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June 2, 2008

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Mr. David Maland United States District Clerk Eastern Division 101 E. Pecan, Room 216 Sherman, Texas 75090

RE: No. 4:08CV150; Robert Dale and Jo Anderson, et al v. United States Army Corps of Engineers, Tulsa District, and Grayson Central Appraisal District

Dear Mr. Maland:

Enclosed for filing in connection with the above-referenced cause is the:

[X] Grayson Central Appraisal District's Original Answer, Pleas to the Jurisdiction & Affirmative Defenses to Plaintiffs' Original Complaint

Please file this document with the other papers By copy of this letter we are serving a copy of this instrument on opposing counsel.

Sincerely,

PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.

Handwritten signature of Joseph T. Longoria

JTL/lc

Enclosure

**IN THE UNITED STATES COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**ROBERT DALE AND JO ANDERSON  
ET AL,  
*Plaintiffs***

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v.

**CASE NO. 4:08CV150**

**UNITED STATES ARMY CORPS OF  
ENGINEERS, TULSA DISTRICT, AND  
GRAYSON CENTRAL APPRAISAL  
DISTRICT  
*Defendants***

**GRAYSON CENTRAL APPRAISAL DISTRICT'S  
ORIGINAL ANSWER, PLEAS TO THE JURISDICTION & AFFIRMATIVE DEFENSES  
TO PLAINTIFFS' ORIGINAL COMPLAINT**

**TO THE HONORABLE JUDGE OF THE COURT:**

Pursuant to Federal Rule of Civil Procedure 8, Andrews County Appraisal District, Defendant respectfully submits the following answer to the Plaintiffs' Original Complaint :

**PRELIMINARY STATEMENT AND PLEAS TO THE JURISDICTION**

1. Grayson Central Appraisal District, ("**GCAD**" hereafter) is a political subdivision of the State of Texas charged with the administration of ad valorem tax appraisals. **GCAD** is subject to the statutory requirements of the Texas Tax Code ("Tax Code") and the Texas Constitution which set forth the authority and procedures for administering the ad valorem tax system in Grayson County, Texas. As part of its duties, GCAD is required to appraise all property within its boundaries for state ad valorem tax purposes and place such property on the appraisal roll. In order to do this, GCAD, identifies and locate all property within its boundaries. This is commonly done through various means including, but not limited to, (a) physical inspections, (b) reviewing confidential and non-confidential information provided by taxpayers and other individuals, (c) reviewing confidential and non-confidential information provided by third party

commercial services such as local multiple listing services (MLS); and (d) reviewing information obtained from governmental agencies. It is not uncommon for appraisal districts to request information from local, state and federal agencies in furtherance of the task of appraising property for ad valorem tax purposes. The information at issue in this matter was obtained in precisely this manner for 2007 and 2008. None of the records at issue in this matter have been released to anyone outside GCAD. To the contrary, GCAD has maintained the confidentiality of these records whenever they have been requested pursuant to the Texas Public Information Act. GCAD did so by withholding such records and seeking opinions from the Texas Attorney General regarding their confidentiality.

This cause of action against GCAD is barred by governmental immunity. Under the doctrine of governmental immunity, a unit of government may not be sued without the express consent of the Legislature. *Thayer v. Houston Mun. Employees Pension Sys.*, 95 S.W.3d 573, 576 (Tex.App.-Houston [1st Dist.] 2002, no pet.); This immunity also protects the State and its governmental units from lawsuits that seek to control their lawful actions by a final judgment made by a court of law. *Tex. Mun. Power Agency v. Pub. Util. Comm'n*, 100 S.W.3d 510, 515 (Tex.App.-Austin 2003, pet. denied)

The court has no jurisdiction over various plaintiffs because they executed a statutory waiver and settlement of all claims related to the subject property. The written agreement between the parties is final and may not be disputed. TEX. TAX CODE ANN. § 1.111(e) (Vernon 2006). *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 69 (Tex.App.-Houston [14<sup>th</sup> Dist.] 2007, no pet.)

GCAD denies that all of the named plaintiffs were listed on the 2007 appraisal roll as a result of using the information that was provided by the Tulsa District of the United States Army Corps of Engineers. ("Corps") Numerous plaintiffs have been listed on the GCAD

appraisal roll prior to 2007. These plaintiffs were added to the appraisal by the use of other methods such as recorded bills of sale, aerial photography, and sales letters provided by taxpayers. Accordingly, these plaintiff have not been harmed as a result of any actions taken by GCAD in relation to the disputed records from the Corps.

**PLAINTIFFS**

2. **GCAD** does not have sufficient information to admit or deny that each of the plaintiffs listed in paragraph 1 of the Plaintiffs' Original Complaint is the holder of a Shoreline Use Permit ("SUP").
3. **GCAD** admits the allegations in paragraph 3 of the Plaintiffs' Original Complaint.
4. **GCAD** admits the allegations in paragraph 4 of the Plaintiffs' Original Complaint.

**JURISDICTION AND VENUE**

5. **GCAD** denies that the Court has jurisdiction over this action pursuant to 5 U.S.C. 552a(g)(1) and 28 U.S.C. 1367(a). GCAD is not an agency as that term is defined in 5 U.S.C. 552 and not subject to the jurisdiction of this Court on that basis. Additionally, this Court should decline to exercise supplemental jurisdiction over this claim because it raises a novel or complex issue of State law, i.e., whether the use of federal agency records by a local county appraisal district in the performance of constitutionally mandated governmental function constitutes a violation of federal privacy laws or state public information laws.
6. **GCAD** denies that venue is proper pursuant to 5 U.S.C. 552a(g)(5) because GCAD is not an agency as that term is defined in 5 U.S.C. 552. **GCAD** further denies that venue is proper pursuant to 28 U.S.C.1391 because GCAD is not an officer or employee of the United States or any agency thereof acting in any official capacity or under color of legal authority, or an agency of the United States.

**FACTUAL STATEMENT**

7. **GCAD** admits the allegations in paragraph 7 of the Plaintiffs' Original Complaint.
8. **GCAD** does not have sufficient information to admit or deny the allegations in paragraph 8 of the Plaintiffs' Original Complaint.
9. **GCAD** admits allegations in paragraph 9 of the Plaintiffs' Original Complaint.
10. **GCAD** does not administer the SUPs and does not have sufficient information to admit or deny that the permits "come with numerous conditions attached to them" or that the SUP prohibits any actions by the permittees that might give the "appearance that the federal public property on which they are located has been converted to private use."
11. **GCAD** does not have sufficient information to admit or deny the allegations in paragraph 11 of the Plaintiffs' Original Complaint.
12. **GCAD** admits that there are more than two hundred boat docks on Lake Texoma. **GCAD** admits that on January 8, 2007, one of its appraisers, Pam Lammers, requested a listing of all boat docks pursuant to the Federal Freedom of Information Act, 5 U.S.C. 552. **GCAD** denies that it disregarded the personal privacy interest of any of the plaintiffs as alleged in paragraph 12 of the Plaintiffs' Original Complaint.
13. **GCAD** denies that the Corps "mischaracterized GCAD as a federal agency in evaluating the FOIA request and disregarded the requirements of the Federal Privacy Act" in paragraph 13 of Plaintiff's Original Complaint,. The Corps provided this information to **GCAD** as a response to a proper FOIA request. The Corps released these documents to GCAD's appraiser in her "official capacity as an appraiser for the Grayson Central Appraisal District for the State of Texas." **GCAD** denies that the Corps provided the information contingent upon certain conditions. The Corps confirmed that **GCAD** agreed to "use the documents for official purposes only and not to release them to anyone outside of [the] office." **GCAD** used this

information to compile the appraisal roll for Grayson County. **GCAD** has not released any of the records or information to anyone outside its office. **GCAD** denies that the plaintiffs were the "direct and intended beneficiaries" of the Corps conditions on provision of the information and records. In requesting and receiving this information, **GCAD** did not intend to convey any benefit to the plaintiffs and did not enter into any contract for the benefit of the plaintiffs. **GCAD's** intent was to locate, appraise and place property onto the Grayson county appraisal roll as required by the Texas Constitution and statutes. Under Texas law, parties are presumed to be contracting for themselves only; as stated by the Texas Supreme Court, "[a] court will not create a third-party beneficiary contract by implication.... The intention to contract or confer a direct benefit to a third party must be clearly and fully spelled out or enforcement by the third party must be denied." *Fleetwood Enterprises, Inc. v. Gaskamp* 280 F.3d 1069, 1075-1976 (5<sup>th</sup> Cir. 2002). **GCAD** does not have sufficient information to admit or deny plaintiffs' allegations regarding any other parties or entities as set forth in paragraph 13 of the Plaintiffs' Original Complaint

14. **GCAD** admits that it agreed to hold confidential the records provided by the Corps as alleged in paragraph 14 of the Plaintiffs' Original Complaint. Several individuals and entities have requested this information from **GCAD** pursuant to the Texas Public Information Act ("TPIA"). **GCAD** has withheld this information and requested opinions regarding its release from the Office of the Office of the Attorney General of Texas ("OAG"). The OAG has consistently ruled that such information and documents may not be disclosed. The letter referenced in paragraph 14 of the Plaintiffs' Original Complaint is additional briefing that the OAG requested from **GCAD** during the course of one of the opinion requests.
15. **GCAD** admits that it used the records provided by the Corps to compile a portion of the 2007 Grayson County appraisal roll and list the property as required by the Texas Tax Code. TEX.

TAX CODE ANN. § 25.02 (Vernon 2006). **GCAD** denies that all of the information that is detailed in paragraph 15 of the Plaintiffs' Original Complaint is listed on the 2007 Grayson County appraisal roll.

16. **GCAD** denies that the "ARB-approved tax rolls" contain any of the confidential records provided by the Corps. **GCAD** admits that it provided the 2007 appraisal roll to the Grayson County Tax Assessor as part of its official duties. The 2007 appraisal roll contains the information that is required by the Texas Tax Code. . TEX. TAX CODE ANN. § 25.02 (Vernon 2006). For example, the appraisal roll for lead plaintiff contains the following: Name, mailing address, legal description, appraised value and a short description of the property. This type of information is found for each and every other account on the Grayson County appraisal rolls.
17. **GCAD** denies the allegations in paragraph 17 of the Plaintiffs' Original Complaint. **GCAD** merely used the records to compile a portion of the 2007 appraisal roll as part of its official duties. In its response letter of January 26, 2007, the Corps specifically stated that it these records could be used by **GCAD** for "official purposes". That is precisely how they were used i.e., to compile the appraisal roll. None of the records (which contain additional information) have been released to any one outside **GCAD's** office.
18. **GCAD** denies the allegation in paragraph 18 of the Plaintiffs' Original Complaint that it took any action with full knowledge that the Federal Privacy act made them unlawful. To the contrary, **GCAD** has not released the records it received from the Corps to any one outside its offices. The August 16, 2007 letter sent to the Texas Attorney General referenced in this paragraph was sent in support of a response to a public information request for these records pursuant to TPIA. **GCAD** argued that the records obtained from the Corps were confidential under the Federal Privacy Act and the Texas rendition statute. TEX. TAX CODE ANN. § 22.27 (Vernon 2006).

19. **GCAD** admits that the Corps wrote a letter to the Attorney General of Texas regarding the records it provided to GCAD.
20. **GCAD** denies the allegations in paragraph 20 of the Plaintiffs' Original Complaint that it breached any confidentiality agreement with the Corps. As set forth throughout this answer, GCAD has steadfastly resisted the disclosure of the records it received from the Corps. Plaintiffs are attempting to re-characterize the nature of the contents of the appraisal roll by claiming that it contains confidential information. The records provided by the Corps are confidential and contain other information that is not listed on the appraisal roll.
21. **GCAD** denies the allegations in paragraph 21 of the Plaintiffs' Original Complaint. All acts taken by GCAD are required and mandated by the Texas Tax Code and the Texas Constitution. None were taken in collusion or concert with the Corps. There is no distinction between the information contained on the appraisal rolls regarding these plaintiffs and any other taxpayer in Grayson County, Texas. For example, the appraisal roll information related to any commercial property in downtown Sherman, Texas contains the same type of information that relates to the disputed boat slips in this matter. Additionally, it is quite likely that confidential information or records were used by GCAD to place much of the property it appraises on the appraisal roll. However, and subject to a very few exception, none of the confidential records are disclosed to anybody outside GCAD's offices.
22. **GCAD** denies the allegations in paragraph 22 of the Plaintiffs' Original Complaint that it misrepresented anything to the Texas Attorney General. The plaintiffs allege that GCAD misled the OAG by claiming that the Corps owned the information. The October 1, 2007 letter referenced by plaintiffs is a responsive brief requested the OAG regarding this specific issue of ownership of the records. The letter brief contains the following language:

[The Requestor] is not the "owner of property," as it relates to the document at issue. Lake Texoma is owned by the United States Government. *See attached, Handbook of Texas*  
Case No. 4:08CV150; Grayson County Appraisal District's Original Answer, Pleas to the Jurisdiction & Affirmative Defenses to Plaintiff's Original Complaint: Page 7



*Online.* It is operated and managed by the United States Army Corps of Engineers. *Id.* The records and information at issue are real property reports and other information collected by the owner of the Lake Texoma property — the United States Government and the Army Corps of Engineers.

GCAD clearly enunciated its position related to the records to the OAG in this responsive brief. The records provided by the Corps contain information about the individual plaintiffs. However, the records themselves do not belong to the individual plaintiffs. There was no assertion that the Corps was the owner of the property being appraised as alleged by plaintiffs.

23. **GCAD** denies the allegations in paragraph 23 of the Plaintiffs' Original Complaint that it mischaracterized anything to the Texas Attorney General and further sought to withhold appraisal records from boat dock owners. The records provided by the Corps contain information about the individual plaintiffs. However, the records themselves do not belong to the individual plaintiffs. **GCAD** does not have sufficient information to admit or deny plaintiffs' allegations regarding any other parties or entities as set forth in paragraph 23 of the Plaintiffs' Original Complaint.

24. **GCAD** admits the allegations in paragraph 24 of the Plaintiffs' Original Complaint in that it has requested these records from the Corps in order to use them in its official duties of appraising the boat docks.

#### **LEGAL CLAIMS**

##### **First Claim—PRIVACY ACT, 5 U.S.C. § 552A(g)(1)(D), Against the Corps**

25. **GCAD** does not have sufficient information to admit or deny plaintiffs' allegations regarding any other parties or entities as set forth in *paragraph 25 of the Plaintiffs' Original Complaint*.

##### **Second Claim —TPIA, TEX. GOV'T CODE §§ 552.007 (a) 552.101 & 552.352 (a) Against GCAD**

26. **GCAD** denies the allegations in paragraph 26 of the Plaintiffs' Original Complaint because this cause of action is barred by governmental immunity. GCAD utilized the records at issue to

carry out its official duties to appraise all property for ad valorem taxes. Some of the information contained in the records is on the appraisal roll, but such information is indistinguishable from the same type of information related to any other property owner in Grayson. The records have not been disclosed to anyone outside GCAD's offices.

**Third Claim — Breach of Contract Against GCAD**

27. **GCAD** denies the allegations in paragraph 27 of the Plaintiffs' Original Complaint. GCAD has not released any of the records at issue to anyone outside its offices. GCAD denies that the plaintiffs are third party beneficiaries of any kind in this matter. GCAD does not have sufficient information to admit or deny plaintiffs' allegations regarding any other defendants as set forth in this paragraph.
28. **GCAD** admits that plaintiffs seek the relief specified in its "Prayer" and denies that Plaintiffs are entitled to recover any of the relief requested in paragraph 28 of plaintiff's original complaint.

**AFFIRMATIVE DEFENSES**

29. By way of affirmative defense, this court has no jurisdiction because this cause of action is barred by the doctrine of governmental immunity. Under the doctrine of governmental immunity, a unit of government may not be sued without the express consent of the Legislature. *Thayer v. Houston Mun. Employees Pension Sys.*, 95 S.W.3d 573, 576 (Tex.App.-Houston [1st Dist.] 2002, no pet.); This immunity also protects the State and its governmental units from lawsuits that seek to control their lawful actions by a final judgment made by a court of law. *Tex. Mun. Power Agency v. Pub. Util. Comm'n*, 100 S.W.3d 510, 515 (Tex.App.-Austin 2003, pet. denied)
30. By way of affirmative defense, this court has no jurisdiction over various plaintiffs because they executed a statutory waiver and settlement of all claims related to the subject property. The

written agreement between the parties is final and may not be disputed. TEX. TAX CODE ANN. § 1.111(e) (Vernon 2006). *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 69 (Tex.App.-Houston [14<sup>th</sup> Dist.] 2007, no pet.)

31. By way of affirmative defense, **GCAD** alleges various of the named plaintiffs were listed on the 2007 appraisal roll as a result of using the information that was provided by the Corps. Numerous plaintiffs have been listed on the GCAD appraisal roll prior to 2007. These plaintiffs were added to the appraisal by the use of other methods such as recorded bills of sale, aerial photography, and sales letters provided by taxpayers. Accordingly, these plaintiff have not been harmed as a result of any actions taken by GCAD in relation to the disputed records from the Corps.
32. By way of affirmative defense, **GCAD** alleges that this cause of action is barred by laches. In this matter, plaintiff's were clearly aware of the various opinions that the OAG issued that permitted GCAD to withhold the records. For example, on October 24, 2007, the OAG notified GCAD and a plaintiff that the records could be withheld. This letter clearly stated that "[i]f a ruling requires or permits a governmental body withhold some or all of the requested information, the requestor can appeal that decision by suing the governmental body. TEX. GOV'T CODE § 552.321(a)(Vernon 2006)." Despite being aware of this right, none of the plaintiff filed suit pursuant to this statute.

#### **Prayer for Relief**

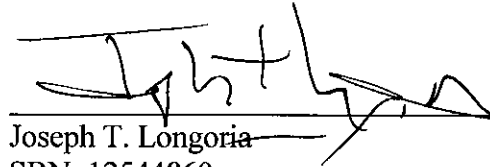
**Wherefore**, for the foregoing reasons, Grayson County Appraisal District, respectfully prays that the plaintiffs take nothing from it on any theory of recovery and that the court grant all other and further relief to which Grayson County Appraisal District may be entitled at law or in equity.

other and further relief to which Grayson County Appraisal District may be entitled at law or in equity.

**Respectfully submitted,**

**PERDUE, BRANDON, FIELDER,  
COLLINS & MOTT, L.L.P.**

**By:**



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**ATTORNEYS FOR DEFENDANT, GRAYSON  
CENTRAL APPRAISAL DISTRICT**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **Grayson Central Appraisal District's Original Answer, Pleas to the Jurisdiction & Affirmative Defenses to Plaintiffs' Original Complaint** was served on following individuals by depositing same in the United States Mail, certified, return receipt requested, postage paid, this 2<sup>nd</sup> day of June, 2008.

Max Renea Hicks  
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Austin, Texas 78701

