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APPLICATION OF WOLFE  
AIRPARK CIVIC CLUB, INC. TO  
OBTAIN A WATER  
CERTIFICATE OF  
CONVENIENCE AND NECESSITY  
IN BRAZORIA COUNTY

§ PUBLIC UTILITY COMMISSION  
§  
§ OF TEXAS  
§  
§  
§

**APPLICANT'S RESPONSE TO WALKER'S REPLY BRIEF**

Respectfully submitted,

*/s/John C. Hampton*

By:

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**ATTORNEY FOR APPLICANT  
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INC.**

**Date: August 23, 2018**

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## Attachments

**Applicant’s Exhibit 10 – TCEQ Transcription of 2006 Complaint No. 68737**

**Applicant’s Exhibit 11 – 2008 TCEQ Withdrawal of Complaint No. 687373**

**Applicant’s Exhibit 18 (pages 5 and 6) – Map of Applicant’s Service Area**

**16 Texas Administrative Code (TAC) § 24.1 (b)**

**16 Texas Administrative Code (TAC) § 24.102 (a) (1)**

## **APPLICANT'S RESPONSE TO WALKER'S REPLY BRIEF**

Now comes Wolfe Airpark Civic Club, Inc. (Applicant) and submits this Response to Walker's Reply Brief, responding to his accusations of misconduct.

### **I. INTRODUCTION**

For over twenty years, Walker has never paid any portion of the costs incurred by the Applicant for the maintenance and operation of the water system. Instead, he has been suing the Applicant in State Court for almost eighteen years to avoid paying \$30.00 per month for unlimited water service. This \$30.00 charge reflected the pro rata cost incurred for the maintenance and operation of the water system.

Walker continues his campaign in the current proceeding, intervening to ask this Court to stop all water service to Applicant's residential customers. His objection to Applicant's request for a Certificate of Convenience and Necessity (CCN) is an irrational attempt to avoid paying anything for unlimited water service. To support his claims, he has made a series of false accusations to which Applicant responds below.

### **II. SPECIFIC RESPONSES TO WALKER'S ACCUSATIONS**

#### **A. Accusation of Misleading the Court**

On page 2 of Walker's Reply Brief (Item 68 on the PUC Interchange), Walker accuses undersigned counsel of presenting "only the first page of this report during presentation to the Administrative Judges which gives a false impression...."

This outrageous accusation is untrue. For the benefit of the Court, Applicant is attaching Applicant's Exhibit 10 (the transcription of the 2006 TCEQ Field Report - 2 pages), and Applicant's Exhibit 11, the 2008 withdrawal of the 2006 violations. As shown in the upper right hand corners, Exhibit 10 has two pages, page 1 of 2 and page 2 of 2. Exhibit 11 has one page, page

1 of 1. There is no record on the TCEQ website of a 2<sup>nd</sup> page to the 2008 withdrawal. Walker's accusation is untrue. Applicant has presented the full and complete documents that relate to this important series of TCEQ investigation.

### **B. The TCEQ 2008 Withdrawal**

In Walker's Reply Brief at page 2, he acknowledges Applicant's argument that the 2008 TCEQ withdrawal "supposedly retracts all previous complaints and violations." However, Walker is incorrect in stating that the 2008 TCEQ withdrawal is the **only** basis to support the finding that Applicant has a TCEQ approved water system.

The TCEQ conducts regular inspections of the site. Applicant's Exhibit 14, page 44 shows that the TCEQ conducted inspections of this water system on:

- 11-01-2001
- 11-13-2002
- 11-25-2002
- 11-02-2004
- 08-02-2006
- 08-14-2008
- 02-29-2012
- 04-22-2015

The TCEQ found no violations in any of these inspections from 2001 – 2012. The 2015 inspection found no violation related to water quality or system capability, but noted a reporting violation which was immediately corrected. During the thirty plus years of operation, the TCEQ (and its predecessor's) positive reports confirms that Applicant provides safe and adequate water service to its customers.

### **Rates and Billing**

Walker's first argument on the first page of his Initial Brief confirms that his (almost) 18 years of litigation against the Applicant is based on his refusal to pay for water service (Item 64 on the PUC Interchange – Walker's late-filed Initial Brief).

Walker describes the amount of the charge in controversy (Walker's Initial Brief at page 19), stating that "the initial billings were \$30.00 per month per connection...". These were the monthly billings that were in place during the 2006 TCEQ investigation. The small monthly billing was based on a pro rata charge to each customer, based upon the costs incurred by the Applicant for the maintenance and operation of the water system. Although the 2006 TCEQ investigation made the determination that Applicant could not bill without a CCN or water meters (Exhibit 10), the 2008 withdrawal (Exhibit 11) **reversed** the 2006 finding, which affirmed Applicant's right to bill for water under the then existing TCEQ's regulatory authority to set rates and tariffs. [See attached 16 TAC 24.1 (b).]

Much of Walker's Reply Brief delves into his analysis of various documents not previously produced. However, Walker acknowledges (Initial Brief at page 19) that the net effect of Applicant's request is to increase the monthly billing rate from \$30.00 per month to \$35.00 per month for unlimited use of water. PUC staff has recommended, and Applicant concurs, that the actual rate structure should be determined in a separate rate application.

#### Water Meters

The TCEQ in its 2008 withdrawal made the administrative determination that Wolfe Airpark **did not** have to have water meters or a CCN to continue its historical charge of \$30.00 per month for unlimited water usage. PUC staff recommends, and Applicant concurs, that these issues should be subject to a subsequent rate request.

Commission staff, in their Initial Brief at page 6 (Item 59 on the PUC Interchange), explained that "The Commission may exempt a water utility from installing meters. Since this utility is relatively small and has been able to successfully manage its finances for the past several decades, Staff recommends that the installation of meters be addressed in a subsequent rate case outside of this proceeding, and that Applicant submit a cost analysis for installing meters in order

to aid Staff in considering whether it is prudent to install the meters.” Applicant concurs with this recommendation.

### Service Area

Regarding Applicant’s service area, Walker makes similar complaints to this Court that he made in his original 2006 complaint to the TCEQ. Walker is arguing now and then, that the Applicant cannot serve the Holland Estates or the northern portion of the Wolfe Airpark Subdivision (Lots 153-157). Applicant’s Exhibit 18, pages 4 and 5 (attached), are maps of the proposed service area. These are the customers in this service area that Applicant has been serving for over thirty years.

As stated by Commission staff, in its Initial Brief at page 6, “The Applicant has already been successfully providing water service to the customers in the proposed service area since its inception, and granting the CCN application would maintain the status quo. Because of the unique location and combination of residential and hanger connections, it is not feasible to obtain water from another retail water utility.”

### III. WATER QUALITY

At the time of the 2006 investigation, Walker’s State Court lawsuit had been pending since April 2002, over four years. **However, in his 2006 complaint to the TCEQ, Walker made no complaint about water quality.** Walker’s last minute, unsubstantiated complaint about water quality at the April 26, 2018 hearing is contradicted by his silence on this issue for almost eighteen (18) years. Further, the multiple site inspections by the TCEQ outlined above show no violations for water quality or system capacity. Additionally, Exhibit A of Applicant’s Rebuttal Testimony Regarding Water Quality (Item 61 on the PUC Interchange) demonstrates that more than 500 weekly inspections for water quality were submitted to the TCEQ (set forth in monthly reports) affirming that Applicant provides safe water (see Item 61, Exhibit A). Additionally, Exhibit B of

Item 61 is a series reports from the Texas Department of State Health Services showing that Applicant's water quality meets all TNI (2009 Std.) requirements.

#### **IV. WALKER'S IRRELEVANT ARGUMENTS**

All of Walker's remaining objections, including his arguments about the effect of deed restrictions, plats, customers serviced, and design criteria are not relevant to the Commission's Preliminary Order or the administrative requirements for the issuance of a CCN. As stated by the Commission staff, the issuance of a CCN preserves the status quo and allows Applicant to continue to serve the customers that it has served over the last three decades. Regarding specific rate structure and whether water meters are required, Commission staff recommends and Applicant agrees, that these issues be determined in a separate filing.

All the documentary evidence submitted to this Court establishes the fact that Applicant meets the requirements of the Commission's Preliminary Order for issuance of a CCN.

#### **V. SUMMARY**

The Commission's directive in its Preliminary Order asks this Court to determine whether Applicant meets the requirements of 16 TAC 24.102 (a) (1) (attached). Commission Staff, having reviewed all the evidence and arguments, recommends that Applicant receive a CCN for water service to the requested area. As shown above, there have been no valid complaints regarding the operation of this system during its entire thirty plus years of operation.

Applicant has successfully operated the system under the continuous regulatory authority of the TCEQ. The results of the regular TCEQ inspections confirm that the Wolfe Airpark system is a TCEQ-approved water system, providing safe water in adequate quantities.

Applicant also would refer the Court to the continuing position of Commission staff which supports the recommendation of a CCN to Applicant, reserving issues related to the requirement for water meters and the specific rate structure authorized for a subsequent rate request.



Applicant, as well as PUC Staff, requests that the Court recommend that a CCN be issued to maintain the status quo to serve the customers that have been continually served since the inception of the system's operation.

## **VI. CONCLUSION**

Wherefore, Applicant respectfully requests that this Court find and recommend that the Commission approve Applicant's request for a Certificate of Convenience and Necessity for Wolfe Airpark Civic Club, Inc. for the provision of water services within the application area.

Respectfully submitted,

*/s/John C. Hampton*

By: \_\_\_\_\_

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## **CERTIFICATE OF SERVICE**

I certify that a true copy of this document, together with any attachments, has been served on August 24, 2018 on the Legal Division of the Texas PUC by serving Rachelle Robles via email [rachelle.robles@puc.texas.gov](mailto:rachelle.robles@puc.texas.gov), and on Joe Walker via email to [joewalk@hal-pc.org](mailto:joewalk@hal-pc.org) and [joewalkerpe@gmail.com](mailto:joewalkerpe@gmail.com).

*/s/John C. Hampton*

\_\_\_\_\_  
JOHN C. HAMPTON



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## Complaint Status

**Complaint Tracking #:** 68737

**Complaint Received Date:** 12/05/2005

**Number Complaining:** 1

**Status:** CLOSED

**Status Date:** 01/09/2006

**Nature:** WATER SUPPLY SERVICE

**Frequency:** CURRENT

**Duration:** ESTIMATED

**Media:** WATER

**Program:** PUBLIC WATER SYSTEM/SUPPLY

**Priority:** Within 60 Calendar Days

**Effect:** GENERAL

**Receiving Water Body:**

**Regulated Entity:** WOLFE AIR PARK

**County:** BRAZORIA

**Description:**

Complainant claims that the system is falsifying connection information to the agency. Complainant also claims that the water supply corporation is not a legal entity.

**Comment:**

The system does not individually meter the connections and does not have a CCN. Now that the water supply corporation was more than 15 connection it will have to have a CCN, will have to individually meter all service connections, and have an approved rate structure for the payment of water service.

A notice of violation will be sent to the water supply corporation for these issues and a compliance shedule will be set for these issues.

**Action Taken:**

Mr. Barry Price met with the complainant on December 1, 2005 at 9:30 AM. The complainant showed Mr. Price the well site and told Mr. Price that he felt that the home owners association officers were elected by people who were not legally eligible to vote in the election. Therefore the Water Supply Corporation that they set up was not legal.

Mr. Price told the complainant that the issue of the home owners association vote was not a matter for the TCEQ. If he felt there was election fraud, he

Applicant's  
Exhibit 10

needed to contact the appropriate state agency. Mr. Price counted the number of connections and it appears there are 16 connections in the subdivision and 8 connections at the air craft hangers at the end of the run way, plus 5 homes connected to the system off site.

An owner of one of the hangers told the investigator that he paid Wolfe Air Park for water service. One of the off site home owners told the investigator that the five home at the front of the park paid Wolfe Air Park for their water service.

The last investigation of the system shows on 11/02/2005 the system claimed 11 connections being served.

Mr. Van Dusen, an officer with Wolfe Air Park WSC, send an email on 12/7/05 to Mr. Price in response to a request to clarify the number of connections being served by the system. Mr. Van Dusen stated in the email that the system has 36 connections being billed, 19 connections are residences and 17 are only air craft hangers.

Mr. Price than requested an copy of the system distribution map. Mr. Van Dusen provided Mr. Price with a copy of the map, it was received on 12/27/05. Mr. Price than Called Mr. Jeff Brennan, the system operator, and made an appointment to meet with him on 1/6/06 at the system to check the well rating.

Mr. Price met with Mr. Brennan at 9:30 AM on 1/6/06 at the well site of Wolfe Air Park. Mr. Price checked the well flow and at that time found the well producing 45 GPM. The 45 GPM meets the requirement of 1 GPM per air craft hanger and 1.5 GPM per regular connection.

The system does not individually meter the connections and does not have a CCN. Now that the water supply corporation has more than 15 connections it will have to have a CCN, individual meters at all service connections, and an approved rate structure for the payment of water service.

A notice of violation will be sent to the water supply corporation for these issues.

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## Complaint Investigation Details

**Complaint Tracking #:** 2 68737

**Investigation #:** 2 451666

**Regulated Entity:** 2 WOLFE AIR PARK

**Regulated Entity #:** 2 RN101230720

**County:** 2 BRAZORIA

**Street Address:** 2 Not available

**City:** 2 Not available

**Zip:** 2 Not available

**Date of Investigation:** 2 12/01/2005

**Media:**

WATER

**Program:**

PUBLIC WATER SYSTEM/SUPPLY

**Notice of Violation** 2 **Date:** 01/09/2006

**Violations:**

Status	Date	Abbreviated Description	Regulation	Specific Citation
WITHDRAWN	08/20/08	Failure to possess a Certificate of Convenience and Necessity.	30 TAC Chapter 291, SubChapter G	291.101 (a)
WITHDRAWN	08/20/08	Failure by a community water system to provide accurate metering devices at each service connection to provide water usage data.	30 TAC Chapter 290, SubChapter D	290.44 (d)(4)
WITHDRAWN	08/20/08	Failure to file Tariffs.	30 TAC Chapter 291, SubChapter B	291.21 (a)

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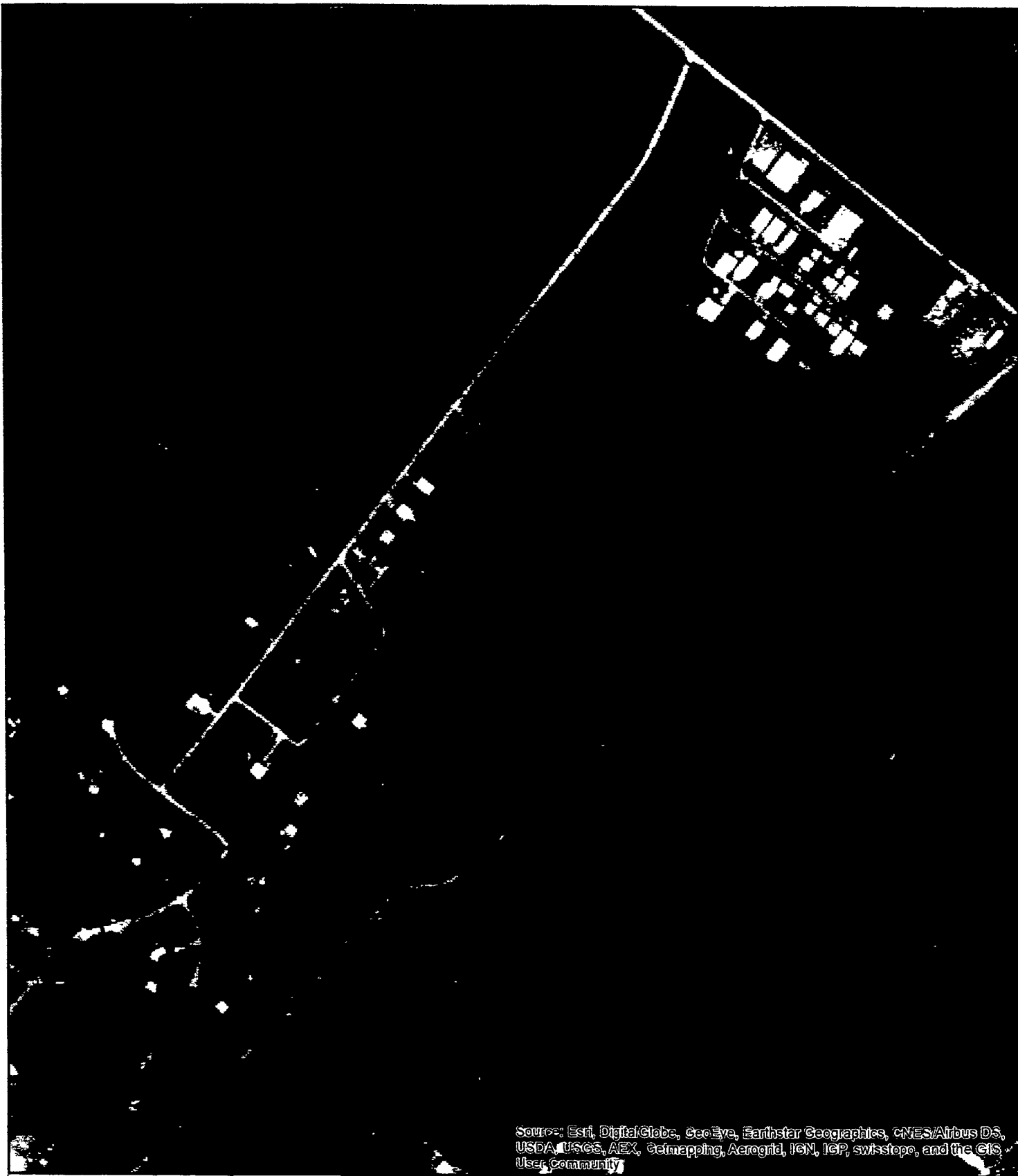
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Applicant's  
Exhibit II



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

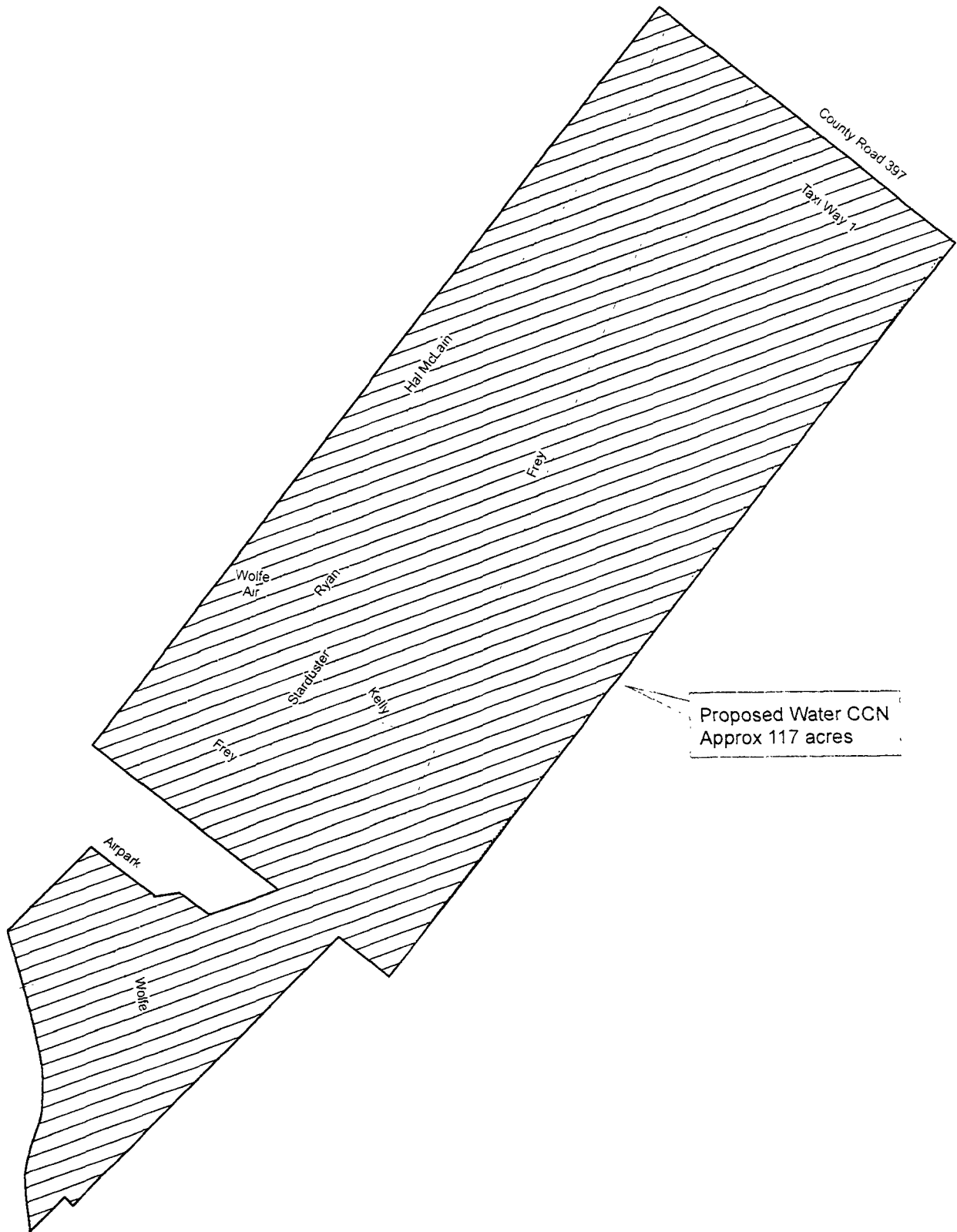
### Large Scale Map on Imagery

Wolfe Airpark Civic Club, Inc.  
Application to Obtain a Water CCN in Brazoria County

 Proposed Water CCN



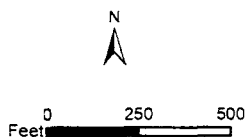
Map by S. Burt, ASBGI  
Date: Nov. 17, 2016  
Base map ESRI World Imagery  
Project: Wolfe Airpark Large Scale on Imagery




Proposed Water CCN  
Approx 117 acres

### Large Scale Map

Wolfe Airpark Civic Club, Inc.  
Application to Obtain a Water CCN in Brazoria County



 Proposed Water CCN

Map by S. Burt. ASBGI  
Date Nov 17, 2016  
Base map StratMap Transportation  
Project Wolfe Airpark Large Scale

## **CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.**

### **Subchapter A. GENERAL PROVISIONS.**

#### **§24.1. Purpose and Scope of this Chapter.**

- (a) This chapter is intended to establish a comprehensive regulatory system under Texas Water Code chapter 13 to ensure that rates, operations, and services are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.
- (b) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality (TCEQ) related to a power, duty, function, program, or activity transferred by House Bill 1600 and Senate Bill 567, 83rd Legislature, Regular Session (this Act), continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas (commission) and remains in effect until amended or replaced by the commission. Any jurisdiction over a utility's rates, operations, and services ceded to the TCEQ continues in effect and shall be deemed to be ceded to the commission.
- (c) It is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by TCEQ or other agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to TCEQ of regulated activities as required by TCEQ rules.
- (d) An application received by the commission and file stamped in the commission's Central Records office shall be processed in accordance with the rules in effect on the date that the application was received by Central Records.

**CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.**

**Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.**

§24.102-1 effective 12/21/16 (P 45111)

**§24.102. Criteria for Granting or Amending a Certificate of Convenience and Necessity.**

(a) In determining whether to grant or amend a certificate of convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For retail water utility service, the commission shall ensure that the applicant has:

(A) a TCEQ-approved public water system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC; and

(B) access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.