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August 16, 2024

Via E-Filing

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
P.O. Box 13087
Austin, TX 78711-3087

Re: TCEQ Docket No. 2024-1225-MWD; College Mound Special Utility District &
Post Oak MHC, LLC Application for TPDES Permit No. WQ0016312001

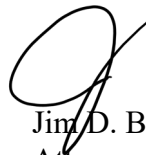
Dear Ms. Gharis:

Attached for filing please find Applicants College Mound Special Utility District and Post Oak MHC, LLC's Response to Request for Contested Case Hearing and Reconsideration of ED's Decision in the referenced docket for consideration by the Commissioners for the September 11, 2024 Agenda Meeting.

Concurrently with this electronic filing, we are serving all parties on the Mailing List for this docket.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,



Jim D. Bradbury
Attorney for Applicants

cc: Mailing List

DOCKET NO. 2024-1225-MWD

APPLICATION BY COLLEGE MOUND SPECIAL UTILITY DISTRICT & POST OAK MHC, LLC FOR NEW TPDES PERMIT NO. WQ0016312001	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**APPLICANTS’ RESPONSE TO REQUEST FOR CONTESTED CASE HEARING AND
RECONSIDERATION OF ED’S DECISION**

College Mound Special Utility District (the “District”) and Post Oak MHC, LLC (collectively “Applicants”) file this Response to Hearing Request regarding the requests for contested case hearing and reconsideration of the ED’s decision made by the City of Terrell (the “City”) on the referenced Application for TPDES Permit No. WQ0016312001 (the “Application”). For the reasons stated herein, Applicants request that the Texas Commission on Environmental Quality (the “Commission”) deny the requests for contested case hearing and reconsideration and issue final approval of the Application and Draft Permit.

**I. OVERVIEW OF APPLICATION AND CITY’S FAILURE TO COMMIT TO
SERVE THE DEVELOPMENT**

This Application seeks authorization to construct facilities to provide wastewater service to a residential manufactured home community in Kaufman County, Texas (the “Development”). As an initial matter, it is important to note that this Application would be moot if the City would clearly state and commit that it is willing to serve the Development. As set forth in detail herein, the City has had multiple opportunities to make such a statement and commitment but has, to date, failed to do so. Prior to submitting the Application, Applicants conferred with the City multiple times regarding the City’s capacity *and* willingness to serve the Development. The City has responded it has capacity but consistently declines to state whether it will in fact serve the Development. The City now argues against the Application on the basis of it contravening the regionalization policies, and yet, in its public comment and hearing request, the City continues to discuss its capacity to serve but neglects to commit to actually serve the Development. This failure renders the City’s arguments on regionalization hollow. Because of the City’s failure to commit to serve the Development, Applicants proceeded with the Application to ensure forward progress of the Development.

By its Application, Applicant seeks a new TPDES permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.0625 million gallons per day (“MGD”) for phase I, 0.125 MGD for phase II, and 0.25 MGD for the final phase. The authorization will allow Applicant to construct facilities and lines to serve the Development. The District operates a water system under Certificate of Convenience and Necessity (“CCN”) No. 10825 in Kaufman County, Texas. Post Oak MHC, LLC is the owner of property where the Development is planned and is the Development that will be served by the facility proposed by the Application.

The District has long been a fixture of high quality water service in the Kaufman County area and is willing and able to serve the Development. Kaufman County is experiencing significant

growth, and residential communities like the Development are essential to providing housing for the growing population. Ensuring efficient and cost-effective sewer service is essential to these developments and growing communities.

The District's proposed facility under the Application will be an activated sludge process plant operated in the complete mix mode with treatment units that include four aeration basins, final clarifiers, chlorine contact chamber, and four sludge digesters. Sludge generated from the treatment facility will be hauled by a registered transporter and disposed of at the Greenville Wastewater Reclamation Center, a TCEQ-authorized (TPDES Permit No. WQ0010485002) land application site in Hunt County, Texas. The draft permit also allows the disposal of sludge at a co-disposal landfill, a TCEQ-authorized land application site or Wastewater Treatment Facility, or a facility that may further process sludge. Treated effluent from the proposed facility will be discharged to an unnamed tributary, then to Anthony Branch, then to Kings Creek, and finally into Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin.¹

II. PROCEDURAL HISTORY

Applicants submitted their Application on March 10, 2023, and it was declared administratively complete on May 17, 2023. Applicants published the Notice of Receipt and Intent to Obtain a Water Quality Permit in the *Kaufman Herald* on May 25, 2023 and published in Spanish in *Al Dia* on May 31, 2023. The Executive Director ("ED") completed the technical review of the Application on August 30, 2023, and prepared the proposed permit (the "Draft Permit"), which if approved, would establish the conditions under which the facility must operate. Applicants published the Notice of Application and Preliminary Decision in the *Kaufman Herald*, and in Spanish in *Al Dia*, on October 11, 2023. The public comment period for the Application closed on November 10, 2023. The deadline for requesting a contested case hearing closed on May 10, 2024.

The City filed its Public Comments and Request for a Public Meeting and Contested Case Hearing on November 10, 2023. The City filed three main comments to the Application:

- 1) Approval of the Application and issuance of the Draft Permit would violate Texas's legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems;
- 2) The Application raises concerns that the proposed discharge will impair existing uses and/or quality of the receiving waters in contravention of TCEQ's antidegradation policy; and
- 3) The Application contains numerous deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

(Pub. Comm., at 3, 7, 10). The ED responded to the City's comments in The Executive Director's Response to Public Comment for Permit No. WQ0016312001 on April 10, 2024. The ED

¹ Concurrently with this Application, the District has applied for an application for a new sewer CCN (PUC Docket No. 54925; SOAH Docket No. 473-24-06017) with the Public Utility Commission of Texas ("PUC") to serve the Development. The PUC application is currently abated pending a final determination of the instant Application before the Commission.

addressed each of the City's comments in detail. With respect to the City's comment that the Draft Permit violates the TCEQ's policy on regionalization, the ED concluded:

The TCEQ's policy on regionalization does not require the agency to deny a wastewater discharge application on the basis that there is a pending application for a regional plant within three miles of a proposed facility. Additionally, the fact that a facility or collection system is located within three miles of a proposed facility is not an automatic basis to deny an application. ... The Applicant determined that connecting to the City's wastewater system is not economically feasible, nor cost effective, and that the City's WWTF cannot be considered a viable alternative regional wastewater option for the Applicant. ... WQD staff concluded that the proposed permit is consistent with Texas' Regionalization policy because, according to the Applicant, there are no WWTF's located within a three-mile radius that can provide service that is not cost-prohibitive.

(ED's Rsp to Comm., at 8-9). Concerning the City's comment regarding impairment of existing uses and quality of receiving waters in violation of the TCEQ antidegradation policy, the ED responded:

The draft permit was developed in accordance with the Texas Surface Water Quality Standards to be protective of water quality, provided that the applicant operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements. ... Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater that: 1) results in instream aquatic toxicity; 2) causes a violation of an applicable narrative or numerical state water quality standard; 3) results in the endangerment of a drinking water supply; or 4) results in aquatic bioaccumulation that threatens human health.

As part of the application process, TCEQ staff must determine the uses of the receiving waters and set effluent limits that are protective of those uses. In order to achieve the goal of maintaining a level of water quality sufficient to protect existing water body uses, the proposed permit contains several water quality specific parameter requirements that limit the potential impact of the discharge on the receiving waters.

(ED's Rsp to Comm., at 9-10). The ED's Response goes on to describe the Tier 1 antidegradation review that was performed of the receiving waters for the Application and the specific effluent limitations and standards in the Draft Permit that will ensure the Texas Surface Water Quality Standards are met and the water uses and water quality of the receiving waters are protected. (ED's Rsp. to Comm., at 10-11). The ED also addressed the individual purported deficiencies in the Application raised by the City in its third comment ultimately concluding no changes to the Draft Permit were required in response to the City's comments. (ED's Rsp. to Comm., at 11-14).

On May 10, 2024, the City filed a Request for Contested Case Hearing and/or Reconsideration of the Executive Director's Decision. The City seeks a contested case hearing for the following reasons:

- 1) a legislatively mandated interest in promoting and protecting the general health, safety, and welfare of persons residing inside its city limits and extra-territorial

jurisdiction (“ETJ”) from the deleterious effects of a new source of potential contamination from the Applicants’ proposed facility;

- 2) because the proposed facility, outfall, discharge route, and service area are all within the City’s ETJ and proximate to the City’s corporate limits; and
- 3) 30 TAC §55.203(b) deems local governmental entities in the City’s position to be “affected persons.”

(City’s Hearing Req., at 3). The City also identified its disputed issues, which primarily dispute the ED’s responses and conclusions on each of the City’s public comments on the Application. As set forth herein, Applicants urge the Commissioners to deny the City’s hearing request because it is not an affected person and the disputed issues the City submits are not a basis for denying the Application or the Draft Permit. Further, the City’s request for reconsideration of the ED’s decision to grant the Application and issue the Draft Permit should similarly be denied because the reasons provided throughout its request, which are the same as the disputed issues for its Hearing Request, are not a sufficient basis for denying the Application or Draft Permit. Applicants respectfully request that the Commissioners approve the Application and issue the Draft Permit.

III. RESPONSE TO HEARING REQUEST

A. Applicable Law

Chapter 26 of the Texas Water Code governs water quality permits in Texas, authorizing the Commission to “issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.” Tex. Water Code § 26.027(a). The Commission is required to provide public notice of a permit application under Chapter 26 and under certain circumstances hold a public hearing on the application. *Id.* § 26.028(a), (c), (h). While any person may provide public comment on a pending water quality permit application, only those who are also “affected persons” may obtain a public hearing. *Id.* § 26.028(c).

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. Tex. Water Code § 5.115(a); 30 Tex. Admin. Code § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.* In determining whether a person is an “affected person,” the Commissioners may consider a variety of factors, which may 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 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.

30 Tex. Admin. Code § 55.203(c). In addition to the foregoing factors, the Commission may consider the following in making an “affected person” determination: 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 a hearing requestor. *Id.* § 55.203(d). In addition to being an affected person, a requestor must timely file a written request for a contested case hearing that identifies the person’s personal justiciable interest affected by the permit application and list all relevant and material disputed issues of fact that were raised during the public comment period and that form the basis of the hearing request. 30 Tex. Admin Code § 55.201(a), (c), (d)(2), (4); *see also* Tex. Water Code § 5.556(d).

After a hearing request is filed on a permit application, the applicant may submit a written response to the hearing request. 30 Tex. Admin. Code § 55.209(d). An applicant’s response to a hearing request must specifically address the following:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director’s Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

Id. The Commission may grant an application without a public hearing if it finds that the requestor is not an affected person, that the hearing request did not comply with the statutory or regulatory requirements, or that the permit application is exempt from the public hearing requirement under Tex. Water Code § 26.028(d).

B. The City is Not Entitled to a Hearing on the Application Because the City is Not an “Affected Person.”

The City claims “affected person” status on four primary grounds: 1) its interest in promoting and protecting general health, safety, and welfare of persons residing inside its city limits and ETJ from potential contamination; 2) the proposed facility, outfall, discharge route, and service area are all within the City’s ETJ and proximate to the City’s corporate limits; 3) 30 Tex.

Admin. Code § 55.203(b) “deems” local governmental entities like the City to be “affected persons;” and 4) the City owns and operates an extensive wastewater treatment and collection system that can serve the Development and should be considered based on the TCEQ regionalization policy. None of these grounds support granting the City “affected person” status or granting its hearing request.

1. The City’s Interest in Promoting and Protecting General Health, Safety, and Welfare of its Citizens inside its City Limits and ETJ from Potential Contamination

The City claims “affected person” status based on its interest in promoting and protecting the health, safety, and welfare of its citizens from potential contamination. The City’s interest in health and safety is no different than an interest common to members of the general public. As such, this basis does not qualify as a personal justiciable interest for the City. *See* 30 Tex. Admin. Code § 55.203(a). The City is concerned with the impacts of the Applicants’ proposed facility and discharge on the waterways within the City’s ETJ. The City fails to supply any material evidence of any factual or actual threat to the City’s waterways or ETJ from the Application. In fact, all of the proposed facilities and discharge routes are downstream from the City, and the Draft Permit is designed to avoid any such impacts. The City points to no concrete data or factual information of actual negative impacts that would occur as a result of the proposed facility and Application. The City supplies no evidence or factual data to refute the ED’s responses supplied in the Response to Comment that show in detail how the Draft Permit complies with the Texas Surface Water Quality Standards, complied with the Texas Antidegradation Review, and will be protective of water quality in Texas. The City’s arguments and statements are little more than conjecture and speculation, and such conjecture and generalized interests common to the general public cannot supply a basis for “affected person” status.

2. The Location of the Proposed Facility, Outfall, Discharge Route, and Service Area in Relation to the City’s ETJ and corporate limits

The City further claims it is entitled to “affected person” status because the Applicants’ proposed facility, outfall, discharge route, and service area are all within the City’s ETJ and in close proximity to the City’s corporate limits. It is unclear at best whether any of the Applicants’ proposed facilities or activities under the Draft Permit would fall within the City’s ETJ. Maps on the City’s own website show the location of the proposed facility to be outside of the City’s ETJ and corporate limits. In Figure 1 below, the yellow shading indicates the City’s corporate limits, and the grey area with the aqua dotted line is the ETJ.² Applicants added the red star to the map to show the approximate location of the proposed facility.

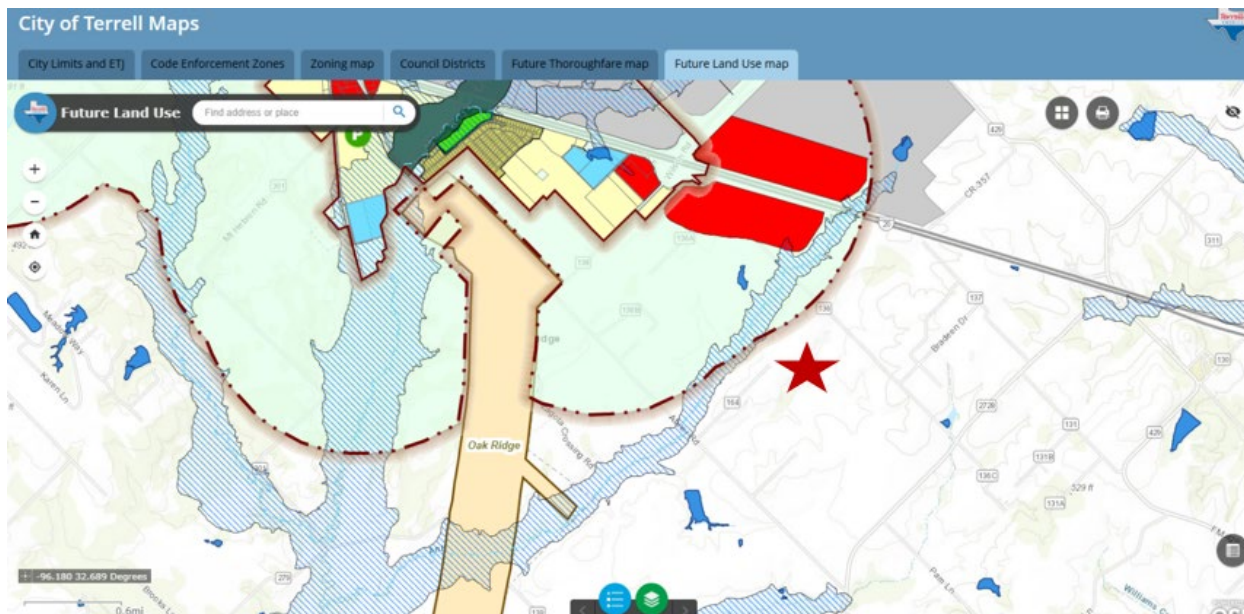
² <https://terrell.maps.arcgis.com/apps/MapSeries/index.html?appid=6290c12eee144624b706ff5c12cfffcl> (last visited Aug. 16, 2024).

Figure 1. City of Terrell Map of City Limits and ETJ



Similarly, on Figure 2 below, the light green area denotes the City's ETJ, and the red star is placed to show the approximate location of the proposed facility, which is outside the City's ETJ.³

Figure 2. City of Terrell Map of Future Land Use

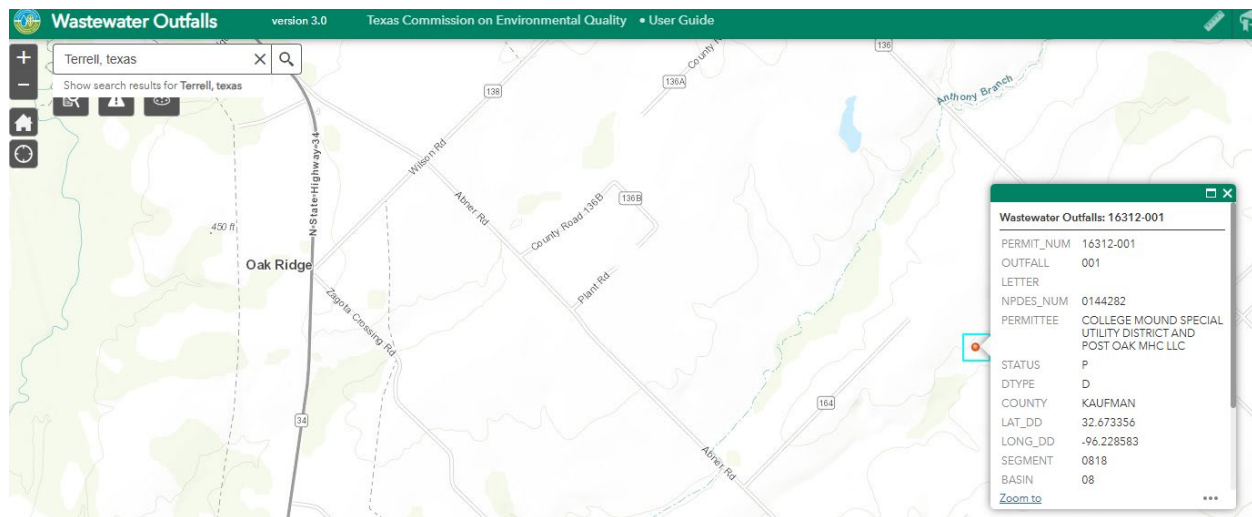


Figures 1 and 2 are City maps posted on the City's website. Figure 3 is a map produced by TCEQ that similarly shows the proposed wastewater outfall in the same location and outside the City's ETJ.⁴

³ <https://terrell.maps.arcgis.com/apps/MapSeries/index.html?appid=6290c12cee144624b706ff5c12cfff1> (last visited Aug. 16, 2024).

⁴ <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=d47b9419f42c49dea592203acda99da1> (last visited Aug. 16, 2024).

Figure 3. TCEQ Wastewater Outfall Map



Significantly, each of the maps shown in Figures 1 through 3 call into question the City’s statement that all of the Applicants’ facilities, outfall, discharge route, and service area are within the City’s ETJ. To the contrary, most, if not all, of the Applicants’ facilities, discharge routes, or service area for the Development will be outside the ETJ or downstream from the City. The impacts to the City, its citizens, its waterways, or its wastewater system will be minimal, if at all. The City’s second basis for obtaining “affected person” status therefore fails, and the City’s Hearing Request should be denied.

3. Section 55.203(b)’s Statement on Local Governmental Entities

The City also points to section 55.203(b)’s statement regarding local governmental entities as a basis for granting “affected person” status. The City contends that the provision “deems” the City an “affected person.” The City reads too much into this provision. Section 55.203(b) states: “governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application *may* be considered affected persons.” 30 Tex. Admin. Code § 55.203(b) (emphasis added). This section merely states an additional factor to be considered in determining whether a person is an “affected person” and does not mandate or require that a local government with authority over issues raised by an application be deemed an “affected person.” Applicants urge that this provision, without significantly more, is insufficient to supply “affected person” status for the City.

4. TCEQ Regionalization Policy and the City’s Wastewater Treatment and Collection System

Finally, the City argues that it already has substantial wastewater treatment facilities less than three miles from the Development, that the City’s system has the capacity to serve more than the customers it currently serves, and that the Texas regionalization policy requires consideration of the City’s facilities. The ED responded to the City’s public comment on regionalization that the policy is not a basis for denying an Application. Similarly, it should not be a basis for granting a contested case hearing. Further, while the City mentions its facilities and proximity to the Development and states it has sufficient capacity to serve, it has never agreed, stated that it is willing, or otherwise indicated any intent to serve the Development. Applicants contacted the City on multiple occasions to determine if the City would serve the Development, and the only response

the Applicants received was that the City had capacity to serve. When pressed further as to whether the City was willing to serve the Development, the City failed to respond. In Exhibit A, attached hereto and incorporated by reference herein, one of the developers for the Development supplied an Affidavit and copy of an email with the City regarding this very issue in the PUC matter concerning the District's CCN application. Even in its filings with the Commission seeking a contested case hearing, the City never states it will serve the Development.

Even if the City were willing to serve the Development, the cost analysis conducted by Applicants as a part of the regionalization inquiry showed a difference of more than \$2 million to connect to the City's system rather than proceed with the Application. Attached as Exhibit B is an excerpt from a detailed cost opinion conducted by the project engineer updated as of August 23, 2023. This cost analysis shows that the preliminary cost for connecting to the City's system is estimated to be \$6,431,981.70. (Ex. B). The preliminary cost for constructing the new plant under the Application with the District is estimated to be \$4,268,207.00. This is a significant cost difference, and as the ED explained in the Response to Comment, can supply a basis for choosing the less expensive option to serve the Development. The Regionalization Policy therefore should not be a basis for granting "affected person" status to the City on this Application. The City is not an "affected person" and its Hearing Request should be denied.

C. Applicants' Further Response to Hearing Request

1. Which issues raised in the hearing request are disputed.

In its Hearing Request, the City disputes the ED's Response to Comment ("RTC") Nos. 2-13, which fall under the three broader categories of three issues disputed above, notably: 1) issuance of the Draft Permit would contravene Texas regionalization policy; 2) inconsistencies in the Application give rise to concerns that the conditions in the Draft Permit will not protect against nuisance odors or the negative impacts of the proposed facility on water quality, antidegradation, and stream standards; and 3) deficiencies in the Application create uncertainty as to whether TCEQ was provided with accurate and complete information sufficient to prepare the Draft Permit. (City's Hearing Request, at 10).

Significantly, most of the City's issues concern the ED's processing of the Application or implementation of regulations, policies, and procedures and not the actual terms and conditions of the Draft Permit. As such, Applicants generally dispute all issues raised by the City in the Hearing Request. Applicants maintain that the ED's technical review of the Application was thorough and complete, and the Draft Permit complies with all applicable laws, policies, and regulations. For the reasons stated herein, the City has not indicated it intends to nor wants to serve the Development, the cost for developers to connect to the City as opposed to construct the proposed facility with the District is significant and the Application presents a much more cost effective option, and the Draft Permit complies with all water quality standards and is protective of water quality in and around Texas. Further, the purported deficiencies identified by the City have been resolved to the satisfaction of the ED throughout its extensive technical review and do not supply a basis for a contested case hearing.

2. Whether the dispute involves questions of fact or of law.

When a contested case hearing is granted, the Commission must order the number and scope of issues to be referred to the State Office of Administrative Hearings ("SOAH") for hearing. 30 Tex. Admin. Code § 50.115(b). The Commission may not refer an issue to SOAH for a

contested case hearing unless the Commission determines that the issue: 1) involves a disputed question of fact or a mixed question of law and fact; 2) was raised during the public comment period by an affected person whose hearing request is granted; and 3) is relevant and material to the decision on the application. 30 Tex. Admin. Code § 50.115(c). Disputed issues of law cannot, therefore, be referred for hearing.

The City's issues raised appear to involve questions of law. Accordingly, none of the issues raised by the City should be referred for hearing because they are questions of law and not properly referred for a contested case hearing. *See* 30 Tex. Admin. Code § 50.115(c). The City's overarching complaint in its public comments and hearing request concern the ED's processing of the Application and not the actual terms and conditions of the Draft Permit. Even where the City urges that certain data is unknown or inaccurate, their issues boil down to disagreeing with the ED's decision that the Application meets all requirements of applicable law. The City's issues, therefore, are issues of law and should not be referred for a contested case hearing. *See* 30 Tex. Admin. Code § 50.115(c).

In its disputed issue concerning RTC 2 regarding the antidegradation review, the City's primary issue is that the ED does not agree with the information the City supplied that it believes is more accurate than what was submitted in the Application. The ED, however, considered this information and found that it does not alter their conclusion in the regionalization analysis. The City's continued dispute, therefore, concerns the agency's actual process and analysis of the regionalization policy and not the factual information at issue. This issue should not be referred to SOAH.

In RTC 3, the City raises the Commission's antidegradation policy and that the Application and Draft Permit raise concerns with the City that the proposed discharge under the Application will not be in compliance with the policy or maintain the current standards in local waterways. The ED conducted a thorough review and process of these matters and determined that the Draft Permit is compliant with the antidegradation policy and will maintain water quality standards. Once again the City's issue is with the extent and manner in which the ED conducted its review of the Application and creation of the Draft Permit. This issue should not be referred to SOAH.

In the City's issues labeled RTC 4 through RTC 13 in its Hearing Request, the City takes issue entirely with the ED's processing of the Application and response to the City's comments. These issues are directed once again to the processing of the Application and not any factual issue of the Application itself that could be determined in a contested case hearing. The ED has set forth numerous responses and reasons as to how the thorough technical review of the Application complied with all applicable laws and regulations. The City's disagreement with the ED staff about how they conducted the technical review of the Application does not and should not be an issue referable to SOAH. They are issues of law and not fact and should not be referred for hearing.

Further, if a hearing is granted, the Commission should include as a referred issue whether the City intends to serve the Development, which remains unknown and unspecified by the City. Applicant maintains that any issues to be referred for a hearing should be narrowly tailored.

3. Whether the issues were raised during the public comment period.

The issues raised by the City in its Hearing Request are substantially the same as those raised in its public comments, which were responded to in the Executive Director's Response to

Comments. Notably, as mentioned above, the Executive Director made no changes to the Draft Permit as the result of the City's comments.

4. Whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

Applicants are not aware of the City withdrawing its public comments.

5. Whether the issues are relevant and material to the decision on the Application.

For the reasons stated above, Applicants do not believe that the issues raised by the City in its Hearing Request are relevant or material to the decision on the Application and would respectfully request that the Commission issue final approval of the Application. The City's comments contain conjecture and speculation regarding the purported negative impacts of the Applicants' proposed facility. The City's claim that the proposed facility, service area, and other features of the Development are located within the City's ETJ appears to be in error. The City has made no indication that it intends to or is willing to serve the Development, and connecting to the City's system rather than proceeding with the Application is estimated to be more than \$2 million more than the proposed facility with the District. The Draft Permit complies with the Texas Surface Water Quality Standards as well as all other applicable laws, statutes, and regulations. The City's issues are with the processing of the Application, which the ED has responded and refuted their arguments. The City's issues are not a sufficient basis for a contested case hearing on this Application or for denial of the Application and the permit.

6. A maximum expected duration for the contested case hearing.

Applicants maintain that a contested case hearing is neither merited nor appropriate on the Application. Nonetheless, it responds that should a contested case hearing be granted on the Application, a hearing should not exceed 100 days.

D. The City's Request for Reconsideration of the ED's Decision Should be Denied

In addition to its request for contested case hearing, the City additionally asks that the ED reconsider its decision to grant the Application and issue the Draft Permit. The City bases this request on the same disputed issues it identifies as the basis for its Hearing Request. As provided herein, the disputed issues raised by the City are not a sufficient basis for overturning or denying the Application or issuance of the Draft Permit. The City's overarching issue with the Application is the ED's process and implementation of its own policies or the sufficiency of the Commission's rules for protecting water quality. These are matters are not a basis for denying an Application or issuance of a permit, and the ED has considered and responded to the City's issues finding that the permit should be issued and no changes were required to the Draft Permit. Accordingly, Applicants respectfully request that the Commission deny the City's Request for Reconsideration.

IV. CONCLUSION AND PRAYER

Applicants have complied with all requirements for approval of their Application and issuance of the Draft Permit. The City contests the Application and yet fails to state or commit to serving the Development. The City further fails to meet the requirements of an "affected person," the issues raised by the City are issues of law and not referable for contested case hearing, and

the issues are not relevant or material to a decision on the Application. The Draft Permit complies with applicable law and is protective of water quality. Accordingly, Applicants respectfully request that the Commission deny the City's Request for contested case hearing and reconsideration of the ED's decision and issue final approval of the Application and Draft Permit.

Respectfully submitted,

/s/ James D. Bradbury

James D. Bradbury

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ATTORNEYS FOR APPLICANTS

CERTIFICATE OF SERVICE

I certify that on August 16, 2024, the "Applicants' Response to Request for Contested Case Hearing and Reconsideration of ED's Decision" for issuance of Permit No. WQ0016312001 by College Mound Special Utility District and Post Oak MHC, LLC 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, electronic mail, or by deposit in the U.S. Mail.

/s/ James D. Bradbury

James D. Bradbury

MAILING LIST
College Mound Special Utility District & Post Oak MHC, LLC
TCEQ Docket No. 2024-1225-MWD
Permit No. WQ0016312001

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Austin, Texas 78759

REQUESTER:

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RESOLUTION:

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EXHIBIT A

DOCKET NO. 54925

APPLICATION OF COLLEGE §
MOUND SPECIAL UTILITY §
DISTRICT FOR A NEW §
CERTIFICATE OF CONVENIENCE § PUBLIC UTILITY COMMISSION
AND NECESSITY IN KAUFMAN §
COUNTY § OF TEXAS
AFFIDAVIT OF STEVEN WINSLOW

STATE OF TEXAS §
§
COUNTY OF KAUFMAN §

BEFORE ME, the undersigned authority, on this day personally appeared STEVEN "HARRY" WINSLOW, who is personally known to me, and after being duly sworn, stated under oath:

"My name is Steven Winslow, known as Harry Winslow. I am the Vice President for K8H Ventures, the developer of the manufactured housing community that will form the service area for the certificate of convenience and necessity in the above-referenced Application. I am over the age of twenty-one years, have never been convicted of a crime, am of sound mind, and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, each of which are true and correct.

"Attached to this Affidavit as AttachmentA-1 is a true and correct copy of the email I sent to the City of Terrell on August 5, 2021 requesting service from the City of Terrell for wastewater services.

"The City of Terrell declined to provide service to our development."

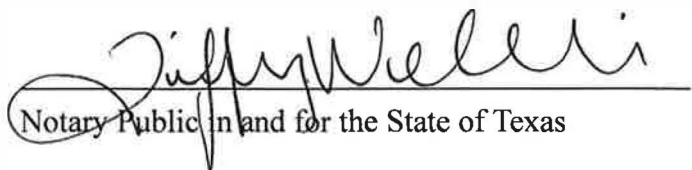
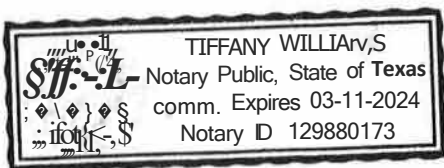
FURTHERAFFIANT SAYETH NOT.

Executed this 10th day of October, 2023.



STEVEN WINSLOW

SUBSCRIBED AND SWORN TO BEFORE ME, on this 10th day of October, 2023 by Steven Winslow.



Notary Public in and for the State of Texas

From: Harry Winslow <Hwinslow@affinalre.com>
Sent: Thursday, August 5, 2021 8:44 AM
To: utilities@cityofterrell.org
Cc: Kevin Mims
Subject: Post Oak MHC Terrell - Sewer Utilities
Attachments: Conceptual Layout (1) -Compressed.pdf; Topo with Prop Outline.pdf; Commercial Contract Exhibit #1 - 1261 0.pdf

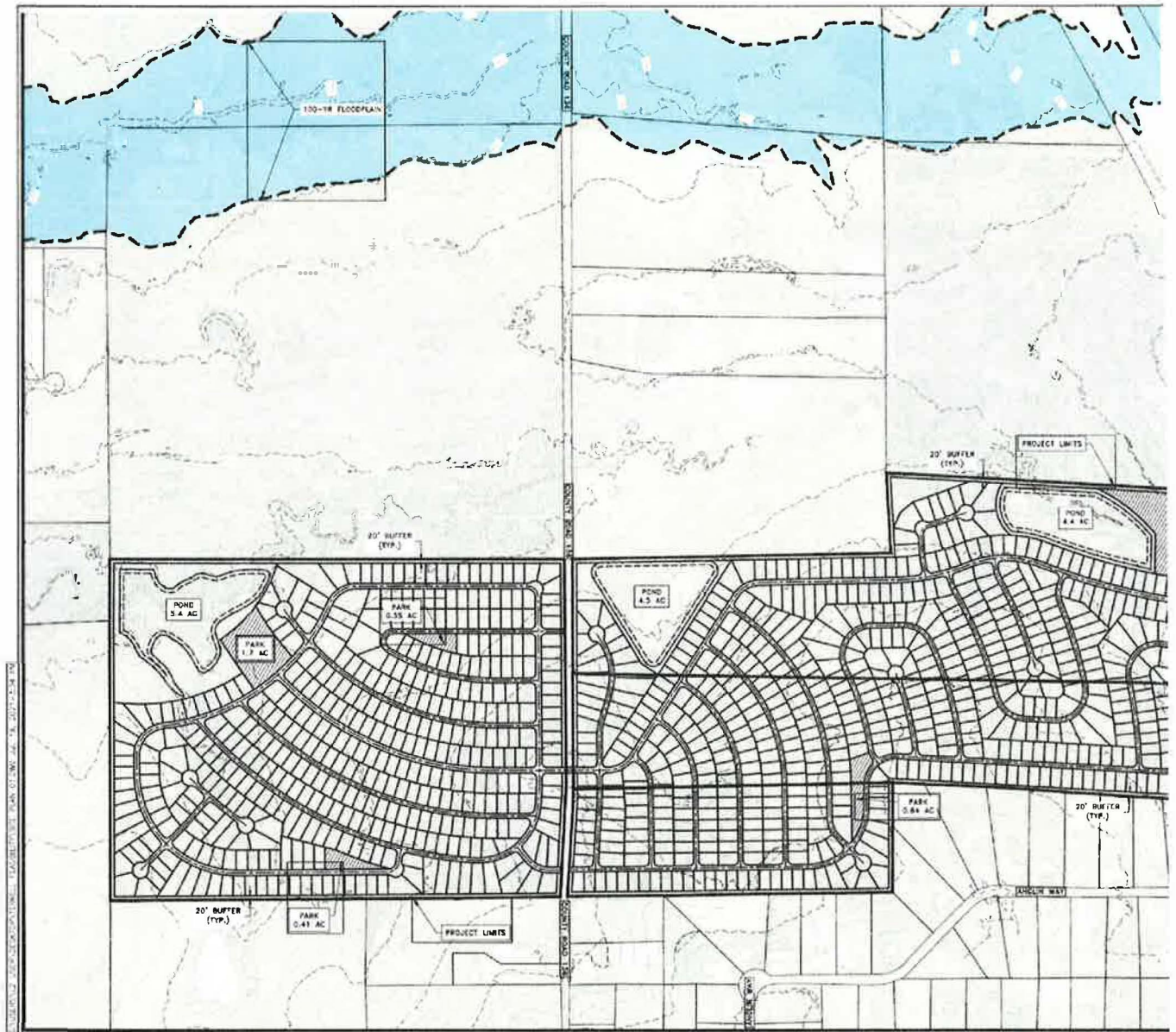
Good morning,

We are purchasing a tract of land just outside of the city limits. We met with Kaufman Co last week for our predevelopment meeting about our development. Terrell HRC currently has the sewer CCN on our property but after speaking with them they advised they will not provide sewer for our development. Kaufman Co advised to reach out to you to see if the city would like to provide wastewater services for our community. Let me tell you about our project which we project to be breaking ground in November 2022.

We are looking to build an ~1,000 space class A manufactured housing community. The community will be lot lease only but will a full single family subdivision feel. The individual lots will be 55' x 120' with concrete curb, gutter, and stormwater. The community will have several playgrounds and parks, walking trails, a dog park, splash pad, pool, and full apartment style amenity center. Utilities will be direct billed to the resident.

Below is the first draft of our conceptual layout.

Let me know what other information you may need or how else I can help.



Best regards,

[*Information About Brokerage Services](#)

[*Texas Real Estate Commission Consumer Protection Notice](#)

Harry Winslow

Vice President

Gene Mims Investments | GMI Management | K&H Ventures | Deacon Baldys

5451 FM 1488 | Magnolia, TX | 77354

EXHIBIT B

Re: Post Oak WWTP Phase 1 Preliminary Cost

Opinion

Job No. 10757-003

L Squared Engineering

Prepared By: Christopher Hogan, EIT/Levi Love, PE

Updated: August 24, 2023

This was prepared for preliminary purposes only. Plans are not approved, please expect adjustments and allow for changes in the market.



L SQUARED ENGINEERING
MUNICIPAL COMMERCIAL RESIDENTIAL

No.	Item Description	Qty	Unit	Unit Cost	Line Item Cost
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PHASE 1

A. Site Civil					
1	Build Earthen Pad to rough grade.	Sep Contract	SY	\$ -	\$0.00
2	Concrete Equipment Pads, Sidewalks, Ect	100	SY	\$ 80.00	\$8,000.00
3	6" Lime stabilized base coarse for pad.	3600	SY	\$ 10.00	\$36,000.00
4	6" Lime stabilized base 3' depth in compacted lifts at WWTP equipment.	1200	CY	\$ 60.00	\$72,000.00
5	Fine Grading	3600	SY	\$ 2.00	\$7,200.00
6	Seeding and Hydromulch	1	AC	\$ 2,500.00	\$2,500.00
7	24" HDPE Outfall Pipe	775	LF	\$ 60.00	\$46,500.00
8	Sampling Manhole/ Manhole	2	EA	\$ 4,000.00	\$8,000.00
9	Concrete Headwall at Outfall	1	EA	\$ 3,000.00	\$3,000.00
10	500 GPM Lift Station	1	EA	\$ 300,000.00	\$300,000.00
11	6" Forcemain	75	LF	\$ 50.00	\$3,750.00
12	6' Chainlink Fence with 3-Strands Barbed Wire/ Gates	720	LF	\$ 30.00	\$21,600.00
13	Access Drive (lime stabilized subgrade and limestone base)	482	SY	\$ 10.00	\$4,820.00
Subtotal:					\$513,370.00

B. WWTP Equipment and Installation					
1	0.0625 MGD WW Treatment Plant delivered and installed (Pre-Manufactured Package Plant), includes blowers, equipment controls.	1	EA	\$ 750,000.00	\$750,000.00
2	Misc. connections, piping, and install coordination.	1	LS	\$ 50,000.00	\$50,000.00
3	Electrical including Service Rack with Service Disconnects, CTs and Meter, Portable Generator ATS with quick-connection, Power Runs to Equipment and Controls, and Auto-Dialer for Plant Monitoring	1	LS	\$ 200,000.00	\$200,000.00
4	Chlorine (bleach) tank, dosing pump, tubing and related controls.	1	LS	\$ 50,000.00	\$50,000.00
Subtotal:					\$1,050,000.00

C. Miscellaneous					
1	SWPPP Implementation, regulatory compliance, and BMPS.	1	LS	\$ 10,000.00	\$10,000.00
Subtotal:					\$10,000.00

No.	Item Description	Qty	Unit	Unit Cost	Line Item Cost
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PHASE 2

A. WWTP Equipment and Installation					
1	0.0625 MGD WW Treatment Plant Expansion (0.125 MGD total) delivered and installed (Pre-Manufactured Package Plant), includes blowers, equipment controls.	1	EA	\$ 625,000.00	\$625,000.00
2	Misc. connections, piping, and install coordination.	1	LS	\$ 50,000.00	\$50,000.00
3	Electrical Power Runs to Equipment and Controls	1	LS	\$ 50,000.00	\$50,000.00
				Subtotal:	\$725,000.00

PHASE 3

A. WWTP Equipment and Installation					
1	0.125 MGD WW Treatment Plant Expansion (0.25 MGD total) delivered and installed (Pre-Manufactured Package Plant), includes blowers, equipment controls.	1	EA	\$ 1,250,000.00	\$1,250,000.00
2	Misc. connections, piping, and install coordination.	1	LS	\$ 50,000.00	\$50,000.00
3	Electrical Power Runs to Equipment and Controls	1	LS	\$ 50,000.00	\$50,000.00
				Subtotal:	\$1,350,000.00

Estimated Construction Total: \$3,648,370.00

Contingency (10%): \$364,837.00

Professional Services: \$ 225,000.00

CMT Testing: \$ 30,000.00

Total Project Costs: \$4,268,207.00

Re: Post Oak - City of Terrell Wastewater

Connection Cost Estimate

Job No. 10757-003

L Squared Engineering

Prepared By: Christopher Hogan, EIT/ Lesley Reel, PE

Updated: August 23, 2023

This was prepared for preliminary purposes only. Plans are not approved, please expect adjustments and allow for changes in the market.



L SQUARED ENGINEERING

MUNICIPAL COMMERCIAL RESIDENTIAL

No.	Item Description	Qty	Unit	Unit Cost	Line Item Cost
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A. Site Civil					
1	Seeding and Hydromulch	1	AC	\$ 2,500.00	\$2,500.00
2	Sewer Manhole	2	EA	\$ 4,000.00	\$8,000.00
3	Sanitary Sewer Lift Station	2	EA	\$ 300,000.00	\$600,000.00
4	10" Forcemain	9000	LF	\$ 100.00	\$900,000.00
5	City of Terrell Impact Fees ⁽¹⁾	1	LS	\$ 2,255,847.00	\$2,255,847.00
				Subtotal:	\$3,766,347.00

B. Downstream Improvements					
1	Upsize downstream Sanitary Sewer from 8" to 15" from connection point at TA Truck Stop to City of Terrell's King Creek WWTP	11,500	LF	\$ 125.00	\$1,437,500.00
2	Sanitary Sewer manhole, including excavation, bedding, backfill, complete in place with all necessary appurtenances.	30	LF	\$ 4,500.00	\$133,875.00
				Subtotal:	\$1,437,500.00

C. Miscellaneous					
1	SWPPP Implementation, regulatory compliance, and BMPS.	1	LS	\$ 10,000.00	\$10,000.00
2	Electrical Power Runs to Lift Stations	1	LS	\$ 150,000.00	\$150,000.00
3	Short-Term Bypass Pumping	2	EA	\$ 30,000.00	\$60,000.00
4	Mid to Long-Term Bypass Pumping (60 days)	1	EA	\$ 100,000.00	\$100,000.00
5	Traffic Control	1	LS	\$ 25,000.00	\$25,000.00
6	Pavement Repair	1	LS	\$ 100,000.00	\$100,000.00
7	Bore 15" Sanitary Sewer under Hwy 34 with Steel Casing	150	LF	\$ 50.00	\$7,500.00
				Subtotal:	\$452,500.00

Estimated Construction Total:	\$5,656,347.00
Contingency (10%):	\$565,634.70
Easement/Lift Station Site Acquisition:	\$ 50,000.00
Professional Services:	\$ 150,000.00
CMT Testing:	\$ 10,000.00
Total Project Costs:	\$6,431,981.70

⁽¹⁾ Calculated via City of Terrell Impact Fees Calculator (See Attachment A)