

DOCKET NO. 2022-0272-MWD

APPLICATION BY  
CONTINENTAL HOMES OF TEXAS  
FOR NEW TPDES PERMIT  
NO. WQ0015948001

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

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**I. Introduction**

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Continental Homes of Texas (Applicant) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015948001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Florence M. Dews.

Attached for Commission consideration is a satellite map of the area.

**II. Description of Facility**

Continental Homes of Texas, L.P. has applied to the TCEQ for a new permit that authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.20 million gallons per day (MGD). The Trails at Mustang Ridge Wastewater Treatment Facility will be an activated sludge process plant operated in suspended growth with single stage nitrification mode. Treatment units will include a bar screen, two aeration basins, a final clarifier, two aerobic sludge digesters, and a chlorine contact chamber. The proposed wastewater treatment facility will serve the Trails at Mustang Ridge Residential Development Tract.

The effluent limitations in the draft permit, based on a 30-day average, are 5 mg/l five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), 5 mg/l total suspended solids (TSS), 2.0 mg/l ammonia-nitrogen (NH<sub>3</sub>-N), 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual in the range of 1.0 to 4.0 mg/L after a detention time of at least 20 minutes (based on peak flow). The pH must be in the range of 6.0 to 9.0 standard units.

The wastewater treatment facility will be located approximately 0.81 miles northeast of the intersection of Laws Road and U.S. Highway 183, in Travis County, Texas 78610. The treated effluent will be discharged to an unnamed tributary, thence to Cedar Creek, thence the Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary and Cedar Creek. The designated uses for Segment No. 1434 are primary contact recreation, public water supply, and exceptional aquatic life use.

**III. Procedural Background**

The TCEQ received this application on December 1, 2020, and declared it administratively complete on February 3, 2021. The Notice of Receipt and Intent to

Obtain a Water Quality Permit (NORI) was published on February 9, 2021, in the *Austin American Statesman* in English, and February 11, 2021, in the *El Mundo Newspaper* in Spanish. ED staff completed the technical review of the application on June 26, 2021, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published August 25, 2021, in the *Austin American Statesman* in English and August 26, 2021, in the *El Mundo Newspaper* in Spanish. The comment period for this application ended on September 27, 2021. This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

#### **IV. The Evaluation Process for Hearing Requests**

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

##### **A. Response to Requests**

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;
- 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;
- whether the issues are relevant and material to the decision on the application; and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

##### **B. Hearing Request Requirements**

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an

issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will 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; and

list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

### **C. Requirement that Requestor be an Affected Person/"Affected Person" Status**

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person. For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

whether the interest claimed is one protected by the law under which the application will be considered;

distance restrictions or other limitations imposed by law on the affected interest;

whether a reasonable relationship exists between the interest claimed and the activity regulated;

likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

likely impact of the regulated activity on use of the impacted natural resource by the person;

whether the requestor timely submitted comments on the application which were not withdrawn; and

for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;

the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

#### **D. Referral to the State Office of Administrative Hearings**

"When the Commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

involves a disputed question of fact or a mixed question of law and fact;

was raised during the public comment period by an affected person whose hearing request is granted; and

is relevant and material to the decision on the application.

30 TAC § 50.115(c).

#### **V. Analysis of the Request**

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

## **A. Whether the Hearing Request Complied with Section 55.201(c) and (d).**

Florence M. Dews submitted a timely hearing request that raised issues presented during the public comment period that have not been withdrawn. She provided her name, address, email address, and requested a public hearing. She identified herself as a person with what she believed to be a personal justiciable interest affected by the application, which will be discussed in greater detail below, and provided a list of disputed issues of fact she raised during the public comment period. Therefore, the Executive Director concludes that the hearing requests of Florence M. Dews substantially complies with the section 55.201(c) and (d) requirements.

### **Florence M. Dews**

According to the information provided by Florence M. Dews, her property is adjacent to the proposed discharge route, and she is listed on the downstream landowner map provided with the application. She raised concerns about water quality, human health, animal life, flooding, erosion, and nuisance odor. Ms. Dews's concerns about water quality, human health, and animal life are protected by the law under which the application will be considered and are, thus, referable. Ms. Dews has an interest in protecting the quality of the water on her property, human health, and animal life, which are interests affected by the application not common to members of the general public. Florence M. Dews demonstrated that she has a personal justiciable interest not common to members of the public; therefore, she is an affected person.<sup>1</sup>

The Executive Director recommends the Commission find that Florence M. Dews is an affected person.

## **B. Whether Issues Raised Are Referable to SOAH for a Contested Case.**

The Executive Director analyzed the issues raised in the hearing request it has recommended granting in accordance with the regulatory criteria and provides the following recommendations regarding whether the issues can be referred to SOAH if the Commission grants the hearing requests. All issues were raised during the public comment period, and none of the issues were withdrawn. All identified issues are considered disputed unless otherwise noted.

### **1. Whether the draft permit contains adequate provisions to protect water quality. (RTC Response Nos. 8 and 10).**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect water quality, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

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<sup>1</sup> 30 Tex. Admin. Code § 55.203(3)(a); *see also id.* § 55.211(c)(2).

**2. Whether the draft permit is protective of human health and animal life. (RTC Response No. 10)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect human and animal life, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

**3. Whether the draft permit will contribute to flooding. (RTC Response No. 7).**

This is an issue of fact. However, it is not relevant and material to a decision on the application, as TCEQ does not have jurisdiction over flooding. The Executive Director does NOT recommend referring this issue to SOAH.

**4. Whether the draft permit will contribute to erosion, and impact the creek, tanks, ground surfaces, and the fractious rocks of adjacent landowners. (RTC Response No. 8).**

This is an issue of fact. However, it is not relevant and material to a decision on the application, as TCEQ does not have jurisdiction over erosion. The Executive Director does NOT recommend referring this issue to SOAH.

**5. Whether the draft permit contains adequate provisions to prevent nuisance odor.**

This issue involves a disputed question of mixed fact and law. However, this issue was raised by Florence M. Dews in the hearing request but not during the comment period. Therefore, The Executive Director does NOT recommend referring this issue to SOAH.

**VI. Contested Case Hearing Duration**

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

**VII. Conclusion**

The Executive Director recommends the following actions by the Commission:

Find Florence M. Dews as an affected person and grant her hearing request;

Refer the following issues to SOAH:

**Issue 1.** Whether the draft permit contains adequate provisions to protect water quality.

**Issue 2.** Whether the draft permit is protective of human health and animal life.

Respectfully submitted,

Texas Commission on Environmental Quality

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Executive Director

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Environmental Law Division

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REPRESENTING THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**VIII. CERTIFICATE OF SERVICE**

I certify that on March 17, 2022, the “Executive Director’s Response to Hearing Request” for new TPDES Permit No. WQ0015948001 by Continental Homes of Texas was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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**DOCKET NO. 2022-0272-MWD; PERMIT NO. WQ0015948001**

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FOR THE CHIEF CLERK

via eFilings:

<https://www14.tceq.texas.gov/epic/eFiling/>

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REQUESTER(S)/INTERESTED PERSONS

See attached list



REQUESTER(S):

Florence M. Dews  
12513 Laws Road, Unit A  
Buda, Texas 78610

INTERESTED PERSON(S):

Florence M. Dews  
12513 Laws Road  
Mustang Ridge, Texas 78610

Renee Mitchell  
P.O. Box 648  
Clayton, California 94517

Lindsay Royal  
12106 Laws Road  
Buda, Texas 78610



# Continental Homes of Texas (WQ0015948001)



Protecting Texas by  
Reducing and  
Preventing Pollution

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 2/1/2022  
CRF 0065115B  
Cartographer: ABanda



- Requestor
- Wastewater Outfall
- Facility Location
- Discharge Route
- FacilityLocation\_Buffer

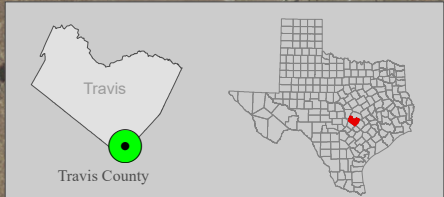
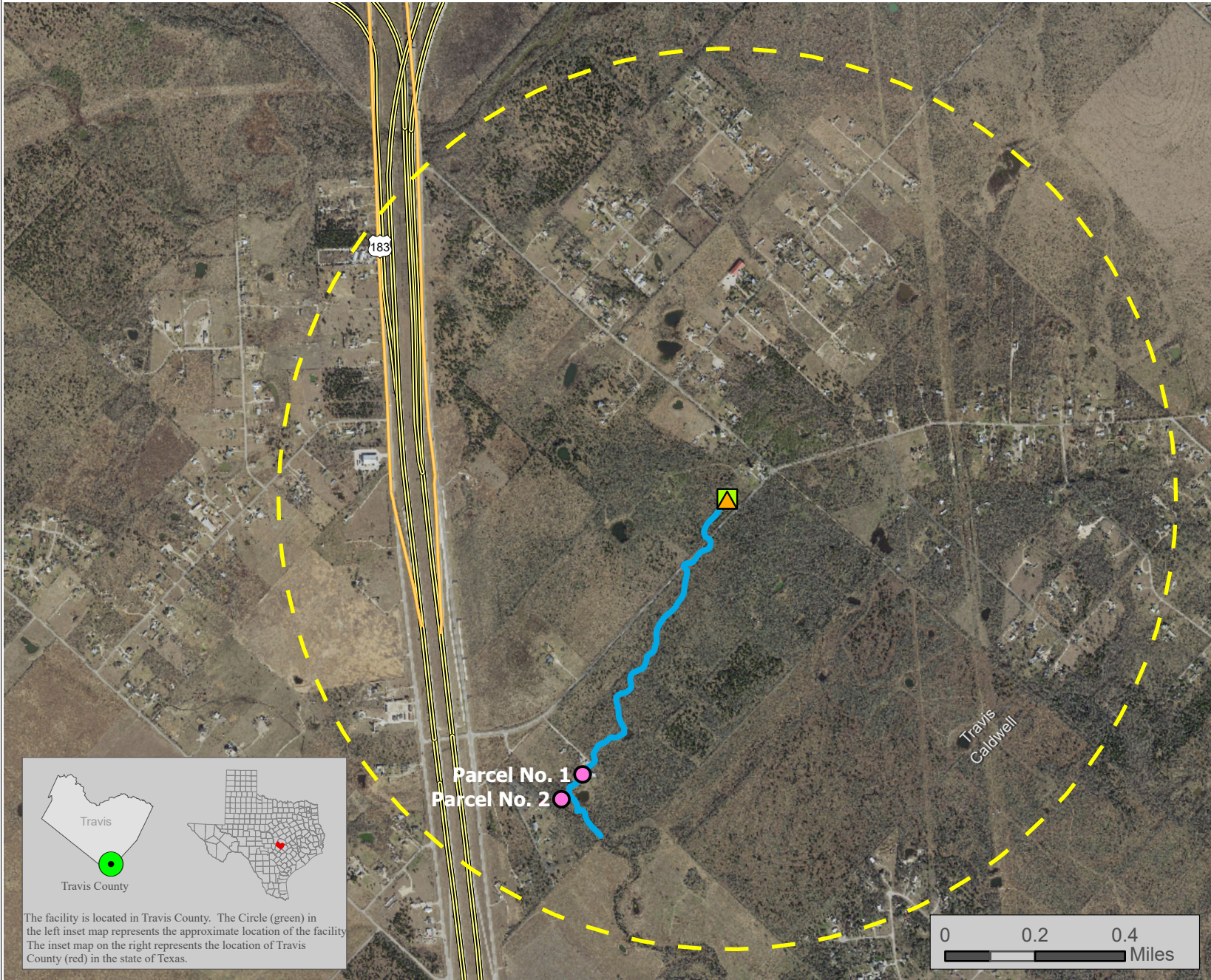
The requestor labeled in this map is Florence M. Dews who is located 0.76 miles from the Facility Location.

Parcel No. 1: 12501 Laws Road,  
Mustang Ridge, Texas 78610

Parcel No 2: 12513 Laws Road,  
Mustang Ridge, Texas 78610

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Travis County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Travis County (red) in the state of Texas.