

TCEQ DOCKET NO. 2024-0668-MWD

APPLICATION BY RIVER OAKS	§	BEFORE THE
LAND PARTNERS II, LLC FOR	§	TEXAS COMMISSION ON
AMENDMENT TO TEXAS	§	
POLLUTION DISCHARGE	§	ENVIRONMENTAL QUALITY
ELIMINATION SYSTEM PERMIT NO.	§	
WQ0015559001	§	

RIVER OAKS LAND PARTNERS II, LLC’S RESPONSE TO HEARING REQUEST

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Applicant River Oaks Land Partners II, LLC (Applicant) and files this Response to Hearing Request relating to the issuance of an amendment to Texas Commission on Environmental Quality (TCEQ or Commission) Permit No. WQ0015559001, and would respectfully show the following:

I. SUMMARY OF RESPONSE

The TCEQ received one hearing request from individual Brian Kieley. Mr. Kieley is not an affected person because his property is not adjacent to the site and the issue he raised is not within the TCEQ’s jurisdiction. Also, neither of the two public comments received in September 2023 requested a contested case hearing and may not be considered as such. Accordingly, the Commission should deny Mr. Kieley’s hearing request and remand this uncontested matter to the Executive Director for issuance of the permit amendment as requested.

II. BACKGROUND

Applicant seeks a permit amendment to its no-discharge or Texas Land Application Permit (TLAP) (TCEQ Permit No. WQ0015559001) that was issued in February 2018. While Applicant does not intend to increase the overall volume of treated domestic wastewater to be land applied, the amendment is classified as a “major” amendment because the Interim Phase II flow would increase from 0.180 MGD to 0.36 MGD to better reflect the current pace of construction and realities of the development process. The amendment would also result in a decrease to the size of storage ponds from 15 acres to 8.34 acres, a reduction in the total storage capacity of the ponds from 306 are-feet to 131 acre-feet as well as a change to the size of the irrigation area from 70 to

20 acres in Interim Phase I and from 70 to 108 acres in the Interim Phase II. The Applicant is not seeking any changes to the application rate, effluent limitations or monitoring requirements. In all technical respects, the proposed amendment complies with all Commission rules and policy.

III. AUTHORITY

To be granted, an “affected person” with a personal justiciable interest demonstrating a non-speculative injury resulting from the granting of the permit must make the request for hearing. Section 55.203 provides the standing criteria for individual requestor Brian Keiley, as follows:

- (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 general public does not qualify as a personal justiciable interest.
- (b) Except as provided by §55.103 of this title (relating to Definitions), 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;
 - (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
 - (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 executive director; and

- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.¹

As indicated above, Mr. Kieley lacks a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application² and the two public commenters have not made actual hearing requests.

IV. RESPONSE TO INDIVIDUAL HEARING REQUEST AND COMMENTS

Brian Kieley

Mr. Kieley's attorney, Catherine Tabor, filed two identical hearing requests on September 18 and 19, 2023 by electronic and certified mail, respectively, and has not filed any further pleading thereafter. As depicted on the attached Exhibit A landowner map,³ Mr. Kieley is not an adjacent landowner. Current landownership records from the Williamson County Appraisal District show that there are multiple intervening landowners and tracts located between Mr. Kieley and the WWTP, the irrigation ponds and the irrigation area designated in the Draft Permit.

That means that Mr. Kieley simply cannot have a justiciable interest since the interest he claims is common to multiple members of the general public – there are at least **10 separately owned tracts located between himself and the facility/ponds/irrigation area**. Practically speaking, as this is a no-discharge TLAP permit, Mr. Kieley's concerns about effluent runoff are unfounded since runoff is prohibited and effluent will be taken up in the root zone of the required cover crop in accordance with the approved water balance and application rate. Additionally, even if there were a violation of the no-discharge rules, according to the Application's topographical

¹ 30 TAC § 55.203.

² 30 TAC § 55.203(a).

³ **Exhibit A.** The Application Landowner Map has been updated (from the September 29, 2022 Application) to show current ownership of tracts surrounding and between the site and Mr. Kieley based on Williamson County Appraisal District records.

maps, drainage flows to the northeast toward the North Fork San Gabriel River and *away* from Mr. Kieley.

The sole issue raised in his September 18-19, 2023 hearing request also relates to flooding which is outside of the jurisdiction of the TCEQ. Because Mr. Kieley raises no other issues, and no relevant and material issues at all, and the request is totally silent on how he will be adversely affected by the proposed facility in a manner not common to the members of the general public, Mr. Kieley's hearing request should be denied.

Jami Strable

Ms. Strable e-filed a single public comment on August 27, 2023 and has not filed a hearing request or any other pleading since that time and after the Executive Director's Response to Comments (RTC) was issued on December 12, 2023. Ms. Strable's comment requests that the Commission reconsider the placement of a WWTP that was authorized in 2018, but otherwise does **not** request a contested case or evidentiary hearing. For reference, Ms. Strable's property is located 0.95 miles from the WWTP, on the other side of multiple intervening landowners,⁴ and therefore lacks a justiciable interest since her claims are common to members of the general public. Her comments do not constitute a hearing request that the Commission may refer to SOAH for hearing under Tex. Water Code § 5.115.

Lisa Rosenhagen

Like Ms. Strable, Ms. Rosenhagen filed a single e-filed public comment (August 28, 2023) and has not filed a hearing request or any other pleading since that time or the issuance of the RTC. Ms. Rosenhagen's comment states that she wishes to "contest" the plant but nowhere does she indicate that she is requesting a hearing. Like Ms. Strable, Ms. Rosenhagen is located 0.95 miles from the WWTP, on the other side of multiple intervening landowners,⁵ and therefore lacks a justiciable interest since her claims are common to members of the general public and there are multiple property owners located between she and the facilities. Her comments do not constitute

⁴ *Id.*

⁵ *Id.*

a hearing request that the Commission may refer to SOAH for hearing under Tex. Water Code § 5.115.

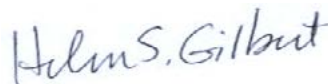
V. RELEVANT AND MATERIAL ISSUES FOR REFERRAL

The only issue raised by Mr. Kieley relates to flooding and the potential increase in flood damage already affecting his home and surrounding property by a “recently constructed structure,” that does not belong to Applicant nor have anything to do with the Application. Flooding is outside of the jurisdiction of the TCEQ and is not one protected by the law under which the Commission is considering this TLAP permit amendment.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant River Oaks Land Partners II, LLC respectfully prays that the Commission deny the hearing request of Brian Kieley as he lacks a justiciable interest and failed to raise any relevant and material issues.

Respectfully submitted,



By: _____

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**ATTORNEYS FOR RIVER OAKS LAND
PARTNERS II, LLC**

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on this 3rd day of June 2024:

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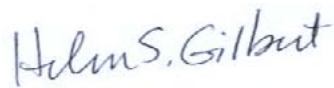
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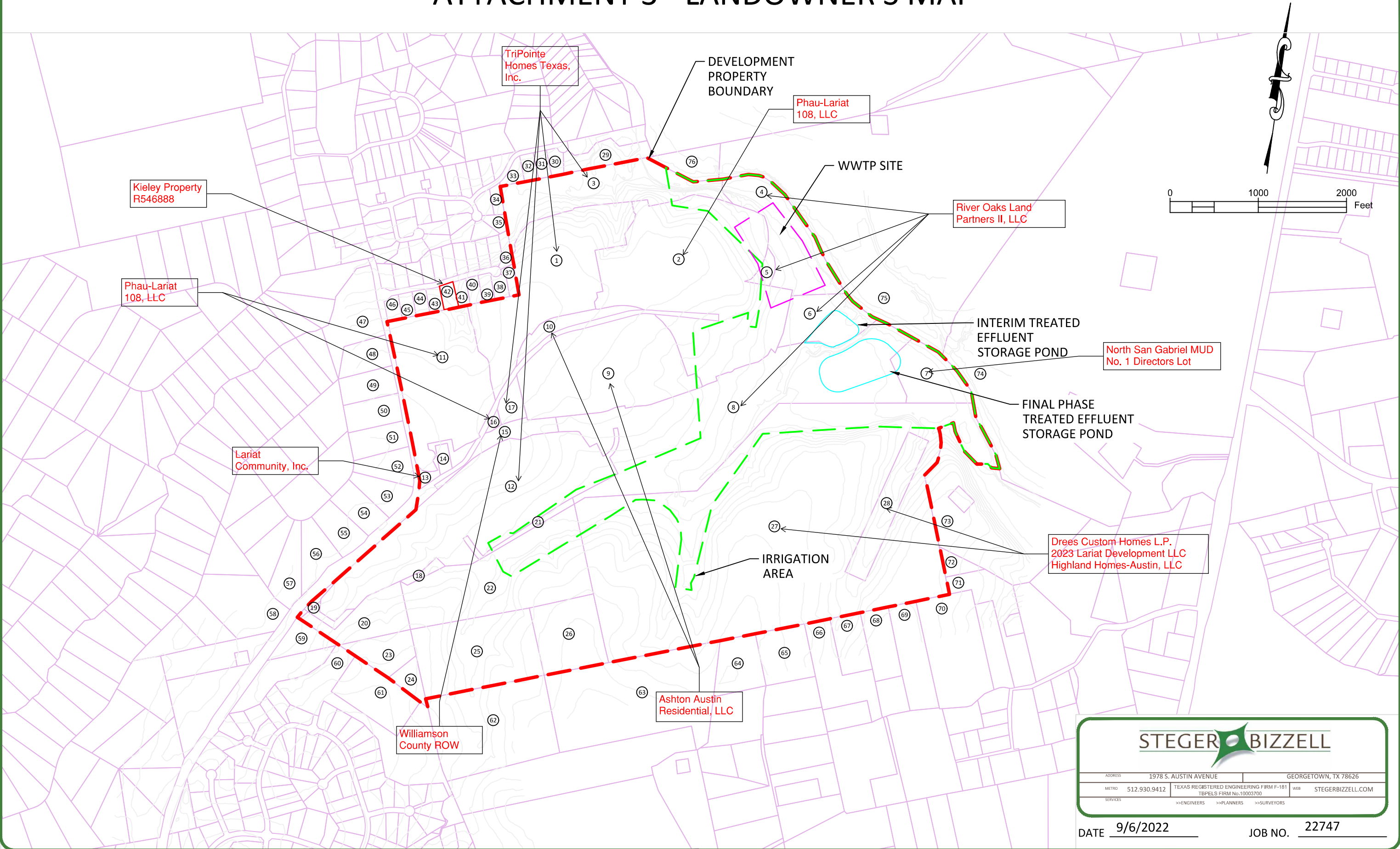
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By: _____
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EXHIBIT A

ATTACHMENT 3 - LANDOWNER'S MAP





STEGER & BIZZELL

ADDRESS	1978 S. AUSTIN AVENUE	GEORGETOWN, TX 78626
METRO	512.930.9412	TEXAS REGISTERED ENGINEERING FIRM F-181 TBPELS FIRM No.10003700
SERVICES	>>ENGINEERS	>>PLANNERS >>SURVEYORS

STEGERBIZZELL.COM

DATE 9/6/2022 JOB NO. 22747

EXHIBIT A

Attachment 4 – List of Affected Landowners

1. Tri Pointe Homes Texas Inc 13640 Briarwick Dr Ste 170 Austin, TX 78729	11. Same as #2	21. Permittee Owned
2. Phau-Lariat 108 LLC 9000 Gulf Fwy Houston, TX 77017	12. Same as #1	22. Permittee Owned
3. Permittee Owned	13. Permittee Owned	23. Permittee Owned
4. Permittee Owned	14. Haskell, Frank A & Jody M 2455 County Road 214 Liberty Hill, TX 78642-4527-	24. Permittee Owned
5. Permittee Owned	15. Permittee Owned	25. Permittee Owned
6. Permittee Owned	16. Same as #2	26. Permittee Owned
7. Berman Mark & John L Lohr & Lisa Anderson & Delanie & Andrew McDonald 11500 Reading Way Austin, TX 78717	17. Same as #1	27. Permittee Owned
8. Permittee Owned	18. Permittee Owned	28. Permittee Owned
9. DRP TX 4 LLC ATTN Chris Bornemann 590 Madison Ave #FL 13 New York, NY 10022	19. Permittee Owned	29. Cherokee Ridge LLC 1285 County Road 260 Bertram, TX 78605
10. Same as #9	20. Permittee Owned	30. Dacus, Galyon M & Roberta A 120 Horizon Ridge Cv Liberty Hill, TX 78642-2079

EXHIBIT A

Attachment 4 – List of Affected Landowners

31. Steer, John & Gerda
116 Horizon Ridge Cv
Liberty Hill, TX 78642

41. San Filippo, Justine
1539 County Road 215
Bertram, TX 78605

51. Lochte, Glen E & Reagan A
192 Thoroughbred Trace
Liberty Hill, TX 78642

32. Same as #31

42. Kieley, Brian Edward
116 Taylor Creek Way
Liberty Hill, TX 78642

52. Shearer, Erica M & Grant
180 Thoroughbred Trace
Liberty Hill, TX 78642

33. Swierc, Conrad R & Debbie
108 Horizon Ridge Cv
Liberty Hill, TX 78642

43. Maniaci, Dave & Michelle
2821 Deerfern Ln
Round Rock, TX 78665-2574

53. Etheredge, Jim Tom & Rose
Marie
172 Thoroughbred Trace
Liberty Hill, TX 78642

34. Nad, Tomislav & Shasha
Zhang
104 Horizon Ridge Cv
Liberty Hill, TX 78642

44. Hamilton, Kelsey & Tyler
108 Taylor Creek Way
Liberty Hill, TX 78642

54. Nicolas, Pablo Antolin &
Cathleen
160 Thoroughbred Trace
Liberty Hill, TX 78642

35. Owner Unknown
301 San Gabriel Hideaway Cv
Liberty Hill, TX 78642

45. Singh, Gulab & Poonam
9703 Dover Springs Ct
Katy, TX 77494

55. Walker, Harry C & Denise E
152 Thoroughbred Trace
Liberty Hill, TX 78642

36. Hernandez, Cesar Margarito
141 Taylor Creek Way
Liberty Hill, TX 78642

46. Guevara-George, Joany &
Juan J Varela Albarran
100 Taylor Creek Way
Liberty Hill, TX 78642

56. Hagerman, Eric & Wendy
144 Thoroughbred Trace
Liberty Hill, TX 78642

37. Wills, Timothy P & Jody K
4572 Loganview Dr
Yorba Linda, CA 92886

47. Rosenhagen, Brad & Lisa
291 N Showhorse Dr
Liberty Hill, TX 78642

57. Barto, Richard Kyle
136 Thoroughbred Trace
Liberty Hill, TX 78642

38. Kunze, Dana P & Hilary
Schreckenbach
616 Sawyer Trail
Leander, TX 78641

48. Strable, George Charles Jr &
Jamie Lei
220 Thoroughbred Trace
Liberty Hill, TX 78642

58. Carlson, Judith Ann
136 N Showhorse Dr
Liberty Hill, TX 78642

39. Drosche, Renee & Jason
128 Taylor Creek Way
Liberty Hill, TX 78642

49. McIntosh, Thomas D & Laura E
210 Thoroughbred Trace
Liberty Hill, TX 78642

59. Permittee Owned

40. Irick, Jack Thomas & Sheryl
512 Los Escondidos
Marble Falls, TX 78659

50. Fillmore, Spencer J & Andrea
200 Thoroughbred Trace
Liberty Hill, TX 78642

60. Permittee Owned

EXHIBIT A

Attachment 4 – List of Affected Landowners

61. Permittee Owned	71. Hurst, Wayne 1103 Rivery Blvd, Ste 160 Georgetown, TX 78628-3035
62. Watson Ranch, LTD 777 Oak Lane Liberty Hill, TX 78642	72. Same as #71
63. Same as #62	73. Huffstutler, M Conrad Jr & Gail J 280 Cole Dr Liberty Hill, TX 78642-4511
64. Fleming, Debra Gwen 807 Oak Ln Liberty Hill, TX 78642	74. BDH Liberty Holdings LP 7350 FM 3405 Liberty Hill, TX 78642
65. Nixon, Lynn Wade & Sandra Jo 6008 Gateridge Dr Flower Mound, TX 75028-2393	75. Warren, Bill D & Patricia 6702 Mesa Dr Austin, TX 78731-2818
66. Pilgrim, Clinton S & Laura Kathleen 810 Cole Dr Liberty Hill, TX 78642	76. Same as #75
67. Nelson, Judy & Jeffrey A 800 Cole Dr Liberty Hill, TX 78642	
68. Gillespie, Thad & Kerstin 216 Arrowhead Mound Rd Georgetown, TX 78628-2319	
69. Parker, David James & Majda 650 Cole Dr Liberty Hill, TX 78642-4531	
70. Snelgrooes, Richard & Carri Eddo Trustees of R&C Snelgrooes Trust 600 Cole Dr Liberty Hill, TX 78642	