

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 26, 2021

Laurie Gharis, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2021-0047-DIS; Prairie Oaks Municipal Utility District of Denton County; Request filed regarding Internal Control No. D-06012020-001.

Dear Ms. Gharis:

Transmitted herewith for filing with the Texas Commission on Environmental Quality (Commission or TCEQ) are the following items to be filed as backup materials for the April 14, 2021, Agenda on a hearing request for the creation of Prairie Oaks Municipal Utility District of Denton County:

1. Executive Director's Response to the Hearing Request;
2. Hearing request;
3. Map of proposed boundaries;
4. Technical memo prepared by staff; and
5. Petition.

Please do not hesitate to contact me if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bobby Salehi".

Bobby Salehi, Staff Attorney
Environmental Law Division

Enclosures

Attachment 1

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 22, 2021

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Application by 2018 Blackhawk 31 Holdings Ltd. for Prairie Oaks Municipal Utility District of Denton County; Permit Number D-06012020-001; TCEQ Docket No. 2021-0047-DIS

Dear Ms. Gharis:

Enclosed for filing is the "Executive Director's Response to Hearing Requests." Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bobby Salehi".

Bobby Salehi
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2021-0047-DIS

APPLICATION FOR PRARIE OAKS	§	BEFORE THE TEXAS
MUNICIPAL UTILITY DISTRICT	§	COMMISSION ON
OF DENTON COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the Application by 2018 Blackhawk 31 Holdings Ltd. (Petitioner) for the Creation of Prairie Oaks Municipal Utility District of Denton County (District). The Office of the Chief Clerk received a hearing request from the Honorable State Representative Jared Patterson.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map

I. DESCRIPTION OF DISTRICT

2018 Blackhawk 31 Holdings Ltd. applied for the creation of Prairie Oaks Municipal Utility District of Denton County. The proposed district contains one tract of land totaling 31.696 acres. The proposed district is located within Denton County, Texas and is wholly located within the extraterritorial jurisdiction of the City of Oak Point.

The petition states that the proposed district will: construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic and commercial purposes; construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and construct, install, maintain, purchase and operate facilities, systems, plants, and enterprises of such additional facilities as shall be consistent with the purposes for which the District is created.

The petition goes on to state that the District’s area will experience substantial and sustained residential and commercial growth, and there is not currently an adequate water system, sanitary sewer system, drainage facilities, fire suppression facilities, or parks and recreational facilities system.

II. PROCEDURAL HISTORY

The TCEQ received the application on June 1, 2020. The Application was declared administratively complete on June 3, 2020. On December 10, 2020, proper notice of the application was posted on the bulletin board used for legal notices in the Denton County courthouse. The Petitioner published Notice of District Petition in the *Denton Record-Chronicle*, a newspaper of general circulation in Denton County, where the district is proposed to be located, on December 16, 2020 and December 23, 2020. The period to request a contested case hearing ended on January 22, 2021.

The TCEQ received one timely hearing request from the Honorable State Representative Jared Patterson opposing the creation of the district.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission consideration of the hearing requests on March 10, 2021.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. TEX WATER CODE § 54.001. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

TEX. WATER CODE § 54.012. The commission has jurisdiction to hear this case and create the district. *TEX. WATER CODE § 54.014.*

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the district. *Tex. Water Code § 54.021(a); 30 TEX. ADMIN. CODE § 293.13(b)(1).* If the commission fails to make these findings, it shall refuse to grant the petition. *TEX. WATER CODE § 54.021(d); 30 TEX. ADMIN. CODE § 293.13(a).*

In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;

- (E) natural run-off rates and drainage;
- (F) water quality; and
- (G) total tax assessments on all land located within a district.

TEX. WATER CODE § 54.021(b).

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings. *30 TEX. ADMIN. CODE § 293.13(b)(2); TEX. WATER CODE § 54.021(c).*

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant or affected persons may request a contested case hearing on this application. *30 TEX. ADMIN CODE § 55.251(a).* The Commission must evaluate the hearing requests and may take on of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings (“SOAH”) for a hearing; or
- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.

30 TEX. ADMIN. CODE § 55.255(a). The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice Of District Petition. *30 TEX. ADMIN. CODE § 55.251(b) and (d).* These two requirements are mandatory. The affected person’s hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request.
- (2) identify the person’s personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor’s location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

30 TEX. ADMIN CODE § 55.251(c). An affected person’s personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public. *30 TEX. ADMIN. CODE § 55.256(a).* The regulations give

the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person; and
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c). Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application. *30 TEX. ADMIN. CODE § 55.256(b).*

V. THE HEARING REQUEST

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Analysis of the Hearing Request

The Honorable State Representative Jared Patterson submitted a timely hearing request in writing. The hearing request included his name, address, and phone number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c). However, Representative Patterson's request only included his Capitol mailing address rather than a physical address near the proposed district. Representative Patterson's hearing request states that the City of Point Oak is within his district. The proposed district is located in the extraterritorial jurisdiction of the City of Point Oak but is not located within the City of Point Oak. However, the hearing request was not made on behalf of the City of Oak Point nor did it address how the City has statutory authority over issues relevant to the application. State Representative Patterson's hearing request did not include an address near the proposed district to illustrate that he will be affected in a manner not common to members of the general public.

The Executive Director recommends the Commission find that the hearing request by the Honorable State Representative Jared Patterson does not comply with the requirements of 30 TAC § 55.251.

B. Whether the Individual Requestor Meets the Affected Person Requirements

The Executive Director reviewed the factors found in 30 TAC § 55.256 for determining if a person is an affected person, and could not find that State Representative Patterson is an affected person. Representative Patterson did not demonstrate that he has a personal justiciable interest related to a legal right, duty,

privilege, power, or economic interest affected by the application that is not common to members of the general public. Specifically, State Representative Patterson's hearing request raised the following issues: concern regarding added burden on current infrastructure, cost, logistics, and safety issues for residents of Oak Point. The request did not address how he was personally affected by the application.

State Representative Patterson did not demonstrate a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application in a way that is not common to members of the general public.

Therefore, the Executive Director could not find that State Representative Patterson is an affected person pursuant to the criteria in 30 TAC § 55.256.

C. Whether the Issues Raised are Referable to SOAH for a Contested Case Hearing

In evaluating whether a MUD is feasible, practicable, necessary and would be a benefit to the land included in the district, the commission shall consider "the availability of comparable services from other systems, included by not limited to water districts, municipalities, and regional authorities; the reasonableness of projected construction costs, tax rates, and water and sewer rates; and whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following: (A) land elevation; (B) subsidence; (C) groundwater level within the region; (D) recharge capability of a groundwater source; (E) natural run-off rates and drainage; (F) water quality; and (G) total tax assessments on all land located within a district." TEX. WATER CODE § 54.021(b)(1-3).

State Representative Patterson did not raise any of the above issues for feasibility of the proposed district.

VI. DURATION OF THE CONTESTED CASE HEARING

If the Commission refers the Application at issue for a contested case hearing, the Executive Director recommends that the duration for any contested case hearing between preliminary hearing on the matter and presentation for a proposal for decision before the commission, be 180 days.

VII. RECOMMENDATION

State Representative Patterson's hearing request did not contain an explanation of a personal justiciable interest or a description of his property in relation to the boundaries of the proposed district. Therefore, Representative Patterson does not appear to be an affected person. Representative Patterson also did not raise issues referable to SOAH for a contested case hearing. Thus, the hearing request should be denied.

The Executive Director recommends the following actions by the Commission:

- 1) Find that the State Representative Patterson is not an affected person;
- 2) Deny State Representative Patterson's hearing request; and
- 3) Grant the application.

Respectfully submitted,
Texas Commission on Environmental
Quality
Toby Baker, Executive Director
Robert Martinez, Deputy Director
Environmental Law Division



Bobby Salehi, Staff Attorney
Environmental Law Division
State Bar No. 24103912
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-5930
Fax: (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 22, 2021, the original of the “Executive Director’s Response to Hearing Request” for the Application by 2018 Blackhawk 31 Holdings Ltd. for the Creation of Prairie Oaks Municipal Utility District of Denton County was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Bobby Salehi, Staff Attorney
TCEQ’s Environmental Law Division

MAILING LIST
PRAIRIE OAKS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY
DOCKET NO. 2021-0047-DIS; INTERNAL CONTROL NO. D-06012020-001

FOR THE APPLICANT:

Scott Eidman
Ross Martin
Winstead PC
2728 North Harwood Street, Suite 500
Dallas, Texas 75201
Tel: (972) 419-4717

Paul McCracken
Kimley Horn and Associates, Inc.
6160 Warren Parkway, Suite 210
Frisco, Texas 75034

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Bobby Salehi, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Kenneth Jones, Technical Staff
Texas Commission on Environmental
Quality
Water Supply Division, MC-152
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4627
Fax: (512) 239-6972

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-5678

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR ALTERNATIVE DISPUTE RESOLUTION
via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0687
Fax: (512) 239-4015

FOR THE CHIEF CLERK
via eFilings:

<https://www14.tceq.texas.gov/epic/eFiling/>
Laurie Gharis
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER(S)/INTERESTED PERSON(S):

The Honorable Jared Patterson
State Representative, District 106
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

Prairie Oaks Municipal Utility District

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda

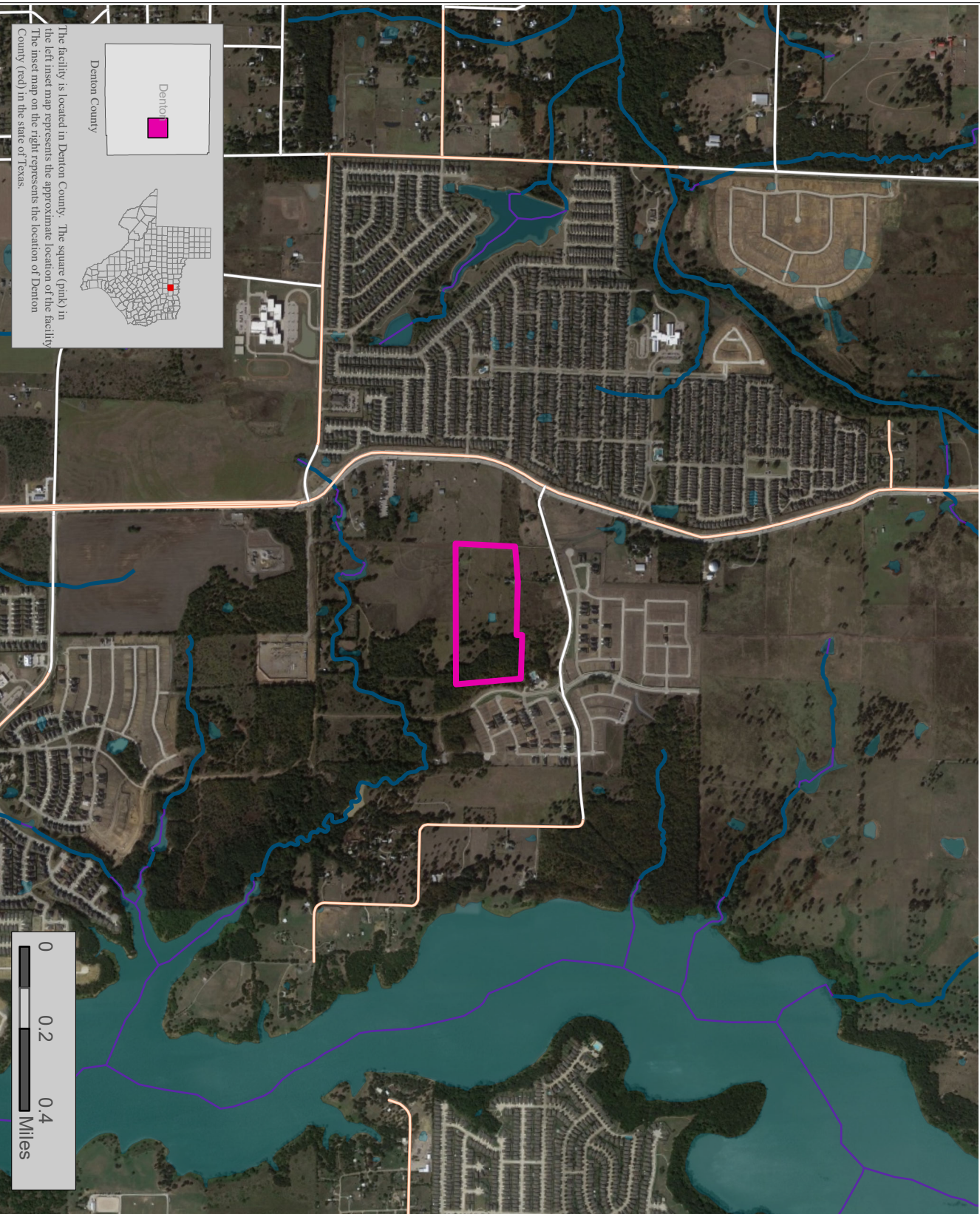


*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 3/19/2021
CRF: 0046317
Cartographer: Choddepri



 Proposed MUD



Denton
Denton County

The facility is located in Denton County. The square (pink) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Denton County (red) in the state of Texas.

State Representative
Patterson did not identify a
physical address

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

Attachment 2



JARED PATTERSON

TEXAS STATE REPRESENTATIVE • DISTRICT 106

November 24, 2020

Office of the Chief Clerk
MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

To whom it may concern:

Please see that the necessary criteria for requesting a contested case hearing regarding the petition for the Prairie Oaks Municipal Utility District (MUD) are below:

1. State Representative Jared Patterson, (512) 463-0688, P.O. Box 2910, Austin, TX 78768;
2. 2018 Blackhawk 31 Holdings LTD., TCEQ Internal Control Number D-06012020-001;
3. I request a contested case hearing regarding the petition for the creation of Prairie Oaks MUD;
4. Amongst other major concerns, this petition would affect the City of Oak Point negatively in that it would prove to be an incredible burden on current infrastructure. Burdening existing infrastructure and lacking funds to create necessary, new infrastructure is not only a logistical issue, but a matter of safety for Oak Point's current residents; and
5. The City of Oak Point resides in my district and the Prairie Oaks MUD would be situated just outside of Oak Point in their extraterritorial district.

Please do not hesitate to reach out if you have any questions.

God bless,

Jared Patterson
State Representative

CHIEF CLERKS OFFICE

2020 NOV 30 PM 3:01

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Attachment 3

Prairie Oaks Municipal Utility District

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 3/19/2021
CRF 0046317
Cartographer: CHoddePi

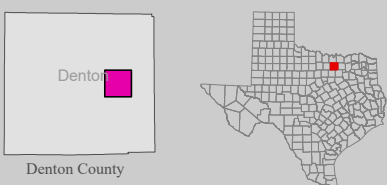
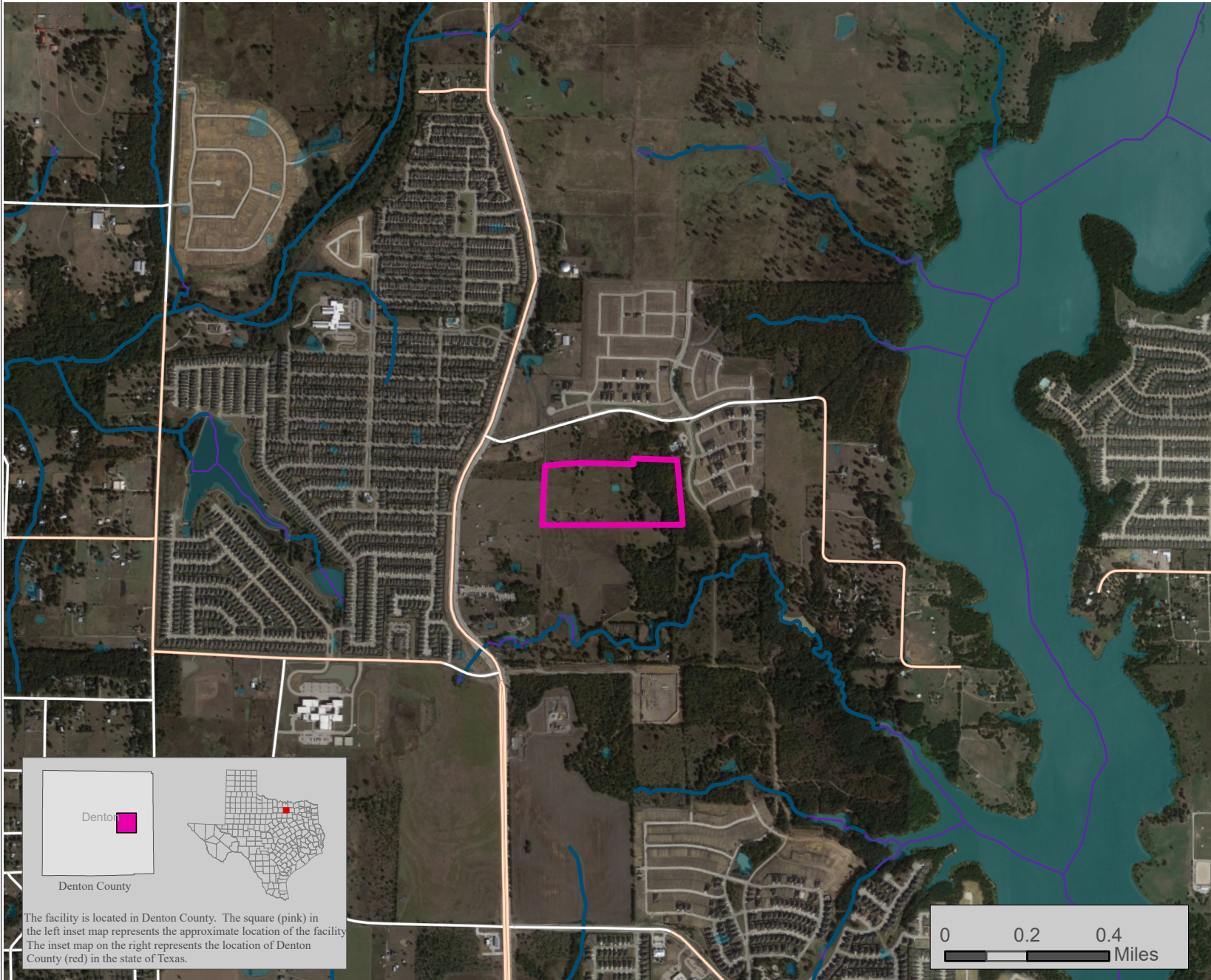


Proposed MUD

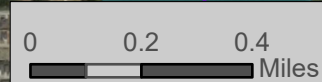
State Representative
Patterson did not identify a
physical address

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Denton County. The square (pink) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Denton County (red) in the state of Texas.



Attachment 4

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Chris S. Ulmann, P.E., Manager
Districts Section

Date: March 1, 2021

Thru: Cheryl Covone., Leader
Districts Creations Team

From: Kenneth Jones
Districts Creation Team

Subject: Docket No. 2021-0047-DIS; Petition by 2018 Blackhawk 31 Holdings Ltd. for the Creation of Prairie Oaks Municipal Utility District of Denton County; Pursuant to Texas Water Code Chapters 49 and 54.
TCEQ Internal Control No. D-06012020-001
CN: 605784016 RN: 111049813

A. GENERAL INFORMATION

The Texas Commission on Environmental Quality (TCEQ) received a petition within the application requesting approval for the creation of Petition by Prairie Oaks Municipal Utility District of Denton County (District). The petition was signed by John Dowdall, President of Nine Blackhawk, Inc., general partner of 2018 Blackhawk 31 Holdings LTD., a Texas limited partnership. The petition states that the Petitioner holds more than 50% of the value of all such area in the proposed District. The application further states that there are no lienholders on the lands included in the proposed District.

The District is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59 of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code (TWC).

Location and Access

The proposed District is located within the Extraterritorial Jurisdiction (ETJ) of the City of Oak Point (City) in Denton County, approximately 1,800 feet north of Martop Road and the City limits, approximately 675 feet south of Lloyds Road, approximately 1,200 feet east of Oak Grove Parkway (FM 720), and approximately 175 feet west of Hidden Oaks Trail.

Access to the proposed District is from existing Lloyd's Road and existing Hidden Oaks Trail, via proposed roads outside of the District that will be extended from each of the existing facilities as part of an adjacent development called Prairie Oaks Public Improvement District No. 1.

Metes and Bounds Description

The proposed District contains one tract of land, consisting of 31.696 acres. The metes and bounds legal descriptions have been checked by the TCEQ's staff and has been found to form an acceptable closure.

City Consent

EXHIBIT B

In accordance with Local Government Code Section 42.042 and Texas Water Code Section 54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the petitioner submitted a petition to the City to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code Section 54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code Section 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the district.

Statements of Filing Petition

Evidence of filing the petition with the Denton County Clerk's Office, the TCEQ's regional office, the State Senator, and State Representative for the district has been provided.

Type of Project

The proposed District will be considered a "developer project" as defined by 30 Texas Administrative Code (30 TAC) Section 293.44(a). Therefore, developer cost participation in accordance with 30 TAC Section 293.47 will be required.

Developer Qualifications

The application material indicates that John S. Dowdall will be the developer of the land within the proposed District. Information available supports that Mr. Dowdall has developed over 1,900 single family lots in North Texas. Additionally, he has experience in utility district creations at the city, county, and state level.

Certificate of Ownership

By certificate dated May 15, 2020, the Denton Central County Appraisal District has certified that its tax rolls indicate that 2018 Blackhawk 31 Holdings, Ltd., holds title to 100 percent of the appraised value of the property in the proposed District.

Temporary Director Affidavits

The TCEQ has received affidavits for consideration of the appointment of temporary directors for the following:

Halley Burnett
Kelly Maloney

Nathan Mantz
Justin McGinnity

Lindsey Welch

Each of the above persons named is qualified, as required by 30 TAC Section 293.32(a), to serve as a temporary director of the proposed District as each (1) is at least 18 years old; (2) is a resident of the State of Texas; and (3) either owns land subject to taxation within the proposed District, or is a qualified voter within the proposed District.

Notice Requirements

Proper notice of the application was published on December 16, 2020 and December 23, 2020, in the *Denton Record - Chronicle* a newspaper regularly published or circulated in Denton County. Proper notice of the application was posted on December 10, 2020 on the bulletin board used for posting legal notices in the Denton County Courthouse and on the Denton County internet website. Accordingly, the notice requirements of 30 TAC Section 293.12(b) have been satisfied.

County Notification

In accordance with TWC Section 54.0161, a letter, dated September 22, 2020, was sent to the Commissioners Court of Denton County providing notice of the proposed District's pending creation application and providing the Court an opportunity to make its recommendations. The County Commissioner's Court has not responded.

B. ENGINEERING ANALYSIS

The creation engineering report indicates the following.

Availability of Comparable Service

The proposed District will receive water and wastewater services from Mustang SUD. The engineering report indicates that District will construct the water distribution system, the sanitary sewer collection system, the drainage system, and the public roads that will serve the District. It is anticipated that once constructed, the District drainage and roadway improvements will be dedicated to, owned, maintained, and operated by the District. Construction of these facilities is necessary since there are no other sources in the area.

Water Supply

The engineering report states that the proposed District will obtain water from the Mustang SUD from surface water sources available to Mustang SUD. All water supply and distribution system improvements to serve the proposed District will be designed in accordance with criteria established by the TCEQ, Mustang SUD, and Denton County to meet pressure requirements under peak demand conditions.

When fully developed, the total population of the District is estimated to be 625 persons. At full development, the application estimates an average daily demand of 0.094 million gallons per day (MGD) is expected.

Water Distribution Improvements

The engineering reports states that the on-site waterlines will consist of approximately 6,500 feet of 8-inch waterline and 179 service connections. The water distribution system will be looped for service redundancy during emergencies and maintenance periods, and to maintain adequate circulation and pressure in the system. Valves, fire hydrants and flushing services will be provided at intervals as required by the TCEQ, Mustang SUD, and City of Oak Point (with respect to fire hydrants).

The water distribution system will be modeled to verify that the system has the capacity to maintain a minimum pressure of 35 psi under normal operating conditions and a minimum pressure of 20 psi under emergency operating conditions with a demand of 1.5 gallons per minute per connection.

Wastewater Treatment Improvements

All wastewater treatment improvements to serve the proposed District will be designed in accordance with design criteria established by the TCEQ, Denton County and Mustang SUD. The improvements to the District are projected to support 179 equivalent single-family connections (ESFCs) at 350-gallons per day (gpd) per ESFC as stated in the engineering report. An average wastewater flow of 62,650-gpd is anticipated.

Wastewater Collection

The engineer report states the proposed sanitary sewer collection system for the District will consist of approximately 8,000 feet of 8-inch gravity sewer line that will connect to an existing system located in the adjacent Prairie Oaks development. The existing system includes a lift station that will pump the District's flow to the west approximately 7,000 feet to a regional

trunk line at a location on the north side of Martop Road. The trunk line conveys flow north to the Oak Point Peninsula Wastewater Treatment Plant operated by Upper Trinity Regional Water District.

Storm Water Drainage

The storm water collection system for the proposed District will consist of a combination of street curbs and gutters with inlets, and approximately 5,000 linear feet of reinforced concrete conduit ranging from 18-inch diameter to 54-inch diameter. The majority of existing drainage is through overland flow to existing tributaries which eventually outfall into Lewisville Lake.

The engineering report states all storm drainage improvements will be designed in accordance with the applicable design criteria established by the City of Oak Point.

Road Improvement

The roads within the proposed District will be reinforced 6-inch concrete roads and curb and gutter system. Roads will be owned, operated, and maintained by the District.

All roadway improvements will be designed in accordance with the applicable criteria established the City of Oak Point.

Topography/ Floodplain / Elevation

The proposed District is located on a moderately sloping site. The Flood Insurance Rate Maps ("FIRM's") provided by the Federal Emergency Management Agency ("FEMA") indicates that the entire District is within Zone "X". Zone X is defined as areas determined to be outside the 0.2% annual chance floodplain. Exhibit 10, FEMA Map Number 48121C0405G, illustrates the flood plain.

Elevations in the proposed District range from 595 to 569 miles above sea level. The engineering report states the fill and/or excavation associated with the development of the proposed District's systems will not cause any changes in land elevation other than that normally associated with the construction of the underground utility systems, drainage facilities, and paving.

Subsidence and Groundwater Levels

According to the Engineering Report no facilities are proposed that will impact subsidence. No facilities are proposed that will contribute to adverse impacts of groundwater or groundwater recharge levels. The primary water source is provided by surface water sources.

Dam Safety Analysis

The TCEQ Dam Safety Program personnel reviewed the location of the District and identified a dam and small pond on the land to be included in the proposed District. The Dam Safety Program indicated that if the dam is over six feet high, plans for removal may be required to be submitted. In a response letter, the Petitioner's engineering firm indicated that the pond is a 0.25-acre, isolated upland pond with no spillway or downstream channel constructed or eroded. The petitioner also indicated that the maximum high of the dam is approximately six feet and pond will be removed as part of the development.

C. SUMMARY OF COSTS

WATER, WASTEWATER, AND DRAINAGE **Construction Costs**

District's Share ⁽¹⁾

A. Water Distribution System	\$	529,929	
B. Wastewater System		656,010	
C. Stormwater and Drainage System		<u>1,055,924</u>	
TOTAL CONSTRUCTION COSTS (69.60% OF BIR)	\$	2,241,863	7,500,050

Non-Construction Costs

A. Legal Fees	\$	96,632	
B. Fiscal Agent Fees		64,421	
C. Interest			
1. Capitalized Interest (12 months @ 5.00%)		161,053	
2. Developer Interest (24 months @ 6.96%)		224,186	
D. Bond Discount (3.00%)		96,632	
E. Creation Costs		150,000	
F. Bond Issuance Costs		40,000	
G. Organization and Operating Costs		100,000	
H. Bond Application Reports		35,000	
I. TCEQ Bond Issuance Fee (0.25%)		8,053	
I. Attorney General Fee (0.10%)		<u>3,221</u>	
TOTAL NON-CONSTRUCTION COSTS	\$	<u>979,198</u>	
TOTAL W, WW, & D BOND ISSUE REQUIREMENT	\$	3,221,061	

Notes:

(1) Assumes 100.0% funding of anticipated for Construction Costs and Non-Construction Costs.

Eligibility of costs may be subject to TCEQ review to be determined in accordance with TCEQ rules in effect at the time bond applications are reviewed.

ROADS

<u>Construction Costs</u>		<u>District's Share</u> ⁽¹⁾
A. Roadway System	\$	<u>1,351,608</u>
TOTAL CONSTRUCTION COSTS (79.00% OF BIR)	\$	1,351,608

Non-Construction Costs

A. Legal Fees	\$	51,327	
B. Fiscal Agent Fees		34,217	
C. Interest			
1. Capitalized Interest (12 months @ 5.00%)		85,545	
2. Developer Interest (24 months @ 7.90%)		135,161	
D. Bond Discount (3.00%)		51,327	
F. Attorney General Fees (0.10%)		<u>1,711</u>	
TOTAL NON-CONSTRUCTION COSTS	\$	<u>359,288</u>	
TOTAL ROAD BOND ISSUE REQUIREMENT	\$	1,710,896	

Notes:

(1) Assumes 100.0% funding of anticipated for Construction Costs and Non-Construction Costs.

A preliminary layout of roads proposed for funding has been provided, and they appear to benefit the District and the land included within the District.

D. ECONOMIC ANALYSIS

Land Use

The land use for the proposed District is projected in the following table.

<u>Development</u>	<u>Acres</u>	<u>ESFCs</u>
Single-Family Residential	22.3	179
Open Space	2.7	0
Right-of-Way	<u>6.7</u>	<u>0</u>
Totals	31.7	179

Market Study

A market study, prepared by Residential Strategies, Inc. (RSI), dated March 2020 has been submitted in support of the creation of the proposed District. The market study indicates that the proposed District is a future phase of the active Prairie Oaks community. Currently, the proposed District is in an area of undeveloped land. As residents of the greater Prairie Oaks community, residents of the proposed District will have access to a large amenity center with a resort-style pool, covered pavilion, gazebos, BBQs/fire pit, adjacent playground area, and miles of bike & bike trails, along with ample greenspaces.

At buildout, 31.7-Acre tract is planned to contain a total of 179 single-family homesites, typically sized 40' wide and 110' to 125' deep. The price of the single-family homes will range from \$260,000 to \$325,000. Initial lot deliveries for the subject tract are anticipated for 4Q21.

Project Financing

The estimated total assessed valuation of land in the proposed District at completion is as follows:

<u>Development Type</u>	<u>No. of Units</u>	<u>Average Unit Value</u>	<u>Total Value at Build Out</u>
Single-Family Homes (40'x120' Lot)	179	\$240,000	<u>\$42,960,000</u>
TOTAL ASSESSED VALUATION			\$42,960,000

Considering an estimated bond issue requirement of \$4,931,957 (including \$3,221,061 for utilities plus \$1,710,896 for roads) and assuming 100% financing, a coupon bond interest rate of 5.00%, a 25-year bond life, the average annual debt service requirement would be approximately \$349,934 (including \$228,542 for water, wastewater, and drainage plus \$121,392 for roads). Assuming a 97% collection rate and an ultimate assessed valuation (AV) of \$42,960,000 a tax rate of approximately \$0.85 (\$0.55 for utilities, \$0.30 for roads) per \$100 AV would be necessary to meet the annual debt service requirement. The application materials indicate that a maintenance tax of \$0.05 per \$100 of annual AV is anticipated.

The total year 2019 tax rates on land within the proposed District are shown in the following tables:

<u>Taxing Jurisdiction</u>	<u>Tax Rates ⁽¹⁾</u>
Denton Independent School District	\$1.47
Denton County	0.23
Proposed District Tax ⁽²⁾	<u>0.90</u>
Total tax per \$100 AV	\$2.60

Notes:

- (1) Represents a tax rate per \$100 of assessed valuation.
- (2) District tax rate of \$0.90 (includes debt service tax of \$0.85 and \$0.05 for maintenance).

Based on the proposed District tax rate the project is considered economically feasible.

Water and Wastewater Rates

According to information provided by the engineering report, the Mustang SUD will provide following water and wastewater rates are anticipated:

Water:

\$28.10	Base Charge
\$2.75 per 1,000 gallons	0 – 3,000 gallons
\$3.85 per 1,000 gallons	3,001 – 9,000 gallons
\$4.80 per 1,000 gallons	9,001 – 15,000 gallons
\$5.85 per 1,000 gallons	15,001 – 25,000 gallons
\$8.95 per 1,000 gallons	25,001 gallons and up

Wastewater:

\$51.60	0 – 8,000 gallons
\$57.55	8,001 gallons and up

Based on the above rates, the estimated monthly fee for 10,000 gallons of water and wastewater service would be \$70.20 for residential customers.

Comparative Water District Tax Rates

A combined projected tax rate of \$0.90 per \$100 assessed valuation for the proposed District is comparable to other districts. Based on the requirements of 30 TAC Section 293.59, this project is considered economically feasible.

E. SPECIAL CONSIDERATION

Request for Road Powers

A request for approval of road powers was included in the petition for creation of the proposed District. Pursuant to TWC Section 54.234, approval of road powers may be requested at the time of creation. The engineering report provided with the application included a summary of the estimated costs. The proposed roads appear to benefit the proposed District, and financing appears feasible.

F. CONCLUSIONS

1. Based on TCEQ policy, compliance with TCEQ rules, and review of the engineering report and supporting documents, the proposed District is considered feasible, practicable, would be a benefit to the land within the proposed District, and would be necessary as a means to finance utilities and to provide utility service to future customers.
2. Based on a review of the preliminary engineering report, market study, the proposed District's water, wastewater, drainage and road facilities, a combined projected tax rate of \$0.90 per \$100 AV, the proposed District obtaining a 5.00% bond coupon interest rate, and other supporting data, the proposed District is considered feasible under the limits prescribed by 30 TAC Section 293.59.

3. The recommendations are made under authority delegated by the Executive Director of the TCEQ.

G. RECOMMENDATIONS

1. Grant the petition for creation of Prairie Oaks MUD of Denton County.
2. Grant the District's request to acquire road powers in accordance with TWC Section 54.234 and 30 TAC Sections 293.11(d)(11), 293.201, and 293.202, subject to the requirements imposed by the TCEQ and the general laws of the State of Texas relating to the exercise of such powers.

3. The Order granting the petition should include the following statement:

"This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the petition for creation, nor as a commitment or requirement of the TCEQ in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for TCEQ consideration."

4. Appoint the following to serve as temporary directors until permanent directors are elected and qualified:

Halley Burnett
Kelly Maloney

Nathan Mantz
Justin McGinnity

Lindsey Welch

H. ADDITIONAL INFORMATION

The petitioner's professional representatives are:

Attorney:	Mr. Scott Eidman - Winstead, PC
Engineer:	Mr. Paul McCracken, P.E. - Kimley-Horn and Associates, Inc.
Market Analyst:	Mr. Ted Wilson and Cassie Gibson- Residential Strategies, Inc.

Attachment 5

**PETITION FOR THE CREATION OF
PRAIRIE OAKS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY**

THE STATE OF TEXAS	§
	§
COUNTY OF DENTON	§

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The undersigned petitioner, (herein the “Petitioner”, whether one or more), being a majority of the persons who hold title to land(s) situated within the area hereinafter described, which represents a total value of more than 50% of the value of all such area, and being a majority in value of the holders of title of said area described by metes and bounds in Exhibit A attached hereto (the “Land”), respectfully petitions the Texas Commission on Environmental Quality (“TCEQ”) for the creation of a municipal utility district in Denton County, Texas, pursuant to the provisions of Texas Local Government Code § 42.042(b), (c) and (f), and Chapters 49 and 54 of the Texas Water Code, together with all amendments and additions thereto, and would respectfully show the following:

I.

The name of the proposed district shall be “PRAIRIE OAKS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY” (the “District”). There is no other conservation or reclamation district in Denton County, Texas with the same name.

II.

The District shall be created and organized and shall exist under the terms and provisions of Article XVI, Section 59 and Article III, Section 52 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended, together with all amendments and additions thereto.

III.

The District shall contain an area of approximately 31.696 acres of land, situated within Denton County, Texas, described by metes and bounds in Exhibit “A”, which is attached hereto and made a part hereof for all purposes. The described property is wholly located within the extraterritorial jurisdiction of the City of Oak Point (the “City”).

IV.

The undersigned Petitioner constitutes a majority of the persons who hold title to lands within the District which represents a total value of more than 50% of the value of

all lands within the District, as well as a majority in value of the holders of title of the property to be included within the District.

V.

The District shall be created for all of the purposes set forth in Article XVI, Section 59 and Article III, Section 52, Texas Constitution; Chapters 49 and 54, Texas Water Code, as amended; and if required by law, subsequently acquired and approved by and election held within the District, Chapter 257, Texas Transportation Code or other applicable law.

VI.

In accordance with Texas Local Gov't Code § 42.042(a), Petitioner petitioned the City in writing for consent for the creation of the District on September 9, 2019. Petitioner's request is attached as Exhibit B. The City failed to respond to such letter, effectively refusing to give its consent to the creation within 90 days after receiving the written request.

VII.

On January 21, 2020, Petitioner petitioned the City to provide water and sanitary sewer services to the Land in accordance with Tex. Local Govt. Code § 42.042(b) and (c). Such petition is attached hereto as Exhibit C. On January 23, 2020 the City sent Petitioner the City's Municipal Utility District (MUD) Petition Application and requested additional information from Petitioner. On April 3, 2020, Petitioner submitted the requested MUD Application items. However, since April, 3, 2020, the City has not had any meaningful correspondence or discussions with Petitioner or its representatives, and the City has not contractually agreed to provide water and wastewater service to the Land. More than 120 days have passed since Petitioner submitted its January 21, 2020 request for service.

VIII.

The general nature of the work proposed to be done by the District at the present time is the construction, maintenance and operation of a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; the construction, maintenance and operation of a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes; the construction, installation, maintenance, purchase and operation of drainage and roadway facilities and improvements; and the construction, installation, maintenance, purchase and operation of facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized.

IX.

There is a necessity for the improvements described above for the following reasons: The area of the District is urban in nature and is in close proximity to populous and developed sections of Denton County. The District's area will, within the immediate future, experience a substantial and sustained residential and commercial growth. Said area is not supplied with adequate water and sanitary sewer facilities and services or with adequate drainage facilities and does not have adequate fire suppression facilities, parks and recreational land and facilities, or roads or improvements in aid thereof. The health and welfare of the future inhabitants of the area and of territories adjacent thereto require the installation and acquisition of an adequate water supply and sewage disposal system, an adequate drainage system for and within the area of the District, adequate fire suppression facilities, adequate parks and recreational land and facilities, and roads or improvements in aid thereof.

A public necessity exists for the organization of such District to provide for the purchase, construction, extension, improvement, maintenance and operation of such waterworks and sanitary sewer system, such drainage facilities, such fire suppression facilities, parks and recreational land and facilities, and roads or improvements in aid thereof, in order to promote and protect the purity and sanitary condition of the State's waters and the public health and welfare of the community.

X.

Said proposed improvements are practicable and feasible, in that the terrain of the territory to be included in the District is such a nature that a waterworks, sanitary sewer, drainage, storm sewer and roadway system can be constructed at a reasonable cost, currently estimated at \$5,190,568 with reasonable ad valorem tax and assessment rates and water and sewer rates, and said territory will be developed for residential and commercial purposes. The District shall be designated a noncity service district in the meaning of Section 54.016, Texas Water Code, as the District does not currently propose to connect to the City's water or sewer system, as of the date this Petition is filed.

XI.

The following named persons are each and all over eighteen (18) years of age, resident citizens of the State of Texas, owners of land subject to taxation within the District, and are otherwise qualified to serve as directors of the District under the provisions of the Texas Water Code:

1. Lindsey Welch
2. Justin McGinnity
3. Halley Burnett
4. Kelly Maloney
5. Nathan Mantz

WHEREFORE, the undersigned respectfully pray that this Petition be properly filed, as provided by law; that notice of the application be given as provided therein; that a hearing be held if necessary and that this Petition be in all things granted; that the proposed municipal utility district be organized; that the five (5) persons named herein be appointed to serve as temporary directors until their successors are duly elected and qualified; and for such other orders, acts, procedures and relief as are proper, necessary and appropriate to the purpose of creating and organizing the District and to the execution of the purposes for which the District shall be organized, as you may deem proper and necessary.

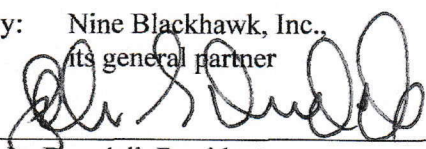
THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

RESPECTFULLY SUBMITTED, this 15th day of May, 2020

PETITIONER:

2018 BLACKHAWK 31 HOLDINGS LTD.,
a Texas limited partnership

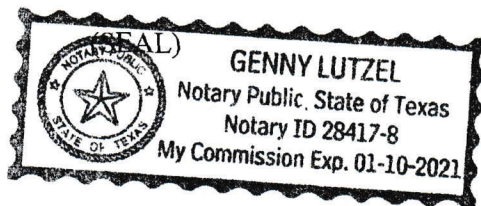
By: Nine Blackhawk, Inc.,
its general partner



John Dowdall, President

Approximate Acreage Owned: 31 acres

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

On May 15, 2020, before me, the undersigned, personally appeared John Dowdall, President of Nine Blackhawk, Inc., general partner of 2018 Blackhawk 31 Holdings Ltd., a Texas limited partnership, and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity.




Notary Public in and for
the State of Texas