

**TCEQ DOCKET NO. 2025-0374-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>TCCI MONTGOMERY GARDENS FOR</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
<b>NEW TPDES PERMIT</b>	<b>§</b>	<b>ON</b>
<b>NO. WQ0016354001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

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

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**I. INTRODUCTION**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests on the application by TCCI Montgomery Gardens, LLC (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016354001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.15 MGD.

The Office of the Chief Clerk received timely requests for a contested case hearing request from Tom Airhart on behalf of Tom Patterson and JoAnne Airhart.

The Executive Director recommends that the Commission find that Tom Airhart, Tom Patterson, and JoAnne Airhart are affected persons and grant their hearing request. Attached for Commission consideration is a satellite map of the area showing the locations of the facility and requestor.

**II. FACILITY DESCRIPTION**

The Applicant has applied for new TPDES Permit No. WQ0016354001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.15 MGD. The treated effluent will be discharged via pipe to an unnamed tributary, thence to Price Creek, thence to Lake Lavon in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and Price Creek. The designated uses for Segment No. 0821 are primary contact recreation, public water supply, and high aquatic life uses. The proposed wastewater treatment facility will serve the TCCI Montgomery Gardens Residential Subdivision.

The TCCI Montgomery Gardens Wastewater Treatment facility will consist of a membrane bioreactor (MBR) treatment system, which combines conventional biological activated sludge processes with membrane filtration. Treatment units will include

three fine screens, an anoxic basin, an aerobic basin, an MBR basin, a sludge press, and an ultraviolet light (UV) disinfection system.

If the draft permit is issued, the TCCI Montgomery Gardens WWTF will be located approximately 1.0 southeast of the intersection of Farm-to-Market Road 549 and Texas State Highway 78 near Copeville, in Collin County, Texas 75442. The facility has not been constructed. Geographic coordinates of the outfall location in decimal degrees are provided in the table below.

#### **Outfall Coordinate Location**

<b>Outfall Number</b>	<b>Latitude</b>	<b>Longitude</b>
001	33.073293N	96.409239W

The effluent limitations in the draft permit, based on a 30-day average, are 5.0 milligrams per liter (mg/L) Five-Day Biochemical Oxygen Demand (BOD<sub>5</sub>), 5.0 mg/L total suspended solids (TSS), 5.0 mg/L minimum Ammonia Nitrogen, 1.0 mg/L Total Phosphorus, and 5.0 dissolved oxygen (DO).

In accordance with 30 TAC Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Lake Lavon, which have been identified as having a high aquatic life use. Existing uses will be maintained and protected.

Segment No. 0821 is not currently listed on the state's inventory of impaired or threatened waters (the 2022 Section 303 (d) list).

### **III. PROCEDURAL BACKGROUND**

The TCEQ received the application on June 13, 2023, and declared it administratively complete on August 7, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *McKinney Courier Gazette* on August 13, 2023, and in Spanish in *La Prensa Comunidad* on August 22, 2023. The Executive Director completed the technical review of the application on January 4, 2024, and prepared the proposed draft permit, which if

approved, establishes the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English in the *McKinney Courier Gazette* on February 11, 2024, and in Spanish in *La Prensa Comunidad* on March 5, 2024.

The public comment period ended on April 4, 2024. This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. The Texas Legislature enacted SB 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

#### **IV. EVALUATION OF HEARING REQUESTS**

HB 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is discussed below.

##### **A. Response to Requests**

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.<sup>1</sup>

Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) whether issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or 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 by filing a written withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and

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<sup>1</sup> 30 TEX. ADMIN. CODE § 55.209(d).

(7) a maximum expected duration for the contested case hearing.<sup>2</sup>

## **B. Hearing Request Requirements**

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . . , based only on the requester's timely comments, and not based on an issue that was 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 ED's Response to Comment.<sup>3</sup>

A hearing request must substantially comply with the following:

- (1) give the name, address, telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who is responsible for receiving all official communications and documents for the group;
- (2) identify the person's 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 facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.<sup>4</sup>

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<sup>2</sup> 30 TEX. ADMIN. CODE § 55.209(e).

<sup>3</sup> 30 TEX. ADMIN. CODE § 55.201(c).

<sup>4</sup> 30 TEX. ADMIN. CODE § 55.201(d).

### **C. Requirement that Requestor be an Affected Person**

To grant a contested case hearing, the Commission must determine that a requestor is an “affected person” by conducting the following analysis:

- (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 public does not qualify as a personal justiciable interest.
- (b) 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; and
  - (6) whether the requester timely submitted comments on the application which were not withdrawn; and
  - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
  - (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 ED; and

- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.<sup>5</sup>

Under 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.<sup>6</sup>

Additionally, for applications filed on or after September 1, 2015, a hearing request by a group or association for a contested case may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.<sup>7</sup>

#### **D. Referral to the State Office of Administrative Hearings**

When the Commission grants a request for a contested case hearing, the Commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing.<sup>8</sup> The Commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

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<sup>5</sup> 30 TEX. ADMIN. CODE § 55.203(a)-(d).

<sup>6</sup> 30 TEX. ADMIN. CODE § 55.205(a)(1)-(3).

<sup>7</sup> 30 TEX. ADMIN. CODE § 55.205(b)(1)-(4).

<sup>8</sup> 30 TEX. ADMIN. CODE § 50.115(b).

- (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; and
- (3) is relevant and material to the decision on the application.<sup>9</sup>

## **V. ANALYSIS OF THE HEARING REQUESTS**

For this permit application, the public comment period ended on April 4, 2024, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on September 30, 2024. The Commission received a timely hearing request from Tom Airhart on behalf of Tom Patterson and JoAnne Airhart. The Executive Director's analyses determined whether the Request followed TCEQ rules, if the requestors qualify as affected persons, what issues may be referred for a possible hearing, and the length of that hearing.

### **A. Whether the Request complies with 30 Tex. Admin. Code §§ 55.201-205.**

#### **Persons Affected**

Tom Airhart submitted timely comments and request for a contested case hearing on February 10, 2024, containing the name, address, and telephone number of adjacent landowners Tom Patterson and JoAnne Airhart, pursuant to 30 Tex. Admin. Code § 55.201(d)(1) and (3). The submission also included the permit number as required in the notice and pursuant to 30 Tex. Admin. Code § 55.201(d)(4). Tom Airhart also submitted timely public comments to form the basis of the hearing request pursuant to 30 Tex. Admin. Code § 55.201(c).

In its request, Tom Airhart states that his family are affected persons because they have interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public under 30 Tex. Admin. Code § 55.203. Specifically, Mr. Airhart states that his family owns an adjacent farm that runs the entire length of the Applicant's property to the West, a few feet away from the discharge point. Tom Patterson and JoAnne Airhart are identified on the adjacent landowner list and map provided by the Applicant.

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<sup>9</sup> 30 TEX. ADMIN. CODE § 55.203(d).

Mr. Airhart raises the following issues in his comments that he claims will affect their interests: (1) whether the proposed facility and discharge will negatively impact his family's property and crops; (2) whether the draft permit complies with the Texas Surface Water Quality Standards and antidegradation requirements in 30 Tex. Admin. Code Chapter 307; and (3) whether the application is accurate and provides all required information.

The Airhart family has demonstrated, as adjacent landowners, that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public and therefore are affected persons. The Executive Director recommends that the Commission find that the Airhart family are affected persons and grant their hearing request.

**B. Whether the Issues the Requestor Raised are Referable to the State Office of Administrative Hearings (SOAH).**

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the Response to Comments. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred.<sup>10</sup> The issues raised for this application and the Executive Director's analysis and recommendations are discussed below.

**Issue 1. Whether issuance of the Draft Permit will be protective of human health and adjacent property.**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If the Commission finds that Tom Airhart, Tom Patterson, and JoAnne Airhart are affected persons and grants their hearing request, the Executive Director recommends the Commission refers this issue to SOAH.

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<sup>10</sup> TEX. GOVT. CODE § 2003.047(e-1); 30 TEX. ADMIN. CODE § 55.211(c)(2)(A)(ii).



**Issue 2. Whether the Draft Permit is protective of water quality and the receiving waters in accordance with the applicable regulations, including the Texas Surface Water Quality Standards.**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If the Commission finds that Tom Airhart, Tom Patterson, and JoAnne Airhart are affected persons and grants their hearing request, the Executive Director recommends the Commission refers this issue to SOAH.

**Issue 3. Whether the Application is accurate and contains all required information.**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If the Commission finds that Tom Airhart, Tom Patterson, and JoAnne Airhart are affected persons and grants their hearing request, the Executive Director recommends the Commission refers this issue to SOAH.

**VI. CONTESTED CASE HEARING DURATION**

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be six months from the preliminary hearing to the presentation of the proposal for decision to the Commission.

**VII. EXECUTIVE DIRECTOR'S RECOMMENDATION**

The Executive Director recommends the following actions by the Commission:

1. Find that Tom Airhart, Tom Patterson, and JoAnne Airhart are affected persons and grant their hearing request.
2. Should the Commission decide to refer this case to SOAH:
  - a. refer the case to Alternative Dispute Resolution for a reasonable time; and
  - b. refer the identified issues above in Section V.B to SOAH for a contested case hearing.
3. If referred to SOAH, the duration of the hearing be six months from the preliminary hearing to the presentation of the proposal for decision to the Commission.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Phillip Ledbetter, Director  
Office of Legal Services

Charmaine Backens, Deputy Director  
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## **VII. CERTIFICATE OF SERVICE**

I certify that on March 24, 2025, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ016354001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.



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Anthony Tatu, Staff Attorney  
State Bar No. 00792869

MAILING LIST  
TCCI Montgomery Gardens, LLC  
TCEQ Docket No./TCEQ Expediente N.º 2025-0374-MWD;  
TPDES Permit No./TPDES Permiso N.º WQ0016354001

FOR THE APPLICANT/PARA EL SOLICITANTE

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Lauren Wahl, P.E.  
Water Resources Engineer  
Reuse Engineering, Inc.  
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Georgetown, Texas 78626

REQUESTER(S)/ SOLICITANTE(S)/

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Copeville Tx 75121-0140

Airhart, Tom Wallis  
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Nevada Tx 75173-8145

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Austin, Texas 78711

FOR ALTERNATIVE DISPUTE RESOLUTION/PARA LA RESOLUCIÓN ALTERNATIVA DE DISPUTAS

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Texas Commission on  
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Alternative Dispute Resolution, MC-222  
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FOR THE CHIEF CLERK/PARA LA SECRETARIO OFICIAL

via eFilings:

Docket Clerk  
Texas Commission on Environmental  
Quality Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711

<https://www.tceq.texas.gov/goto/efilings>

# Attachment A



# TCCI Montgomery Gardens, WQ0016354001

## Hearing Requestor Location

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda



*Protecting Texas by  
Reducing and  
Preventing Pollution*

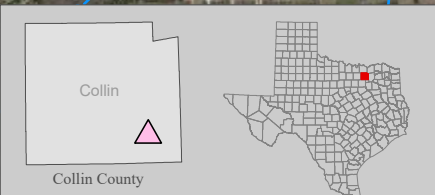
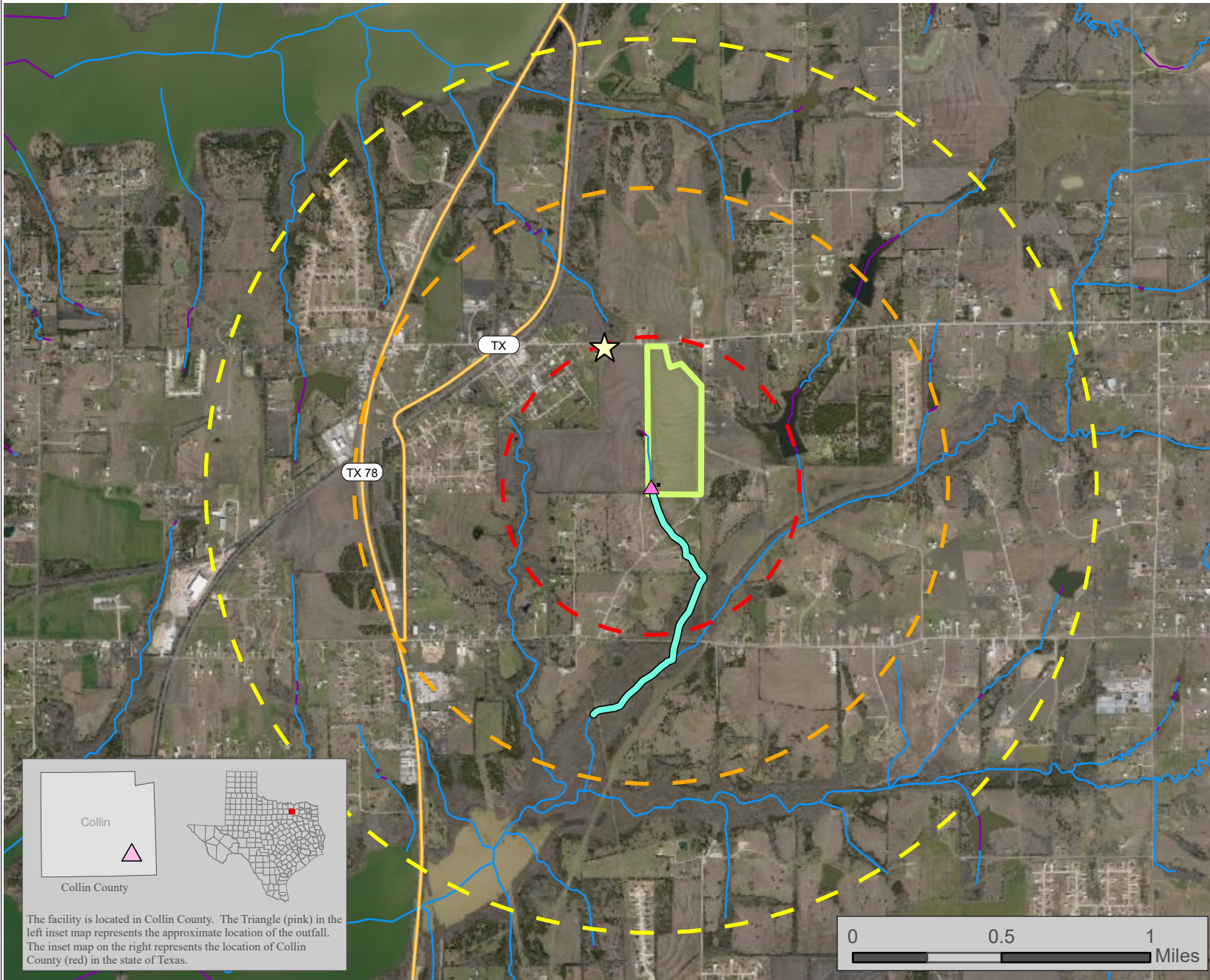
Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 3/13/2025  
CRF 0119739  
Cartographer: RKukushk

- ★ Airhart Family Residence
- △ TCCI Montgomery Gardens WQ Wastewater Treatment Plant Outfall
- Property Boundary
- 1 mile Discharge Route
- Facility Boundary
- - - 1.5 miles
- - - 1 mile
- - - 0.5 miles
- Highway
- Stream/River
- Artificial Path

**The Airhart Family Residence is 0.49 miles from the outfall.**

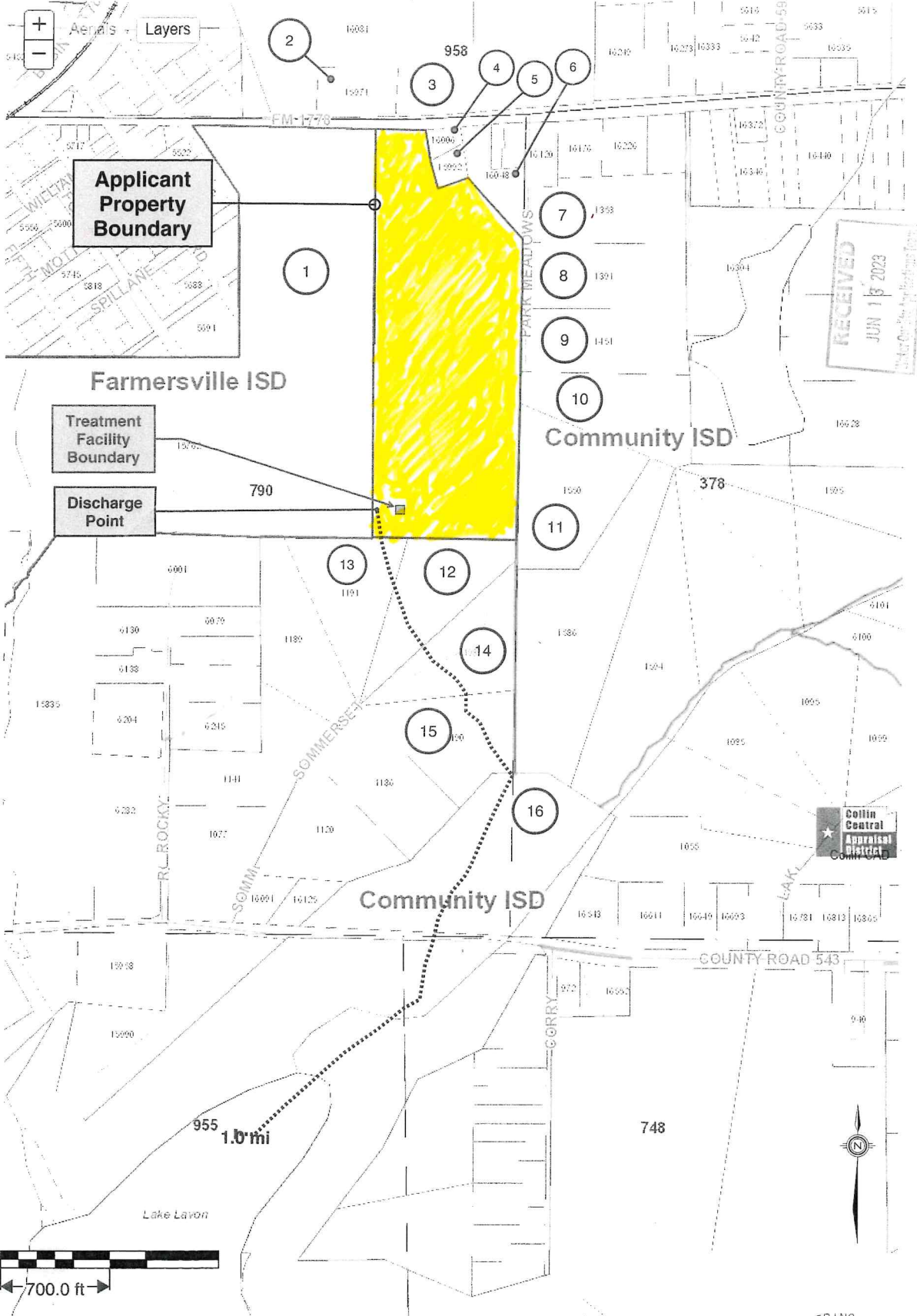
Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

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 Collin County. The Triangle (pink) in the left inset map represents the approximate location of the outfall. The inset map on the right represents the location of Collin County (red) in the state of Texas.





<https://map.collincad.org/?prop=2798841>

TCCI MONTGOMERY GARDENS  
TPDES PERMIT APPLICATION  
COLLIN COUNTY, TEXAS

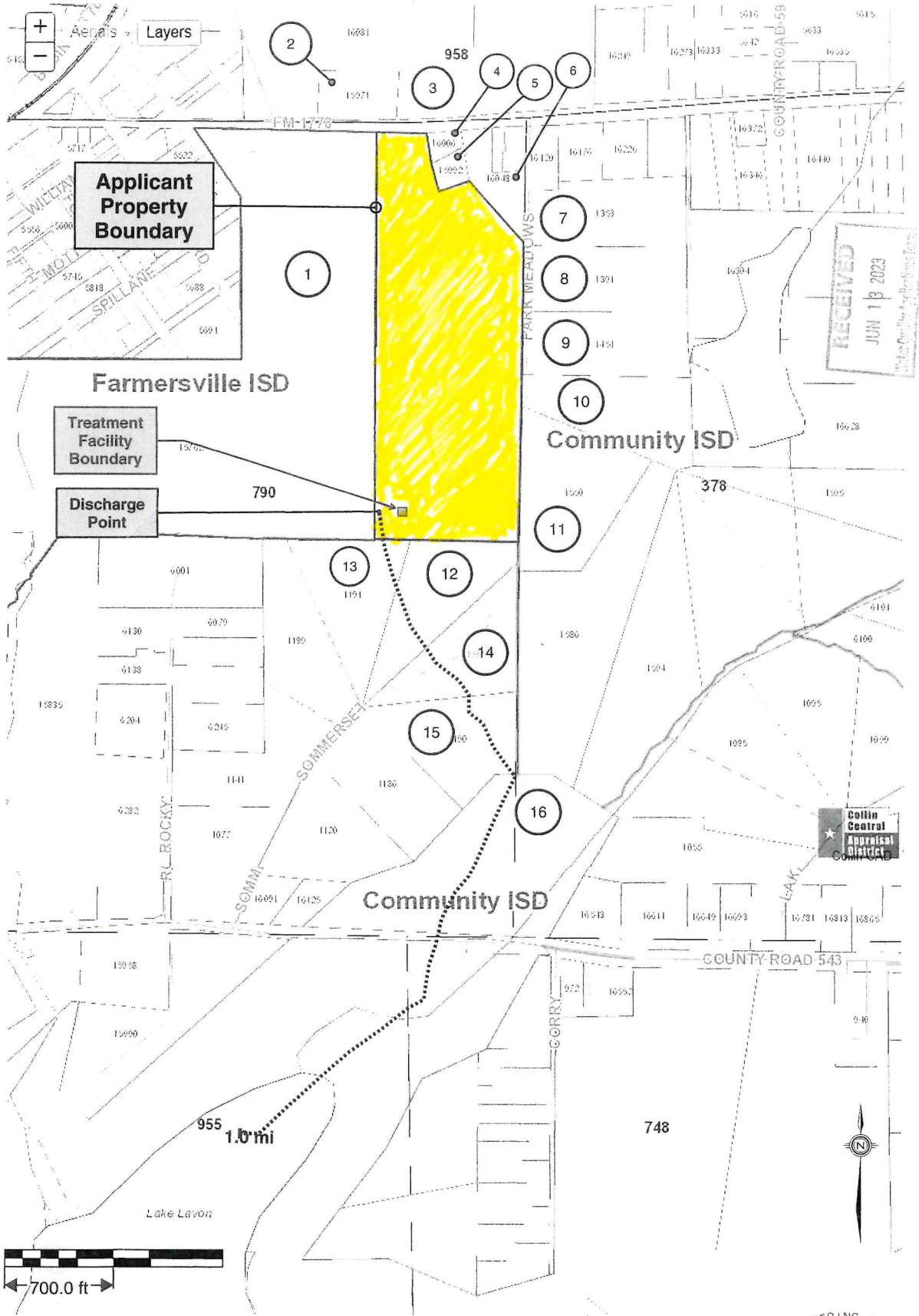
LANDOWNERS MAP  
Attachment D

**reUse**  
ENGINEERING

4411 SH 35, Suite 100  
Georgetown, TX 78626  
TX Firm No. 21880

Landowner's Cross Reference  
List provided on next page  
Information compiled on  
28 FEB 2023

REUSE ENGINEERING TBP# F-21880  
STATE OF TEXAS  
LAUREN B. WAHL  
141050  
LICENSED  
PROFESSIONAL ENGINEER  
07 JUN 2023



<https://map.collincad.org/?prop=2798841>

TCCI MONTGOMERY GARDENS  
TPDES PERMIT APPLICATION  
COLLIN COUNTY, TEXAS

LANDOWNERS MAP  
Attachment D

**reUse**  
ENGINEERING  
4411 SH 35, Suite 100  
Georgetown, TX 78626  
TX Firm No. 23880

Landowner's Cross Reference  
List provided on next page  
Information compiled on  
28 FEB 2023



## Landowner's Cross Reference List

1. Tom Patterson and Jo Anne Airhart  
P.O. Box 140  
Copeville, TX 75121-0140
2. Copeville Baptist Church  
P.O. Box 260  
Copeville, TX 75121-0260
3. LGI Homes - Texas LLC  
1450 Lake Robbins Dr Ste 430  
The Woodlands, TX 77380-3294
4. Maxine Baty Webb Estate Of Karen Webb Bennett-Indep Exec  
2101 Beavers Pt  
Bonham, TX 75418-5194
5. Joseph Ryan and Jessica Lynn Alsobrook  
15992 Fm 1778  
Nevada, TX 75173-8156
6. David and Lee Ann Powell  
P.O. Box 86  
Copeville, TX 75121-0086
7. Grand Prairie Construction Inc  
210 SW 4Th St Ste 100  
Grand Prairie, TX 75051-1711
8. Ana G Villagomez Hernandez and Joel Hernandez Cruz and Elmer Rubier VI  
6417 Monahans Ct  
Plano, TX 75023-4416
9. Enrique Norma Hernandez and Delmy Del Carmen Gomez Yanez and Elmer Rubier VI  
1809 G Ave Unit 223  
Plano, TX 75074-5600
10. Nevada Farms LLC C/O Carlos Martinez and Jose Arturo Castillo Segura  
P.O. Box 69  
Rockwall, TX 75087-0069
11. Nevada Farms LLC C/O Guillermo Romero Aguilera and Antonia Castilla Hernandez  
P.O. Box 69  
Rockwall, TX 75087-0069



## **Landowner's Cross Reference List**

12. Nevada Farms LLC C/O Danilo Medina Andrade and Vanessa Mercedes Castellanos  
P.O. Box 69  
Rockwall, TX 75087-0069
13. Nevada Farms LLC C/O Avila Blas and Martin Rete Quistian and Jose Efrain Garcia Regalado  
1065 E Centerville Rd Apt 3305  
Garland, TX 75041-3635
14. Nevada Farms LLC C/O Jose Arturo Vazquez Diaz & Marza Leyva  
Po Box 69  
Rockwall, TX 75087-0069
15. Jose Rosario Fonseca & Daniel Fonseca Mejia  
1192 Sommerset Dr  
Nevada, TX 75173-1237
16. Government Owned – Federal Land (Owner ID 96207)