



September 6, 2023

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

Re: Application by Hays Commons Land Investments, LP, to the Texas Commission on Environmental Quality for creation of Hays Commons Municipal Utility District, TCEQ Internal Control No. D-06282023-060

Dear Chief Clerk Gharis:

The City of Hays, Texas (the “City”) formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to me, Joshua Katz, attorney for the City, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. My daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Hays Commons Land Investments, LP (“Applicant”) is applying to the Texas Commission on Environmental Quality (the “TCEQ”) for creation of a new municipal utility district entirely within Hays County, and entirely within the current extraterritorial jurisdiction (“ETJ”) of the City of Hays.¹ The City opposes the creation of the Hays Commons Municipal Utility District (the “District”).

The City is an “affected person” entitled to a contested case hearing on issues raised in this hearing request 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 and is an affected person under 30 TEX. ADMIN. CODE § 55.256. The proposed municipal utility district will be located within the ETJ of the City. The City does not consent to its creation. Pursuant to Texas Water Code § 54.016(a), land within the City’s extraterritorial jurisdiction cannot be included within the boundaries of a municipal utility district without the City’s consent. For this and additional reasons, local governments, such as the City, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The City has authority to protect the public health and safety within its ETJ and to

¹ On or about September 1, 2023, Applicant filed a petition with the City to release certain property that it owns from the ETJ of the City pursuant to Senate Bill 2038. Senate Bill 2038 took effect on that same date. As of the date of this letter, the City is reviewing Applicant’s petition pursuant to the requirements of Senate Bill 2038. Upon information and belief, the property Applicant seeks to remove from the City’s ETJ is most or all of the property located within the proposed boundaries of the MUD.

regulate development within its ETJ. TEX. LOC. GOV'T CODE §§ 42.001, 212.044. Various city functions and services – including water services, emergency services, and health and safety concerns – may be affected by the creation of the district and are not taken into account by the application.

But further, even if the subject property is removed from the City's ETJ, the City is an affected person pursuant to the relevant factors enumerated in 30 TEX. ADMIN. CODE § 55.256(c), based on the proximity of the proposed district and related wastewater facilities to the municipal limits of the City, its residents, and the wells that serve its municipal water system. The City has water wells for its municipal water system that are adjacent to the wastewater facility proposed by the Applicant. The City has a statutory obligation to provide safe potable drinking water to the customers of this system, both inside and outside of its municipal boundaries. The City therefore has an interest in ensuring the creation and operation of the proposed District is protective of the public health and safety. Thus, the City has authority under state law over the issues contemplated by this application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

The City owns and operates two public water systems that derive their sole water supply from the Barton Springs segment of the Edwards Aquifer. The City has two public water supply wells; one is located within 60 feet of the proposed district boundary, and the other is located approximately 600 feet from the proposed district boundary. Approximately 90% of the proposed District overlies the Barton Springs segment of the Edwards Aquifer recharge zone, the source of the City's groundwater supply, and that of thousands of other people in the region. The area of the proposed District contains hundreds of sensitive karst features, which are direct conduits of water into the Barton Springs segment of the Edwards Aquifer. Because the District has been unable to obtain wholesale water and wastewater service from a regional provider, the district proposes to construct an approximately 200,000 gallon per day wastewater treatment plant, and dispose of the wastewater effluent via a Texas Land Application Permit ("TLAP") from TCEQ. The TLAP associated with the proposed District would be located in the area containing these karst features, which is contiguous with the City's northern municipal limits and in close proximity to the City's Edwards Aquifer wells. Therefore the impact of the proposed District on the health, safety, and use of property by the residents of the City, as well as the people within and without the City limits who are served by the City's public water supply system, supports the City's standing to request a hearing on the Application.

Moreover, Texas Water Code § 54.021 sets out the criteria the Commission uses to determine whether a proposed MUD is feasible and practicable, necessary, and would be a benefit to the land included in the district. Among these factors are the potential effects of the proposed district on groundwater levels in the region, groundwater recharge capability, run-off rates and drainage, and water quality. Because of the proximity of the District to the City and its water system infrastructure, the City requests a contested case hearing in order to ensure that the proposed District is protective of its interests. Therefore the impact of the District on the health, safety, and use of property by the residents of the City.

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua Katz". The signature is written in a cursive style with a large initial "J".

Joshua D. Katz
Attorney for City of Hays

JDK/rfb