

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 504
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

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REGARDING: ORDER NO. 1 MEMORIALIZING PRELIMINARY HEARING, ESTABLISHING CASE SCHEDULE AND PROCEDURES
DOCKET NUMBER: 582-19-1955

JUDGE REBECCA SMITH

FAX TO:
ERIC ALLMON

FAX TO:
(512) 482-9346

MICHAEL MCCULLAR

VIA EMAIL

PRANJAL M. MEHTA (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-6377

NICOLAS PARKE (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-3434

DEREK L. SEAL (WINSTEAD PC)

(512) 370-2850

DOUG HARRISON

VIA REGULAR MAIL

xc: Docket Clerk, State Office of Administrative Hearings

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**SOAH DOCKET NO. 582-19-1955
TCEQ DOCKET NO. 2018-1303-AIR**

APPLICATION OF VULCAN CONSTRUCTION MATERIALS, LLC FOR PERMIT NO. 147392L001, COMAL COUNTY, TEXAS	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**ORDER NO. 1
MEMORIALIZING PRELIMINARY HEARING, ESTABLISHING CASE SCHEDULE
AND PROCEDURES**

A preliminary hearing was held in this case on March 6, 2019. Vulcan Construction Materials, LLC (Applicant) offered Exhibit App-1, which contained the administrative record, and Exhibit App-2, which separately contained the jurisdictional exhibits. Both exhibits were admitted.

I. PARTIES

The following appeared and were admitted as parties:

PARTIES	REPRESENTATIVES
Vulcan Construction Material, LLC (Applicant)	Derek Seal, ___
Executive Director (ED)	Nicholas Parke, ___
Office of Public Interest Counsel (OPIC)	Pranjal Mehta
Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry	Eric Allman
Comal ISD	Michael McCullar
Doug Harrison	self

<p>Michael L. Maurer, Ora Lee Frisch, Nathan & Kira Olson, Jack Olivier, Jim & Joyce Doyle, Bob & Jeanne Nebergall, Bruce & Grace Murphy, John P. Mooney, Stephan & Jane Johnson, Sheryl Lynn Mays, Keith & Susan Randolph, Ted Martin, James & Linda Martin, Chris Lupo, Claire H. Loomis, James & Gladys Kuhn, Chuech Kuentz, Judy Krup, William & Linda Mohr, Lara Stonesifer, Mike Zimmerman, Michael Wilkinson, Ronald J. Walton, Michael & Terry Olson, Jack & Trudy Striegel, Peggy Pueppke, Mike Stemig, James Shipley, Gerald & Tracy Schulke, Esther Scanlon, Josh & Jakki Saul, Gaspar & Anna Rivera, Jeff Reeh, Chris M. Hoppman, Mary Ann Trujillo, Renee Wilson, Richard C. Keady, Robert Carrillo, Windell Cannon, William K. Byerley, Ron & Elaine Bigbee, Michael & Deborah Bell, Yvonne R. Arreaga, Thomas & Kathleen Chaney, Mark & Betty Abolafia-Rosenzweig, Lorraine DelaRiva, Pamela Seay, Craig Johnson, Kenneth & Diane Higby, Milann & Pru Guckian, Liz James, Becky Cox, Ruby Hartmann, Katheryn Acklen, Stephen & Mary Lee Freeman, Richard & Sally Harvey, Alan M. Hammack, Kleo Halm, David & Debbie Granato, Carol Glover, Robert & Maureen Cartledge, Karl & Linda Fuchs, Brigitte & Gail Dean Deyle, David N. Fletcher, Jana Fichtner, Kyra Faught, Deborah Farrar, Larry Ewald, Don & Linda Everingham, Stephanie Elizondo, James K. & Michele Drake, Joyleen Dodson, Charles Gerdes</p>	<p>self</p>
<p>Greater Edwards Aquifer Alliance</p>	<p>Annalisa Pease</p>
<p>Donna H. Gibson Dell, Trustee of the Robert P. and Shirley D. Gibson Living Trust</p>	<p>Kevin Shay</p>
<p>Smithson Valley Heritage Oaks Property Owners Association</p>	<p>Ted Martin</p>
<p>Zuercher-Froboese Family Ranch</p>	<p>Helen Lammert</p>

The Protestants, with the exception of Comal ISD and Mr. Harrison, were aligned with Friends of Dry Comal Creek and Stop 3009 Vulcan Quarry.

II. PROCEDURAL SCHEDULE

The parties agreed to a procedural schedule leading to a hearing on the merits. That schedule is approved as set forth below, and the parties are directed to comply with the procedural schedule.

<u>DATE</u>	<u>ACTIVITY</u>
3/6/19 (Wednesday)	Preliminary hearing; administrative record admitted. Discovery begins. Parties' objections and responses are due 21 days from the date written discovery requests are served. Notice of any depositions must be served on all parties at least 10 days prior to the date of the deposition.
4/5/19 (Friday)	Deadline for Protestants and OPIC to designate expert witnesses who may testify and to serve information and materials required by TRCP 194.2(f).
4/12/19 (Friday)	Deadline for Applicant and ED to designate expert witnesses who may testify and to serve information and materials required by TRCP 194.2(f).
4/26/19 (Friday)	Deadline for Protestants and OPIC to file direct cases, including testimony, proposed order of witnesses, and exhibits. Deadline for all parties to complete discovery on Protestants and OPIC.
5/15/19 (Wednesday)	Deadline for Applicant and ED to pre-file additional evidence, if any, including testimony, proposed order of witnesses, and exhibits, as is allowed by 30 TEX. ADMIN. CODE § 80.117(c)(3). Deadline for all parties to complete discovery on ED and Applicant.
5/24/19 (Friday)	Deadline for all parties to file dispositive motions and any objections to and motions to strike pre-filed testimony and exhibits.
5/31/19 (Friday)	Deadline for all parties to file responses to dispositive motions and any objections to and motions to strike pre-filed testimony and exhibits.

<u>DATE</u>	<u>ACTIVITY</u>
6/6/19 (Thursday)	Prehearing conference, if necessary.
6/10/19 (Monday) – 6/12/19 (Wednesday)	Hearing on the merits.
6/26/19 (Wednesday)	Deadline for all parties to file written closing arguments.
7/10/19 (Wednesday)	Deadline for all parties to file written replies to closing arguments. Record closes.
9/3/19 (Tuesday)	Deadline for Proposal for Decision.

III. HEARING AND PREHEARING DATES AND LOCATION

The hearing on the merits will convene at 9:00 a.m., June 10, 2019, at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Given the complexity and anticipated length, appearing at the hearing on the merits by telephone is not practical and will not be allowed.

IV. DISCOVERY


Discovery shall be conducted according to the Texas Rules of Civil Procedure (TRCP), as supplemented by the discovery rules of the Texas Commission on Environmental Quality (TCEQ) and the State Office of Administrative Hearings (SOAH). 30 Tex. Admin. Code § 80.151, and 1 Tex. Admin. Code § 155.251. The TRCP shall be interpreted consistently with chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act. 30 Tex. Admin. Code § 80.151.

Pursuant to 1 Tex. Admin. Code § 155.251(c)(2), discovery documents shall be served on the other parties but shall not be filed with the ALJ unless such materials are the subject of a discovery dispute. The parties are expected to attempt to resolve discovery disputes; however,

disputes that cannot be resolved should be brought to the ALJ's attention in a motion to compel. Any such motion shall include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

The total time for each alignment or unaligned party to take oral depositions may not exceed 50 hours. Each may divide its total time among the deponents as it sees fit. The total number of written interrogatories that any Party may serve on any other Party may not exceed 25. 30 Tex. Admin. Code § 80.152(c).

SIGNED March 19, 2019.


REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AUSTIN OFFICE

**300 West 15th Street Suite 504
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061**

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: VULCAN CONSTRUCTION MATERIALS, LLC
SOAH DOCKET NUMBER: 582-19-1955
REFERRING AGENCY CASE: 2018-1303-AIR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ REBECCA SMITH**

REPRESENTATIVE / ADDRESS

PARTIES

ERIC ALLMON
ATTORNEY
1206 SAN ANTONIO STREET
AUSTIN, TX 78701
(512) 469-6000 (PH)
(512) 482-9346 (FAX)
eallmon@lf-lawfirm.com

JAMES & LINDA MARTIN

CHRIS M. HOPPMANN

JACK OLIVIER

JIM & JOYCE DOYLE

BOB & JEANNE NEBERGALL

BRUCE & GRACE MURPHY

JOHN P. MOONEY

WILLIAM & LINDA MOHR

SHERYL LYNN MAYS

ORA LEE FRISCH

TED MARTIN

MICHAEL & TERRY OLSON

CHRIS LUPO

CLAIRE H. LOOMIS

ZUERCHER-FROBOESE FAMILY RANCH

JAMES & GLADYS KUHN

CHUCK KUENTZ

JUDY KRUP

RICHARD C. KEADY

FRIENDS OF DRY COMAL CREEK

MICHAEL L. MAURER

MIKE STEMIG

STOP 3009 VULCAN QUARRY

SMITHSON VALLEY HERITAGE OAKS PROPERTY
OWNERS ASSOC.

DONNA H. GIBSON DELL, TRUSTEE OF THE

GREATER EDWARDS AQUIFER ALLIANCE (GEAA)

MIKE ZIMMERMAN

MICHAEL WILKINSON

RONALD J. WALTON

MARY ANN TRUJILLO

NATHAN & KIRA OLSON

LARA STONESIFER

RICHARD & SALLY HARVEY

JAMES SHIPLEY

GERALD & TRACY SCHULKE

ESTHER SCANLON

JOSH & JAKKI SAUL

GASPAR & ANNA RIVERA

JEFF REEH

KEITH & SUSAN RANDOLPH

PEGGY PUEPPKE

JACK & TRUDY STRIEGEL

RENEE WILSON

ROBERT CARRILLO

STEPHEN & JANE JOHNSON

WILLIAM K. BYERLY

RON & ELAINE BIGBEE

MICHAEL & DEBORAH BELL

YVONNE R. ARREAGA

THOMAS & KATHLEEN CHANEY

MARK & BETTY ABOLAFIA-ROSENZWEIG

ROBERT & MAUREEN CARTLEDGE

PAMELA SEAY

CRAIG JOHNSON

KENNETH & DIANE HIGBY

MILANN & PRU GUCKIAN

LIZ JAMES

BECKY COX

RUBY HARTMANN

KATHERYN ACKLEN

DAVID N. FLETCHER

ALAN M. HAMMACK

KLEO HALM

DAVID & DEBBIE GRANATO

CAROL GLOVER

CHARLES GERDES

WINDELL CANNON

STEPHEN & MARY LEE FREEMAN

LORRAINE DELARIVA

JANA FICHTNER

KYRA FAUGHT

DEBORAH FARRAR

LARRY EWALD

DON & LINDA EVERINGHAM

STEPHANIE ELIZONDO

JAMES K. & MICHELE DRAKE

JOYLEEN DODSON

BRIGITTE & GAIL DEAN DEYLE

KARL & LINDA FUCHS

DEREK L. SEAL
WINSTEAD PC
401 CONGRESS AVENUE, SUITE 2100
AUSTIN, TX 78701
(512) 370-2807 (PH)
(512) 370-2850 (FAX)
dseal@winstead.com

VULCAN CONSTRUCTION MATERIALS
INCORPORATED

NICOLAS PARKE
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENVIRONMENTAL LAW DIVISION
MC 103 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-1320 (PH)
(512) 239-3434 (FAX)
nicolas.parke@tceq.texas.gov

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PRANJAL M. MEHTA
ASSISTANT PUBLIC INTEREST COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
MC 103 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-0574 (PH)
(512) 239-6377 (FAX)
pranjal.mehta@tceq.texas.gov

OFFICE OF PUBLIC INTEREST COUNSEL

MICHAEL MCCULLAR
EXECUTIVE DIRECTOR
1404 IH 35 NORTH
NEW BRAUNFELS, TX 78130
(830) 221-2064 (PH)
michael.mccullar@comalisd.org

COMAL ISD

DOUG HARRISON
1000 HARRISON ROAD
NEW BRAUNFELS, TX 78132
(830) 708-0808 (PH)

DOUG HARRISON

Lee Curry

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