

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

<b>APPLICATION FOR CREATION OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>LUND FARM MUNICIPAL UTILITY</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>DISTRICT</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS**

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Hearing Requests (Response) on the Petition by Lund Farm Investment LLC (Petitioner) for the creation of Lund Farm Municipal Utility District (District). The Office of the Chief Clerk received hearing requests from John E. Carlson, Margery R. Carlson, Barbara Johnson, Gary Neal Johnson, Terry Johnson, and Mitchell Schroeder.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map.

The ED recommends that the Commission deny all of the hearing requests.

**I. DESCRIPTION OF DISTRICT**

The Petitioner filed a petition for creation of the District with TCEQ. The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of TCEQ.

The petition states that: the Petitioner is the owner of a majority of the assessed value of the land to be included in the proposed District; there are no lienholders on the property to be included in the proposed District; the proposed District will contain approximately 569.739 acres of land, located within Bastrop and Travis Counties, Texas; and a portion of the land to be included in the proposed District is within the extraterritorial jurisdiction of the City of Elgin. The District is located near the intersection of State Highway (SH) 95 and County Line Road. Access to the proposed District will be by SH 95 and County Line Road.

By resolution No. 2023-08-15-55, passed and adopted on August 15, 2023, the City gave its consent to the creation of the proposed District, pursuant to Texas Water Code (TWC) § 54.016.

The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment and appliances necessary to: provide a water supply for municipal uses, domestic uses and commercial purposes; collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; gather, conduct, divert and control local storm water or other local harmful excesses of water in the District and the payment of organization expenses, operational expenses during construction and interest during construction; design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and provide such other facilities,

systems, plants and enterprises as shall be consonant with the purposes for which the District is created and permitted under state law.

## **II. PROCEDURAL HISTORY**

TCEQ received the petition on September 26, 2023. The Application was declared administratively complete on September 27, 2023.

Proper notice of the application was published on January 10, 2024, and January 17, 2024, in the *Austin American-Statesman*, a newspaper regularly published or circulated in Bastrop and Travis Counties, the counties in which the district is proposed to be located. Proper notice of the application was posted on January 4, 2024, on the bulletin board used for posting legal notices in the Bastrop County Courthouse and on January 4, 2024, on the bulletin board used for posting legal notices in the Travis County Courthouse. The opportunity for the public to request a contested case hearing (comment period) expired February 16, 2024.

## **III. CREATION OF MUNICIPAL UTILITY DISTRICTS**

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. TEX WATER CODE § 54.001. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

A MUD 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. § 54.012. the commission has jurisdiction to hear this case and create the district.<sup>1</sup>

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the

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<sup>1</sup> Tex. Water Code § 54.014.

district.<sup>2</sup> If the commission fails to make these findings, it shall refuse to grant the petition.<sup>3</sup>

In determining if the project is feasible and practicable and if it is necessary and would be a benefit 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.<sup>4</sup>

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings.<sup>5</sup>

#### **IV. THE EVALUATION PROCESS FOR HEARING REQUESTS**

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant, or affected persons may request a contested case hearing on this application.<sup>6</sup> The Commission must evaluate the hearing requests and may take on of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings (“SOAH”) for a hearing; or
- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.<sup>7</sup>

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time

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<sup>2</sup> Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.13(b)(1).

<sup>3</sup> Tex. Water Code § 54.021(d); 30 Tex. Admin. Code § 293.13(a).

<sup>4</sup> Tex. Water Code § 54.021(b).

<sup>5</sup> 30 Tex. Admin. Code § 293.13(b)(2); Tex. Water Code § 54.021(c).

<sup>6</sup> 30 Tex. Admin. Code § 55.251(a).

<sup>7</sup> 30 Tex. Admin. Code § 55.255(a).

provided in the Notice of District Petition.<sup>8</sup> These two requirements are mandatory. The affected person's hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request;
- (2) 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 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;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.<sup>9</sup>

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public.<sup>10</sup> The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including 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) for governmental entities, their statutory authority over or interest in the issues relevant to the application.<sup>11</sup>

Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application.<sup>12</sup>

## **V. THE HEARING REQUESTS**

### **A. John E. Carlson and Margery R. Carlson**

John E. Carlson submitted timely hearing requests on behalf of himself and his mother, Margery, which contained their names, addresses, and phone numbers pursuant to 30 TAC § 55.251(c)(1). According to the addresses provided, their property identified in the request is located 0.04 miles from the proposed District.

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<sup>8</sup> 30 Tex. Admin. Code § 55.251(b) and (d).

<sup>9</sup> 30 Tex. Admin. Code § 55.251(c).

<sup>10</sup> 30 Tex. Admin. Code § 55.256(a).

<sup>11</sup> 30 Tex. Admin. Code § 55.256(c).

<sup>12</sup> 30 Tex. Admin. Code § 55.256(b).

Mr. Carlson requested contested case hearings on the MUD creation pursuant to 30 TAC § 55.251(c)(3), and he also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4).

In the requests, Mr. Carlson stated that he and his mother own a farm located immediately across from the proposed District. Mr. Carlson submitted a lengthy hearing request in which he described in great detail how he believes the district creation fails to comply with each of the requirements of TWC § 54.021 and TCEQ's notice requirements. While detailed, the hearing request failed to articulate how the district would affect a personal justiciable interest unique to him or Mrs. Carlson in light of the factors the Commission must consider pursuant to TWC § 54.021. Mr. Carlson repeatedly emphasizes impacts to the Elgin community but did not demonstrate how he or Mrs. Carlson would be affected.

As the hearing request articulates concerns of the general public, pursuant to 30 TAC § 55.256(a), an interest common to the general public cannot qualify as a personal justiciable interest. Therefore, the ED recommends that the Carlson's hearing request be denied.

**B. Barbara Johnson, Gary Neal Johnson, and Terry Johnson**

Gary Johnson submitted a timely request on behalf of himself, his wife Barbara, and his son Terry. The request contained their names, addresses, and phone numbers pursuant to 30 TAC § 55.251(c)(1).

Mr. Johnson requested contested case hearings on the MUD creation pursuant to 30 TAC § 55.251(c)(3), and he also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4).

According to the hearing request, Mr. Johnson stated that the Johnson family owns an agricultural property located several miles north of the proposed District. Mr. Johnson did not provide an address of this property, only a general description of its location.

Mr. Johnson stated that he had concerns regarding the District's impact on traffic, drainage, and water quality. Mr. Johnson also stated that he is a commissioner for Travis County Emergency Services District #13, but he did not state that his request for a hearing was on behalf of the emergency services district.

While Mr. Johnson raised relevant and material issues that are part of the Commission's review of a district petition as outlined in TWC § 54.021, Mr. Johnson did not articulate how his or his family's interests could be uniquely affected. Mr. Johnson stated he felt that the drainage and water quality issues were not adequately addressed and he had concerns about what impact additional traffic would have on the area. These concerns did not describe how the creation would impact the agricultural property or any other justiciable interest. These concerns can be accurately described as concerns of the general public. Additionally, because Mr. Johnson did not provide the specific location of his property relative to the proposed District, he did not provide sufficient information to allow the ED to determine if he is affected in a manner different from a member of the general public.

As the hearing request articulates concerns of the general public, pursuant to 30 TAC § 55.256(a), an interest common to the general public cannot qualify as a personal

justiciable interest. Therefore, the ED recommends that the Johnson's hearing request be denied.

**C. Mitchell Schroeder**

Mitchell Schroeder submitted a timely request which contained his name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). While Mr. Schroeder did request a hearing, he failed to include the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4). According to the hearing request, Mr. Schroeder stated that he owns land on Roemer Road north of Elgin. Based on the address he provided, Mr. Schroeder's address is approximately 0.49 miles from the proposed District.

In the request, Mr. Schroeder expressed several concerns regarding a housing development and accompanying wastewater treatment facility. These concerns included impacts from pollution, flooding, water, electricity, and roads. Mr. Schroeder stated that he had concerns regarding the discharge of effluent and the suitability of the discharge route.

While water quality is an issue which the Commission is required to consider in its review of a district creation petition, his concerns appear to be issues that are more appropriately raised in the context of a TPDES application. Mr. Schroeder did not articulate how he would be affected by the district should it be created.

Having failed to identify a justiciable interest uncommon to the general public, the ED recommends that Mr. Schroeder's hearing request be denied pursuant to 30 TAC § 55.251(c)(2).

**VI. RECOMMENDATION**

The ED recommends that the Commission deny the hearing requests of John E. Carlson, Margery R. Carlson, Barbara Johnson, Gary Neal Johnson, Terry Johnson, and Mitchell Schroeder. The ED recommends the Commission grant the creation petition.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Charmaine Backens, Deputy Director  
Environmental Law Division

A handwritten signature in cursive script, appearing to read "Harrison Cole Malley".

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Harrison Cole Malley, Staff Attorney  
Environmental Law Division

State Bar No. 24116710

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### CERTIFICATE OF SERVICE

I certify that on July 8, 2024, the “Executive Director’s Response to Hearing Requests” for the 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.

A handwritten signature in black ink, appearing to read "Harrison Cole Malley", written in a cursive style.

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Harrison Cole Malley Staff Attorney  
Environmental Law Division



# Attachment A

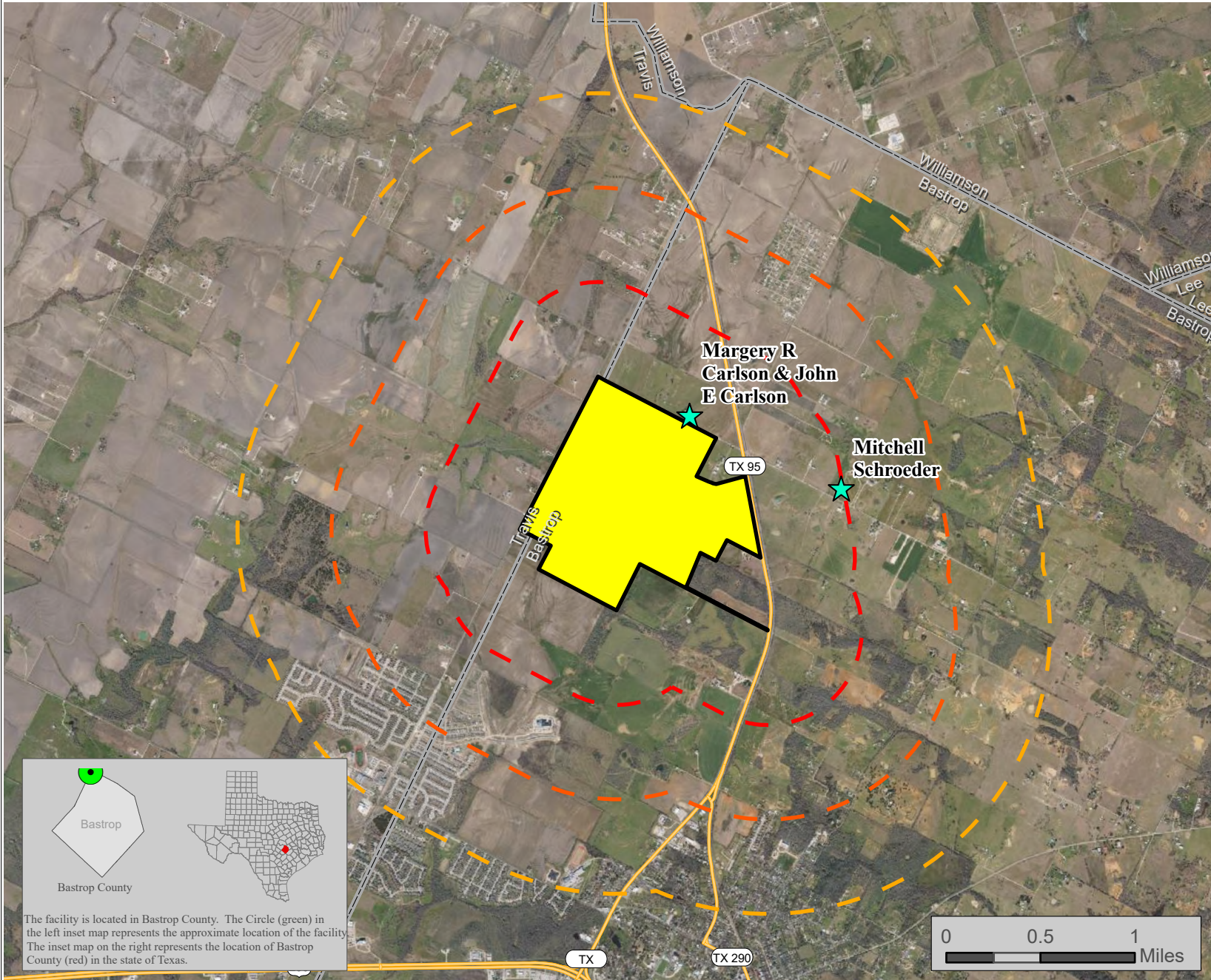
# Lund Farm Municipal Utility District

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: 6/27/2024  
CRF 0107317\_1  
Cartographer: rkukushk



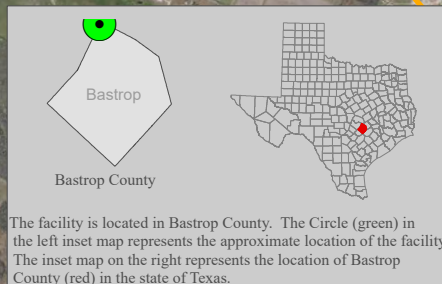
- ★ Requesters
- 1.5 mile Buffer
- 1 mile Buffer
- 0.5 mile Buffer
- Lund Farm MUD
- Highway
- County Boundary

Distance from Lund Farm MUD:  
Margery R Carlson - 0.04 miles  
John E Carlson - 0.04 miles  
Mitchell Schroeder - 0.489 miles

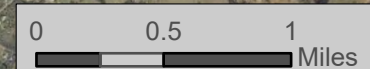
Gary Neal Johnson, Barbara Johnson, and Terry Johnson did not provide addresses suitable for the purposes of this map.

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 Bastrop 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 Bastrop County (red) in the state of Texas.



MAILING LIST  
Lund Farm Municipal Utility District  
Docket No. 2024-0672-DIS; Internal Control No. D-09262023-033

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