March 28, 2016

Re: Application by Ventana Development McCrary, Ltd. for Permit No. WQ0015241001; Docket No. 2016-0144-MWD

This letter is in response to the ED's and OPIC's responses to our hearing request in the above-referenced matter. There are a number of mistakes in their responses that need to be pointed out and corrected, which will result in establishing our right to a contested case hearing on this matter, as an affected person in accordance with the rules of the TCEQ.

First, the ED's response makes it clear that we are "adjacent landowners", as the ED notes on page 6 that the "Applicant's landowner map (Attachment B) shows the Blairs as adjacent landowners". The OPIC response on page 5 stating that we are not adjacent landowners is not accurate, as we are indeed an affected person by our adjacent status along with our close proximity to the proposed site and its respective discharge point.

Second, the ED's response states that "the 100-year floodplain issue was not raised by anyone during the original comment period." However, the OPIC response correctly notes that "all issues raised in the hearing request were raised in the comment period and have not been withdrawn" (page 8), and one of the issues raised specifically by us was that the proposed site was in the 100-year floodplain, as OPIC found (pages 5 and 8). In addition, in the ED's Response to Comments, the ED notes under Comment 2 that "… other homeowners stated that the proposed location would be in an area subject to flooding" (page 7). This clearly identifies that if the proposed site is "in an area subject to flooding", that this raises a fact question as to whether this site is located within the 100-year floodplain. The ED did not respond as to whether or not this site was subject to flooding or whether it was in the 100-year floodplain or not. The ED has only stated that "the Applicant states that the site is not within the 100-year floodplain." We have provided information that demonstrates that this site is adjacent to the unnamed tributary that clearly floods and yet does not have a floodplain delineation for this stream, and therefore there is in fact, question raised as to whether this site is in the 100-year floodplain, contrary to the Applicant's assertion that it is not. OPIC agrees that this issue is appropriate for referral to SOAH for a contested case hearing if one were to be granted.

Finally, both the ED and OPIC believe that we are not "affected persons" because we will not be adversely affected by the proposed facility and discharge, since our property "… is located away from the proposed discharge route" (ED) or that "any impacts would be attenuated by the Blairs' location and distance from the site" (OPIC). This is wrong for the following reasons:

First, since our property is located a short distance downstream of the proposed wastewater plant site, and if this site is in the 100-year floodplain of the unnamed tributary as we and others know it is, and this tributary runs through our property, then if this plant were to flood during events up to and including the 100-year flood, untreated wastewater would end up flowing onto and through our property. Clearly, this is a condition which is not to be allowed under the TCEQ rules and regulations for siting a wastewater treatment plant. That is why the 100-year floodplain issue is so important, why it was raised, and why OPIC recognizes that it is an issue to be referred to SOAH. It is unclear why OPIC believes that our property would not be affected by this condition, since our property lies downstream along this tributary and is only about 500 feet from the proposed plant.

Second, the proposed discharge point is just to the east of our property boundary line at McCrary Road and into the unnamed tributary. Our property lies immediately to the west of McCrary Road and also contains this unnamed tributary, which is in extremely close proximity of the discharge point and not necessarily upstream, which was incorrectly noted. On multiple occasions, we have seen water backing up in this tributary and onto our property in the past with this problem of water backup being exasperated since the excavation and development began. This is because the slope of the stream in this area is basically flat, as shown on the attached figure from the Fort Bend County Floodplain Mapping Tool. As you can see from this figure, the bottom of the tributary has an elevation of about 80 feet, both on our side of McCrary Road as well as on the applicant's side, where the discharge outfall would be located. To say that we are "located away from the proposed discharge route" (ED) or that "any impacts would be attenuated by our location and distance from the site" (OPIC) is factually untrue, given the topography in this area and the close proximity of our property to this unnamed tributary, which we again stress has not yet been formally evaluated.

We strongly request that the TCEQ Commissioners grant our request for a contested case hearing on this matter, as we are clearly "affected persons" given our property's location to the proposed site and its respective discharge point. We are extremely likely to being adversely impacted by not only (1) untreated wastewater leaving the site and flowing down the unnamed tributary and onto and through our property, since this proposed site is within the 100-year floodplain of this tributary, as well as (2) the wastewater discharge being located immediately east of our property in a portion of this unnamed tributary where water has been known to backup and flow west given the flatness of the stream in this area.

Sincerely,

Clark and Sara Blair

CC: Mr. Lawrence G. Dunbar, P.E., J.D.

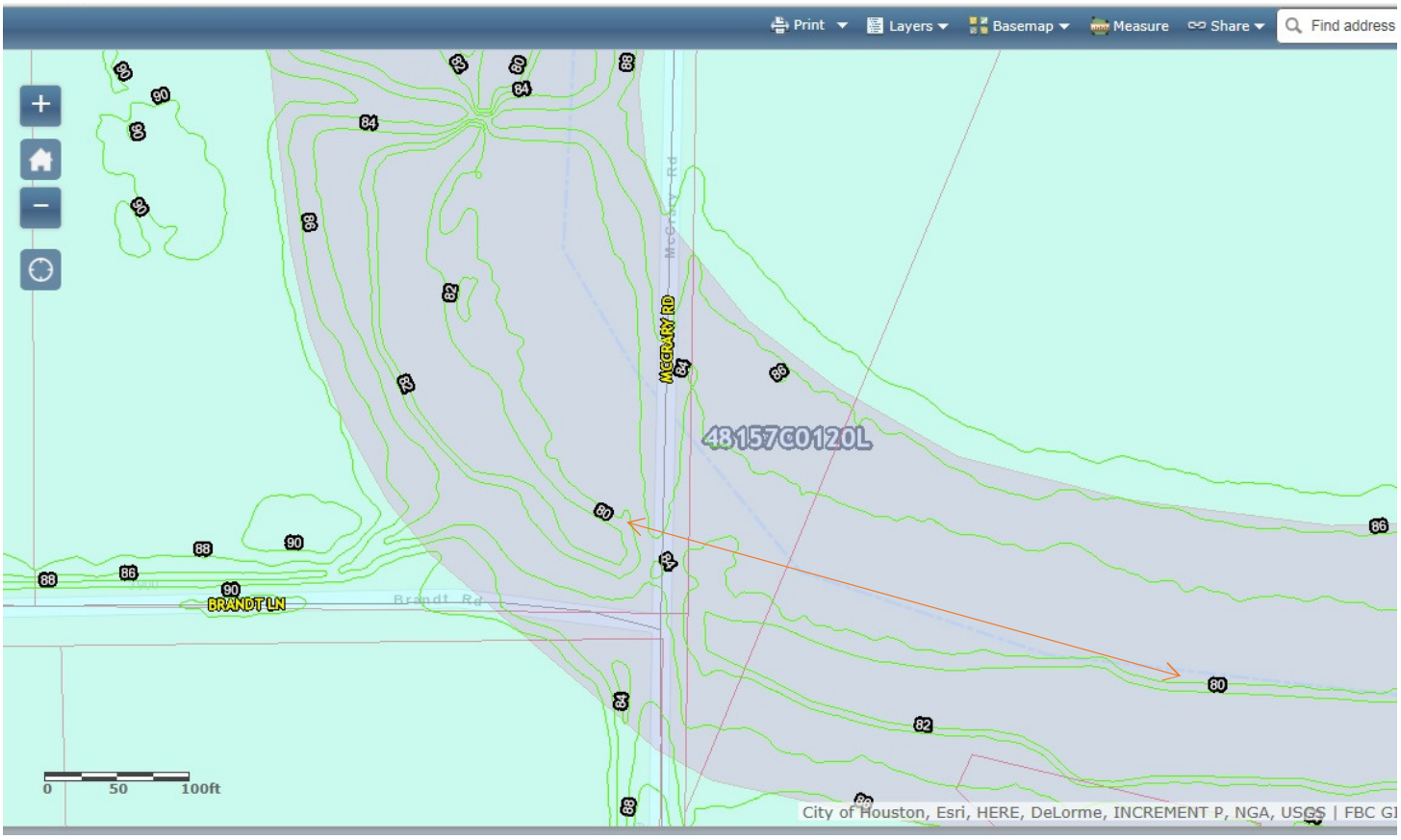

Figure 1. Two-foot contour map of the unnamed tributary at intersection of McCrary Road and Brandt Lane, which shows the elevation of areas to the east and the west of the discharge point being the same 80' elevation, thus depicting a flat surface where the water backflows onto our property.