Bridget C. Bohac, Chief Clerk  
MC105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  

SUBJECT: Army Comment on TCEQ ED Counsel’s Response to Request for Reconsideration on Proposed Permit NO. WQ0015219001  

Dear Ms. Bohac:  

We are making a comment regarding the TCEQ Executive director's counsel August 17, 2015 response to our May 28, 2015 request reconsideration of TCEQ Executive Director's decision dated May 1, 2015.  

As background, our Army installation is downgradient of this proposed wastewater treatment plant siting and we have expressed concerns about potential effects on water quality and other issues, as have many citizens and a local environmental group, the Greater Edwards Aquifer Authority (GEAA) regarding this permit.  

Our request for reconsideration, which the TCEQ Executive director's counsel responded to on August 17, 2015, asked for reconsideration based on TCEQ apparently not following its own rules regarding 1) the potential impacts of the facility and land application to groundwater in the area and 2) plant sizing. The Executive Director's counsel's August 17, 2015 response also characterizes this as issues of law, whether the TCEQ followed its own rules.  

We are writing this comment as rebuttal to the August 17, 2015 response's analysis regarding land application and the theme that TCEQ may not be following its own rules. Regarding land application, see atch page 11 of Trio's TCEQ form 10053, block 7.k. The form is checked that Trio is/will be owner of the land where the treatment facility is located and 7.l. that they are the owner of the effluent disposal site. Unless they provided a long term lease or executed option to buy to TCEQ (there were no such documents in the permit files at Fair Oaks or Boerne), they may have a significant problem -- they do not own the land yet, do not have a long-term lease or executed option in the permit file, so how can they be an "applicant"? Also, their application is clearly incorrect in that they do not own the discharge site (7.l).
Our understanding is the City of Fair Oaks Ranch’s city attorney notified Trio (see atch article) that because they had not obtained an assignment of development rights, purchased the property or had an agent delegation from the landowner, Russell W. Pfeiffer (or R W Pfeiffer LLC), the city considered null all of Trio’s prior platting applications and dealings regarding the development agreement with the city. See atch newspaper article on this subject from the San Antonio Express News.

See landownership info below and a fuller version enclosed, checked recently at the appraisal districts’ websites. Kendall County Appraisal District property ID 11782 is the 339.29 acre tract for R W Pfeiffer LLC for tax year 2015:

<table>
<thead>
<tr>
<th>#</th>
<th>Type</th>
<th>Description</th>
<th>Acres</th>
<th>Sq ft</th>
<th>Eff Front</th>
<th>Eff Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>NR1</td>
<td>Native Range 1</td>
<td>338.2970</td>
<td>14736217.32</td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>

https://propaccess.trueautomation.com/ClientDB/Property.aspx?prop_id=11782

Comal County Appraisal District property ID 83163 is the 5.6 acre tract for Russell W Pfeiffer for tax year 2015 (owner ID 44689):

- 1NPG NATIVE PASTURE (GOOD) 5.6820 247507.92 0.00 0.00 $90,470 $380

http://taxweb.co.comal.tx.us/ClientDB/Property.aspx?prop_id=83163

Per 30 TAC 217.2 Definitions, 217.2 Plans and Specifications General, and 217.6 Submittal Requirements and Review Process, the Executive Director should be processing a wastewater treatment permit with the owner of the wastewater treatment plant and the effluent discharge site, see regulatory excerpts with highlighting to emphasize “owner” in the enclosures.

As noted in our request for reconsideration, see relevant excerpt from a Texas State Office of Administrative Hearings (SOAH) decision, 2010 TX SOAH LEXIS 59 (February 8, 2010), the commission shall follow its rules:

FN 40. TEX. WATER CODE ANN. (Water Code) § 5.103(c) states: "The commission shall follow its own rules as adopted until it changes them in accordance with [the APA]." If a Texas agency fails to follow the clear, unambiguous language of its own regulations, its action is arbitrary and capricious. See Rodriguez v. Service Lloyds Ins. Co., 997 S.W.2d 248, 255 (Tex.

Trio’s wastewater permit application should be dismissed because they have not shown that they have a long-term lease or have bought the property where the treatment facility will be constructed (7.k) and/or are not the owner of the effluent discharge site (7.l).

If you have any questions please feel free to contact me at (210) 295-7082 or 9830.

Sincerely,

[Signature]

James V. Cannizzo
Counsel

Enclosures
Enclosure: Extract of Trio’s Application, note blocks 7 k and l.

Section B: Enter the site location information.
If no physical address (Street Number & Street Name), provide a written location access description to the site:
Located along the north right-of-way of Ammann Road at its intersection with Rolling Acres Trail in north Fair Oaks Ranch, Southeastern Kendall County, Texas. See attachment “A”.
(Ex.: located 2 miles west from intersection of Hwy 290 & IH35 accessible on Hwy 290 South)

e. City where the site is located or, if not in a city, what is the nearest city:
   Fair Oaks Ranch

f. ZIP Code where the site is located: 78006

g. County where the site is located: Kendall

h. Latitude: 29° 46’ 12.01” N    Longitude: 98° 37’ 04.07” W

i. In your own words, briefly describe the primary business of the Regulated Entity:
   (Do not repeat the SIC and NAICS code)
   Waste Water Treatment

j. Owner of treatment facility: Trio Developers, Inc.

   Ownership of Facility: ☐ Public    ☐ Private    ☐ Both    ☐ Federal

k. Owner of land where treatment facility is/will be: Trio Developers, Inc.
   (If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years. In some cases, a lease may not suffice - see instructions.)

l. Owner of effluent disposal site: Trio Developers, Inc.
   (If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years.)

m. Owner of sewage sludge disposal site: N/A
   (Required only if authorization is sought in the permit for sludge disposal on property owned/controlled by the applicant.)

8. DISCHARGE/ DISPOSAL INFORMATION (Instructions, Page 27)

a. Is the point of discharge and discharge route in the existing permit correct?
   ☐ Yes    ☐ No

   If no, or a new or amendment permit application, please give an accurate description.
   N/A - New Permit
Fair Oaks project tripped up

Foes of plan for 635 upscale homes say it’s too dense for 345-acre site

By Zeke MacCormack

FAIR OAKS RANCH — More than a year of haggling over a controversial subdivision proposal may be for naught because city officials say the would-be developer lacked formal authorization to pursue the project.

That revelation is the latest twist in the convoluted path followed by the Reserve at Fair Oaks Ranch, a development of 635 upscale homes planned just outside the city limits.

“I have to say I’m a little surprised they didn’t do that, and I’m a little surprised that we didn’t catch it,” Mayor Cheryl Landman said Thursday. “It did feel like a shame that we put in a lot of time on plans and things like that. That was wasted time on our part.”

The city in November 2013 entered a development agreement with Pflieger Properties, owner of the 345-acre Ammann Road parcel that City Council considered but rejected for annexation five months later amid public protests about the project.

Acting as Pflieger’s agent, Trio Developers Inc. of Austin sought a plat for the development and also applied to the Texas Commission on Environmental Quality for a discharge permit for a planned wastewater treatment plant.

However, City Attorney Charles Zech notified Trio and Pflieger last month that the pending plat application was being rejected, and that the city would henceforth deal only with Pflieger, unless he formally assigns development rights or transfers ownership of the parcel to another party.

“The city and Pflieger Properties have a valid and binding agreement, the terms of which the city stands willing and able to observe,” Zech wrote to Pflieger on July 7.

Zech, who began representing the city after the development agreement was signed, said he learned that Pflieger and Trio lacked a formal agreement from Trio’s lawyer, Alan Waldrop.

“This is a real opportunity to improve the situation and to get a development there that is less dense.”

Steve Harpener, Fair Oaks councilman

As a result, Zech told Waldrop in a July 7 letter that the plat application was rejected and said “the city will no longer be in a position to discuss the agreement or development” with Trio.

Zech said he had not received a response from Pflieger, who couldn’t be reached for comment, nor Waldrop, who refused questions to Trio President Marc Frease.

Asked Thursday about the purported absence of a written assignment by Pflieger to Trio, Frease said, “Does anyone have proof of the claims they are making?” He declined to take questions.

The issue arose after Pflieger secured the city in June of breaching the development agreement by failing to annex the land, failing to approve the plat and refusing to accept a water availability study on the site, among other things.

Zech, denying the city breached its obligations, said that in researching Pflieger’s allegations, he asked Waldrop for the letter assigning development rights to Trio and was
FAIR OAKS
From page A3
told it doesn’t exist.
City leaders say they dealt
only with Tito representa-
tives. The engineer who pre-
arried and
sent the Reserve at Fair
Oaks Ranch plan, Paul Schr"o-
der, said Wednesday that his
contract was with Tito, which
he understood to be an agent for
Pfeiffer.

The public uproar over the
project helped fuel the suc-
cessful election campaigns
in May of Councilmen Steve Har-
tpen and Garry Manitzas,
members of the grass-roots
group Save Fair Oaks Ranch,
which led the opposition effort.

“Told me this kind of resets
the whole deal,” Manitzas said
Thursday. “In my mind, that’s
kind of a plus.”

Harptong said, “This is a
real opportunity to improve
the situation and get a de-
velopment there that is less dense.”

Mary McConnell of Save Fair
Oaks Ranch said recent events
reinforce the group’s view that
the city had rushed unprepared
into its first such development
agreement.

“We’ve beat a dead horse
saying the due diligence wasn’t
done,” she said Thursday. “We
are thrilled to potentially
have another opportunity to reshape
what we thought all along was
an irresponsible density for that
property.”

LOCAL AND TEXAS BRIEFS

NORTH SIDE

Two men shoot
store clerk

A Saturday night shooting
left a store clerk in critical
condition on the city’s North Side.
The shooting took place at
around 9 p.m., Saturday, when
a clerk at the Golden Food Mart
convenience store, located in
the 7200 block of Fredericks-
burg Road, stepped outside to
smoke a cigarette. A witness
who was pumping gas outside
the store told officers that two
men approached the clerk and
shot him multiple times in the
chest before fleeing on foot
down Zarzamora Road.
The victim was transported
to University Hospital in criti-
cal condition. Officers were
still searching for the gunman
Sunday night.

SOUTH SIDE

Fire forces
families to flee

Several families were evicted
from the housing units
on the South Side after an
apartment complex went up in
flames.

Officials with the San An-
tonio Fire Department told
reporters that a resident was
burning crease, causing a wall
to catch fire.
The apartment complex in
the 3000 block of Roosevelt
Avenue sustained nearly
$20,000 in damages. There
were no reports of injuries.

DALLAS

Mayor rescues
restaurant patron

A woman who began chok-
ing at a Dallas Mexican restau-
rant is crediting Mayor Mike
Rawlings with using the Heinz-
lache maneuver to clear her
airway.

WFAA TV reported that
Helen Mayer was having lunch
with about eight family mem-
bers at El Fez restaurant
downtown when she began
choking on bite of fajita.

Rawlings was finishing
lunch with his son when he
heard screaming from a nearby
table.

Mayer said she remembered
standing up while choking, but
little else. “The next thing I
knew, this gentleman had
picked me up from behind and
did the Heimlich maneuver.”

Rawlings said he learned the
Heimlich from his past as a
lifeguard and Boy Scout.

BAY CITY

After 35 years, he
gets day in court

For more than 35 years, a
Texas man has been in a prison
even though an appeals court
threw out his conviction in 1990
on a 1976 murder charge that
initially had him on death row.

Jerry Hartfield, now 59, will
return to court today for a
retrial, facing a life sentence
if convicted of the brutal killing
of a woman who sold tickets at
a Bay City bus station.

The Texas Court of Criminal
Appeals overturned Hartfield’s
capital murder conviction in
1990 because of a jury selection
problem and ordered a new trial.
Three years later, then-
Gov. Mark White commuted
Hartfield’s sentence to life
in prison. But he had never had
the retrial.

It wasn’t until 2006 that a
fellow inmate pointed out
that Hartfield, who said he
learned to read and write in
prison, filed a handwritten
court writ demanding retrial or
release. It was initially rejected
but in 2009, a federal judge
agreed and a new trial was
ordered.

At a hearing Friday, a psy-
chologist testified Hartfield’s
IQ is 65, below the threshold of
70 considered mental impair-
ment.

Staff and wire reports
Enclosure: 30 TAC 217 References regarding the applicant being “an owner”.

30 TAC 217.2 Definitions..

(37) **Owner**—A person **who owns** a collection system or a treatment facility or part of a system or facility.

30 TAC 217.5 Plans and Specifications General Requirements.

(a) **An owner** is required to build a wastewater collection system or treatment facility according to the plans and specifications approved by the executive director.
(b) The executive director's approval of plans and specifications of a facility does not relieve **an owner** of the responsibility to obtain a wastewater permit or other authorization in accordance with Texas Water Code, Chapter 26.
(c) The executive director’s approval of a wastewater permit does not relieve **an owner** of the responsibility to obtain a plans and specifications approval for a facility in accordance with this chapter.
(d) **An owner** must ensure that its facility plans and specifications meet all design requirements in the associated wastewater permit.

30 TAC 217.6 Submittal Requirements and Review Process

(a) **An owner** is not required to submit collection system or treatment facility plans and specifications for approval prior to the commission issuing the facility’s wastewater permit.
(b) A treatment facility's plans and specifications must be based on a design that will produce effluent that will at least meet the requirements and effluent limits in the associated wastewater permit.
(c) **An owner** shall submit to the executive director and the appropriate regional office a summary transmittal letter for each collection system and treatment facility that includes the following requirements, except as provided by §217.8 of this title (relating to Municipality Reviews):
   (1) the name and address of the design firm;
   (2) the name, phone number, and facsimile number of the design engineer;
   (3) the county(s) where the project will be located;
   (4) an identifying name for the project;
   (5) the name(s) of the person(s) that proposes to operate the collection system or treatment facility;
   **(6) the collection system or treatment facility owner's name**, and if applicable, the treatment facility permit number, and facility name;
   (7) a statement certifying that the plans and specifications are in substantial compliance with all requirements of this chapter, with the exception of any listed variance requests;
   (8) a statement certifying that any variances from the requirements will not threaten public health or environment, based on the best professional judgment of the engineer.
who prepared the report and the project plans and specifications;
(9) a brief description of the project scope that includes:
(A) a brief engineering summary of the collection system or treatment facility;
(B) a description of variances from the requirements of this chapter, including the use of nonconforming or innovative technology; and
(C) an explanation of the reasons for such variances in accordance with §217.4 of this title (relating to Variances); and
(10) the signature and seal of the engineer responsible for the design of the collection system or treatment facility.
(d) The executive director may review the plans and specifications for any collection system or treatment facility.
(e) If the executive director does not notify an owner by fax or letter within 30 days after the receipt of a summary transmittal letter that a review will occur, the project is approved. However, such approval is conditional, subject to an executive director determination under §217.4(c) or (d) of this title. Additionally, if this provision conflicts with any other rule in this chapter that requires affirmative executive director approval, then this provision does not apply.
(f) If the executive director notifies an owner by fax or letter of the intent to review a collection system or facility's design, the owner shall submit the following within 30 days after receiving notice:
(1) a complete set of plans and specifications;
(2) a complete report;
(3) any requested variances; and
(4) sufficient information to satisfy the executive director that a project is in substantial compliance with this chapter.
(g) If the executive director does not notify an owner of any insufficiency within 30 days after receipt of any additionally requested information, the project is approved.
Enclosure: Kendall County Appraisal District Website Showing Ownership of 339 acres in Kendall County of the 345 acre Tract Trio Proposes to Develop
Enclosure: Comal County Appraisal District Website Showing Ownership of 6 acres in Comal County of the 345 acre Tract Trio Proposes to Develop