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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 23, 2025

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

RE: **IN THE MATTER OF THE APPLICATION BY COUPLAND
UTILITIES, LLC AND LANDCROWD DEVELOPERS, LLC FOR
TPDES PERMIT NO. WQ0016446001
TCEQ DOCKET NO. 2025-0541-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-0541-MWD

APPLICATION BY COUPLAND	§	BEFORE THE
UTILITIES, LLC AND	§	TEXAS COMMISSION ON
LANDCROWD DEVELOPERS,	§	ENVIRONMENTAL
LLC FOR TPDES PERMIT NO.	§	QUALITY
WQ0016446001		

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Requests for Hearing and Requests for Reconsideration in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Coupland Utilities, LLC and LandCrowd Developers, LLC (collectively, Coupland or Applicant) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016446001. The Commission received comments and a request for a contested case hearing from Jonah Special Utility District and Julie Van Zandt. In addition, the Commission received a request for reconsideration of the Executive Director’s decision on this application from Jonah Special Utility District. For the reasons below, OPIC respectfully recommends the Commission find that Jonah Special Utility District and Julie Van Zandt qualify as affected persons in this

matter and grant their pending hearing requests. OPIC respectfully recommends denial of all requests for reconsideration.

B. Background of Facility

Applicant has applied to TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The Applicant seeks to operate Coupland Utilities Wastewater Treatment Facility (WWTF), the proposed facility, which, if the permit is issued, would serve the Coupland Utilities, LLC and LandCrowd Developers, LLC residential development.

If the permit is issued, the proposed Coupland Utilities Wastewater Treatment Facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units would include one bar screen, one equalization basin, six aeration basins with membrane bio reactors, an ultra-violet light (UV) chamber, one sludge holding tank, and a belt filter press.

The treated effluent would be discharged to an unnamed reservoir, then to a second unnamed reservoir, then to an unnamed tributary, then to a third unnamed reservoir, then to an unnamed tributary, then to the San Gabriel River in Segment No. 1248 of the Brazos River Basin. The designated uses for Segment No. 1248 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use.

C. Procedural Background

TCEQ received Coupland's application on December 27, 2022, and declared it administratively complete on February 2, 2024. The Notice of Receipt

and Intent to Obtain a Water Quality Permit (NORI) was published on February 11, 2024, in the *Williamson County Sun* and on February 8, 2024, in *El Mundo Newspaper*. The combined NORI and Notice of Application and Preliminary Decision (NAPD) was published on May 22, 2024, in the *Williamson County Sun* and on May 23, 2024, in *El Mundo Newspaper*. The public comment period ended on June 24, 2024. The Executive Director's (ED) Response to Comments was mailed on February 4, 2025, and the deadline for submitting a contested case hearing request or request for reconsideration was March 6, 2025.

II. APPLICABLE LAW

A. Requests for Hearing

The application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 TAC § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the requestor'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 proposed 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 proposed 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 by the requestor 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 the requestor's comments that the requestor disputes, 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.

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. As provided by § 55.203(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. Relevant factors to be considered in determining whether a person is affected include:

- (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 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the 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 hearing requestor.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

Under 30 TAC § 55.205(b), a hearing request by a group or association 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.

B. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under 30, (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. ANALYSIS OF HEARING REQUESTS

A. Whether the requestors are affected persons

Jonah Special Utility District

Jonah Special Utility District (Jonah) timely filed numerous requests for contested case hearing, including its substantive request filed on June 19, 2024, by Mr. Micheal Parsons. In its request, Jonah states that it is a special utility district, a political subdivision of the State of Texas operating under Texas Water Code (TWC) Chapter 65 with authority under state law over issues raised by the application, as the holder of Water Certificate of Convenience and Necessity (CCN) No. 10970, in Williamson County. Further, the request indicates that Jonah's duty to provide fresh, clean, potable water meeting all of the state and federal water quality standards makes Jonah's interest in the quality of its source water an interest that is not common to the general public. The request also indicates that the proposed facility is to be located in the middle of the District's CCN territory, and if the permit is approved, effluent will flow through Jonah's district boundaries. The map prepared by ED staff confirms Jonah's assertion that the proposed facility is to be located within Jonah's CCN, and that the discharge route runs through district boundaries. OPIC agrees that Jonah's interest in providing services within its CCN and special district boundaries is an interest protected by the Texas Water Code under which the application will be considered per 30 TAC § 55.203(c)(l). Jonah's request also points to the fact that its authority to provide services within its water CCN and special district boundaries is prescribed by law, and as such, evidences a reasonable relationship

between the District's interest in providing water services and the activity being regulated pursuant to 30 TAC § 55.203(c)(2).

In addition, Jonah has raised concerns related to the health and safety of its roughly 13,500 customers and 35,000 people within its service area that may be directly impacted by Jonah's ability to provide fresh, clean, potable water meeting all of the state and federal water quality standards, as well as concerns related to water quality and impacts to natural resources in areas near Lake Granger.

Given Jonah's status as a political subdivision with authority over issues raised by the application as well as the relevance of its concerns, OPIC finds that Jonah Special Utility District qualifies as a governmental entity with affected person status pursuant to 30 TAC § 55.203(a)(7).

Julie Van Zandt

Julie Van Zandt submitted a timely request for a contested case hearing through her counsel, Bobby M. Salehi. The request outlines the close proximity between two properties owned by Mrs. Van Zandt and the proposed facility - which the ED's map confirms are located 0.17 miles and 0.26 miles from the facility point, respectively. The request further indicates that the affected landowners map shows that the discharge route for this facility will cut directly through the center of the Van Zandt property, making the Van Zandt property unique in that they are both a downstream landowner to the discharge and a neighboring landowner to the facility which, according to the request, highlights

Mrs. Van Zandt's unique personal justiciable interest in the application per 30 TAC §§ 55.203(a) and 55.203(c)(2).

Mrs. Van Zandt's request also cites concerns regarding impacts to recreational activities as she and her family enjoy fishing, swimming, and kayaking in the San Gabriel River, and concerns related to the health and safety of her family and use and enjoyment of her property. In addition, Mrs. Van Zandt has articulated concerns related to impacts on wildlife, water quality, and algal growth, and other issues within the Commission's jurisdiction.

Each of the concerns raised by Mrs. Van Zandt is protected by the law under which this application is being considered. *See* 30 TAC § 55.203(c)(1). Further, given the proximity of Mrs. Van Zandt's properties to the facility and frequency of her recreational activities in the area, a reasonable relationship exists between her claimed interests and the regulated activity, and the regulated activity is likely to impact her health, safety, use of property, and use of the impacted natural resources. *See* 30 TAC § 55.203(c)(3)-(5). Therefore, OPIC finds that Julie Van Zandt has a personal justiciable interest in this application that is not common to members of the general public. Accordingly, OPIC recommends that the Commission find Julie Van Zandt is an affected person in this matter pursuant to 30 TAC § 55.203(a).

B. Which issues raised in the hearing requests are disputed

Affected persons raised the following issues:

1. Whether the draft permit is adequately protective of water quality including algal growth, and recreational use and enjoyment of Requestors' properties;

2. Whether the proposed discharge will adversely impact animal life, including aquatic life;
3. Whether the draft permit contains sufficient monitoring requirements and complies with applicable regulations;
4. Whether the Applicant provided proper notice;
5. Whether the draft permit should be modified or denied in consideration of the Applicant's compliance history;
6. Whether the representations contained in the application are accurate and complete; and
7. Whether the draft permit is consistent with TCEQ's regionalization policy and Texas Water Code §§ 26.081 and 26.0282, including consideration of need and regional treatment options.

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

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. All issues raised by Requestors are issues of fact.

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

Issues 1-7 in Section III. B were specifically raised by affected persons during the public comment period.

E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment

All hearing requests are based on timely comments that have not been withdrawn.

F. Whether the issues are relevant and material to the decision on the application

The hearing requests raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Water Quality, Animal Life, and Recreation

Requestors raised concerns about adverse effects to water quality and the consequential impacts on aquatic life, animal life, and whether the draft permit will adequately maintain the recreational uses of the waterbodies in the route of the proposed discharge. The Commission is responsible for the protection of water quality under Texas Water Code Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (TSWQS) in Chapter 307 require that the Proposed Permit "maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and ... economic development of the state...." 30 TAC § 307.1. According to § 307.6(b)(4) of the Standards, "Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three." Additionally, "[s]urface waters must not be toxic to man from

ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d). Finally, 30 TAC § 307.4(e) requires that nutrients from permitted discharges or other controllable sources shall not cause excessive growth of aquatic vegetation which impairs an existing, designated, presumed, or attainable use. As Chapter 307 designates criteria for the regulation of water quality and the protection of animal life, and recreational uses of relevant water bodies, Issues No. 1-2 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

Monitoring Requirements

The Applicant is required to analyze the treated effluent prior to discharge and to provide monthly reports to the TCEQ that include the results of the analyses. The Applicant may either collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. The Applicant is required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. In addition, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint. Because this Applicant is subject to monitoring requirements, Requestors’ concerns related to this issue are relevant and material to the Commission’s decision on this application.

Notice

Mrs. Van Zandt raised concerns about improper notice. Under 30 TAC Chapter 39, such concerns regarding lack of proper notice are relevant and material to the Commission's decision on this application and are appropriate for referral to SOAH.

Compliance History & Accuracy and Completeness & Operators

TCEQ rules found in 30 TAC Chapter 60 (Compliance History or CH) require the Commission to consider the CH for the five-year period prior to the date the application was received for the company or entity, and the proposed site. Accordingly, requestor's concerns about compliance history are relevant and material to the Commission's decision on this application. Further, 30 TAC Chapter 281 (Applications Processing (281 rules)) and Chapter 305, Subchapter C (Application for Permit (305 rules)) outline the requirements relevant to requestors' concerns regarding completeness and accuracy of the application. These issues are relevant and material to the Commission's decision on this application and are therefore appropriate for referral to SOAH.

Regionalization

Under Texas Water Code § 26.081(a), it is "state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems ... to prevent pollution and maintain and enhance the quality of the water in the state." The Texas Water Code further states:

In considering the issuance ... of a permit to discharge waste, the commission may deny or alter the terms of the proposed permit ... based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order....

TWC § 26.0282. Therefore, Issue 7 regarding regionalization is relevant and material to the Commission's decision on the Application and is appropriate for referral to SOAH.

G. Maximum Expected Duration of Hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. Requests for Reconsideration

Jonah Special Utility District submitted timely requests for reconsideration that articulated concerns about whether the Executive Director's decision expressed in its Response to Comment fails to provide factual justifications for concluding the Applicant demonstrated the need for the permit and proposed facility. Additionally, Jonah asserts that the Executive Director incorrectly weighs the importance of TCEQ's Regionalization Policy and fails to consider the Applicant's responses to some of TCEQ's application questions.

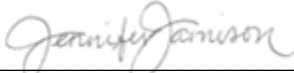
While OPIC notes that the concerns expressed are relevant and material to the Commission's decision on this application, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would be needed to recommend that the requests for reconsideration be granted. As no such record exists yet, OPIC cannot recommend the requests be granted at this time.

V. CONCLUSION

Having found that Jonah Special Utility District and Julie Van Zandt qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issue Nos. 1-7 specified in Section III. B. for a contested case hearing at SOAH with a maximum duration of 180 days. Finally, OPIC recommends denial of all requests for reconsideration.

Respectfully submitted,

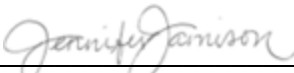
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2025 the original of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Jennifer Jamison

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TCEQ DOCKET NO. 2025-0541-MWD

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