

**SOAH DOCKET NO. 582-24-15644
TCEQ DOCKET NO. 2023-1588-DIS**

PETITION OF HAYS COMMONS LAND INVESTMENTS, LP FOR CREATION OF HAYS COMMONS MUNICIPAL UTILITY DISTRICT	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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APPLICANT’S REPLY TO EXCEPTIONS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Applicant, Hays Commons Land Investments, LP provides the following Reply to Exceptions:

Reply to the Executive Director’s Exceptions

Applicant agrees with all the Executive Director’s Exceptions.

Reply to the Aligned Protestants’ Exceptions

Applicant disagrees with all of the Aligned Protestants’ Exceptions and provides the following Reply:

1. Findings of Fact.

Availability of Comparable Service from Other Systems

FOF 22. Water and wastewater service is not available from other systems.

The crux of Aligned Protestants’ argument is that if Applicant continues to seek wastewater service from another system (in this case, the City of Austin), then wastewater service must be

available. This is simply not true. The record shows that despite Applicant's best efforts and desires, the City of Austin system has been and remains unavailable.

Applicant has not hidden the fact that since the initial request and denial from the City of Austin, and even after the Petition to create a MUD was filed, the District has continued to try to get service from Austin.¹ “[D]espite lengthy discussions and negotiations from the original application filed in October, 8 2022, the City of Austin has not yet agreed to provide water and wastewater service to the property.”²

The negotiations are discussed in the transcript at TR (Vol. 1) at 47:2 to 50:6 and 63:6 to 64:3. Although progress had been made, and although the District desires to connect with the City of Austin,³ the District's efforts to reach an agreement with Austin was stymied when it could not get its proposal on the planning Commission's agenda.⁴ In fact, District continues to try to reach an agreement with Austin.⁵ But it is at an impasse.⁶ Unfortunately, Save our Springs, one of the Protestants in this proceeding, is fighting the District's efforts to connect to the City of Austin.⁷ Applicant is, in fact, in limbo with the City of Austin. The record shows that years have passed with the City of Austin being willing to take any action on Applicant's request – largely thanks to SOS, one of the Protestants in this case.

¹ TR (Vol. 1) at 43:23 to 44:1.

² APPEX-2 at 15:7-10.

³ TR (Vol. 1) at 63:6 to 64:3.

⁴ TR (Vol. 1) at 47:2 to 50:6.

⁵ TR (Vol. 1) at 53:5 to 54:10.

⁶ TR (Vol. 1) at 54:2-10.

⁷ TR (Vol. 1) at 62:5-11.

The bottom line is that as of the date of the hearing on the merits, and even as of today, the City of Austin has not agreed to provide water or sewer service.⁸ This system is not available to the Applicant.

Aligned Protestants request that the Court take judicial notice under Tex. R. Evid. 201 of a letter sent by the Applicant to the City of Austin's City Manager on May 21, 2025, is inappropriate and Applicant objects to this request. TRE 201 provides that a court may judicially notice a fact that is not subject to reasonable dispute. A letter sought to be introduced into evidence is not an adjudicative fact that is subject to judicial notice. Aligned Protestants may not do an end-run around admissibility rules and rules allowing parties to cross-examine witnesses on properly admitted evidence just by asserting "judicial notice." The letter sought to be admitted by Aligned Protestants is not generally known within the trial court's territorial jurisdiction; and it cannot be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. It does not satisfy the requisites for judicial notice under TRE 201.

As the letter was not introduced into evidence, and as the record "closed on April 9, 2025, after submission of written closing arguments,"⁹ the letter attached to Aligned Protestants' Exceptions should not be considered.

To the extent that the extra-record letter is considered, it does not change the analysis. As pointed-out by Applicant, Applicant has tried and continues to try to obtain service from the City of Austin. It has been unsuccessful. The extra-record letter changes nothing.

⁸ TR (Vol. 1) at 132:5-8.

⁹ Proposal for Decision at 3.

Aligned Protestants ask: “Why would the Applicant continue to incur the costs of seeking services that are unavailable?”¹⁰ Then answer is clear. Applicant hopes that the services might someday become available, but as of today, they are not.

The Aligned Protestants’ exceptions are unwarranted.

Reasonableness of Projected Construction Costs, Projected Tax Rates, and Projected Water and Sewer Rates

FOF 23. The proposed construction costs set out in the preliminary engineering report, which total \$20,791,828, are reasonable.

Aligned Protestants assert that the proposed construction costs can’t be reasonable because Aligned Protestants claim they are based on a development scheme that is impossible under current applicable laws.¹¹ First, the question of what may or may not be built under other laws is an issue for different proceedings and different regulatory authorities. It is not up to the Aligned Protestants to determine what may or may not be constructed. Notably, the ALJ noted in the PFD that At hearing, Mr. Ryan agreed that Hays County regulations could create difficulties with building as planned, but described possible alternatives.¹² With respect to Hays County regulations and state law, the testimony in the record reflects that the Development will be built in accordance with these requirements.¹³

The construction costs were calculated and shown at APPEX-2-02 at 21-22 and 24. Applicant will not be required to construct any infrastructure or incur any development expenses beyond what is considered for the development of a large, mixed use development such as that

¹⁰ Aligned Protestants Exceptions at 2.

¹¹ Aligned Protestants Exceptions at 3.

¹² Proposal for Decision at 15.

¹³ TR. (Vol. 1) at 145:15 to 146:9.

being proposed by this MUD, particularly with respect to similar developments of this size in this area.¹⁴ The testimony shows that these costs are reasonable.¹⁵

The Aligned Protestants' exceptions are unwarranted.

Effect on Groundwater Levels and Groundwater Recharge Capability

FOF 35. No facilities are planned that would have an unusual impact on groundwater recharge

The Aligned Protestants assert there is nothing in the record to support this finding. On the contrary, Mr. Ryan clearly testified that he did not anticipate and “unreasonable impacts to recharge capabilities from this development.”¹⁶ Furthermore, Mr. Ryan stated that “recharge rates are primarily driven by the creek bottoms.”¹⁷ With respect to impervious cover, Mr. Ryan testified that there are two things that keep impervious cover from being a problem:

The first is the protection of natural features that have recharge to them by TCEQ. . . We're not allowed to disturb within a certain distance of those, so not just the feature itself. . . It has a setback as well. And then the creeks themselves are . . . the primary source of recharge, and we still have to treat the water and convey it to the creeks where the recharge is occurring.

TR. (Vol. 1) at 132:23 to 133:14.

Most importantly with respect to recharge, an application for groundwater production permits is planned to be filed with the Barton Springs-Edwards Aquifer Conservation District, which will limit the impact to groundwater as a result of the District's development.¹⁸ The Barton

¹⁴ APPEX-2 at 16:21-25.

¹⁵ APPEX-2 at 16:25.

¹⁶ TR. (Vol. 1) at 106:25 to 107:2.

¹⁷ TR. (Vol. 1) at 106:11-12 (emphasis added).

¹⁸ APPEX-2 at 19:13-20.

Springs-Edwards Aquifer Conservation District rules prevents drawdown or impacts to another well and if there was an unreasonable effect would limit the applicant's production.¹⁹

There is record evidence to support this finding. The Aligned Protestants' exceptions are unwarranted.

36. The District's development plan includes considerable pervious surface in the form of open space, natural drainage corridors, and predominantly single-family residential.

The Aligned Protestants assert there is nothing in the record to support this finding. On the contrary, Mr. Ryan testified that there would be "approximately 139.67 acres of neighborhood parks and open space."²⁰ The record evidence also includes testimony from Mr. Ryan that "Considerable pervious surface in the form of open space, natural drainage corridors, and the predominantly single family residential land use are part of the MUD development plan."²¹ This testimony went un rebutted. Based on these facts, Mr. Ryan further testified that "[n]o facilities are proposed that will adversely impact the recharge capability of a 24 groundwater source in any unusual way."²² There is clear evidence in the record that supports this Finding of Fact.

There is record evidence to support this finding. The Aligned Protestants' exceptions are unwarranted.

37. Applicant established that the District and its system and subsequent development within the District will not have an unreasonable effect on groundwater levels in the region or recharge capability of a groundwater source.

¹⁹ TR. (Vol. 1) at 80:1-10; TR. (Vol. 1) at 189:6-11.

²⁰ APPEX-2 at 9:28.

²¹ APPEX-2 at 19:25-27.

²² APPEX-2 at 19:24-25.

Protestants assert that the ALJ impermissibly shifted the burden of proof.²³ The Protestants base this allegation on a quote taken out of context which they allege means there was no evidence on this issue. That is not the case. The Aligned Protestants ignore all the evidence the ALJ pointed to that supports this finding. The ALJ discussed in detail the evidence that supports no unreasonable effect on groundwater levels at pages 26-29 of the PFD. In fact, the PFD points to the following evidence:

- (1) Applicant intends to file an application for groundwater production permits with the Barton Springs-Edwards Aquifer Conservation District (BSEACD), which will limit the impact to groundwater because the groundwater conservation district will regulate it.²⁴
- (2) There is testimony that the proposed density “is consistent with the use of groundwater.”²⁵
- (3) There is testimony that “[n]o facilities are proposed that will adversely impact the recharge capability of a groundwater source in any unusual way.”²⁶
- (4) There is testimony that the District’s development plan includes “considerable pervious surface in the form of open space, natural drainage corridors, and the predominantly single family residential land use.”²⁷

²³ Aligned Protestants Exceptions at 4.

²⁴ PFD at 26.

²⁵ PFD at 26-27.

²⁶ PFD at 27.

²⁷ PFD at 27.

(5) Applicant's expert Kaveh Khorzad, P.G., testified that based on his modeling, the wells for the MUD would have no significant impact on groundwater levels within the region.²⁸

In sum, there is evidence to support this finding and there was "no evidence" to suggest otherwise. This conclusion is not a shifting of the burden of proof.

Aligned Protestants further assert that pumping will adversely affect the groundwater levels. But as the ALJ noted, "[t]he Commission . . . does not consider a proposed MUD's water supply source to be a consideration for the groundwater factors, deferring those matters to the groundwater conservation districts with specific authority to regulate groundwater."²⁹

The Aligned Protestants' exceptions are unwarranted.

Effect on Natural Run-off Rates and Drainage

38. Applicant intends to develop the property in compliance with Hays County, state, and federal stormwater regulations.

The Aligned Protestants argue that there is no evidence to support this finding. On the contrary, at pages 29-30 of the PFD the ALJ quoted Mr. Ryan saying precisely this fact.³⁰

The Aligned Protestants' exceptions are unwarranted.

Effect on Water Quality

39. The Petition anticipates discharging treated wastewater and using that discharge to irrigate specific land.

²⁸ PFD at 27.

²⁹ PFD at 28-29.

³⁰ PFD at 29-30 (quoting APPEX-2 at 20).

The Aligned Protestants argue that because the ALJ used the words “discharging” and “discharge” this finding of fact “presumes that the Applicant will violate its proposed Texas Land Application Permit (TLAP), which prohibits the discharge of pollutants”³¹ For this reason, Applicant’s Exceptions recommended that Findings of Fact 39, 40, and 41 be modified. Applicant notes that in its Exceptions it missed one instance of the use of “discharge” in Finding of Fact No. 39. Therefore, Applicant recommends that Findings of Fact 39, 40, and 41 be modified as follows (note specifically the change to the word “discharge” in Finding of Fact 39):

39. The Petition anticipates ~~discharging~~ land applying treated wastewater and using that ~~discharge~~ effluent to irrigate specific land.

40. Applicant’s ~~discharge~~ land application plan requires a separate TCEQ permit, and the application for that permit is separate from the Petition.

41. Applicant’s plan to ~~discharge~~ land apply water subject to a TCEQ permit is sufficient to meet its burden to show that the District and its system and subsequent development within the District will not have an unreasonable effect on water quality.

The Aligned Protestants’ exceptions are unwarranted.

40. Applicant’s discharge plan requires a separate TCEQ permit, and the application for that permit is separate from the Petition.

The Aligned Protestants allege that this finding of fact is extraneous and has no bearing on TCEQ’s obligation to consider the effects of the proposed district.³² The Aligned Protestants are incorrect. It is the Protestants that attempted to make the TLAP Permit an issue in the case. As the ALJ pointed out, “this proceeding addresses the petition for a MUD creation, not the TLAP application, which is subject to its own review and hearing process.”³³ Furthermore, [t]he MUD

³¹ Aligned Protestants Exceptions at 5.

³² Aligned Protestants Exceptions at 5.

³³ PFD at 25.

itself could exist without the TLAP . . . [and] [t]his MUD creation hearing is not the appropriate forum to evaluate the merits of the TLAP.”³⁴ In other words, this Finding of Fact is important to demonstrate the proper role of the TLAP Permit in this proceeding. It is not extraneous.

The Aligned Protestants’ exceptions are unwarranted.

41. Applicant’s plan to discharge water subject to a TCEQ permit is sufficient to meet its burden to show that the District and its system and subsequent development within the District will not have an unreasonable effect on water quality.

Again, the Aligned Protestants seek to litigate the TLAP Permit in this proceeding. It is simply inappropriate to do so. This proceeding does not authorize any wastewater treatment facilities – such authorization must be obtained in a separate proceeding.³⁵ The ALJ is merely following precedent – as the ALJ noted in the PFD for *Highland Lakes* “the Applicant’s plan to discharge waste pursuant to a Commission-issued . . . permit is sufficient to meet its burden.” PFD for *Application of Highland Lakes Midlothian I, LLC for the Creation of FM 875 Municipal Utility District of Ellis County*, SOAH Docket Number 582-23-11662, TCEQ Docket No. 2022-0534-DIS; (Dec. 4, 2023) (hereafter *Highland Lakes PFD*) at 32.³⁶

The Aligned Protestants’ exceptions are unwarranted.

Complete Justification for Creation of the District

45. Applicant has shown that the District is feasible, practicable, necessary, and will benefit all of the land to be included in the District.

The Aligned Protestants conclusory statement that “[t]he Applicant failed to meet its

³⁴ PFD at 25-26.

³⁵ APPEX-2 at 20:17-20 (“the treatment and disposal of wastewater flows from the MUD will be by means of the wastewater treatment facility to be designed, constructed, owned, and operated by the MUD in compliance with its TCEQ permit.”). TR. (Vol. 1) at 150:21-25 (TLAP application not authorized by this proceeding); TR. (Vol. 1) 161:17 to 162:8.

³⁶ See also TR. (Vol. 1) at 162:16-20 (TCEQ imposes water quality requirements before issuing wastewater permit).

burden of proof on the other issues in this proceeding” is simply without merit or support. It is merely conclusory. The PFD appropriately outlines how the Applicant met its burden.

The Aligned Protestants’ exceptions are unwarranted.

2. Conclusions of Law.

9. Applicant met its burden of proof regarding the availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1).

For the reasons set out in the Reply to Exceptions to Finding of Fact number 22, the Applicant met its burden on this issue.

10. Applicant met its burden of proof regarding reasonableness of projected construction costs, tax rates, and water and sewer rates. Tex. Water Code § 54.021(b)(2).

For the reasons set out in the Reply to Exceptions to Finding of Fact number 23, the Applicant met its burden on this issue.

11. Applicant met its burden of proving that the District, its systems, and subsequent development will not have an unreasonable effect on land elevation, subsidence, groundwater levels and recharge capability within the region, natural run-off rates and drainage, water quality, or total tax assessments on all land located within the District. Tex. Water Code § 54.021(b)(3).

For the reasons set out in the Reply to Exceptions to Finding of Fact numbers 35 36 37 38, 39, 40, 41, the Applicant met its burden on these issues.

13. Applicant met its burden of proof to show that the project and District are feasible, practicable, and necessary and would be a benefit to the land included in the District. Tex. Water Code § 54.021; 30 Tex. Admin. Code § 293.11(d)(5)(J).

For the reasons set out in the Reply to Exceptions to Finding of Fact number 45, the

Applicant met its burden on this issue.

14. Applicant's Petition should be granted.

Contrary to Aligned Protestants' conclusory statement, this Conclusion of Law is supported by the record and the law. Because the Applicant met its burden of proof in these proceedings, the Petition should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following parties as shown below on this 4th day of July 2025 as follows:

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