

PUC DOCKET NO. _____

PETITION OF SAN ANTONIO WATER	§	PUBLIC UTILITY COMMISSION
SYSTEM FOR A CEASE AND DESIST	§	
ORDER AGAINST TIMBERWOOD	§	OF TEXAS
DEVELOPMENT COMPANY LP	§	

**PETITION OF SAN ANTONIO WATER SYSTEM
FOR A CEASE AND DESIST ORDER AGAINST
TIMBERWOOD DEVELOPMENT COMPANY LP**

The San Antonio Water System ("SAWS") (CCN No. 20285), files this petition against Timberwood Development Company LP ("Timberwood") and requests the Commission to issue an order directing Timberwood to cease and desist all activities to provide retail sewer utility services in SAWS' certificated service area in Bexar County.

I. Requesting Party

SAWS is the water and sewer utility for the City of San Antonio, which is a home-rule municipality located in Bexar County, Texas. SAWS' contact information for this proceeding is as follows:

Keith Martin
2800 U.S. Highway 281 North
San Antonio, TX 78212
(210) 233-3867
keith.martin@saws.org

Joe Freeland
Mathews & Freeland, LLP
8140 N. MoPac Expwy, Ste 2-260
Austin, TX 78759
(512) 404-7800
jfreeland@mandf.com

II. Party Subject of the Order

Timberwood may be contacted at the following address:

Timberwood Development Company LP
15315 San Pedro
San Antonio, Texas 78232

SAWS is providing Timberwood with a copy of this petition.

000001

III. Description of Alleged Interference

SAWS holds CCN No. 20285 authorizing SAWS to provide retail sewer service in most of Bexar County, including all of a development known as Timberwood Park. SAWS is the only retail sewer utility authorized to provide retail sewer utility service in Timberwood Park.

On April 7, 2014, Timberwood filed a wastewater discharge permit application with the Texas Commission on Environmental Quality ("TCEQ") to treat wastewater generated on 65 lots within a proposed subdivision within Timberwood Park -- Timberwood Villas Phase II. Excerpts from the application are set out in Exhibit 1. In the application, Timberwood acknowledges that the area to be served is located within SAWS' CCN area, and that the wastewater treatment plant is being constructed to provide sewer service to the 65 lots within Timberwood Villas Phase II. Timberwood's intent to provide service is shown clearest by Buffer Zone Map and its Economic Analysis for Not Connecting to the CCN.¹ Timberwood expressly acknowledges that it intends to charge the purchasers of lots within Timberwood Villas Phase II an amount to recoup its costs to construct the wastewater treatment plant, which would constitute the provision of retail sewer utility service.

SAWS is protesting the issuance of the wastewater discharge permit at TCEQ on the basis that the treatment plant is not needed because the applicant has no CCN to serve the area. On February 3, 2015, the Executive Director of the TCEQ recommended issuance of Timberwood's application for discharge permit. The TCEQ Executive Director's position is that the treatment plant is needed because, based on Timberwood's analysis, Timberwood can provide sewer service more economically than the service that could be provided by SAWS. On March 3, 2015, SAWS filed a request for contested case hearing with TCEQ regarding Timberwood's wastewater discharge permit.

Regardless of TCEQ's decision on the wastewater discharge permit, Timberwood may not provide retail sewer utility service in SAWS' sewer CCN service area unless it obtains a CCN authorizing such service.² Timberwood has not received SAWS' written permission to provide retail sewer service within SAWS' sewer service area, and it does not have a CCN authorizing it to provide the service. Retail service to the subdivision by Timberwood would

¹ Exhibit 1.

² PUC Subst. Rule 22.101 (a) & (b).

infringe upon SAWS' right to be the sole service provider in its certificated area. Moreover, the TCEQ cannot authorize Timberwood to provide retail sewer service, even if it concludes that service from Timberwood would be more economical than service from SAWS. TCEQ may have the authority to issue a wastewater discharge permit, but the issuance of such a permit does not authorize Timberwood to charge customers for treatment.

SAWS has contacted Timberwood. Timberwood asserts that it will not be providing retail sewer service because Timberwood will transfer control of the wastewater plant to a new homeowners' association and that the homeowners' association will provide the service, which will be funded out of homeowners' association dues. SAWS' position is that even the provision of sewer service by a homeowners' association funded out of homeowners' association dues constitutes the provision of sewer service to the public for compensation – retail sewer utility service. If either Timberwood or a homeowners' association provide service for compensation, they become subject to the Commission's jurisdiction, and must obtain a CCN and approval of rates. There are no exceptions to the obligation to obtain a CCN that apply in this situation.

SAWS asserts that action by the Commission is needed now to protect the public interest. The Commission should decide whether Timberwood (or a homeowners' association) is legally precluded from providing retail sewer utility service to the lots in question before Timberwood develops the property, constructs the sewer collection and treatment system, and begins selling lots to the public. The Commission should not wait for Timberwood to actually begin selling lots or for the homeowners' association to collect dues before ordering them to stop.

IV. Map

Exhibit 1 contains a map taken from Timberwood's wastewater discharge application showing its proposed retail service area as being within SAWS' CCN area. SAWS is providing an additional map, Exhibit 2, which delineates the area that SAWS believes Timberwood intends to serve and the location of SAWS' CCN in the proximate area.

V. Requested Relief


SAWS respectfully requests the Commission to enter an order prohibiting Timberwood from: (1) constructing its proposed wastewater treatment plant and utility lines; and (2) providing retail sewer utility service, within SAWS' CCN area. Alternatively, if the PUC elects not to

enter such an order, SAWS requests that the PUC enter an order declaring that Timberwood is prohibited from providing retail sewer utility service within SAWS' CCN area without first obtaining a CCN authorizing the provision of retail sewer utility service and declaring that sewer service provided by a homeowners' association funded from dues constitutes retail sewer utility service.

Respectfully submitted,

MATHEWS & FREELAND, L.L.P.
Westpark II, Suite 260
8140 N. MoPac Expy
Austin, TX 78759
(512) 404-7800
Fax: (512) 703-2785
E-mail: jfreeland@mandf.com

By:


C. Joe Freeland
State Bar Number 07417500

ATTORNEYS FOR SAN ANTONIO
WATER SYSTEM

EXHIBIT 1

DOMESTIC ADMINISTRATIVE REPORT 1.0

The following is required for all applications--Renewal, New, And Amendment

Type of application:

- | | |
|---|--|
| <input checked="" type="checkbox"/> New TPDES | <input type="checkbox"/> New TLAP |
| <input type="checkbox"/> Major amendment with Renewal | <input type="checkbox"/> Major Amendment without Renewal |
| <input type="checkbox"/> Renewal of existing permit | <input type="checkbox"/> Minor amendment to permit |
| | <input type="checkbox"/> Minor modification to permit |

If applying for an amendment to a permit, please describe the request in detail.

NA

1. APPLICANT INFORMATION (Instructions, Page 18)

a. Facility Owner (Owner of the facility must apply for the permit.)

What is the Legal Name of the entity (applicant) applying for this permit?

Timberwood Development Corporation, L.P.

(The legal name must be spelled exactly as filed with the Texas Secretary of State, County, or in the legal document forming the entity.)

If the applicant is currently a customer with TCEQ, what is the Customer Number (CN)?

Search for your CN at:

<http://www12.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch>

CN 602918864

What is the name and title of the person signing the application?

(The person must be an executive official meeting signatory requirements in TAC 305.43(a).)

Prefix: Mr.

(Mr. Ms, Miss)

First/Last Name: Jason R. Gale

Suffix: NA

Title: Assistant Vice President

Credential: NA

What is the applicant's mailing address as recognized by the **US Postal Service**?

You may verify the address at: <http://zip4.usps.com/zip4/welcome.jsp>

Organization Name: Timberwood Development Company, L.P.

Mailing Address: 15315 San Pedro

Internal Routing (Mail Code, Etc.): _____

City: San Antonio

State: TX

ZIP Code: 78232

RECEIVED

APR 07 2014

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DOMESTIC TECHNICAL REPORT 1.1

THE FOLLOWING IS REQUIRED FOR NEW AND AMENDMENT APPLICATIONS

1. PERMITTED AND/OR PROPOSED FLOWS (Instructions, Page 46)

a. Complete the following chart.

PERMITTED AND /OR PROPOSED FLOW:	Initial/existing Phase	Intermediate Phase	Final Phase
Design Flow (MGD)			0.0156
2-Hr Peak Flow (MGD)			0.06
Construction estimated to start			12-2014
Date waste disposal to start			03-2015

Phase currently in operation: NA

b. Provide a detailed discussion regarding the need for the proposed permit or proposed phase(s). Failure to provide sufficient justification may result in the Executive Director recommending denial of the proposed phase(s) or permit.

Please see TA # 14

c. Provide the following information concerning regionalization of domestic wastewater treatment facilities:

1. If the applicant is a city, check N/A and proceed to item 2: ☐ N/A

Is any portion of the proposed service area located in an incorporated city?

☐ Yes ☒ No

If yes, within the city limits of: NA

If yes, is correspondence from the city is attached: ☐ Yes ☒ No

If consent to provide service is available from the city, is justification for the proposed facility and a cost analysis of expenditures that includes the cost of connecting to the city versus the cost of the proposed facility or expansion attached? ☐ Yes ☒ No

2. Is any portion of the proposed service area located inside another utility's CCN area?

☒ Yes ☐ No

☒ If yes, check if justification for the proposed facility and a cost analysis of expenditures that includes the cost of connecting to the CCN facilities versus the cost of the proposed facility or expansion is attached.

3. Are there any domestic permitted wastewater treatment facilities and/or collection systems located within a three-mile radius of the proposed facility?

☒ Yes ☐ No

If yes, is a list of these facilities that includes the permittee's name and permit number, and an area map showing the location of these facilities attached? ☒ Yes ☐ No

a. If yes, are copies of your certified letters to these facilities and their response letters concerning connection with their system attached? ☐ Yes ☒ No

Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity or is willing to expand to accept the volume of wastewater proposed in this application?

☒ Yes ☐ No

If yes, is an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion attached? ☒ Yes ☐ No

2. PROPOSED ORGANIC LOADING (Instructions, Page 47)

a. Is this a new permit application? ☒ Yes ☐ No

b. If no, and the application is to amend an existing permit, provide the following information.

Facility Design Flow (flow being requested in application) _____

Average Organic Strength or BOD₅ Concentration in mg/l _____

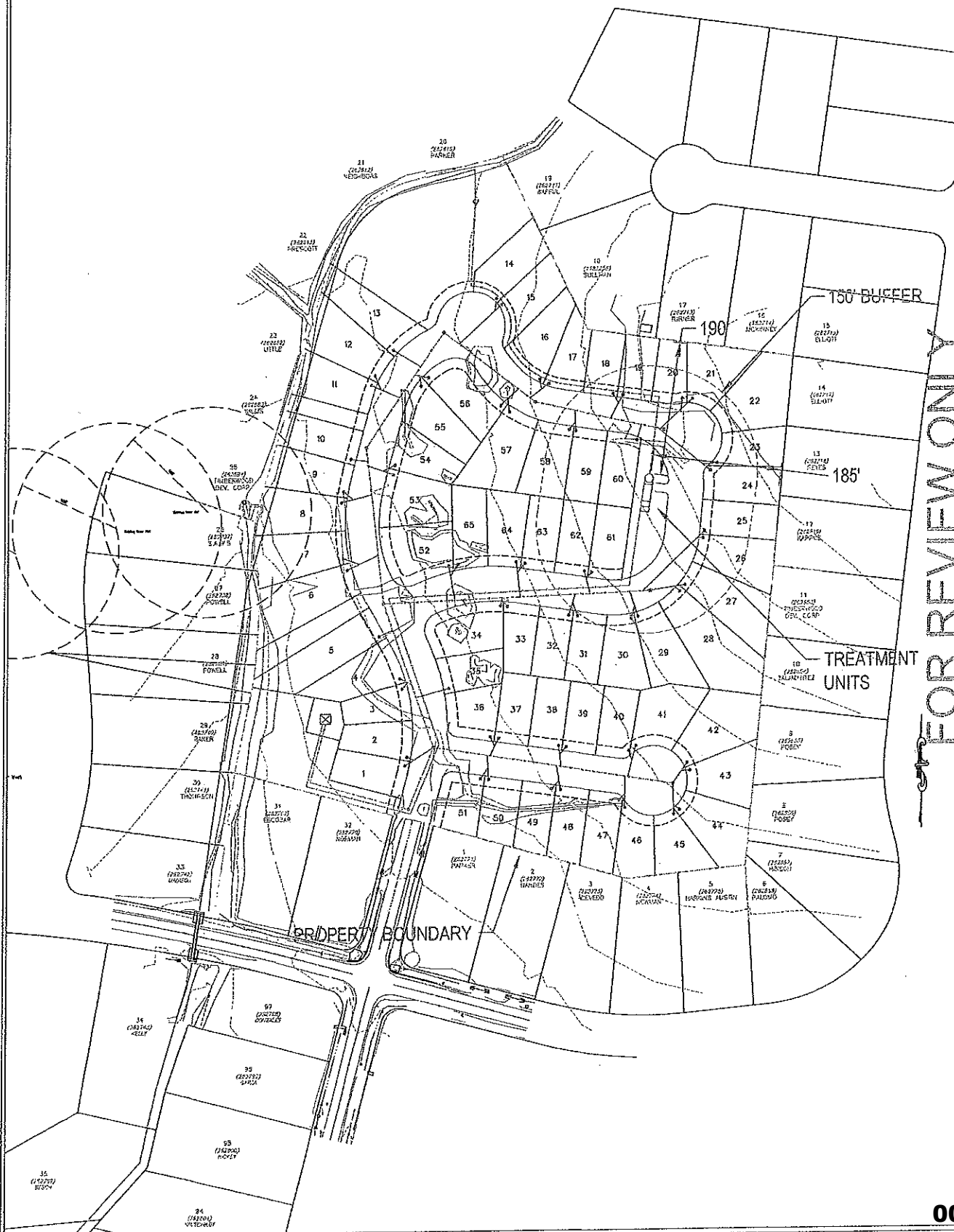
Average Loading (lbs/day=total average flow x average BOD₅ conc. X 8.345) _____

Provide the source of the average organic strength or BOD₅ concentration _____

If the increased flow will impact the existing organic strength, the following table must be completed.

c. If yes to question 2.a, this table must be completed.

SOURCE	TOTAL AVERAGE FLOW, (MGD)	ORGANIC STRENGTH BOD ₅ CONCENTRATION, (mg/l)
Municipality		
Subdivision	15560.00	300.00
Trailer Park-Transient		
Mobile Home Park		
School with cafeteria and showers		
School with cafeteria, no showers		
Recreational Park, overnight use		
Recreational Park, day use		
Office Building of Factory		
Motel		
Restaurant		
Hospital		
Nursing Home		
Other		
	Total Flow: 15560.00	Average BOD ₅ : 300.00



SCALE: 1" = 200'

Austin CAD Services
5524 Deer Cove Rd - G1 Austin, Tx 78746
(512) 328-0876 www.austincadservices.com



Know what's below.
Call before you dig.

TIMBERWOOD VILLAS PH. 2

BUFFER ZONE MAP
DOMESTIC ADMINISTRATIVE REPORT 1.1 ITEM 2A
SAN ANTONIO, TEXAS



WWD ENGINEERING, INC.
F-12009

9217 Hwy 290 W., Ste 110
Austin, Texas 78735

Engineering
engineered wastewater solutions

File

Timber/cod Ph2_v7 TPDES.doc

Date _____

Mar 31, 2014

Sheet No.

TA7

000009

Economic analysis for not Connecting to the CCN

The new proposed Timberwood Phase II wastewater treatment plant falls within SAWS CCN for wastewater. WWD search for a facility to connect to. There is no facility within a 3 mile radius of the site. The cost to install a minimum of 15,750 feet of force main at \$50.00 per foot would be \$788,000. This would not include the 3 offsite lift stations that would be needed at \$200,000 each or \$600,000. The design and surveying would be an additional \$250,000. The nearest plant is further than three miles away. We are at a total estimated cost of \$1,638,000 plus the additional footage to get to a plant that will accept the wastewater.

This estimate does not include any capital recovery fees, easement acquisition, or moving existing utilities to accommodate the force main.

The cost for this if there was a plant to accept our wastewater at 3 miles would be more than \$2,500,000 which is not feasible for a 65 lot subdivision. The cost would be approximately \$38,000 per lot. The cost per lot to install the system as proposed is \$11,000 per lot. This is onequarter fifth of the cost to connect to the SAWS system. As you can see this makes no economic sense to do.

EXHIBIT 2

Camp
Bullis

Blanco Rd.

SAWS CCN and Location of Alleged Interference



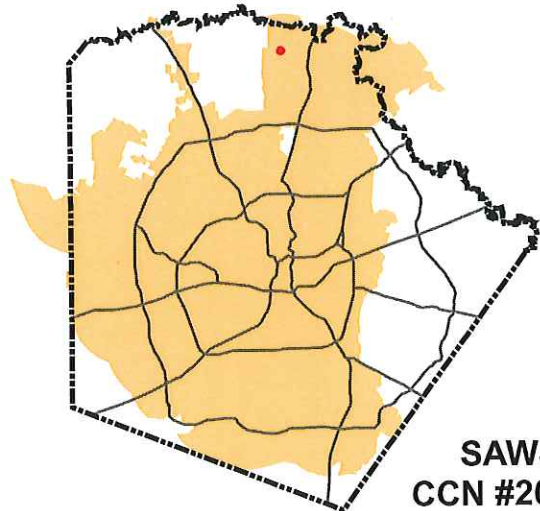
Borgfeld Rd.

Timberwood Villas II

Canion Golf Rd

Slumber Pass

White
Eagle



SAWS
CCN #20285

Legend

SAWS SEWER CCN

City Limits

COSA ETJ

0 500 1,000 1,500 Feet

000012