

**TCEQ DOCKET NO. 2025-0543-MWD**

<b>APPLICATION BY BLIZEXAS, LLC</b>	<b>§</b>	<b>BEFORE THE</b>
	<b>§</b>	
<b>FOR TCEQ</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
	<b>§</b>	
<b>PERMIT NO. WQ0016111001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
	<b>§</b>	

**FITZHUGH NEIGHBORS’ AND GREATER EDWARDS AQUIFER ALLIANCE’S  
REPLY TO RESPONSES TO HEARING REQUESTS AND REQUESTS FOR  
RECONSIDERATION**

TO THE HONORABLE COMMISSIONERS:

Fitzhugh Neighbors and Greater Edwards Aquifer Alliance (“GEAA”) (collectively, “Requestors”) hereby submit this Reply to the Responses to Hearing Requests and Requests for Reconsideration by Blizexas, LLC (“Applicant”), the Executive Director (“ED”), and the Office of Public Interest Counsel (“OPIC”) regarding the Application by Blizexas, LLC for TCEQ Permit No. WQ0016111001 (the “Application”). As recommended by the ED and OPIC, the Commission should find that Requestors are “affected persons” and should grant their hearing requests. The Commission should refer the issues raised in the requests by Fitzhugh Neighbors and GEAA to the State Office of Administrative Hearings (“SOAH”) for a contested case hearing on the Application.

**I. REPLY TO APPLICANT’S RESPONSE**

The Applicant’s Response argues simply that because Fitzhugh Neighbors and GEAA have relied on members who own property that is not immediately adjacent to the TLAP property, their hearing requests should be denied. This is wrong for at least three reasons.

**A. Requestors have members with a property interest adjacent to the proposed wastewater disposal site.**

First, as Applicant acknowledges, Requestors identified several members who have a property interest in a tract that is directly adjacent to the property owned by the Applicant and

where the wastewater treatment and disposal will occur. That it is a property interest in the form of a driveway easement and not a fee simple property ownership is irrelevant. Notably, Applicant points to no Texas statute or TCEQ regulation to support its position that an affected person must hold a particular type of property interest, such as a fee simple property interest, to have a personal justiciable interest pursuant to 30 Tex. Admin. Code §§ 55.201 and 55.203. This error dovetails with Applicant's second error.

**B. A hearing requestor need not possess a property interest to demonstrate a personal justiciable interest.**

Neither the applicable statute—Texas Water Code Section 5.115—nor the relevant TCEQ rules state that a property right is necessary at all to establish a personal justiciable interest. *See, e.g.*, 30 Tex. Admin. Code §§ 55.201, .203, .205. Had the Legislature intended that a personal justiciable interest be limited to property interests, it would have said so. *Colorado Cnty. v. Staff*, 510 S.W.3d 435, 447 n.45 (Tex. 2017) (courts “must presume the Legislature included words in them that it intended to include and omitted words it intended to omit”). The Commission should not read into the statutory and regulatory language a requirement that is not supported by the plain language in the rules and statute. *Id.* at 444 (Commission cannot “rewrite the statute under the guise of interpreting it”).

The definition of “affected person” in Chapter 5 of the Water Code is intended to reflect judicial constitutional standing principles. *City of Waco v. Tex. Comm’n on Env’tl. Quality*, 346 S.W.3d 781, 803-04 (Tex. App.—Austin 2011), *rev’d on other grounds*, 413 S.W.3d 409 (Tex. 2013) (acknowledging that “personal justiciable interest” not common to members of the “general public”—the cornerstone of section 5.115’s “affected person” definition—denotes the constitutionally minimal requirements for litigants to have standing to challenge governmental actions in court). So, if a property interest is not necessary for demonstrating constitutional

standing to access the judicial system to challenge a wastewater disposal permit, then, a property interest cannot be a necessary requirement for demonstrating that one is an affected person for purposes of participating in an administrative contested-case hearing.

**C. Requestors have members with recreational interest, which is a personal justiciable interest for purposes of demonstrating standing.**

By describing their members' interest in and use of the property adjacent to Applicant's proposed facility and disposal site (the driveway easement property), Requestors have demonstrated that, in addition to a real property interest, their members also have a recreational interest. The Commission has granted hearing requests based on recreational interests—even when that interest is shared by many. Specifically, the Commission granted the hearing request of Environmental Stewardship with respect to the application by Corix Utilities (Texas) Inc. for TPDES Permit No. WQ0013977001, TCEQ Docket No. 2023-1591-MWD. In that case, Environmental Stewardship's hearing request relied on a member who regularly fished in an area of the Colorado River open to the general public, slightly more than one mile downstream of the proposed discharge. The Commission correctly found that this member demonstrated a personal justiciable interest and was an affected person.

Similarly, the Texas Supreme Court has made clear that an interest shared by many does not render it one that is common to the general public for purposes of a constitutional standing analysis. *See Abbott v. Mexican Am. Legislative Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 699 (Tex. 2022) (holding that harm that is shared among many does not make it a “generalized grievance” that cannot confer standing; generalized grievance is one that is “abstract and indefinite nature”) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 575 (1992)).

Here, the Napiorkowskis, the Munns, and the D'Abates all described their property interest in the driveway easement; all also described their recreational interest in, for example, taking

frequent walks, jogs, and scooter rides with their dogs, children, and grandchildren up and down the driveway to Fitzhugh Road, as well as their concerns that foul odors—an issue squarely within TCEQ’s jurisdiction—could adversely impact their use and enjoyment of their property, including the driveway. Contrary to Applicant’s claims, they clearly articulate how the facility and wastewater disposal may affect their use and enjoyment of the property (driveway) and surrounding area.

## **II. REPLY TO ED’S AND OPIC’S RESPONSES**

The Requestors agree with the ED’s and OPIC’s recommendation that their hearing requests should be granted, and file this reply to briefly address two specific issues.

First, it is not clear from the ED’s map what distance is being measured. For example, the distance between the Sorenson property and the Applicant’s land application site (assuming the distance is measured from the nearest dripfield) is much less than the 0.64 miles reported on the ED’s Appendix A, which can be seen by examining Attachment B to Fitzhugh Neighbors and the Greater Edwards Aquifer Alliance April 2, 2025 Hearing Request. Though the difference does not seem to have made a material difference for members of Fitzhugh Neighbors and GEAA, it is worth pointing out that the difference amounts to nearly 0.5 miles, which may have made a difference in the ED’s and OPIC’s analysis of other hearing requests.

Second, Requestors disagree with the ED and agree with OPIC regarding the issue of regionalization and need. Nothing in Texas Water Code sections 26.0282 or 26.081 exempt TLAP permits from Texas’ Regionalization Policy and required demonstration of need for the facility at this location. Therefore, the issue should be referred to SOAH.

## **III. CONCLUSION**

For the reasons stated above, Fitzhugh Neighbors and Greater Edwards Aquifer Alliance respectfully request that the Commission grant their hearing requests and refer the issues raised

in their requests to the State Office of Administrative Hearings for a contested case hearing on the Application.

Respectfully submitted,

/s/ Lauren Ice

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this day, July 28, 2025, a true and correct copy of the foregoing document was served on all parties of record listed in the attached service list via electronic service.

/s/ Lauren Ice

Lauren Ice

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