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July 22, 2024

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TCEQ Docket No. 2024-0672-DIS

PETITION FOR THE CREATION	§	BEFORE THE TEXAS COMMISSION
OF LUND FARM MUNICIPAL	§	
UTILITY DISTRICT	§	ON ENVIRONMENTAL QUALITY

**JOHN E. CARLSON AND MARGERY R. CARLSON'S
REPLY TO RESPONSES TO REQUESTS
FOR CONTESTED CASE HEARING**

John E. Carlson and Margery R. Carlson (the Carlsons) file this reply to the responses to requests for contested case hearing of (1) petitioner/applicant Lund Farm Investment LLC (Petitioner); (2) the Executive Director (ED); and (3) the Office of Public Interest Counsel (OPIC).

I. INTRODUCTION

Petitioner seeks approval of its application for the formation of the Lund Farm Municipal Utility District (MUD) in rural Bastrop and Travis Counties. The proposed MUD comprises 570 acres, and the proposed dense Lund Farm subdivision would contain over 2,500 living units on land that has previously only been used for agricultural purposes.

The Carlsons co-own and operate a 107.5-acre working family farm that is located *immediately* to the north of the proposed district and development, and effectively share a 0.7-mile common boundary with the proposed district. Their farmhouse is located only 200 feet from the proposed district/development's boundary. The Carlsons timely filed written public comments and hearing requests that otherwise undisputedly satisfied the Commission's rules regarding such comments and requests. Those comments and requests establish that the Carlsons are "affected persons" with personal justiciable interests in the application not common to the general public.

In other recent cases involving proposed municipal utility districts in rural/agricultural areas – including but not limited to the Lampasas County MUD and the Lakeview MUD Nos. 1, 2 and 3 applications – the Commission has determined that individual landowners who were similarly situated to the Carlsons and who had expressed concerns very similar to those that the Carlsons have stated here qualified as “affected persons” and referred the applications to contested case hearing. The Commission should make a similar determination and ruling here, finding that the Carlsons so qualify and referring this application to the State Office of Administrative Hearings (SOAH) for a contested case hearing on, at minimum, the following issues:

- whether the proposed project is feasible, practicable, necessary, and would be a benefit to the land to be included in the district;
- whether or not the district and its system and subsequent development within the district will have an unreasonable effect on:
 - subsidence;
 - groundwater level within the region;
 - natural run-off rates and drainage; and
 - water quality;
- whether the applicant is qualified to undertake this project;
- whether comparable service is available from other systems, including but not limited to water districts, municipalities, and regional authorities; and
- whether the projected construction costs, tax rates, and water and sewer rates are reasonable.

II. BACKGROUND

The Application

Petitioner filed a petition on September 26, 2023, seeking approval for the creation of the Lund Farm MUD in Bastrop and Travis Counties. The proposed district comprises approximately 570 acres of land, a portion of which is located within the extraterritorial jurisdiction (ETJ) of the

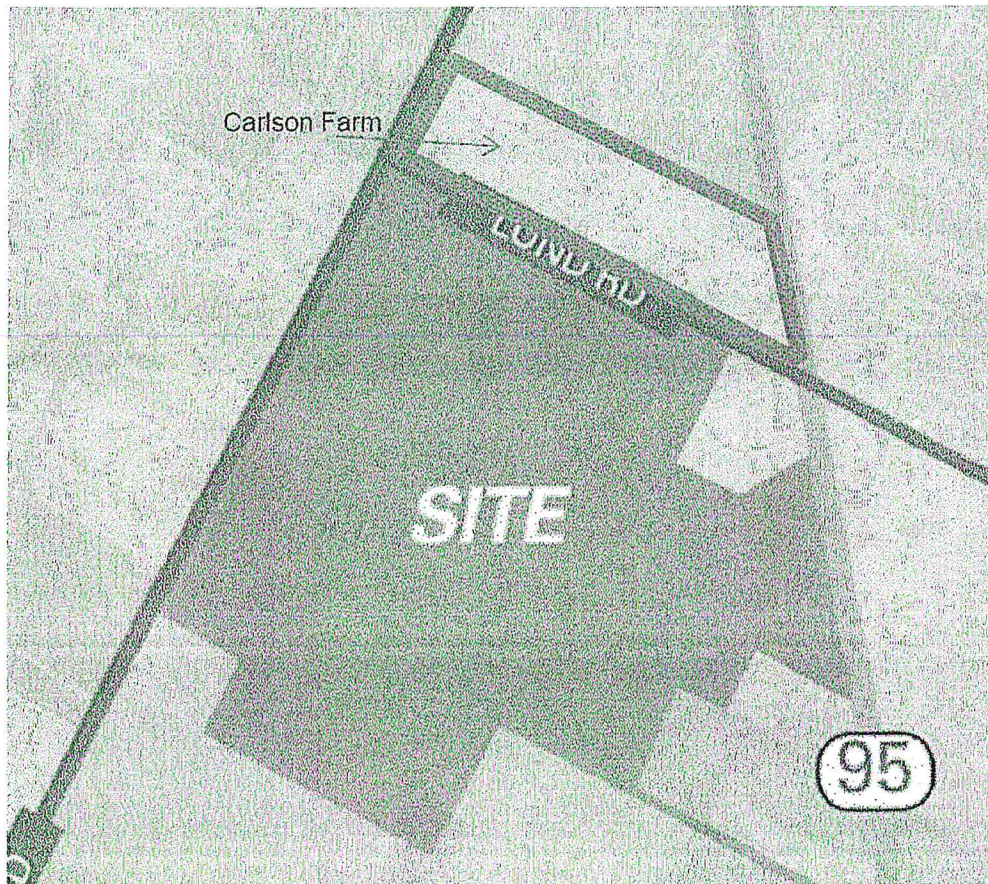
City of Elgin and the rest in unincorporated areas of both counties. The proposed Lund Farm development would comprise some 1,856 single-family residences and 648 apartment units on dense (tiny) lots, on land that has been exclusively used for farming and ranching since Central Texas was settled.

The application was declared administratively complete on September 27, 2023. Notice of the petition was published on January 17, 2024. The public comment and contested case hearing request periods ended on February 16, 2024.

Public Comments and Requests for Contested Case Hearing

The Carlsons timely filed their written public comments and requests for a contested case hearing (the Comments and Requests) – first in comments and a hearing request that was electronically filed with the Commission on January 16, 2024, and then again in written comments and a hearing request that were filed on February 16, 2024. The Comments and Requests specifically referenced the Commission's internal control and permitting numbers for the subject petition, and provided the required address and personal contact information.

As set forth in detail in the Comments and Requests, the Carlsons co-own and operate a 107.5-acre family farm located immediately north of the proposed Lund Farm MUD:



The Carlsons' property shares an approximate 0.7-mile boundary with the proposed district and development – separated only by the 40-foot Lund Road right-of-way. Their farmhouse (which is John Carlson's homestead and residence) fronts Lund Road and is approximately 200 feet (0.04 mile) from the proposed district, and their barn and farm sheds are all also within a few hundred feet of the proposed district. The farm is a working family farm, on which the Carlsons raise cattle and hay.

In their Comments and Requests, the Carlsons have raised a number of concerns regarding the proposed 2,500-home district and development and its potential environmental, health, and safety effects on themselves, their property, and their livestock, as well as their use of their

property. These include, but are not limited to, concerns raised regarding potential effect of the district and development on natural run-off and drainage; flooding; the high density of the proposed development and the proposed lot sizes not complying with applicable city or county ordinances; the applicant's mis-identification of the applicable area stormwater drainage system/basin; of the proposed development being in the flood plain; effects of the district and development on water quality; and the effect of the district and development on water supply and wastewater treatment services. They have also raised concerns regarding the potential annexation of their property for future expansion of Lund Road; the poor qualifications and financial wherewithal of the applicant; increased traffic on Lund Road and insufficient roadway infrastructure; increased pressure on local schools, fire, and emergency services; and lack of personal notice.

III. APPLICABLE LAW

A MUD may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution and Section 54.011 of the Texas Water Code. *See generally* TEX. CONST. Art. XVI, §59 & TEX. WATER CODE §54.011. Chapters 49 and 54 of the Texas Water Code govern the creation of MUDs. *See* TEX. WATER CODE §§49.001 *et seq.* & 54.001 *et seq.* The Commission's administrative rules governing MUDs and their creation are located in Title 30, Chapter 293 of the Texas Administrative Code. *See* 30 TAC §§293.1 *et seq.*

To create a MUD administratively, a petitioner must file a petition with the Commission. TEX. WATER CODE §54.014. The Commission must determine that the proposed project is feasible, practicable, necessary, and would be a benefit to the land to be included in the district. *Id.* at

§54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission must 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 of all land located within a district.

Id. at §54.021(b). If the petition does not conform to the requirements of Section 54.015 or the project is not feasible, practicable, necessary, or a benefit to the land in the district, the Commission must deny the petition. *Id.* at §54.021(d).

The petitioner must publish notice of its proposed petition after it is declared administratively complete. *Id.* at §§49.011(b) & 54.018. The Commission must hold a contested case hearing on the petition if requested by the Commission, the Executive Director, or an “affected person” under the factors set forth in Chapter 55 of the Texas Administrative Code. *Id.* at §49.011. A hearing requestor must make the hearing request in writing within the time period proscribed by law. 30 TAC §55.251. Relevant factors to be considered in determining whether an individual or entity is an “affected person” for the purposes of a hearing request 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.

Id. at §55.256(c).

The Commission must grant a request for a contested case hearing if: (1) the request is made by the applicant or the Executive Director; or (2) the request is made by an affected person, complies with the requirements of 30 TAC §55.251, is timely filed with the Chief Clerk, and is made pursuant to a right to hearing authorized by law. 30 TAC §55.255(b).

IV. ARGUMENT AND AUTHORITIES

The ED's and Petitioner's Responses to Request for Hearing

In his response, the ED has recommended that the Carlsons' requests for a contested case hearing be denied, dubiously asserting that they have not demonstrated "how the district would affect a personal justiciable interest unique to [them]." In its response, Petitioner similarly argues that the Carlsons have not asserted a personal justiciable interest sufficient to establish "affected person" status. Both the ED and the Petitioner are wrong.

Both the ED and the Petitioner completely sidestep addressing the most obvious facts that establish the Carlsons' substantial personal justiciable interests in the application. The Carlsons' farm is immediately north of the proposed district and development, essentially *adjacent* for a 0.7-mile common boundary but for the 40-foot-wide Lund Road right-of-way. The farmhouse and

farm buildings are only a couple hundred feet (0.04 mile) from the proposed district and development. They (John Carlson) reside on the property, work on the property, and raise livestock and hay and otherwise use their property on a daily basis. They use Lund Road as the sole means of access to and from their property. And, in their Comments and Requests they have raised a number environmental, health, and safety concerns regarding the application that, in combination with their close proximity (and the close proximity of their livestock and cropland) to the proposed district and development, establish that they will be affected in ways not common to the general public – specifically including but not limited to the concerns they have expressed regarding water quality, flooding, and natural run-off rates and drainage.

The ED and Petitioner are also advocating/recommending a position that is wholly inconsistent with how the Commission has addressed hearing requests by adjacent and proximate landowners in other matters involving MUD applications involving rural/agricultural areas. For example, in 2021 in connection with the applications for the formation of Lakeview MUD Nos. 1, 2 and 3 in Ellis County (TCEQ Docket Nos. 2021-0572-DIS, 2021-0571-DIS & 2021-0573-DIS), the Commission granted the hearing requests of some 30 individuals who owned land in the vicinity of the proposed districts. Similarly, in early 2023 in connection with the application for the formation of Lampasas County MUD No. 1 in Lampasas County (TCEQ Docket No. 2022-1653-DIS), the Commission granted the hearing requests of some 16 individuals whose property was located within a mile of the proposed district. Many of these individual hearing requestors in the Lakeview and Lampasas County MUD cases owned residential or agricultural properties that were substantially *further* from the proposed district than the Carlsons' farm and farmhouse are from the proposed Lund Farm MUD.

The Carlsons have sufficiently established a personal justiciable interest in ways not common to the general public, and their contested case hearing request(s) should be granted.

OPIC's Response to Request for Hearing

In its response, OPIC "concludes that the Carlsons have successfully demonstrated that they qualify as affected persons in this matter." For the reasons set forth in OPIC's response and herein, OPIC is correct: the Carlsons are indeed "affected persons" and their hearing request should be granted.

V. INCORPORATION OF PUBLIC COMMENTS AND REQUEST(S) FOR HEARING

The Carlsons incorporate the public comments and requests for hearing that they filed in this matter on January 16, 2024 and February 16, 2024 for all purposes herein.

VI. CONCLUSION AND PRAYER

For the reasons set forth herein and in their hearing requests, the Commission should find that John E. Carlson and Margery R. Carlson qualify as affected persons, grant their hearing requests, and refer the matter to SOAH for a contested case hearing.

Dated: July 22, 2024

Respectfully submitted,

LAW OFFICES OF JOHN E. CARLSON

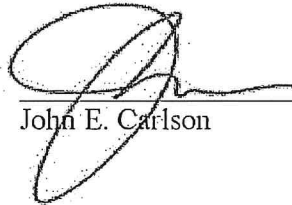


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CERTIFICATE OF SERVICE

I certify that on July 22, 2024, a true and correct copy of this document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via U.S. mail and/or via e-mail.



John E. Carlson

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Laurie Gharis

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