

Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 10, 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 VISTA TOWNHOMES
AUSTIN LLC FOR NEW TCEQ PERMIT NO. WQ0016355002
TCEQ DOCKET NO. 2025-1323-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-1323-MWD

**APPLICATION BY VISTA
TOWNHOMES AUSTIN LLC
FOR TCEQ PERMIT NO.
WQ0016355002**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING AND REQUEST 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 Request for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Vista Townhomes Austin LLC (Vista Townhomes or Applicant) for new Texas Land Application Permit (TLAP) No. WQ0016355002. The Commission received timely comments and hearing requests from Cody Faulk on behalf of the City of Georgetown, Allyson Almeida, and Casey Toole. The Commission received a request for reconsideration from the City of Georgetown. For the reasons stated herein, OPIC respectfully recommends that the Commission find that the City of Georgetown, Allyson Almeida, and Casey Toole are affected persons, and further recommends that the Commission grant their hearing requests. OPIC recommends denial of the request for reconsideration.

B. Description of Application and Facility

Vista Townhomes applied to the TCEQ for a new TLAP permit to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day via surface irrigation of 6.5 acres of public access land. The draft permit does not authorize a discharge to surface water. If the draft permit is issued, 24,000 gallons of treated effluent would be authorized to be land applied by surface irrigation to 1.3 acres at an application rate of 9.4 acre-feet per acre per year.

The proposed plant would consist of an activated sludge process plant using the conventional mode for secondary treatment and a membrane bioreactor (MBR) for solids separation. Treatment units would include headworks with fine screening, an equalization tank, six aeration basins with MBRs, an ultraviolet light unit, a sludge holding tank, and a sludge dewatering screw press.

The proposed facility and disposal site would be located approximately 0.4 miles north of the intersection of Vista Heights Drive and State Highway 29 West in Williamson County. The wastewater treatment facility and disposal site would be located in the drainage basin of the Middle Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin.

C. Procedural Background

The application was received on February 26, 2024 and declared administratively complete on March 22, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on April 3, 2024 in the

Williamson County Sun and in Spanish on April 3, 2024 in *El Mundo*. The Notice of Application and Preliminary Decision was published in English on November 7, 2024 in the *Williamson County Sun* and in Spanish on November 7, 2024 in *El Mundo*. The public comment period ended on December 10, 2024. The Executive Director's (ED) Response to Comments (RTC) was mailed on June 26, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was July 28, 2025.

II. APPLICABLE LAW

A. Hearing Requests

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 Texas Administrative Code (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.

30 TAC § 55.201(d).

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.

30 TAC § 55.203(d).

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must 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.

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 requestor is an affected person

City of Georgetown

The Commission received timely comments and a hearing request on behalf of the City of Georgetown. The request indicates that the City is an affected person under 30 TAC § 55.203 because the City has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. Additionally, the City has statutory authority over and interests in the issues relevant to the application within the meaning of 30 TAC 55.203(b).¹ The City's interests include promoting and protecting the general health, safety, and welfare of persons residing in the

¹ The City cites: Texas Water Code (TWC) Ch. 26, Subchapter E; TWC Ch. 7, Subchapter H; Tex. Health & Safety Code Ann. § 121.003(a); Tex. Loc. Gov't Code Ann. § 551.002; Tex. Loc. Gov't Code Ann. § 212.003(a); Tex. Loc. Gov't Code Ann. § 217.042; Tex. Loc. Gov't Code Ann. § 552.001; and Tex. Loc. Gov't Code Ann. § 552, Subchapter C.

City's corporate limits and extraterritorial jurisdiction (ETJ). *See* Tex. Loc. Gov't Code Ann. § 42.001. According to the hearing request, and reiterated on the map created by ED staff, the proposed facility would be located adjacent to the City's corporate limits and within its ETJ.

The City of Georgetown provides wastewater treatment services to areas both inside and outside of its corporate limits. Additionally, the City has authority over or an interest in the effects on the environment and on public health, safety, and welfare, including the proposed facility's wastewater disposal onto land immediately adjacent to a residential neighborhood within the City's corporate limits as well as the City's ETJ. Further, the City has an interest in eliminating new potential sources of pollution and protecting the Edwards Aquifer, which is a significant source of the City's drinking water.

The issues raised in the request include concerns about water quality, groundwater and the Edwards Aquifer, regionalization and need, application accuracy, monitoring and sampling, endangered species, human health, flooding, and per- and polyfluoroalkyl substances (PFAS). Governmental entities, including local governments, with authority under state law over issues raised by the application, may be considered affected persons. 30 TAC § 55.203(b). Furthermore, when determining whether local governments are affected persons, factors related to their statutory authority over or interest in the issues relevant to the application should be considered. 30 TAC § 55.203(c). The City's concerns are protected by the law under which the application will be considered. Further, the City has demonstrated that it has authority under state law over the issues it

has raised. Finally, the proposed facility would be constructed in close proximity to the City's corporate limits and within its ETJ. In combination, these factors give the City a personal justiciable interest and distinguish that interest from the general public. Therefore, OPIC finds that the City of Georgetown qualifies as an affected person.

Allyson Almeida

The Commission received timely comments from Allyson Almeida and a hearing request that articulated her request for a contested case hearing and incorporated by reference her prior comments. According to the map created by ED staff, Ms. Almeida resides fewer than 0.5 miles from the proposed facility. This proximity is reiterated by Ms. Almeida's presence on the Applicant's Affected Landowner map and list, which indicates that Ms. Almeida shares a property boundary with the Applicant and resides adjacent to the effluent irrigation area. Ms. Almeida's request articulated concerns about plant and animal life, human health, groundwater and the Edwards Aquifer, water quality and availability, nearby cave systems, air quality, and traffic. Many of these interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of Ms. Almeida's proximity to the proposed facility, a reasonable relationship exists between the interests she seeks to protect and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3). Further, the requestor's proximity increases the likelihood that the regulated activity may impact her health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given her

relevant concerns and proximity, OPIC finds that Ms. Almeida has demonstrated that she would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Allyson Almeida is an affected person.

Casey Toole

The Commission received timely combined comments and a hearing request from Casey Toole. According to the map created by ED staff, Casey Toole resides fewer than 0.5 miles from the proposed facility. Casey Toole's residence is south of the proposed facility, putting them in even greater proximity to the effluent irrigation area than the facility itself. Casey Toole's request articulated concerns about water quality, odors, wildlife, and nearby cave systems. These interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of Casey Toole's proximity to the proposed facility, a reasonable relationship exists between the articulated interests they seek to protect and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3). Further, the requestor's proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given these relevant concerns and proximity, OPIC finds that Casey Toole has demonstrated that they would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a).

Therefore, OPIC recommends that the Commission find that Casey Toole is an affected person.

B. Which issues raised in the hearing requests are disputed

The affected requestors raised the following disputed issues:

1. Whether the draft permit is adequately protective of plant and animal life.
2. Whether the draft permit is adequately protective of human health.
3. Whether the draft permit is adequately protective of groundwater and the Edwards Aquifer.
4. Whether the draft permit is adequately protective of water quality and availability.
5. Whether the draft permit is adequately protective against odors.
6. Whether the draft permit adequately considers regionalization and need.
7. Whether the submitted application was accurate.
8. Whether the draft permit included adequate monitoring and sampling requirements.
9. Whether the draft permit was adequately protective of endangered species.
10. Whether the draft permit is adequately protective of nearby cave systems.
11. Whether the draft permit is adequately protective against flooding.
12. Whether the draft permit is adequately protective against PFAS.
13. Whether the draft permit is adequately protective of air quality.
14. Whether the draft permit is adequately protective against excess traffic.

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. The issues raised here are issues of fact.

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

Issues No. 1-14 in Section III.B. were specifically raised by affected requestors during the public comment period.

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

No public comments were withdrawn in this matter. Therefore, the hearing requests are not based on issues raised in withdrawn public comments.

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

The hearing requests raised some 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).

Plant and Animal Life, Endangered Species, Human Health, and Water Quality

The affected requestors in this matter raise concerns about adverse effects to water quality and the consequential impacts on human health, plant life, and animal life, particularly endangered species. The Commission is responsible for

the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (Standards) 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). Also, 30 TAC § 307.4(j)(1) requires that existing, designated, presumed, and attainable uses of aquatic recreation must be maintained. Finally, antidegradation reviews are governed by 30 TAC § 307.5, which establishes the Commission’s antidegradation policy and contains provisions for implementation of the policy. As Chapter 307 designates criteria for the regulation of water quality and governs antidegradation reviews, the protection of human health and safety and animal life, and the maintenance of recreational uses, Issues No. 1, 2, 4, and 9 are relevant and material to the Commission’s decision regarding this application.

Groundwater and the Edwards Aquifer

Requestors expressed concerns regarding impacts on groundwater near the proposed facility, particularly given the proximity of the Edwards Aquifer. As

discussed above, the Commission is responsible for the protection of water quality under Texas Water Code (TWC) Chapter 26 and 30 TAC Chapters 307 and 309. Section 309.10(b) states, in part, that “[t]he purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities ... on selection of a site that minimizes possible contamination of ground and surface waters....” Under 30 TAC § 309.12, the Commission considers several factors relating to a facility’s proposed design, construction, and operational features to evaluate a facility’s potential to cause surface water and groundwater contamination. The rule further provides for consideration of active geologic processes and groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge and discharge conditions. Additionally, TCEQ has developed rules for regulated activities on the Edwards Aquifer recharge and contributing zones under 30 TAC Chapter 213. Therefore, Issue No. 3 is relevant and material to the Commission’s decision on this application.

Odors

TCEQ regulates nuisance conditions under 30 TAC § 309.13(e) which requires applicants to implement a nuisance odor abatement plan. Further, permits issued by TCEQ do not allow the permit holder to create or maintain a nuisance that interferes with a landowner’s use and enjoyment of their property. Because 30 TAC § 309.13 addresses nuisance conditions as described by

requestors, Issue No. 5 is relevant and material to the Commission's decision on this application.

Regionalization and Need

TCEQ's regionalization policy comes from Section 26.081 of the Texas Water Code, which implements "the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." TCEQ's wastewater permit application requires the applicant for a new permit to provide information concerning other wastewater treatment facilities that exist near the applicant's proposed treatment facility site. The applicant is required to state whether any portion of the applicant's proposed service area is located in an incorporated city, whether its proposed service area is located within another utility's certificate of convenience and necessity area, and whether there is a facility, or any sewer collection lines located within the three-mile area surrounding the proposed facility site. Accordingly, Issue No. 6 is relevant and material to the Commission's decision on this application.

Application Accuracy

TCEQ rules require that if an applicant becomes aware that it failed to submit relevant facts or submitted incorrect information in a permit application, the applicant is required to promptly submit such facts and information. 30 TAC § 305.125(19). Therefore, Issue No. 7 is relevant and material to the

Commission's decision regarding this application and is appropriate for referral to SOAH.

Monitoring and Sampling

An affected requestor in this matter is concerned that the terms and conditions of the draft permit, particularly its monitoring and sampling requirements, are not sufficiently protective. The adequacy of the terms and conditions of the draft permit, including its monitoring requirements, implicates the permit's enforceability and ultimately its compliance with applicable statutory and regulatory requirements. Therefore, Issue No. 8 is relevant and material to the Commission's decision to issue or deny this permit and is appropriate for referral to SOAH.

Cave Systems

Several requestors raised concerns regarding the proposed facility's proximity to nearby cave systems. Under 30 TAC § 213.5(f)(2), if any sensitive features, such as caves, are discovered during construction, all regulated activities occurring near the feature must be immediately suspended. The permittee must immediately notify the TCEQ regional office, and regulated activities near the feature may not proceed until the Executive Director has reviewed and approved the methods proposed to protect the feature and the aquifer from potentially adverse impacts to water quality. Therefore, Issue No. 10 is relevant and material to the Commission's decision on this application.

Flooding

TCEQ's jurisdiction is established by statute and does not include authority under the Texas Water Code or its regulations to address or consider flooding when making a decision on issuance of this permit. Therefore, Issue No. 11 is not relevant and material to the Commission's decision on this application.

PFAS

Neither TCEQ nor EPA has promulgated rules or criteria limiting emerging contaminants, including PFAS, in wastewater. In addition, there are currently no federal or state effluent limits for emerging contaminants. Therefore, Issue No. 12 is not relevant and material to the Commission's decision on this application.

Air Quality

A requestor raised concerns regarding the proposed facility's emission of air pollutants. TCEQ's jurisdiction is established by statute and does not include authority under the Texas Water Code or its regulations to address or consider air quality when making a decision on issuance of this TLAP permit, unless there is an associated water quality concern. Accordingly, Issue No. 13 is not relevant and material to the Commission's decision on this application.

Traffic

A requestor articulated concerns about increases in traffic associated with the construction of this facility. The TCEQ does not have jurisdiction to consider effects on traffic when deciding whether to issue a TLAP permit. Therefore, Issue No. 14 is not relevant and material to the Commission's decision on this application.

G. Maximum expected duration for the contested case 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. REQUEST FOR RECONSIDERATION

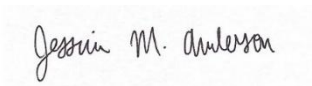
The Commission received a request for reconsideration of the ED's decision from the City of Georgetown. This request for reconsideration reiterated the same issues raised in the City's hearing request. While OPIC is recommending a hearing and referral of the issues encompassing this requestor's concerns as expressed in its request for reconsideration, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would need to exist in order to recommend that the request for reconsideration be granted at this time.

V. CONCLUSION

Having found that the City of Georgetown, Allyson Almeida, and Casey Toole qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issues No. 1-10 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC further recommends the Commission deny the pending request for reconsideration.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2025, the Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

A handwritten signature in cursive script that reads "Jessica M. Anderson". The signature is written in black ink on a light-colored background.

Jessica M. Anderson

MAILING LIST
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TCEQ DOCKET NO. 2025-1323-MWD

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FOR ALTERNATIVE DISPUTE

RESOLUTION

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