



DEPARTMENT OF THE ARMY
CAMP STANLEY STORAGE ACTIVITY, MCAAP
25800 RALPH FAIR ROAD, BOERNE, TX 78015-4800

August 27, 2015

Bridget C. Bohac, Chief Clerk
MC105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

SUBJECT: Army Comment on TCEQ ED Counsel's Response to Request for Reconsideration on Proposed Permit No. WQ0015219001/Docket No. 2015-0841-MWD

Dear Ms. Bohac:

We are making a comment regarding the TCEQ Executive director's counsel August 17, 2015 response to our May 28, 2015 request reconsideration of TCEQ Executive Director's decision dated May 1, 2015.

As background, our Army installation is downgradient of this proposed wastewater treatment plant siting and we have expressed concerns about potential effects on water quality and other issues, as have many citizens and a local environmental group, the Greater Edwards Aquifer Authority (GEAA) regarding this permit.

Our request for reconsideration, which the TCEQ Executive director's counsel responded to on August 17, 2015, asked for reconsideration based on TCEQ apparently not following its own rules regarding 1) the potential impacts of the facility and land application to groundwater in the area and 2) plant sizing. The Executive Director's counsel's August 17, 2015 response also characterizes this as issues of law, whether the TCEQ followed its own rules.

We are writing this comment as rebuttal to the August 17, 2015 response's analysis regarding land application and the theme that TCEQ may not be following its own rules. Regarding land application, see atch page 11 of Trio's TCEQ form 10053, block 7.k. The form is checked that Trio is/will be owner of the land where the treatment facility is located and 7.l. that they **are** the owner of the effluent disposal site. Unless they provided a long term lease or executed option to buy to TCEQ (there were no such documents in the permit files at Fair Oaks or Boerne), they may have a significant problem -- they do not own the land yet, do not have a long-term lease or executed option in the permit file, so how can they be an "applicant"? Also, their application is clearly incorrect in that they do not own the discharge site (7.l).

Our understanding is the City of Fair Oaks Ranch's city attorney notified Trio (see atch article) that because they had not obtained an assignment of development rights, purchased the property or had an agent delegation from the landowner, Russell W. Pfeiffer (or R W Pfeiffer LLC), the city considered null all of Trio's prior platting applications and dealings regarding the development agreement with the city. See atch newspaper article on this subject from the San Antonio Express News.

See landownership info below and a fuller version enclosed, checked recently at the appraisal districts' websites. Kendall County Appraisal District property ID 11782 is the 339.29 acre tract for R W Pfeiffer LLC for tax year 2015:

Land #	Type	Description	Acres	Sq ft	Eff Front
1	NR1	Native Range 1	338.2970		14736217.32
0.00	0.00	N/A	N/A		
2	RAA	Residential Acreage Ag	1.0000		43560.00
0.00	0.00	N/A	N/A		

https://propaccess.trueautomation.com/ClientDB/Property.aspx?prop_id=11782

Comal County Appraisal District property ID 83163 is the 5.6 acre tract for Russell W Pfeiffer for tax year 2015 (owner ID 44689):

1	1NPG	NATIVE PASTURE (GOOD)	5.6820	247507.92	0.00	0.00
		\$90,470		\$380		

http://taxweb.co.comal.tx.us/ClientDB/Property.aspx?prop_id=83163

Per 30 TAC 217.2 Definitions, 217.2 Plans and Specifications General, and 217.6 Submittal Requirements and Review Process, the Executive Director should be processing a wastewater treatment permit with the owner of the wastewater treatment plant and the effluent discharge site, see regulatory excerpts with highlighting to emphasize "owner" in the enclosures.

As noted in our request for reconsideration, see relevant excerpt from a Texas State Office of Administrative Hearings (SOAH) decision, 2010 TX SOAH LEXIS 59 (February 8, 2010), the commission shall follow its rules:

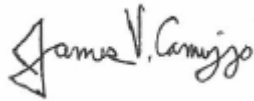
FN 40. TEX. WATER CODE ANN. (Water Code) § 5.103(c) states: "The commission shall **follow its own rules** as adopted until it changes them in accordance with [the APA]." If a Texas agency fails to **follow** the clear, unambiguous language of its **own** regulations, its action is arbitrary and capricious. See *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 255 (Tex.

1999) and *Public Util. Comm'n v. Gulf States Util. Co.*, 809 S.W.2d 201, 207 (Tex. 1991).

Trio's wastewater permit application should be dismissed because they have not shown that they have a long-term lease or have bought the property where the treatment facility will be constructed (7.k) and/or are not the owner of the effluent discharge site (7.l).

If you have any questions please feel free to contact me at (210) 295-7082 or 9830.

Sincerely,

A handwritten signature in black ink that reads "James V. Cannizzo". The signature is written in a cursive style with a large, stylized initial "J".

James V. Cannizzo
Counsel

Enclosures

Enclosure: Extract of Trio's Application, note blocks 7 k and l.

Section B: Enter the site location information.

If no physical address (Street Number & Street Name), provide a written location access description to the site:

Located along the north right-of-way of Ammann Road at its intersection with Rolling Acres Trail in north Fair Oaks Ranch, Southeastern Kendall County, Texas. See attachment "A".

(Ex.: located 2 miles west from intersection of Hwy 290 & IH35 accessible on Hwy 290 South)

e. City where the site is located or, if not in a city, what is the nearest city:

Fair Oaks Ranch

f. ZIP Code where the site is located: 78006

g. County where the site is located: Kendall

h. Latitude: 29° 46' 12.01" N

Longitude: 98° 37' 04.07" W

i. In your own words, briefly describe the primary business of the Regulated Entity:

(Do not repeat the SIC and NAICS code)

Waste Water Treatment

j. Owner of treatment facility: Trio Developers, Inc.

Ownership of Facility: Public Private Both Federal

k. Owner of land where treatment facility is/will be: Trio Developers, Inc.

(If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years. In some cases, a lease may not suffice - see instructions.)

l. Owner of effluent disposal site: Trio Developers, Inc.

(If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years.)

m. Owner of sewage sludge disposal site: N/A

(Required only if authorization is sought in the permit for sludge disposal on property owned/controlled by the applicant.)

8. DISCHARGE/ DISPOSAL INFORMATION (Instructions, Page 27)

a. Is the point of discharge and discharge route in the existing permit correct?

Yes No

If no, or a new or amendment permit application, please give an accurate description.

N/A - New Permit

Metro

Fair Oaks project tripped up

Foes of plan for 635 upscale homes say it's too dense for 345-acre site

By Zeke MacCormack
STAFF WRITER

FAIR OAKS RANCH — More than a year of haggling over a controversial subdivision proposal may be for naught because city officials say the would-be developer lacked formal authorization to pursue the project.

That revelation is the latest twist in the convoluted path followed by the Reserve at Fair Oaks Ranch, a development of 635 upscale homes planned just outside the city limits.

"I have to say I'm a little surprised they didn't do that, and I'm a little surprised that we

didn't catch it," Mayor Cheryl Landman said Thursday. "I do feel it's a shame that we put in a lot of time on plats and things like that. That was wasted time on our part."

The city in November 2013 entered a development agreement with R.W. Pfeiffer Properties, owner of the 345-acre Ammann Road parcel that City Council considered but rejected for annexation five months later amid public protests about the project.

Acting as Pfeiffer's agent, Trio Developers Inc. of Austin sought a plat for the development and also applied to the Texas Commission on Environ-

mental Quality for a discharge permit for a planned wastewater treatment plant.

However, City Attorney Charles Zech notified Trio and Pfeiffer last month that the pending plat application was being rejected, and that the city would henceforth deal only with Pfeiffer, unless he formally assigns development rights or transfers ownership of the parcel to another party.

"The city and Pfeiffer Properties have a valid and binding agreement, the terms of which the city stands willing and able to observe," Zech wrote to Pfeiffer on July 7.

Zech, who began representing the city after the development agreement was signed, said he learned that Pfeiffer and Trio lacked a formal agreement from

"This is a real opportunity to improve the situation and to get a development there that is less dense."

Steve Hartpence, Fair Oaks councilman

Trio's lawyer, Alan Waldrop.

As a result, Zech told Waldrop in a July 7 letter that the plat application was rejected and said "the city will no longer be in a position to discuss the agreement or development" with Trio.

Zech said he had not received a response from Pfeiffer, who couldn't be reached for comment, nor Waldrop, who re-

ferred questions to Trio President Marc Frease.

Asked Thursday about the purported absence of a written assignment by Pfeiffer to Trio, Frease said, "Does anyone have proof of the claims they are making?" He declined to take questions.

The issue arose after Pfeiffer accused the city in June of breaching the development agreement by failing to annex the land, failing to approve the plat and refusing to accept a water availability study on the site, among other things.

Zech, denying the city breached its obligations, said that in researching Pfeiffer's allegations, he asked Waldrop for the letter assigning development rights to Trio and was

Fair Oaks continues on A4

METRO

FAIR OAKS

From page A3

told it doesn't exist.

City leaders say they dealt only with Trio representatives. The engineer who prepared and submitted the Reserve at Fair Oaks Ranch plat, Paul Schroeder, said Wednesday that his contract was with Trio, which he understood to be an agent for Pfeiffer.

The public uproar over the project helped fuel the successful election campaigns in May of Councilmen Steve Hartpence and Garry Manitzas, members of the grass-roots group Save Fair Oaks Ranch, which led the opposition effort.

"To me this kind of resets the whole deal," Manitzas said Thursday. "In my mind, that's kind of a plus."

Hartpence said, "This is a real opportunity to improve the situation and to get a development there that is less dense."

Mary McConnell of Save Fair Oaks Ranch said recent events reinforce the group's view that the city had rushed unprepared into its first such development agreement.

"We've beat a dead horse saying the due diligence wasn't done," she said Thursday. "We are thrilled to potentially have another opportunity to reshape what we thought all along was an irresponsible density for that property."

zeke@express-news.net

LOCAL AND TEXAS BRIEFS

NORTH SIDE

Two men shoot store clerk

A Saturday night shooting left a store clerk in critical condition on the city's North Side.

The shooting took place at around 9 p.m. Saturday, when a clerk at the Golden Food Mart convenience store, located in the 1700 block of Fredericksburg Road, stepped outside to smoke a cigarette. A witness who was pumping gas outside the store told officers that two men approached the clerk and shot him multiple times in the chest before fleeing on foot down Zarzamora Road.

The victim was transported to University Hospital in critical condition. Officers were still searching for the gunmen Sunday night.

WEST SIDE

Home invader attacks girl, 12

A pre-teen girl was violently attacked by an unknown assailant in her far West Side home as she was sleeping.

Investigators told reporters that a male with a black ski mask broke into a house in the 500 block of Mohota Drive near U.S. 90 at around 9:45 p.m. Saturday and slammed the 12-year-old girl's body against a

mirror. The girl's mother ran into the room after she heard the commotion and found her daughter sprawled on the floor.

The suspect fled the scene.

SOUTH SIDE

Fire forces families to flee

Several families were evacuated from their housing units on the South Side after an apartment complex went up in flames.

Officials with the San Antonio Fire Department told reporters that a resident was burning incense, causing a fire to catch.

The apartment complex in the 2900 block of Roosevelt Avenue sustained nearly \$20,000 in damages. There were no reports of injuries.

TEXARKANA

Explosion rocks water plant

The director of Texarkana Water Utilities said an explosion Saturday at a treatment plant on the Texas side caused no injuries and that water continues to flow for customers in both Texas and Arkansas.

Water utilities executive director Bill King said the blast occurred after a motor over-

heated and a portion of it melted, according to the Texarkana Gazette.

King said the treatment plant at Millwood on the Arkansas side has been brought up to full capacity and is producing about 20 million gallons of water per day while equipment at the plant on the Texas side is being repaired and monitored.

DALLAS

Mayor rescues restaurant patron

A woman who began choking at a Dallas Mexican restaurant is crediting Mayor Mike Rawlings with using the Heimlich maneuver to clear her airway.

WFAA TV reported that Helen Mayer was having lunch with about eight family members at El Fenix restaurant downtown when she began choking on bites of fajita.

Rawlings was finishing lunch with his son when he heard screaming from a nearby table.

Mayer said she remembered standing up while choking, but little else: "The next thing I knew, this gentleman had picked me up from behind and did the Heimlich maneuver."

Rawlings said he learned the Heimlich from his past as a lifeguard and Boy Scout.

BAY CITY

After 35 years, he gets day in court

For more than 35 years, a Texas man has been in a prison even though an appeals court threw out his conviction in 1980 on a 1976 murder charge that initially had him on death row.

Jerry Hartfield, now 59, will return to court today for a retrial, facing a life sentence if convicted of the brutal killing of a woman who sold tickets at a Bay City bus station.

The Texas Court of Criminal Appeals overturned Hartfield's capital murder conviction in 1980 because of a jury selection problem and ordered a new trial. Three years later, then-Gov. Mark White commuted Hartfield's sentence to life in prison. But he had never had the retrial.

It wasn't until 2006 that a fellow inmate pointed that out. Hartfield, who said he learned to read and write in prison, filed a handwritten court writ demanding retrial or release. It was initially rejected but in 2009, a federal judge agreed and a new trial was ordered.

At a hearing Friday, a psychologist testified Hartfield's IQ is 67, below the threshold of 70 considered mental impairment.

Staff and wire reports

Enclosure: 30 TAC 217 References regarding the applicant being “an owner”.

30 TAC 217.2 Definitions..

(37) **Owner**--A person **who owns** a collection system or a treatment facility or part of a system or facility.

30 TAC 217.5 Plans and Specifications General Requirements.

(a) **An owner** is required to build a wastewater collection system or treatment facility according to the plans and specifications approved by the executive director.

(b) The executive director's approval of plans and specifications of a facility does not relieve **an owner** of the responsibility to obtain a wastewater permit or other authorization in accordance with Texas Water Code, Chapter 26.

(c) The executive director's approval of a wastewater permit does not relieve **an owner** of the responsibility to obtain a plans and specifications approval for a facility in accordance with this chapter.

(d) **An owner** must ensure that its facility plans and specifications meet all design requirements in the associated wastewater permit.

30 TAC 217.6 Submittal Requirements and Review Process

(a) **An owner** is not required to submit collection system or treatment facility plans and specifications for approval prior to the commission issuing the facility's wastewater permit.

(b) A treatment facility's plans and specifications must be based on a design that will produce effluent that will at least meet the requirements and effluent limits in the associated wastewater permit.

(c) **An owner** shall submit to the executive director and the appropriate regional office a summary transmittal letter for each collection system and treatment facility that includes the following requirements, except as provided by §217.8 of this title (relating to Municipality Reviews):

(1) the name and address of the design firm;

(2) the name, phone number, and facsimile number of the design engineer;

(3) the county(s) where the project will be located;

(4) an identifying name for the project;

(5) the name(s) of the person(s) that proposes to operate the collection system or treatment facility;

(6) **the collection system or treatment facility owner's name**, and if applicable, the treatment facility permit number, and facility name;

(7) a statement certifying that the plans and specifications are in substantial compliance with all requirements of this chapter, with the exception of any listed variance requests;

(8) a statement certifying that any variances from the requirements will not threaten public health or environment, based on the best professional judgment of the engineer

who prepared the report and the project plans and specifications;

(9) a brief description of the project scope that includes:

(A) a brief engineering summary of the collection system or treatment facility;

(B) a description of variances from the requirements of this chapter, including the use of nonconforming or innovative technology; and

(C) an explanation of the reasons for such variances in accordance with §217.4 of this title (relating to Variances); and

(10) the signature and seal of the engineer responsible for the design of the collection system or treatment facility.

(d) The executive director may review the plans and specifications for any collection system or treatment facility.

(e) If the executive director does not notify an owner by fax or letter within 30 days after the receipt of a summary transmittal letter that a review will occur, the project is approved. However, such approval is conditional, subject to an executive director determination under §217.4(c) or (d) of this title. Additionally, if this provision conflicts with any other rule in this chapter that requires affirmative executive director approval, then this provision does not apply.

(f) If the executive director notifies **an owner** by fax or letter of the intent to review a collection system or facility's design, **the owner** shall submit the following within 30 days after receiving notice:

(1) a complete set of plans and specifications;

(2) a complete report;

(3) any requested variances; and

(4) sufficient information to satisfy the executive director that a project is in substantial compliance with this chapter.

(g) If the executive director does not notify **an owner** of any insufficiency within 30 days after receipt of any additionally requested information, the project is approved.

Enclosure: Kendall County Appraisal District Website Showing Ownership of 339 acres in Kendall County of the 345 acre Tract Trio Proposes to Develop

The screenshot shows the Kendall CAD eSearch website interface. The browser address bar displays the URL: <http://esearch.kendallad.org/Search/Result?keywords=PropertyId:11782>. The page title is "Kendall CAD eSearch". The search results show "PropertyId:11782" with a "Search" button and options for "Grid", "List", and "Map". The "Map" view shows a large blue-shaded property area on a street grid. A "view Property Details" pop-up window is open over the property, displaying the following information:

- Property ID: 11782
- Year: 2015
- Property Type: Real
- Geo ID: 1-0033-0214-0040
- Nbrhd. Code: BN
- Address Line 1: Address Line 1:
- Address Line 2: 1103 LAKESHORE LOOP
- Address Line 3: Address Line 3:
- Address City: TOW
- Address State: TX
- Address Zip: 78672-4909
- Legal Description: A10033 - SURVEY 214 D BRADBURY 339.297 ACRES
- Owner ID: 5366410
- Owner Name: R W PFEIFFER LLC
- Percent Ownership: 100.0%

The pop-up window also includes a "Zoom to" link. The map shows surrounding properties with their IDs (e.g., 63945, 63944, 63925, 63943, 63926, 63942, 63927, 63948, 63941, 63928, 63949, 63940, 63929, 63950, 63939, 63924, 63937, 63938, 63931, 63923, 63936, 63932, 63922, 63935, 63933, 63921, 63917, 63934, 63919, 63920, 63916, 63919, 63919, 63915, 63915, 63889, 63914, 63897, 63908, 63901, 63913, 63907, 63909, 63900, 63912, 63908, 63901, 63910, 63909, 63905, 63904, 63904, 45299, 14322, 51253, 14323, 46193, 63818, 22097, 22095, 22093, 22092, 13193, 11780, 15935, 11781). The map source is cited as "Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus D.".

DISCLAIMER: Information provided for research purposes only. Legal descriptions and acreage amounts are for appraisal district use only and should be verified prior to using for legal purpose and or documents. Please contact Kendall County Appraisal District to verify all information for accuracy.

Enclosure: Comal County Appraisal District Website Showing Ownership of 6 acres in Comal County of the 345 acre Tract Trio Proposes to Develop

Property Search Results > 83163 PFEIFFER RUSSELL W for Year 2015 New Search

Details Expand All

Click on a title bar to expand or collapse the information.

Property

Account

Property ID:	83163	Legal Description:	A-989 SUR-214 D BRADBURY, ACRES 5.682
Geographic ID:	780989000400	Agent Code:	
Type:	Real		
Property Use Code:			
Property Use Description:			

Location

Address:	0 BERGHEIM RD	Mapsc0:	
Neighborhood:	Rural ac. area 4	Map ID:	5B-A989-TR 1
Neighborhood CD:	RURAL4		

Owner

Name:	PFEIFFER RUSSELL W	Owner ID:	44689
Mailing Address:	1103 LAKESHORE LOOP TOW, TX 78672-4909	% Ownership:	100.0000000000%

[Exemptions:](#)

Values

Taxing Jurisdiction

Improvement / Building

Land

Roll Value History

Deed History - (Last 3 Deed Transactions)

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	4/28/1980	WD	WARRANTY DEED		PFEIFFER RUSSELL W	295	379	295379

Tax Due

12:55 PM
8/25/2015