

**TCEQ DOCKET NO. 2014-1402-DIS**

<b>APPLICATION FOR THE</b>	<b>§</b>	<b>BEFORE THE</b>
<b>CREATION OF TRAVIS</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>COUNTY MUNICIPAL UTILITY</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>DISTRICT NO. 22</b>	<b>§</b>	

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**REPLY OF HAMILTON POOL ROAD MATTERS TO RESPONSES TO  
HEARING REQUESTS**

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**I. SUMMARY**

Hamilton Pool Road Matters (HPR Matters) agrees with the recommendations of the TCEQ Office of the Public Interest Counsel (OPIC) and Executive Director (ED) that the Commission grant HPR Matters' hearing request. These responses are well-reasoned in light of the applicable law.

On the other hand, JPH Capital, Ltd. ("JPH") has not provided persuasive reasons for the Commission to deny the hearing requests filed by HPR Matters. JPH improperly asks that the Commission disregard factors that are statutorily relevant to its petition for the creation of Travis County Municipal Utility District No. 22 (the "District"). Contrary to JPH's claims, non-economic impacts may serve as the basis of a hearing request by persons owning property outside of the boundaries of a proposed district, and members of HPR Matters will be affected in a manner not common to the general public as a result of such impacts.

## II. THE COMMISSION SHOULD GRANT HPR MATTERS' HEARING REQUESTS

A. *HPR Matters' interests are protected by applicable law including Texas Water Code § 54.021(b) and 30 TAC § 293.11.*

JPH asks that the Commission disregard applicable substantive law in considering HPR Matters' hearing requests. Both OPIC and the Executive Director acknowledge that the interests asserted by HPR Matters are protected by the law governing the hearing requests at issue.<sup>1</sup> JPH concedes that HPR Matters' hearing request is based on factors set forth at Texas Water Code § 54.021(b)(3), but claims that it is improper for the Commission to evaluate these criteria in a contested case hearing on a district creation petition.

While other proceedings could involve some overlapping issues, the Commission still bears a responsibility to address these issues in the immediate proceeding. Factors relevant to a decision set forth by statute or rule cannot simply be ignored.

Furthermore, the hearing process with regard to JPH's district petition allows the exploration of issues in a manner that will not occur in other proceedings. For example, while the impacts of the development on natural runoff rates and drainage may be addressed by Travis County regulations, the consideration of JPH's petition will not necessarily be limited to the specific factors set forth in Travis County's regulations. Likewise, the operation of the District will result in water quality impacts that go beyond those issues that will be

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<sup>1</sup> OPIC Response at p. 7, ED Response at p. 6.

explored in a hearing on the pending wastewater treatment and disposal permit.

Through TCEQ's district creation process, the Legislature has chosen to provide the public with an opportunity to engage in the activities associated with a contested case hearing, such as discovery, the presentation of evidence, and the presentation of argument, with regard to the issues raised. Travis County's application of its regulations will not allow for the type of participation by affected persons that the TCEQ process provides; nor will any other authorization provide for that type of examination on some of the issues involved. The denial of HPR Matters' hearing request would improperly deny the organization of these legislatively-required processes on several issues.

Moreover, TCEQ has an interest in the uniform consideration of these issues for all district applications in the state. If TCEQ relies on local regulations to address the issues, then TCEQ's consideration of some of the issues raised comes to rely upon a patchwork of local regulations.

*B. A reasonable relationship exists between the interests claimed by HPR Matters and the requested creation of the proposed District.*

JPH asserts that none of the members of HPR Matters will be impacted because HPR Matters' members do not own land within the District and will not be subject to taxes, fees or other expenses levied by the District. This argument mistakenly assumes that the impacts of the District will be strictly limited to economic impacts on landowners within the District. But, TCEQ must consider factors such as groundwater impacts, drainage impacts, and surface water impacts

precisely because operation of the District will potentially impact groundwater, drainage patterns, and surface water quality. JPH's application materials indicate that the District intends to exercise its powers to create additional impermeable cover, alter drainage patterns, and construct utility lines within sensitive environmental areas, among other activities. The creation of the requested District enables these activities. Thus, the mere fact that HPR Matters' members do not own property within the boundaries of the District does not mean that the creation of the District will have no impact on those members.

Furthermore, contrary to claims by JPH, the nature of these impacts will be distinct from those experienced by the general public. Each member identified in HPR Matters' hearing requests owns property in close proximity to the boundaries of the proposed District. For example, Mehrad Morabbi as well as Dick and Kathie Hanson own property adjacent to the proposed District.<sup>2</sup> Mr. Morabbi's property is also adjacent to Little Barton Creek downstream of the proposed district, and the Hansons own a groundwater well on their adjacent property. This proximity of the property and natural resources utilized by Mr. Morrabbi and the Hansons distinguishes their interests from that of the general public.<sup>3</sup> Among other considerations, the addition of impermeable cover is likely to impact the Hanson's ability to utilize their groundwater well. Likewise, such impermeable cover and

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<sup>2</sup> The text of the Requesters Map provided by the Executive Director lists 1600 Destiny Cove as the address for Dick and Kathie Hanson. This is a valid mailing address for the Hansons. But, the address of the property at issue is 16400 Hamilton Pool Road. The graphical representation set forth in the Executive Director's map accurately depicts the location of the property at issue.

<sup>3</sup> This Reply discusses Mr. Morabbi and the Hansons as examples. Other members of HPR Matters, including Jessica Tennant and Judy Hendricks, are likewise impacted in a fashion distinct from that experienced by the general public.

on-site construction activities will likely impact Mr. Morabbi's use of his property.

**III. RECENT ACTIONS BY WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY CONFIRM HPR MATTERS' CONCERNS UNDER TEXAS WATER CODE § 54.021(b)(2).**

Contrary to JPH's claims, HPR Matters' concerns go beyond only those factors related to Texas Water Code 54.021(b)(3), that is, issues such as drainage, groundwater impacts and water quality. By its April 30, 2014 hearing request, HPR Matters expressed concern as to whether the petition met all applicable requirements. Those requirements include JPH's burden to demonstrate the reasonableness of projected construction costs, tax rates, and water and sewer rates pursuant to Texas Water Code § 54.021(b)(2).

Recent events confirm HPR Matters' concern on this issue. The engineering report accompanying JPH's application indicates that the West Travis County Public Utility Agency ("WTCPUA") will provide retail service for the 1,837 equivalent single-family connections ("ESFCs") within the proposed District. The economic analysis for the District, including the feasibility of the District's proposed tax rate, assumes this extent of build-out within the District. However, in recent months the WTCPUA has indicated that it can only make water available to serve a maximum of 800 ESFCs. Even that number assumes infrastructure improvements that JPH would be required to fund, but which JPH has not committed to funding. Further, WTCPUA has no plans to expand the availability of water to the development, and has made no commitment to provide water to the development in the future.

Since the District will not be able to rely on income from the number of homes assumed in the application or the commercial retail development proposed in the application, JPH has not shown that the operation of the proposed District is feasible at the proposed tax rates. Should the District turn to groundwater to make up for this shortfall, that could certainly impact groundwater interests held by members of HPR Matters. Given that Travis County's subdivision rules limit the density of developments relying on the Trinity Aquifer, it is far from clear that water is available to support the build out claimed by JPH even if groundwater is utilized as a source in addition to water from WTCPUA. For these reasons, a genuine question exists as to whether JPH's development assumptions in its financial analysis are justified.

#### IV. PRAYER

For the reasons stated above, HPR Matters respectfully asks that the Commission grant HPR Matters' hearing requests and refer the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I, Eric Allmon, hereby certify that on January 12, 2015, the foregoing document was electronically filed with the Chief Clerk at the Texas Commission of Environmental Quality in accordance with TCEQ rules and the instructions as set forth by the Chief Clerk on the Commission's website, and that copies were served on all parties listed below via hand delivery, facsimile transmission, or deposit in the United States Mail.



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