

CAUSE NO. 20-04-04683

**RABBIT HILL PROPERTIES,
LLC,**
Plaintiff,

V.

STATE OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

MONTGOMERY COUNTY, TEXAS

284TH JUDICIAL DISTRICT

AMICUS BRIEF OF SCENIC TEXAS

Scenic Texas respectfully files this amicus brief in support of the State's Motion to Dismiss.

INTRODUCTION

The State planted trees on I-45 in an effort to beautify the entrance to Montgomery County. All of the trees are located on State property. Plaintiff has no standing to object to them. This suit is an attack on fundamental property rights and jeopardizes Texas's long-established legacy of highway beautification.

INTEREST OF AMICUS CURIAE

Scenic Texas, Inc. is a Texas nonprofit corporation dedicated to the preservation and enhancement of our state's visual environment, particularly as seen by the traveling public. Scenic Texas and its chapters work in Austin to provide information, education and advocacy concerning statewide scenic issues. These issues include the designation of scenic highways, funding for landscaping and tree planting, protection from new billboard construction and the enforcement of existing laws.

ARGUMENT

1. Obstruction of billboard visibility is not a valid cause of action.

The issue of whether a billboard owner can bring a so-called visibility claim was decided by the Texas Supreme Court in *State v. Schmidt*, 867 S.W.2d 769 (Tex.

1993) (“Just as a landowner has no vested interest in the volume or route of passersby, he has no right to insist that his premises be visible to them.”) (citing Nichols, *The Law of Eminent Domain*).

2. Plaintiff does not control trees on state highways.

Established case law, the Texas Administrative Code, and Plaintiff’s own billboard permit expressly rule out a purported right to control landscaping on highway property. 43 Tex. Admin. Code § 21.581. *See* Exhibit A—Billboard Permit, 6; *City of Argyle v. Pierce*, 258 S.W.3d 674, 683 (Tex.App.—Fort Worth 2008, pet. dismissed) (“The Texas Administrative Code unequivocally states: ‘[I]ssuance of a permit shall not be deemed to create a property right in the permittee.’”). *State v. Moore Outdoor Props., L.P.*, 416 S.W.3d 237, 247 (Tex. App.—El Paso 2013, pet. denied) (same). *See also* Control of Commercial Signs along Interstate or Primary Highways, ROW Beautification Manual (2018), http://onlinemanuals.txdot.gov/txdotmanuals/bet/destruction_of_treesviolation_of_control_of_access.htm (“Trees and vegetation on the TxDOT’s right of way may not be destroyed or cut for any purpose.”).

3. The State has an absolute right to plant trees on its property.

It is “well established” that a property owner has an absolute right to plant a tree “notwithstanding it obstructs light, air and vision from his neighbor; notwithstanding it depreciates the value of the neighbor’s property, and notwithstanding the motive.” *Harrison v. Langlinais*, 312 S.W.2d 286, 288 (Tex. 1958, no writ).

Indeed, the State is required by law to revegetate its right-of-way with native trees where possible, and failing to do so may disqualify Texas from federal highway funding.¹ The State has initiated a longterm effort to plant 2 million trees in Montgomery and adjacent counties, including the 30 trees at

¹ *See* Policy and Authorities Impacting Landscape and Aesthetics Design, Landscape and Aesthetics Design Manual, Tex. Dep’t of Transportation (Nov. 1, 2017), http://onlinemanuals.txdot.gov/txdotmanuals/lad/policy_and_authorities_impacting_landscape_and_aesthetics_design.htm (listing authorities).

issue. The uncertainty created by this suit imperils the entire program, which could have especially devastating consequences for forested roadways in Montgomery County.

4. The tip of the iceberg.

If this suit is allowed to proceed, despite having no basis in fact or law, it will expose the State to copycat suits by billboard owners across the highway system. If tree plantings must accommodate impacts on billboard visibility, what about construction projects? Every major highway project will be attended by visibility suits from off-premise and on-premise sign owners, and frontage owners who do not even own signs. Every frontage property derives value from visibility. The Texas Supreme Court has therefore wisely established a rule that frontage owners may not bring visibility claims against the State and that inverse condemnation requires a direct invasion or restriction of another property. *Schmidt* is controlling law in this case. The court should safeguard this precedent, which upholds Texas's highway system and its longstanding beautification program.

CONCLUSION

The Court should grant the State's Motion to Dismiss for Lack of Jurisdiction.

Respectfully Submitted,

/s/ Cooke Kelsey

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ATTORNEYS FOR AMICUS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been sent to all counsel of record via ECF in accordance with the Texas Rules of Civil Procedure.

/s/ Cooke Kelsey

Cooke Kelsey

RABBIT HILL PROPERTIES, L.L.C. § IN THE DISTRICT COURT
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VS. § 284TH JUDICIAL DISTRICT COURT
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STATE OF TEXAS § OF MONTGOMERY COUNTY, TEXAS

**RABBIT HILL PROPERTIES, L.L.C.’S RESPONSE TO
AMICUS BRIEF OF SCENIC TEXAS**

Rabbit Hill Properties, L.L.C. (“Rabbit Hill”) files this Response to the Amicus Brief filed by Scenic Texas, and shows the Court the following:

I. INTRODUCTION

1. As stated in Rabbit Hill’s response to the State’s motion to dismiss, it is black letter law that in ruling on a motion to dismiss for lack of subject matter jurisdiction (i.e., a plea to the jurisdiction), the Court is to liberally consider and accept as true the facts and evidence provided in the plaintiff’s pleadings, and if the evidence creates an issue of fact as to the issue of jurisdiction, the Court must deny the motion to dismiss. *Texas Department of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 226–27 (Tex. 2004). It is undisputed in this case that the State knew that its planting of trees would greatly, if not entirely, diminish the value of Rabbit Hill’s property. Because the State’s actions resulted in a substantial, or perhaps complete, reduction in the value of Rabbit Hill’s property, Rabbit Hill has a compensable injury in eminent domain. As such, Rabbit Hill has plead a valid claim for inverse condemnation.

2. Scenic Texas (“ST”) is an affiliate of Scenic America which has called billboards “sky trash” and “litter on a stick.”¹ The cases and authorities on which ST relies do not stand for the propositions stated in ST’s Brief, and Rabbit Hill requests that the Court deny the State’s

¹ See Scenic America website at <https://www.scenic.org/sign-control/billboard-info/>

Motion to Dismiss and decline to support ST's attempt to destroy Rabbit Hill's constitutionally protected property interests.

II. FACTUAL BACKGROUND

3. Rabbit Hill incorporates the Factual Background detailed in its Response to the State's Motion to Dismiss.

III. RESPONSE TO AMICUS BRIEF

4. ST relies on *State v. Schmidt*, 867 S.W.2d 769 (Tex.1994), for the proposition that a landowner is precluded from seeking compensation for visibility claims. Subsequent case authority has specifically found quite the opposite. Indeed, in *Collin Cty. v. Hixon Family P'ship, Ltd.*, 365 S.W.3d 860, 875–76 (Tex. App. – Dallas, 2012, pet. denied), the Court found that, as ST has tried to do here, the appellee had misapplied *Schmidt*. The Court stated that the “holding in *Schmidt* is limited to the assessment of damages to a landowner's *remainder property* after condemnation.” *Id.* at 876 (emphasis added). Based on this finding, the Court held that the expert opinions concerning the questioned adjustments for exposure, visibility, and access were admissible as they did “not relate to any alleged damage to the remainder properties as a result of the condemnation or proposed highway construction. *Id.*”

5. In addition, *Schmidt*, provided that the landowner's damages were not compensable in the absence of a showing that the owners were affected in a “special, unique way.” *Schmidt*, 867 S.W.2d at 781. In this case, Rabbit Hill has asserted a specific, unique damage to its property that was known to the State prior to the State's planting of the trees.

6. ST references its Exhibit A which was not attached to the pleading.

7. ST cites 43 Tex. Admin. Code § 21.581 which was repealed July 1, 2011, and replaced with 43 Tex. Admin. Code § 21.202. ST then cites *City of Argyle v. Pierce*, for the

proposition that issuance of a permit does not create a property right. ST entirely misses the issue in this case, which is not the permit but the actual damage to Rabbit Hill's property rights. Under ST's argument, no billboard would ever be compensable in any takings case. This claim is clearly and legally incorrect. *See State v. Clear Channel Outdoor, Inc.*, 463 S.W.3d 488, 497 (Tex. 2015) (“[A] billboard should be reflected in the valuation of the land at its highest and best use. . . . General estimates of what the property would sell for considering its possible use as a billboard site are acceptable.”) (quoting *State v. Central Expressway Sign Assoc.*, 302 S.W.3d 866, 874 (Tex. 2009)).

8. ST cites the TxDOT ROW Beautification Manual which provides that “[t]rees and vegetation on the TxDOT 's right of way may not be destroyed or cut for any purpose.” The Manual, which was created internally by TxDOT and does not carry the force of law, in no way gives TxDOT the right to intentionally damage Rabbit Hill's property interests as it has done here. *See* ROW Beautification Manual at Ch. 1, § 1 (“This volume provides information concerning the control of commercial signs and junkyards in Texas.”).

9. ST concludes its Brief with an argument that TxDOT has the “absolute right” and is “required by law” to plant trees in a way that damages or destroys Rabbit Hill's property. ST cites *Harrison v. Langlinais* for the “absolute right” claim. *Harrison* involved two private property owners, not a governmental entity. It is therefore clearly inapplicable to a constitutional case involving State taking of private property by inverse condemnation. ST cites the TxDOT internal policy manual for its claim that the State is “required by law” to revegetate. The manual is not “law.”

10. ST concludes its brief with a slippery slope argument. Rabbit Hill submits that ST's claim is again based on *Schmidt*, which, as shown above, does not stand for the proposition that Rabbit Hill's damages are not compensable.

IV. CONCLUSION

The limited issue presented at this point is the State's claim that this case should be dismissed on jurisdictional grounds. As stated above, the Court is to liberally consider and accept as true the facts and evidence provided in the plaintiff's pleadings, and if the evidence creates an issue of fact as to the issue of jurisdiction, the Court must deny the motion to dismiss. *Miranda*, 133 S.W.3d at 226–27 (Tex. 2004). Rabbit Hill has provided sufficient evidence to defeat the State's motion and has demonstrated that the State acted with intent to take Rabbit Hill's property interest. Rabbit Hill therefore requests that the Court deny Defendant's Motion to Dismiss for Lack of Jurisdiction, and grant Rabbit Hill Properties, L.L.C. all other relief to which Rabbit Hill Properties, L.L.C., may show itself justly entitled.

Respectfully submitted,

ROTHFELDER & FALICK, LLP

/s/ Michael C. Falick

Michael C. Falick

State Bar No. 06794600

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Houston TX 77002

713-220-2288 – Telephone

713-658-8211 – Facsimile

**ATTORNEY FOR RABBIT HILL
PROPERTIES, L.L.C.**

CERTIFICATE OF SERVICE

I certify that on July 9, 2020, I served a true and correct copy of this document via electronic delivery upon all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Michael C. Falick

Michael C. Falick

CAUSE NO. 20-04-04683

RABBIT HILL PROPERTIES,
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IN THE DISTRICT COURT OF

MONTGOMERY COUNTY, TEXAS

284TH JUDICIAL DISTRICT

**REPLY TO RABBIT HILL PROPERTIES, L.L.C.'S RESPONSE TO
AMICUS BRIEF OF SCENIC TEXAS**

Scenic Texas files this Reply to address errors in Rabbit Hill's Response.

1. The rule against visibility claims has not changed.

Rabbit Hill objects that 43 Tex. Admin. Code § 21.581, which expressly precludes any claim that a billboard owner might assert based on a purported visibility interest in highway property, *City of Argyle v. Pierce*, 258 S.W.3d 674, 683 (Tex.App.--Fort Worth 2008, pet. dism'd), was "repealed." In fact, the rule was replaced with the exact same operative language in 43 Tex. Admin. Code § 21.202, changing only the word "subchapter." See 42 TexReg 4790 ("Issuance of a permit or license under this subchapter [division] does not create a contract or property right in the permit or license holder.").

2. Collin County rules out visibility claims.

Rabbit Hill cites *Collin Cty. v. Hixon Family P'ship, Ltd.*, 365 S.W.3d 860, 875–76 (Tex. App. – Dallas, 2012, pet. denied) for the proposition that a landowner may bring visibility claims based on obstruction caused by acts on another property,

pursuant to *State v. Schmidt*, 867 S.W.2d 769 (Tex. 1994). The Dallas court's explanation of the *Schmidt* is clear, and it does not favor Rabbit Hill:

In *Schmidt*, the principal issue was whether a landowner, a portion of whose property was taken by power of eminent domain, is entitled to compensation for ... lessened visibility to the passersby....The supreme court held that the landowner could not recover damages...for those factors.

Id. at 876. As Rabbit Hill acknowledges, *Collin County* concerned damages "after condemnation" of the plaintiff's land. The case cannot be turned upside-down to permit an award of damages for loss of visibility without a taking of land.

3. Litter on a stick.

Rabbit Hill complains that another entity, Scenic America, has referred to billboards as "litter on a stick." That is a fair description of many billboards. However, Scenic America is different from Scenic Texas. Scenic Texas has negotiated with the Texas billboard industry for decades as a public-interest advocate and advisor to the legislature and Department of Transportation regarding billboard policy. (Scenic Texas has also advised appellate courts as an amicus curiae in other billboard cases.)

Rabbit Hill's claim in this case are far beyond the pale established by the billboard industry, especially in Texas. It is a direct assault on fundamental property rights. Such a claim should not proceed to trial.

4. Exhibit A

Attached as Exhibit A is the permit application of Rabbit Hill Properties, LLC for the billboard at issue in this case. *See infra* Verification.

/s/ Cooke Kelsey

Cooke Kelsey

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ATTORNEYS FOR AMICUS

VERIFICATION

My name is Cooke Kelsey, my date of birth is 1/4/1977 and my address is 439 Westmoreland St, Houston, TX 77006. I declare under penalty of perjury that Exhibit A is a true and correct of a public record maintained and disseminated by the Texas Department of Transportation and kept by Scenic Texas in the regular course of business. As legal representative for Scenic Texas, I can attest that it is the regular practice of Scenic Texas to keep such public records in furtherance of its public advocacy mission.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been sent to all counsel of record via ECF in accordance with the Texas Rules of Civil Procedure.

/s/ Cooke Kelsey

Cooke Kelsey



Form ROW-OA-4
(Rev. 06/2019)

PERMIT APPLICATION
For a Commercial Sign to be Located Along an
Interstate or Primary System Highway
Regulated under the Highway Beautification Act (HBA)

For Department Use Only

Permit No: [PMT-HBA-14706](#)

Date Issued: 12/11/1980

Part 1 - Instructions

This form was computer generated for record purposes. The full application with instructions is completed online at aca3.accela.com/txdot

The instructions for this generated form have been omitted.

Part 2 - Identification of the Applicant

Complete name of applicant shown on TxDOT Sign License:

John Hagerman

Mailing Address:

24800 I-45, #100

City: Spring	State: TX	ZIP: 77386-NULL	TxDOT Sign License No: 6296
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Email Address: johndhagerman@hotmail.com	Telephone: 2813678800
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Part 3 - Location of Proposed Commercial Sign

Highway Designation and Number: IH 45	Side of Highway: East
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Distance to Nearest Intersection from Sign Site:
120 ft. S of Cathedral Lakes Pkwy

Street Address: 242220 1/2 IH 45 Spring, TX 77386	City: Spring	County: Montgomery
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Central Appraisal District Parcel Identification Number:R257039

Latitude: 30.11650386	Longitude: -95.43886852
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Part 4 - Relocation due to Displacement by a Transportation Project

This permit application is for an existing sign that is being displaced by a transportation project and is eligible for relocation under 43 TAC §21.192. **No**

The current TxDOT Permit Number of the sign being displaced is N/A

Part 5 - Electronic Sign Faces

These definitions have been omitted from this generated form. Please see 43 TAC §21.142 for electronic sign requirements.

This application is for an electronic sign: **No**

Electronic Sign Face #1 (If Applicable)	Electronic Sign Face #2 (If Applicable)
Direction of Facing: N/A	Direction of Facing: N/A

If this application is for an Electronic Sign as described in §21.142(5), the applicant must provide contact information for the person who is available to be contacted at any time and who is able to run off the sign in case of malfunction or to accommodate an emergency notification request for local authorities.

Contact Person Name: N/A	Contact Person Telephone Number: N/A
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Part 6 - Qualifying Commercial or Industrial Activities

The minimum number of commercial or industrial activities required to qualify for the sign permit is as follows:

- Two qualifying activities: If the sign is to be located on a parcel that is not zoned by an incorporated municipality.
- One qualifying activity: If the sign is being relocated due to displacement by a transportation project (see Part 4).
- No qualifying activities: If the sign is to be located on a parcel zoned commercial, industrial, or equivalent by an incorporated municipality.

Activity #1 (If Applicable)	Activity #2 (If Applicable)				
<table border="1"> <tr> <td>Name: Application Indicates the Area is Zoned See Part - 7 of the Application for Details</td> </tr> <tr> <td>Address:</td> </tr> <tr> <td>Hours of Operation:</td> </tr> <tr> <td>Phone Number:</td> </tr> </table>		Name: Application Indicates the Area is Zoned See Part - 7 of the Application for Details	Address:	Hours of Operation:	Phone Number:
Name: Application Indicates the Area is Zoned See Part - 7 of the Application for Details					
Address:					
Hours of Operation:					
Phone Number:					

Part 7 - Municipal Verification

- **If you are not applying for a sign location within a zoned area, skip this part.**
- A zoned area must be designated, through comprehensive zoning action, for general commercial or industrial use by a political subdivision with legal authority to zone, regardless of the specific label used. 43 TAC §21.178

You must attach a zoning map or verification from a city official with your application.

Name of City: Spring	Zoning Designation: NULL
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Part 8 - Landowner Verification

Note: By submitting this application, you certify that you have obtained consent to erect and maintain the above described commercial sign on the property of the person listed below. The information will be verified with the Central Appraisal District records. You must explain any discrepancies by an attachment to this application. Further, you have obtained right of entry onto the property of the sign location for the department or its agents. 43 TAC §21.159

Landowner's Name: Rabbit Hill Properties, LLC Series #4	Landowner's Telephone: UNK
Landowner's Mailing Address: 24800 IH 45 Ste 100, Spring, TX 77386-1987	

Part 9 - Certification of Compliance

By submitting this application, the applicant certifies that the sign will comply with all applicable program rules in Title 43 Texas Administrative Code (TAC), Chapter 21, Subchapter I, for:

- Spacing, as described in §§21.179, 21.183, 21.184, 21.185, 21.186, and 21.187.
- Erection and maintenance from private property, as described in §21.167.
- Wind load pressure, as described in §21.188.
- Height, as described in §21.189; and
- Municipal permits, as described in §21.159(b)

Part 10 - Sketch or Aerial Map of Proposed Sign Site

A sketch or aerial map with required information is only necessary if no GPS coordinates are provided in Part 3 of this application.

In order to properly locate the proposed sign site the following information must be depicted on the sketch or aerial map as required by 43 TAC §21.159(f).

- Indicate the distance from commercial or industrial improvements in relation to the sign site.
- Indicate the distance from the right of way line to the nearest part of the sign structure.
- Depict the distance from the nearest permitted Commercial Sign on the same side of the highway to the proposed sign site.
- Identify the highway name that fronts the sign site.

Attach your sketch or aerial map when submitting this application.

Part 11 - Acknowledgement by Applicant

Electronic applications do not require notarization.

By signing below you certify that the information submitted on this application is true and correct and complies with the rules and regulations outlined in Title 43 of the Texas Administrative Code relating to Commercial Signs.

Applicant Certification: **CERTIFIED**

Part 12 - Non-Profit Commercial Signs

This section applies only to non-profit organization as defined by Title 2 Texas Business Code, Chapter 22.

This application is for a non-profit commercial sign: **No**

Part 13 - Submitting the Application

This section has been changed to include only electronic-application relevant information.

- If this application is approved, the applicant agrees to abide by the provisions of Texas Law and the rules and regulations established by the Texas Transportation Commission pertaining to Commercial Signs and certify that the sign described above is erected and maintained in accordance with all specifications, standards, and requirements under these laws, rules, and regulations.
- By issuance of a permit, TxDOT does not represent that the sign or location thereof meets city, county, and/or local government laws, orders, ordinances, or other regulations. By issuance of a permit, a contract or property right is not created in the permit of the license holder. (43 TAC §21.202)
- The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §552.01 and §552.023 of the Government Code, you are entitled to receive and review this information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Part 14 - Decision on Application

FOR DEPARTMENT USE ONLY

Upon review of this application and the accompanying documents, this permit application is:

Approved

If DENIED, please see attached Notice of Denial for a detailed denial summary.

If approved, the department concludes that the sign is:

Non-Conforming

Each permit is valid for one year from the date issued, provided the sign is duly erected and legally maintained. A permit may be terminated sooner if the State acquires the sign or if the sign is not maintained in accordance with applicable laws and regulations. If the commercial sign license expires without renewal or is revoked, any permits issued pursuant to that license also expire. Permits may only be transferred with approval of the department. Issuance of a permit does not create a contract or property right in the permit or license holder.

Official Coordinates: ,

Action by: _____ **Date:** _____

Director, Commercial Signs Regulatory Program

RABBIT HILL PROPERTIES, L.L.C.

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IN THE DISTRICT COURT

VS.

284TH JUDICIAL DISTRICT COURT

STATE OF TEXAS

OF MONTGOMERY COUNTY, TEXAS

**RABBIT HILL PROPERTIES, L.L.C.’S SUR-REPLY TO SCENIC TEXAS’ REPLY TO
RESPONSE TO AMICUS BRIEF OF SCENIC TEXAS**

Rabbit Hill Properties, L.L.C. (“Rabbit Hill”) files this Sur-reply and shows the Court the following:

1. Scenic Texas (“ST”) continues to misrepresent the breadth of the holding in *State v. Schmidt*, 867 S.W.2d 769 (Tex.1994). As the Dallas Court made clear in *Collin Cty. v. Hixon Family P’ship, Ltd.*, the

“holding in *Schmidt* is **limited to the assessment of damages to a landowner’s remainder property after condemnation**. . . . The Partnership cited to no case, and we have found none, that indicates the holding in *Schmidt* applies to any issue other than damage to remainder property.” *Collin Cty. v. Hixon Family P’ship, Ltd.*, 365 S.W.3d 860, 876 (Tex. App. – Dallas, 2012, pet. denied) (emphasis added).

The claims made in this case by Rabbit Hill do not involve a claim for damages to the remainder. As such, and as was clarified by the *Hixon Family P’ship, Ltd.* Court, which faced a similar attempt to extend *Schmidt*, the *Schmidt* case does not apply. *See also Interstate Northborough P’ship v. State*, 66 S.W.3d 213, 219-20 (Tex. 2001) (“when the damage to the remainder is unique to the landowner, then the losses are compensable”); *State v. CC Telge Road, L.P.*, 2020 WL 2782370 (Tex. App. – Houston [1st Dist.] May 28, 2020). Clearly, ST’s effort to apply the *Schmidt* decision as a blanket prohibition is incorrect.

2. ST does not contest Rabbit Hill’s arguments on any of the remaining points raised, and therefore, it appears that ST relies entirely on *Schmidt* to support its position. Given

the clear inapplicability of *Schmidt* to Rabbit Hill's claims, Rabbit Hill again requests that the Court deny the State's motion to dismiss.

Respectfully submitted,

ROTHFELDER & FALICK, LLP

/s/ Michael C. Falick

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713-658-8211 – Facsimile
**ATTORNEY FOR RABBIT HILL
PROPERTIES, L.L.C.**

CERTIFICATE OF SERVICE

I certify that on July 9, 2020, I served a true and correct copy of this document via electronic delivery upon all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Michael C. Falick

Michael C. Falick

NO. 20-04-04683

RABBIT HILL PROPERTIES, LLC,
Plaintiff,

V.

STATE OF TEXAS,
Defendant.

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IN THE 284TH JUDICIAL
DISTRICT COURT OF

MONTGOMERY COUNTY, TEXAS

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS FOR LACK OF JURISDICTION**

BE IT REMEMBERED THAT on this day came to be considered Defendant’s, the State of Texas, Motion to Dismiss for Lack of Jurisdiction, and after considering the motion, the evidence on file, arguments of counsel, and the Court being fully advised in the matter, finds this motion should be and is hereby GRANTED.

It is therefore ORDERED that Defendant’s, the State of Texas, Motion to Dismiss for Lack of Jurisdiction is GRANTED and that Plaintiff’s, Rabbit Hill Properties, LLC, claims against the State be dismissed with prejudice. Costs of court are assessed against the party incurring the same.

It is further ORDERED that all relief not expressly granted herein is denied. This order disposes of all claims as to all parties and is intended to be FINAL and APPEALABLE.

7/10/2020 4:56:28 PM

SIGNED this _____ day of _____, 2020.



HONORABLE JUDGE PRESIDING