

TCEQ DOCKET NO. 2023-0385-MWD

APPLICATION	§	BEFORE
BY HK REAL ESTATE	§	THE TEXAS
DEVELOPMENT, LLC FOR	§	COMMISSION ON
TPDES PERMIT NO. WQ0016150001	§	ENVIRONMENTAL QUALITY

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EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests on the application by HK Real Estate Development, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016150001, authorizing the discharge of treated domestic wastewater at a daily average flow limit of 0.06, 0.12, and 0.18 million gallons per day (MGD) during the Interim phase I, II, and Final phase (respectively) of the draft permit. James and Betty Freasier (the Freasiers), and Freasier LLC (collectively "requestors") filed timely requests (Requests) for a Contested Case Hearing (Hearing).

II. ATTACHMENTS FOR COMMISSION CONSIDERATION

- Attachment A - ED's GIS Map

III. DESCRIPTION OF THE FACILITY, DISCHARGE ROUTE, AND THE EXECUTIVE DIRECTOR'S TECHNICAL REVIEW

The Applicant's Wastewater Treatment Facility, the Richter Ranch Facility (proposed facility) will serve the Richter Ranch subdivision, is located approximately 2,800 feet southeast of the intersection of County Road 320 and State Highway 181 North, in Wilson County, Texas 78114, and is an activated sludge process plant operated in conventional mode. Treatment units across all phases of the draft permit include mechanical auger screens, anoxic aerobic tanks, aeration tanks, Membrane Bioreactor (MBR) basins, aerobic digesters, and chlorine contact chambers. Interim Phase I includes one of each treatment unit, with Interim Phase II and the Final Phase including two and three of each treatment unit, respectively. The discharge route for the proposed discharge is to Sandpit Creek, then to the Upper San Antonio River in Segment No. 1911 of the San Antonio River Basin.

The TCEQ has primary authority over water quality in Texas and also federal regulatory authority for the TPDES program, which controls discharges of pollutants into Texas surface waterbodies ("water in the state"). The Texas Water Code (TWC) section (§) 26.027, authorizes the TCEQ to issue permits for discharges into *water in the state*, and the ED evaluates applications for discharge permits based on the information provided in the application and can recommend issuance or denial of an application based on its compliance with the TWC and TCEQ rules. Specifically, the ED's review evaluates impacts from the proposed discharge on the receiving waters in the route for the proposed discharge, starting at the discharge point (detention basin), according to 30 TAC Chapter 307, the Texas Surface Water Quality Standards (TSWQS) and the TCEQ's *Implementation Procedures for the Texas Surface Water Quality Standards-June 2010* (IPs).

The designated uses and the dissolved oxygen criterion for the receiving waters of the route for the proposed discharge, according to Appendix A of 30 TAC § 307.10 (TSWQS), is primary contact recreation, high aquatic life use, and 5.0 mg/L DO for the Upper San Antonio River in Segment No. 1911. Through his Technical Review, the ED provides the proper effluent limitations (limits) to protect these uses.

The Technical Review process for surface water quality is conducted by staff in the ED's Water Quality Division, (WQD staff) on the Standards Implementation Team (Standards Team), and WQD staff in the Water Quality Assessment Section (Modeling Team). With the goal of the Technical Review to maintain a level of water quality sufficient to protect the existing uses of the receiving surface waters, WQD staff reviewed the application in accordance with the TSWQS and TCEQ's IPs.

With a goal of maintaining a level of water quality sufficient to protect the existing uses of the receiving waters, during the Technical Review of the application process WQD Staff reviewed the application according to the TSWQS and TCEQ's *Implementation procedures for the Texas Surface Water Quality Standards-June 2010* (IPs). WQD staff performed multiple analyses during the Technical Review of the proposed permit, including but not limited to a review of the receiving waters of the route for the proposed discharge route by the Standards Team, and Water Quality Modeling runs by the Modeling Team using a "Continuously Stirred Tank Reactor" (CSTR) model.

The first component of the ED's Technical Review involved WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters for the proposed discharge. Reviewing the receiving waters of the discharge route, along with other available information, allows the Standards Team to preliminarily determine the aquatic life uses for the area of the proposed discharge's possible impact, and assign the corresponding Minimum Dissolved Oxygen (DO) criterion as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ's IPs. For applications for new discharges, the Standards Team performs an antidegradation analysis of the proposed discharge per 30 TAC § 307.5 (TSWQS) and the TCEQ's IPs. As with all determinations, reviews, or analyses related to the Technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

Correspondingly, the Tier 1 review determined that existing water quality uses will not be impaired by the proposed discharge. The Tier 1 review also determined that within the stream reach assessed, no water bodies with exceptional, high, or intermediate aquatic life uses were present, negating the need for a Tier 2 review. Similarly, downstream of the proposed discharge, no significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses, and existing uses will be maintained and protected. However, because the proposed discharge is directly to an unclassified water body, the Standards Team reviewed this permitting action in conformity with 30 TAC §§ 307.4(h) and (l) (TSWQS) and determined that Sandpit Creek, an unclassified waterbody, had a limited aquatic life use with 3.0 mg/L Dissolved Oxygen (DO). The second tier of TCEQ's antidegradation policy generally applies to water bodies that have existing, designated, or presumed uses of intermediate, high, or exceptional aquatic life waters. Because the detention basin, an unclassified waterbody, has only a limited aquatic life use, a Tier 2 antidegradation review was not performed.

The second component of the ED's Technical Review involved WQD staff on the Modeling Team performing water quality modeling runs, or a Dissolved Oxygen (DO) analysis, using a default QUAL-TX model in combination with an updated version of the calibrated QUAL-TX model documented in the *Waste Load Evaluation for the San Antonio River System in the San Antonio River Basin (1989)*.

In this context, The QUAL-TX model applies to advective reaches of streams or pooled reaches and is a standard analytical tool used at the TCEQ for DO analyses of these types of receiving waters, and procedures for its use in the analysis of discharge applications have been established and are readily available.

The draft permit's effluent limits, established by WQD staff's modeling results, will maintain, and protect the existing instream uses. Similarly, conventional effluent parameters such as DO, Five-day Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>), Total Suspended Solids (TSS), and Ammonia Nitrogen (NH<sub>3</sub>-N), are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan.

Based on the modeling results, the proposed limits below are predicted to be adequate to maintain dissolved oxygen levels above the criteria stipulated by the Standards Implementation Team for Sandpit Creek (3.0 mg/L DO) and for the Upper San Antonio River (Segment No. 1911) (5.0 mg/L DO).

Interim I phase	(0.06 MGD):	5.0 mg/L CBOD <sub>5</sub> , 2.0 mg/L NH <sub>3</sub> -N, and 5.0 mg/L DO
Interim II phase	(0.12 MGD):	5.0 mg/L CBOD <sub>5</sub> , 2.0 mg/L NH <sub>3</sub> -N, and 5.0 mg/L DO
Final Phase	(0.18 MGD):	5.0 mg/L CBOD <sub>5</sub> , 2.0 mg/L NH <sub>3</sub> -N, and 5.0 mg/L DO

Coefficients and kinetics used in the model are a combination of site-specific, standardized default, and estimated values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

The entire set of effluent limitations for all three phases of the draft permit, based on a 30-day average, are 5.0 mg/l CBOD<sub>5</sub>, 5.0 mg/l TSS, 2.0 mg/l NH<sub>3</sub>-N, 63 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 5.0 mg/l minimum DO. The effluent must contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. An equivalent method of disinfection may be substituted only with prior approval of the ED.

In all phases of the proposed permit, the pH must not be less than 6.0 standard units nor greater than 9.0 standard units and must be monitored once per week by grab sample. There must be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

Segment No. 1911 is currently listed on the state's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The listings are for impaired fish community from just upstream of the confluence with Sixmile Creek to the upper end of the segment (Assessment Units [AUs] 1911\_08 & 1911\_09). Segment No. 1911 is also listed for impaired macrobenthic community from just upstream of the confluence with Sixmile Creek to just upstream of the confluence with San Pedro Creek (AU 1911\_08). This facility will be discharging to AU 1911\_04 which is located downstream from the impaired AUs 1911\_08 & 1911\_09 and will therefore not contribute to the impairment of the segment.

Total Maximum Daily Load (TMDL) Project No. 34D has been approved for this segment. On August 8, 2007, the TCEQ adopted TMDLs for Bacteria in the San Antonio Area, Project No. 34D. The EPA approved the TMDL on April 21, 2009. This document describes a project developed to address water quality impairments related to bacteria for three streams located in and around the City of San Antonio: Salado Creek, Segment No. 1910; Walzem Creek, Segment No. 1910A; and the Upper San Antonio River, Segment No. 1911. There are several municipal point sources in the watershed. The TMDL calculation relies on a 63 cfu/100 ml for the waste water treatment facility waste load allocation (WLA). Effluent limits for these facilities should be set at 63 cfu/100 ml.

The proposed permit's pretreatment requirements are based on TPDES regulations contained in 30 TAC Chapter 305, which references 40 Code of Federal Regulations (CFR) Part 403, "General Pretreatment Regulations for Existing and New Sources of Pollution" [rev. *Federal Register*/ Vol. 70/ No. 198/ Friday, October 14, 2005/ *Rules and Regulations*, pages 60134-60798]. The permit includes specific requirements that establish responsibilities of local government, industry, and the public to implement the standards to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works or which may contaminate the sewage sludge. This permit has appropriate pretreatment language for a facility of this size and complexity.

The discharge from the proposed permit is not expected to impact any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. With respect to the presence of endangered or threatened species, the proposed permit does not require EPA's review.

#### IV. PROCEDURAL HISTORY

The TCEQ received the application on April 20, 2022, and declared it administratively complete on June 27, 2022. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in Wilson County, Texas in English in the *Wilson County News* on July 06, 2022, and in Spanish in *El Mundo* on July 07, 2022. The ED completed the technical review of the application on August 25, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the proposed facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in Wilson County, Texas in English in the *Wilson County News* on September 21, 2022, in English in the *Seguin Gazette* on September 18, 2022, and in Spanish in *El Mundo* on September 15, 2022. The public comment period ended on October 21, 2022, the ED's Response to Public Comment (RTC) was filed on December 22, 2022, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on January 27, 2023. Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84<sup>th</sup> Legislature,

2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

#### V. ACCESS TO RULES, LAWS AND RECORDS

- All administrative rules: Secretary of State Website: [www.sos.state.tx.us](http://www.sos.state.tx.us)
- TCEQ rules: Title 30 of the Texas Administrative Code: [www.sos.state.tx.us/tac/](http://www.sos.state.tx.us/tac/) (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)
- TCEQ website: [www.tceq.texas.gov](http://www.tceq.texas.gov) (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”);
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.)  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl)
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- Environmental or citizen complaints may be filed electronically at:  
<https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html> (select “use our online form”) or by sending an email to the following address: [complaint@TCEQ.texas.gov](mailto:complaint@TCEQ.texas.gov)

Commission records for the proposed facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners’ Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). The permit application has been available for viewing and copying at the Floresville City Hall located at 1120 D Street, Floresville, Texas 78114, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision are available for viewing and copying at the same location since publication of the NAPD.

If you would like to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional (Region 13) in San Antonio, TX at (210) 490-3096 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above in the seventh bullet point in the third subsection of Background Information (Access to Rules, Laws, and Records). If an inspection by the Regional Office finds that the Applicant is not complying with all the requirements of the permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

#### VI. EVALUATION OF 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 (Requests). The Commission implemented HB 801 by adopting procedural rules in 30 TAC chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the commission’s consideration of Requests. This application was declared administratively complete on March 23, 2022; therefore, it is subject to the procedural requirements adopted pursuant to both HB 801 and SB 709

**A. LEGAL AUTHORITY TO RESPOND TO HEARING REQUESTS**

“The executive director, the public interest counsel, and applicant may submit written responses to [hearing] requests . . . .”<sup>1</sup>

1. whether the requestor is an affected person;
2. whether issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or 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 by filing a written withdrawal letter with the chief clerk prior to the filing of the ED’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.<sup>2</sup>

**B. HEARING REQUEST REQUIREMENTS**

To consider a Request, the Commission must first conclude that the requirements in 30 TAC §§ 55.201 and 55.203, are met as follows.

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . . , based only on the requestor’s timely comments, and not based on an issue that was 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 ED’s Response to Comment.<sup>3</sup>

A hearing request must substantially comply with the following:

- (1) give the name, address, 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 is responsible for receiving all official communications and documents for the group;
- (2) identify the person’s 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 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 facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) for applications filed;

(B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor 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 ED’s responses to the requestor's comments

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<sup>1</sup> 30 TAC § 55.209(d).

<sup>2</sup> *Id.* at § 55.209(e).

<sup>3</sup> 30 TAC § 55.201(c).

that the requestor disputes, the factual basis of the dispute, list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.<sup>4</sup>

**C. REQUIREMENT THAT REQUESTOR BE AN AFFECTED PERSON**

To grant a contested case hearing, the commission must determine, pursuant to 30 TAC § 55.203, that a requestor is an affected person.

- (a) 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 public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application, may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
  - (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) whether the requester timely submitted comments on the application which were not withdrawn; and
  - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.<sup>5</sup>
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
  - (1) 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;
  - (2) the analysis and opinions of the ED; and
  - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.<sup>6</sup>

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<sup>4</sup> *Id.* at § 55.201(d).

<sup>5</sup> 30 TAC § 55.203(a)-(c).

<sup>6</sup> *Id.* at § 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 State Office of Administrative Hearing (SOAH) for a hearing.”<sup>7</sup> “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person; and
- (3) is relevant and material to the decision on the application.”<sup>8</sup>

#### VII. ANALYSIS OF THE HEARING REQUESTS

For this permit application the relevant public comment period ended on October 21, 2022, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on January 27, 2023. The ED’s analyses determined whether the Requests followed TCEQ rules, if the requestors qualify as affected persons, what issues may be referred for a possible hearing, and the length of that hearing.

#### A. WHETHER THE REQUEST COMPLIED WITH 30 TAC §§ 55.201(C) AND (D).

1. **James and Betty Freasier (the Freasiers)** filed timely, written Requests that provided the requisite contact information, raised issues that form the basis of their Requests in timely comments not withdrawn before the RTC was filed, and requested a hearing.

The Freasiers’ Requests complied with 30 TAC §§ 55.201(c), and (d) because they effectively identified a personal justiciable interest in a written explanation plainly describing why the Freasiers believe they will be affected by the application in a way not common to the public. The Freasiers’ Requests stated they live in proximity to the proposed facility and raised issues related to noxious odors, possible adverse impacts from the draft permit on water quality, the health of the Freasiers’ livestock that drink from the creek, and whether the entire discharge route is *water in the state*, as the term is defined by TWC § 26.001(5).

The ED recommends finding that the Requests of the Freasiers substantially complied with 30 TAC §§ 55.201(c) and (d).

2. **Freasier LLC** filed timely, written Requests that provided the requisite contact information, raised issues that form the basis of its Requests in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Freasier LLC’s Requests complied with 30 TAC §§ 55.201(c), and (d) because they effectively identified a personal justiciable interest in a written explanation plainly describing why Freasier LLC believes it will be affected by the application in a way not common to the public. Freasier LLC’s Requests stated it owns property in proximity to the proposed facility and raised issues related to possible adverse impacts from the draft permit on water quality, the health of the livestock that live on its property and drink from the creek, and whether the

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<sup>7</sup> 30 TAC § 50.115(b).

<sup>8</sup> *Id.* at § 55.203(d).



entire discharge route is *water in the state*, as the term is defined by TWC § 26.001(5).

The ED recommends finding that the Requests of Freasier LLC substantially complied with 30 TAC §§ 55.201(c) and (d).

**B. WHETHER REQUESTOR IS AN AFFECTED PERSON UNDER 30 TAC § 55.203.**

1. **James and Betty Freasier (the Freasiers)** filed Requests that effectively identified a personal, justiciable interest affected by the application.

The Freasiers' Requests stated that the proposed facility is in proximity to their home, which according to the GIS map prepared by the ED's staff is only 0.69 linear miles from the proposed facility and its discharge point. This increases the likelihood that the Freasiers will be affected in a way not common to the general public. The Freasiers' Requests raised relevant issues to a decision on the application, including whether the proposed facility and its discharge will cause noxious odors, adverse impacts to water quality of Sandpit Creek, the health of the Freasiers' livestock that drink from the creek, and whether the entire discharge route is *water in the state*, as the term is defined by TWC § 26.001(5).

The Freasiers' proximity, which was explained briefly and specifically, in plain language in their Requests, and their concerns related to odors, possible adverse impacts to water quality and their animals from the proposed facility and its discharge, are issues related to the interests of the requestors, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which increases the likelihood the Freasiers may be personally affected in a way not common to the general public.

The ED recommends that the Commission find that James and Betty Freasier and are Affected Persons under 30 TAC § 55.203.

2. **Freasier LLC** filed Requests that effectively identified a personal, justiciable interest affected by the application.

Freasier LLC's Requests stated that the proposed facility and its discharge route is in proximity to the land it owns, which according to the GIS map prepared by the ED's staff is only 0.40 linear miles from the proposed facility and is along the discharge route within 0.50 stream miles from the discharge point. This increases the likelihood that Freasier LLC will be affected in a way not common to the general public. Freasier LLC's Requests raised relevant issues to a decision on the application, including whether the proposed facility and its discharge will cause noxious odors, adverse impacts to water quality of Sandpit Creek, the health of the Freasiers' livestock that drink from the creek, and whether the entire discharge route is *water in the state*, as the term is defined by TWC § 26.001(5).

Freasier LLC's proximity, which was explained briefly and specifically, in plain language in its Requests, and its concerns related foul odors from the proposed facility, adverse impacts to water quality and its resulting adverse impacts to Freasier LLC's livestock are issues related to the interests of the requestor, demonstrating a reasonable relationship exists between the interests claimed and the activity regulated, which increases the likelihood Freasier LLC will be personally affected in a way not common to the general public.

The ED recommends that the Commission find that Freasier LLC is an Affected Person under 30 TAC § 55.203.

VIII. ISSUES RAISED IN THE HEARING REQUEST:

The Freasiers' and Freasier LLC's Requests raised the issues below.

**1. Whether the draft permit will protect animal life according to the TSWQS.**

(RTC Response No. 2) This is an issue of fact. If it can be shown that the draft permit will not protect animal life according to the TSWQS, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

**2. Whether the draft permit will protect water quality in the discharge route according to the TSWQS.**

(RTC Response No. 2) This is an issue of fact. If it can be shown that the draft permit will not protect water quality according to the TSWQS, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

**3. Whether the draft permit's nuisance odor controls comply with TCEQ rules.**

(RTC Response No. 3) This is an issue of fact. If it can be shown that the draft permit's odors controls do not comply with TCEQ rules, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue

**4. Whether the entire discharge route in the draft permit is *water in the state*, as the term is defined by the Texas Water Code § 26.001(5).**

(RTC Response No. 1) This is an issue of fact. If it can be shown that the entire discharge route is not *water in the state*, as the term is defined by the Texas Water Code § 26.001(5), that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

**5. Whether the proposed discharge will cause flooding in Sandpit Creek and negatively impact the Freasiers' use and enjoyment of their property.**

(RTC Response No. 1) This is an issue of fact; however, the TCEQ has no statutory authority to consider flooding or its effects in the wastewater permitting process.

The ED concludes this issue is not relevant and material, and if this case is referred to SOAH, the ED recommends the Commission not refer this issue.

IX. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the ED 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.

X. REQUESTS FOR RECONSIDERATION

Freasier LLC filed a timely Request for Reconsideration (RFR). However, the RFR failed to raise any new information for the ED to analyze. Therefore, the ED recommends denying the RFR.

XI. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that Freasier LLC and James and Betty Freasier are affected persons under 30 TAC §§ 55.203.
2. Grant the Requests of Freasier LLC and James and Betty Freasier.
3. Deny the RFR filed by Freasier LLC.
4. Should the Commission decide to refer this case to SOAH:
  - a. refer the case to Alternative Dispute Resolution for a reasonable time; and
  - b. refer the identified issues in section VII. 1.- 4. to SOAH for a Hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor, *Interim Executive Director*

Charmaine Backens, *Acting Director*  
Office of Legal Services

Guy Henry, *Acting Deputy Director*  
Environmental Law Division,



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REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

XII. CERTIFICATE OF SERVICE

I certify that on April 3, 2023, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016150001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.



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Michael T. Parr II, *Staff Attorney*  
State Bar No. 24062936

MAILING LIST  
HK Real Estate Development, LLC  
TCEQ Docket No. 2023-0385-MWD; Permit No. WQ0016150001

FOR THE APPLICANT

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TCEQ Expediente N.º 2023-0385-MWD; TPDES Permiso N.º WQ0016150001

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# Attachment A

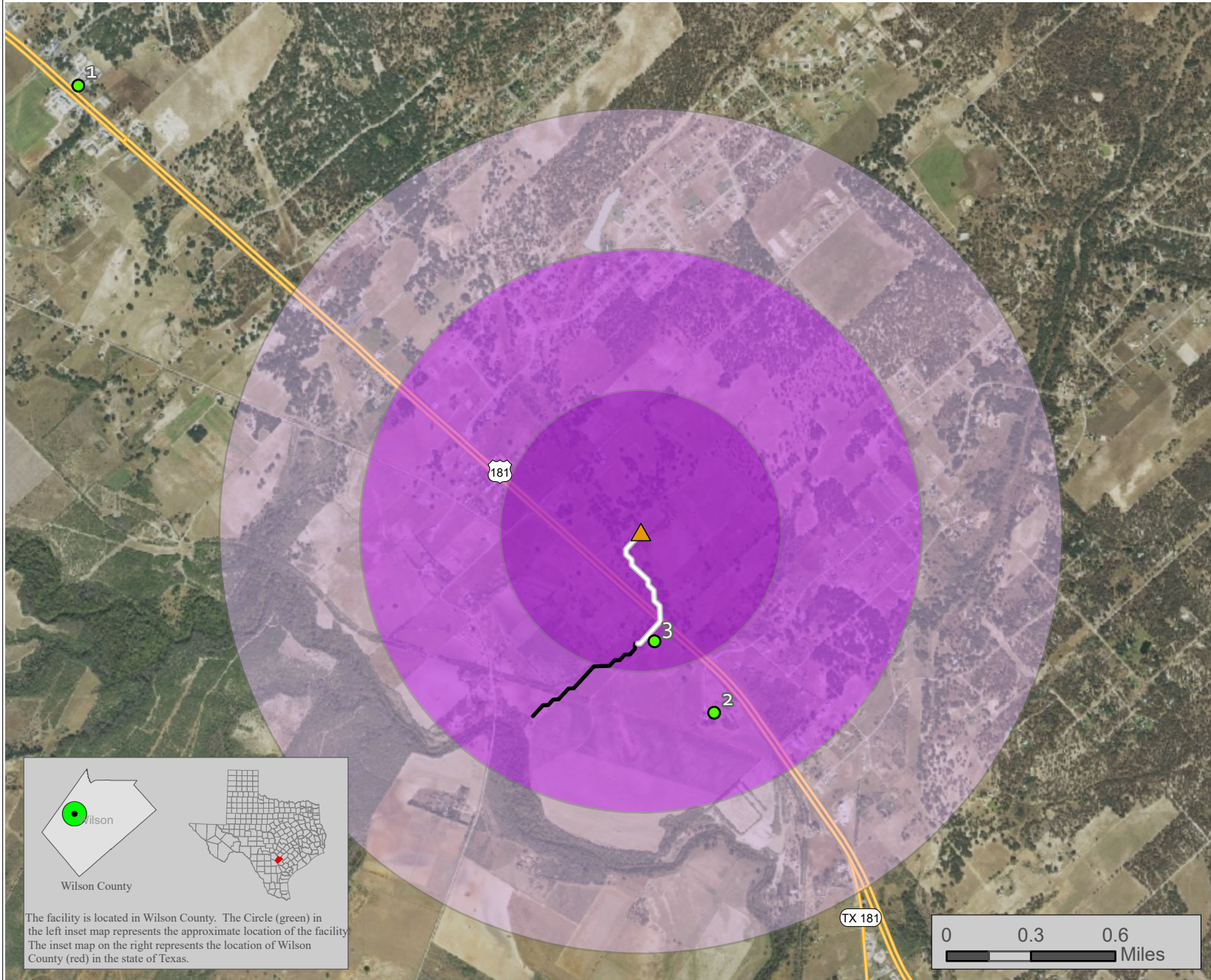
# HK Real Estate, LLC GIS Map

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



*Protecting Texas by  
Reducing and  
Preventing Pollution*

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 3/30/2023  
CRF 0084232  
Cartographer: jbartlin



- Facility
- Requestors
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- 0.5 Mile Discharge
- 1.0 Mile Discharge

2.55 miles from outfall to  
Freasier LLC Property #1 (1)

0.69 miles from outfall to  
Freasier LLC Property #2 (2)

0.40 miles from outfall to  
Freasier LLC Property #3 (3)



The facility is located in Wilson 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 Wilson County (red) in the state of Texas.

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.

