

**TCEQ DOCKET NO. 2024-0672-DIS**

**PETITION FOR THE CREATION OF  
LUND FARM MUNICIPAL UTILITY  
DISTRICT**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**APPLICANT’S RESPONSE TO HEARING REQUESTS**

Lund Farm Investment LLC (“Applicant”) respectfully submits this Response to Hearing Request in the above-referenced matter.

**I. APPLICABLE LAW**

A municipal utility district (“MUD” or “district”) may be created under and subject to the authority, of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, and the Commission’s administrative authority. A district may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

TEX. WATER CODE § 54.012.

To create a MUD, a petition requesting creation shall be filed with the Commission. See TEX. WATER CODE § 54.014. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. See *id.* The petition shall: (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number; (2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and (3) include a name of the district which shall be generally descriptive of the locale of the district. See TEX. WATER CODE § 54.015, 30 TEX. ADMIN. CODE § 293.11(a) and (d).

The Commission shall grant the petition if it conforms to the requirements of section 54.015 and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. TEX. WATER CODE § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
  - (A) land elevation;
  - (B) subsidence;
  - (C) groundwater level within the region;
  - (D) recharge capability of a groundwater source;
  - (E) natural run-off rates and drainage;
  - (F) water quality; and
  - (G) total tax assessments on all land located within a district.

TEX. WATER CODE § 54.021(b).

The Commission may not refer a matter for a hearing if the issues involve only pure legal questions. 30 TEX. ADMIN. CODE § 50.115(c).

A hearing requestor must make the request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically explaining the "requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public." 30 TEX. ADMIN. CODE § 55.251(b)-(d).

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." 30 TEX. ADMIN. CODE § 55.256(a). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. *See* 30 TEX. ADMIN. CODE § 55.256(b). Relevant factors to be considered in determining whether a person is affected include, but are not limited to:

- (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, safety, and 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) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c).

## **II. GARY NEAL JOHNSON DOES NOT HAVE STANDING AND HIS HEARING REQUEST SHOULD BE DENIED**

Mr. Johnson states that “[o]ur farm is located on Skog Road several miles northwest of the proposed development.” The term “several miles” is not specific. Moreover, “several miles” is such a long distance that Mr. Johnson could not have a concern that is not common to members of the public.

Furthermore, Mr. Johnson expresses generalized concerns, but he does not show how his concerns are particular to him. Many of his concerns are also targeted at existing facilities and infrastructure, not facilities and infrastructure that are associated with the MUD. To the extent these concerns might otherwise be relevant, they are only general concerns, have no substance, and do not identify how he is particularly affected.

His concerns about draining and water quality are generalized, have no substance, and do not identify how he is particularly affected.

His concerns about notice to EMS is without basis or merit, has nothing to do with this proceeding, and do not affect him personally.

In sum, Mr. Johnson failed to show how he has a particular interest, his request should be denied, and his standing should be rejected if a hearing request is granted.

## **III. MITCHELL SCHROEDER DOES NOT HAVE STANDING AND HIS HEARING REQUEST SHOULD BE DENIED**

Mr. Schroeder does not identify his “distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public.” 30 TEX. ADMIN. CODE § 55.251(b)-(d).

His primary concern is regarding wastewater and the possible wastewater discharge – which is not the subject of this proceeding. To the extent he does raise relevant concerns, he only raises them in the very general sense, makes no attempt to explain how he is personally affected, and does not attempt to identify any likely impact of the regulated activity on him or his land.

In sum, Mr. Johnson failed to show how he has a particular interest, his request should be denied, and his standing should be rejected if a hearing request is granted.

#### **IV. THE CARLSONS LACK STANDING AND THEIR HEARING REQUESTS SHOULD BE DENIED**

Although the Carlsons submitted voluminous comments, a careful reading of their comments fail to identify a single assertion of a relevant personal justiciable interest.

With respect to notice, the Carlsons’ complaints go to the notice requirements rather than compliance with the requirements. TCEQ rules concerning notice are not a relevant issue for referral to SOAH.

With respect to alleged deficiencies in the application, questions of whether the district can “pay for itself” and concerns about tax assessments on land within the district or run off and drainage, fail to show (1) a reasonable relationship between the interest claimed and the activity regulated, (2) the likely impact of the regulated activity on the health, safety, and use of property of the person, or (3) the likely impact of the regulated activity on use of the impacted natural resource by the person.

The closest the Carlsons come close to asserting a personal justiciable interest is the following:

As owners of real property that runs along the entirety of Lund Road from TX 95 to County Line Road, we face the distinct possibility of governmental annexation of right-of-way from our long-held property for any expansion of Lund Road In the future to address

the need for a larger, enhanced road that would be immediately adjacent to the 1,800+ new homes and 600+ apartment units proposed for the 570-acre district and development.

But whether a governmental entity may someday condemn a portion of the Carlsons' land is not within the purview of this Petition and is not within the TCEQ's jurisdiction. It is simply irrelevant and does not form the basis for a hearing request nor does it provide standing.

In sum, the Carlsons failed to show how they have a particular interest, their requests should be denied, and their standing should be rejected if a hearing request is granted.

### **CONCLUSION**

All Hearing requests should be denied. No person has shown a personal justiciable interest.

Respectfully submitted,

**THE AL LAW GROUP PLLC**

*/s/ David Tuckfield*

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**ATTORNEYS FOR PETITIONER**

## **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 8<sup>th</sup> day of July 2024 as follows:

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