and operating plans. In order to receive a permit, the Applicant must eventually provide Parts III and IV of the application for review, which will also be subject to notice, public participation, and a contested case hearing.

If all parts of the application are eventually submitted and approved, the total permitted facility would include 1,100 acres of land with approximately 800 to 850 acres used for waste disposal. The final elevation of the waste fill final cover material would be 935 feet above mean sea level. The proposed facility would be authorized at an initial acceptance rate of approximately 2,750 tons of waste per day. The facility would be authorized to accept municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional and recreational activities. Accepted waste would include garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste and yard waste. The facility would also be authorized to accept Class 1, Class 2 and Class 3 non-hazardous industrial solid waste and special waste.

B. Procedural Background

TCEQ received Parts I and II of the application on April 15, 2011, and the executive director declared these parts administratively complete on June 1, 2011. The Notice of Receipt of Application and Intent to Obtain a Permit was published in the *Laredo Morning Times* on June 29, 2011, and in Spanish in *El Mañana* on June 29, 2011. On July 3, 2012, the executive director completed his review and issued a draft compatibility determination order. The Notice of Public Meeting was published in the *Laredo Morning Times* on February 9, 2013, February 14, 2013, and February 21, 2013. A public meeting was held in Laredo on February 28, 2013. The Notice of Application and Preliminary Decision was published in the *Laredo Morning Times* on March 30, 2013, and in Spanish in *El Mañana* on February 25, 2013. The public comment period ended on April 29, 2013. The executive director's response to comments was mailed on July 3, 2013. The deadline for filing requests for hearing was August 2, 2013.

II. Applicable Law

A person may request the Commission hold a contested case hearing on an application declared administratively complete after September 1, 1999 pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Legislature, Regular Session, Section 5 (codified at Title 2, Texas Water Code (TWC), Section §5.556).

Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the

proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TAC §55.201(d).

An “affected person” is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” 30 TAC §55.203(a). This justiciable interest does not include an interest common to the general public. 30 TAC §55.203(a). Relevant factors considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC §55.203(c).

The Commission shall grant an affected person’s timely filed hearing request if (1) the request is made pursuant to a right to hearing authorized by law, and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission’s decision on the application. 30 TAC §55.211(c).

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC §55.209(e).

III. Discussion

A. Requests for Contested Case Hearing

The following individuals and entities have filed timely hearing requests: (1) ANB Cattle Company, Ltd; (2) Mrs. Lilia G. Cavazos-Keller; (3) Rosemary Jordan Contreras; (4) Mrs. Anna Jordan Dodier; (5) Hurd Ranch Company, Ltd., Hurd Enterprises, Ltd., Killiam & Hurd, and John R. Hurd Jr. and E. Eugene Garcia, individually and on behalf of Hurdco, Inc. (collectively "the Hurds"); (6) James Robert Jordan; (7) Sharyn Peterson Jordan and Richard Jerome Jordan ; (8) John A. Meitzen; (9) Villareal Real Estate Company ; (10) James Volz; (11) Mary Louise Carr Wied; (12) Robert F. Wied and (13) Robert F. Wied Jr.

1. Determination of Affected Person Status

ANB Cattle Company, Ltd ("ANB") submitted timely hearing requests on November 18, 2011, July 26, 2012, February 28, 2013 (delivered at the public meeting) and July 30, 2013. ANB argues in its requests and supporting exhibits that ANB owns an undivided one-half interest in surface and mineral interests in a significant portion of the real property upon which the proposed facility is to be located. Accordingly, ANB

asserts that the application is incorrect and deficient in failing to identify ANB as an owner of the land where the proposed facility is to be permitted. ANB also asserts that the proposed landfill operations would adversely affect its ability to use its mineral rights toward the exploration, development and production of oil, gas and other minerals. ANB also alleges an ownership in other real property described as adjacent to the proposed facility and in the immediate area of the facility. ANB further contends that the application does not address flood plain issues and the resulting potential for contamination, nor explain the effects of the proposed landfill on area wetlands. ANB also states that the application does not sufficiently address possible effects on groundwater. Additionally, ANB alleges that the proposed landfill 's operations would interfere with an easement that benefits lands owned by ANB.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that ANB is an affected person. ANB raises issues related to whether owners of the proposed landfill site have been properly identified under Part I of the Application. Because Part I and Part II of the application are required to be submitted for a land use compatibility determination, the contents and accuracy of the information provided in Parts I and II of the application are subject to scrutiny during any proceedings on land use compatibility. ANB's asserted interests in the use and enjoyment of property are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. The proposed landfill site could impact the requester's use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). Given ANB's allegations that it is an owner of surface rights and mineral rights related to the proposed facility site, a reasonable relationship exists

between the requester's alleged interests in protecting the use and enjoyment of property and the Commission's determination on land use compatibility. Accordingly, OPIC finds that ANB is an affected person.

Mrs. Lilia G. Cavazos-Keller filed a timely hearing request on August 12, 2012. The landowners' map prepared by the executive director's staff identifies Mrs. Cavazos-Keller as an owner of real property adjacent to one of the tracts where a portion of the proposed landfill would be located and well within one mile proposed facility. Mrs. Cavazos-Keller objects to the facility based on her contentions that it will devalue her family's property, pollute her land and water tanks, interfere with the usual and acceptable use of her land, cause adverse conditions for wildlife and domestic animals, create traffic congestion, generate unacceptable odors, and attract rodents and other pests.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that Mrs Cavazos-Keller is an affected person. She raises issues related to land use compatibility and the use and enjoyment of property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching, agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application. 30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requester's property to the proposed landfill site could impact the requester's use

and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). A reasonable relationship exists between the requester's interests in protecting the use and enjoyment of her property, as well as the character of the rural ranching area in which she owns property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that Mrs. Cavazos-Keller is an affected person.

In several timely filed hearing requests, Rosemary Jordan Contreras states that she owns 64 acres approximately one mile south of the proposed landfill site. The executive director's map confirms the stated location of her property. Ms. Contreras expresses concern that the facility will devalue her property, interfere with the enjoyment of land, pollute land and underground water and stock tanks, produce air and noise pollution, harm wildlife and domestic animals, interfere with the usual and acceptable use of land, be unsightly, create traffic congestion, generate odors, and cause problems with rodents and other pests.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that Ms. Contreras is an affected person. She raises issues related to land use compatibility and the use and enjoyment of property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching, agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application.

30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requester's property to the proposed landfill site could impact the requester's use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC§55.203(a). A reasonable relationship exists between the requester's interests in protecting the use and enjoyment of her property, as well as the character of the rural ranching area in which she owns property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that Ms. Contreras is an affected person.

Mrs. Anna Jordan Dodier states in her request that the proposed facility would be located a few yards from her fence line. According to the map provided by the executive director, her property would appear to be approximately 1.5 miles south of the facility. Mrs. Dodier expresses concern that the facility will devalue her property, interfere with the enjoyment of land, pollute land and underground water and stock tanks, produce air and noise pollution, harm wildlife and domestic animals, interfere with the usual and acceptable use of land, be unsightly, create traffic congestion, generate odors, and cause problems with rodents and other pests.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that Mrs. Dodier is an affected person. She raises issues related to land use compatibility and the use and enjoyment of property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching,

agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application. 30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requester's property to the proposed landfill site could impact the requester's use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). A reasonable relationship exists between the requester's interests in protecting the use and enjoyment of her property, as well as the character of the rural ranching area in which she owns property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that Mrs. Dodier is an affected person.

According to the hearing requests filed by the Hurds, they own a 16,500-acre ranch located less than 2 miles south and southeast of the proposed landfill site. The executive director's map confirms the hearing request's stated location of the Hurds' property relative to the proposed landfill. The ranch has been in the Hurd family for many generations. The ranch includes three permanent residences and is used for many purposes including ranching and recreation. The Hurds contend that rail lines that would be used to transport waste to the facility transverse the Hurd ranch. The Hurds further contend that surface water runoff from the proposed facility would flow toward the Hurd ranch. The Hurds also state that they own mineral rights both under their ranch and under the proposed landfill site and that these mineral rights could be adversely affected by proposed landfill operations. OPIC notes that Part I Section 3.0 of Ranch Viejo's permit application identifies Hurd Enterprises, Ltd. as one of the owners of mineral interests beneath the proposed facility. Given the relative proximity of the proposed facility to the Hurd ranch and their stated interests and concerns, the Hurds

contend that facility operations would interfere with their use and enjoyment of property and be incompatible with their use of the family ranch.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that the Hurds are affected persons. The Hurds raise issues related to land use compatibility and the use and enjoyment of property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching, agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application. 30 TAC §55.203(b)(2). Given the Hurds' stated interests, including their ownership of mineral interests under the facility, the relative proximity of the requesters' property to the proposed landfill site could impact the requesters' use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). A reasonable relationship exists between the requesters' interests in protecting the use and enjoyment of their property, as well as the character of the rural ranching area in which they own property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that the Hurds are affected persons.

James Robert Jordan states that he owns approximately 64 acres less than one mile south of and abutting the site of the proposed landfill. Mr. Jordan's property could not be located for purposes of the executive director's map; however, there is no information available to refute Mr. Jordan's assertion about the proximity of his land to

the proposed landfill. Given the challenges in mapping this area, OPIC takes Mr. Jordan's statements at face value for purposes of determining the threshold issue of his standing as an affected person. Mr. Jordan expresses concern that the facility will devalue his property, interfere with the enjoyment of land, pollute land and underground water and stock tanks, produce air and noise pollution, harm wildlife and domestic animals, interfere with the usual and acceptable use of land, be unsightly, create traffic congestion, generate odors, and cause problems with rodents and other pests.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that James Robert Jordan is an affected person. He raises issues related to land use compatibility and the use and enjoyment of property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching, agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application. 30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requester's property to the proposed landfill site could impact the requester's use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). A reasonable relationship exists between the requester's interests in protecting the use and enjoyment of his property, as well as the character of the rural ranching area in which he owns property, and the

Commission's determination on land use compatibility. Accordingly, OPIC finds that James Robert Jordan is an affected person.

Sharyn Peterson Jordan states in timely hearing requests and comments that she and her husband Richard Jerome Jordan own approximately 546 acres in close proximity to the proposed landfill. The executive director's map places the location of the Jordans' property at approximately two miles southeast of the proposed site. The Jordans' hearing request is based on concerns about property values, pollution of land, surface water and groundwater, adverse conditions for wildlife and domestic animals, unsightly conditions and odors, and interference with the usual and acceptable use of land.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that the Sharyn Peterson Jordan and Richard Jerome Jordan are affected persons. They raise issues related to land use compatibility and the use and enjoyment of their property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching, agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application. 30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requesters' property to the proposed landfill site could impact the requesters' use and enjoyment of property and interests in land use compatibility in a manner not common to the general public.

30 TAC §55.203(a). A reasonable relationship exists between the requesters' interests in protecting the use and enjoyment of their property, as well as the character of the rural ranching area in which they own property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that Sharyn Peterson Jordan and Richard Jerome Jordan are affected persons.

John Meitzen states that he owns 390.457 acres of land located within one mile of the proposed landfill site. The executive director's map confirms the location of his property. His hearing requests raise concerns about vehicular and rail traffic, groundwater monitoring, area water and gas wells, area growth trends and how the facility's employees will impact land use compatibility, the lack of a review of a site operating plan prior to determining land use compatibility, the effect of an existing floodplain on the determination of land use compatibility, site water run-off, facility operator and employee competence, water quality, soil erosion, airborne contaminants, endangered and threatened species, daily cover requirements, the period of time for permit renewal, wetlands, liners and leachate collection systems, effects on mineral rights, odors, vectors and other nuisance conditions.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that Mr. Meitzen is an affected person. He raises issues related to land use compatibility and the use and enjoyment of property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching,

agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application. 30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requester's property to the proposed landfill site could impact the requester's use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). A reasonable relationship exists between the requester's interests in protecting the use and enjoyment of his property, as well as the character of the rural ranching area in which he owns property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that Mr. Meitzen is an affected person.

Villareal Real Estate Company, Inc. ("Villareal") filed a request stating that it owns approximately 334 acres near the landfill site. The executive director's map locates this property at a distance that appears to be less than 2 miles from the proposed landfill. The request states concerns that the facility will devalue property, pollute land and underground water and stock tanks, harm wildlife and domestic animals, interfere with the usual and acceptable use of land, be unsightly, create traffic congestion, generate odors, and cause problems with rodents and other pests.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that Villareal is an affected person. Villareal raises issues related to land use compatibility and the use and enjoyment of property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County

where the surrounding properties are owned in large tracts and used for ranching, agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application. 30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requester's property to the proposed landfill site could impact the requester's use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). A reasonable relationship exists between the requester's interests in protecting the use and enjoyment of property, as well as the character of the rural ranching area in which the requester owns property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that Villareal is an affected person.

James Voltz states that he owns 762 acres of land adjoining the proposed landfill site. This property is identified as owned by JEV Family Ltd on the executive director's map and is shown to be located within one mile of the proposed site. OPIC notes that Part I Section 3.0 of Ranch Viejo's permit application identifies James Volz, as well as other Volz family members, as property owners within 1/4 mile of the proposed facility site boundary. Mr. Volz bases his hearing request on concerns about the devaluation of property, pollution of land and underground water, unsightly conditions, adverse conditions for wildlife and domestic animals, and interference with the usual and acceptable use of land.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that Mr. Volz is an affected person. He raises issues related to land use compatibility and the use and enjoyment of property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste

rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching, agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application.

30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requester's property to the proposed landfill site could impact his use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). A reasonable relationship exists between the requester's interests in protecting the use and enjoyment of his property, as well as the character of the rural ranching area in which he owns property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that Mr. Volz is an affected person.

Robert F. Wied, Mary L Wied and Robert F. Wied, Jr. have each filed hearing requests based on interests in tracts of land identified on the executive director's map as property ID 9 owned by the Wied Family. This property is located within 1 mile of the proposed landfill. Robert F. Wied Jr. states that this land has been in his family for nearly 7 generations over the last 130 years. Robert F. Wied Jr expresses concern that the size and scope of the landfill would change the character of the area. He disputes any finding that the proposed volume of vehicular traffic, rail traffic and waste disposal at the 1100 acre site is compatible with cattle ranching in the surrounding area. He states further concerns about water run-off, buffer zones, impacts on human health and the environment, vectors, feral pigs,, nuisance odors, groundwater impacts, and effects on

recreation and use and enjoyment of property. Robert F. Wied and Mary L. Wied filed identical hearing requests which include generally some of the same concerns identified by Robert F. Wied, Jr.'s request, including unsightly conditions and interference with the usual and acceptable use of land.

Based on the factors in 30 TAC §55.203(c), OPIC concludes that Robert F. Wied, Mary L. Wied and Robert F. Wied, Jr. are affected persons. They raise issues related to land use compatibility and the use and enjoyment of their property that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ's municipal solid waste rules at 30 TAC Chapter 330. From the information available in hearing requests, public comment, and the executive director's map of the area and the executive director's response to comments, the facility is proposed to be located in an area of Webb County where the surrounding properties are owned in large tracts and used for ranching, agriculture, recreation, mineral rights exploration and development. There are no distance limitations for affected persons in the law applicable to this application. 30 TAC §55.203(b)(2). In the context of this area of large ranches, the relative proximity of the requester's property to the proposed landfill site could impact the requesters' use and enjoyment of property and interests in land use compatibility in a manner not common to the general public. 30 TAC §55.203(a). A reasonable relationship exists between the requesters' interests in protecting the use and enjoyment of their property, as well as the character of the rural ranching area in which they own property, and the Commission's determination on land use compatibility. Accordingly, OPIC finds that Robert F. Wied, Mary L. Wied and Robert F. Wied, Jr. are affected persons.

2. Issues Raised in the Hearing Request

The following issues have been raised in the hearing requests:

- (1) Whether the proposed facility is compatible with surrounding land use;
- (2) Whether the Application properly identifies all owners of the proposed facility site;
- (3) Whether the proposed facility will cause or contribute to adverse traffic conditions on site access roads
- (4) Whether the proposed facility will adversely affect the surrounding area because it is located in a floodplain;
- (5) Whether the proposed facility will cause or contribute to adverse effects on surface water drainage, run-off and erosion;
- (6) Whether the proposed facility will cause or contribute to adverse effects on groundwater quality;
- (7) Whether storm water from the proposed facility will cause or contribute to adverse effects on water quality;
- (8) Whether the proposed facility will have an adverse effect on wildlife and domestic animals;
- (9) Whether the proposed facility will cause adverse visual impacts;
- (10) Whether the facility will create nuisance odor conditions;
- (11) Whether the facility will create problems with vectors;
- (12) Whether the facility will interfere with the use and enjoyment of property;
- (13) Whether air emissions from the proposed facility will cause air pollution;
- (14) Whether the facility will have a negative effect on property values;

3. Issues Raised in the Comment Period

All of the issues raised in the timely filed hearing requests were raised in the comment period and have not been withdrawn. 30 TAC 30 TAC §§55.201(c)(d)(4), 55.211(c)(2)(A).

4. Disputed Issues

There is no agreement between the hearing requesters and the ED on the issues raised in the hearing requests.

5. Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC §55.211(c)(2)(A). All of the issues presented are issues of fact appropriate for referral to the State Office of Administrative Hearings (SOAH).

6. Relevant and Material Issues

Because the processing the Rancho Viejo application has been bifurcated, only issues concerning land use compatibility are relevant and material for purposes of pending hearing requests. While the Commission is statutorily authorized and required to consider land use compatibility when making decisions on all landfill permit applications (THSC §361.089(a)), this is the only issue appropriate for adjudication when a land use determination is separated from the processing of the rest of the application under THSC §361.069. As required by 30 TAC §55.201(d)(4) and §55.211(c)(2)(A), the hearing requests raise issues relevant and material to the Commission's determination of land use compatibility.

Relevant and material issues are those governed by the substantive law under which this permit is to be issued. 477 U.S. at 248–51. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–51 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material . . . it is the substantive law’s identification of which facts are critical and which facts are irrelevant that governs”). Commission rules address land use compatibility. 30 TAC 330.61(h) provides: “Impact on surrounding area. A primary concern is that the use of any land for a municipal solid waste facility

not adversely impact human health or the environment. The owner or operator shall provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest.”

While it could be argued that many of the issues raised by the hearing requesters could affect land use compatibility, most of the issues raised would be more meaningfully addressed following review of the remainder of the application. Therefore, at this time, OPIC is not recommending referral of issues Nos. 4-12 listed in Section III. A. 2 above. Furthermore, issues related to air quality cannot be addressed in proceedings on the municipal solid waste landfill application and the issue of effects on property values is not within the Commission’s jurisdiction to address. Therefore, OPIC cannot recommend referral of issues Nos. 13-14 listed in Section III A 2 above.

Remaining issues Nos. 1-3 listed in Section III A 2 above are addressed by Parts I and II of the application and have the most direct impact on a land use compatibility determination.

7. Issues Recommended for Referral

In accordance with the limited scope of issues dictated by Texas Health & Safety Code §361.069 and, 30 TAC §330.57(a) regarding separate land use compatibility determinations, OPIC recommends that the following disputed issues of fact be referred to SOAH for a contested case hearing:

- (1) Whether the proposed facility is compatible with land use in the surrounding area;
- (2) Whether Part I of the Application, a part required to be submitted for a land use compatibility determination, contains complete and accurate information about ownership of the site of the proposed facility;
- (3) Whether Parts I and II of the Application, required to be submitted for a land use compatibility determination, demonstrates compliance with all applicable requirements regarding availability and adequacy of roads and traffic impact and safety.

8. Maximum Expected Duration of Hearing

Commission Rule 30 TAC §50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC §55.209(d)(7), and given the limited scope of issues to be referred to SOAH at this point in the proceedings, OPIC estimates that the maximum expected duration of a hearing on this application would be four months from the first date of the preliminary hearing until the proposal for decision is issued.

IV. Conclusion

OPIC recommends granting the hearing requests of ANB Cattle Company, Ltd; Mrs. Lilia G. Cavazos-Keller; Rosemary Jordan Contreras; Mrs. Anna Jordan Dodier; Hurd Ranch Company, Ltd, Hurd Enterprises, Ltd., Killiam & Hurd, and John R. Hurd Jr. and E. Eugene Garcia, individually and on behalf of Hurdco, Inc. (collectively “the Hurds”); James Robert Jordan; Sharyn Peterson Jordan and Richard Jerome Jordan; John A. Meitzen; Villareal Real Estate Company, Inc.; James Volz; and Mary Louise

Carr Wied, Robert F. Wied and Robert F. Wied Jr. (collectively, "the Wied Family") on the issues set forth in section III A 7 above. OPIC further recommends a hearing duration of four months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2013 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

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