

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

January 14, 2022

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

Re: Petition for Chambers County MUD No. 4; TCEQ Docket No. 2021-1620-DIS

Dear Ms. Gharis:

I have enclosed for filing the Executive Director's Response to Hearing Requests in the above-entitled matter. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Bobby Salehi".

Bobby Salehi
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2021-1620-DIS

APPLICATION BY	§	BEFORE THE TEXAS
MONTGOMERY ESTATES, LLC FOR	§	
CHAMBERS COUNTY MUD NO. 4	§	COMMISSION ON
INTERNAL CONTROL NO.	§	
D-04232021-036	§	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 The Sanctuary Texas LLC (Petitioner) for the creation of Chambers County Municipal Utility District No. 4 (District). The Office of the Chief Clerk received hearing requests from the Chambers County Commissioner’s Court.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map.

I. DESCRIPTION OF DISTRICT

Petition by Montgomery Estates, LLC (Petitioner) for the creation of Chambers County MUD No. 4 (District). The Petitioner requests that the Commission create the District pursuant to Chapters 49 and 54, Texas Water Code. The proposed District is comprised of approximately 146.15 acres of land in Chambers County, Texas. The land of the proposed district is wholly within the extraterritorial jurisdiction of the City of Cove, Texas.

The petition states that the proposed District will: purchase, construct, and acquire, improve, extend, and maintain a waterworks and sanitary sewer system for domestic and commercial purposes; purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, plants, equipment and appliances helpful or necessary to provide adequate drainage for the District; control, abate, and amend local storm water or other harmful excesses of water; purchase interests in land and purchase, construct, acquire, improve, extend, maintain and operate improvements, facilities and equipment for the purpose of providing recreational facilities; pursuant to 54.234 of Texas Water Code, may exercise road powers and authority; may establish, finance, provide, operate, and maintain a fire department or fire-fighting services within the District.

II. PROCEDURAL HISTORY

The TCEQ received the petition on April 23, 2021. The Application was declared administratively complete on April 27, 2021. On November 2, 2021, notice of the petition was posted at the Chambers County Courthouse. The Petitioner published Notice of District Petition in the *Houston Chronicle*, a newspaper of general circulation in Chambers County, where the district is proposed to be located, on October 26 and November 2, 2021. The period to request a contested case hearing ended on December 2, 2021.

The TCEQ received one timely hearing request on this petition, from the Chambers County Commissioner's Court.

The City of Cove consented to the creation of the district by Ordinance No. 2020-12-001, passed and approved December 16, 2020. Accordingly, the requirements of Texas Water Code Section 54.016 and Texas Local Government Code Section 42.042 have been satisfied.

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 § 54.014. 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 REQUESTS

The following governmental entities submitted a request for a contested case hearing:

1. Chambers County Commissioner's Court

The Chambers County Commissioner's Court submitted a timely hearing request which included all of the required information for a contested case hearing request pursuant to 30 TAC § 55.251(c)(1). The Court requested a contested case hearing pursuant to 30 TAC § 55.251(c)(3) and provided the TCEQ Internal Control Number for the case as required and pursuant to 30 TAC § 55.251(c)(4). The Executive Director recommends the Commission find that the hearing request by the Chambers County Commissioner's Court complies with the requirements of 30 TAC § 55.251.

It is undisputed that the proposed MUD is located within Chambers County, Texas. In their hearing request, the Chambers County Commissioner's Court identified the Court's statutory authority and interest in the issues relevant to the application pursuant to 30 TAC § 55.256(c)(6). In their hearing request, the Court included a November 23, 2021, resolution passed opposing the MUD creation and raising issues. The Court's request raised issues relating to drainage, condemnation to build an outfall, and additional tax burden on citizens. These issues include issues that are

within the scope of what the Commissioners consider when reviewing a MUD creation petition. The Executive Director recommends the Commission find that the Chambers County Commissioner's Court is an affected person pursuant to 30 TAC § 55.256.

The Executive Director recommends the Commission grant Chambers County Commissioner's Court's hearing request.

VI. RECOMMENDATION

The Executive Director recommends that the Commission find Chambers County Commissioner's Court is an affected person and grant its hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

Guy Henry, Acting Deputy Director
Environmental Law Division



Bobby Salehi, Staff Attorney
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Chambers County Municipal Utility District No. 4
DOCKET NO. 2021-1620-DIS; INTERNAL CONTROL NO. D-04232021-036

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REQUESTER(S)/INTERESTED PERSONS

See attached list

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Attorney, Chambers County
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Anahuac, Texas 77514

INTERESTED PERSON(S):

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Attachment A

Chambers County Municipal Utility District No. 4



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

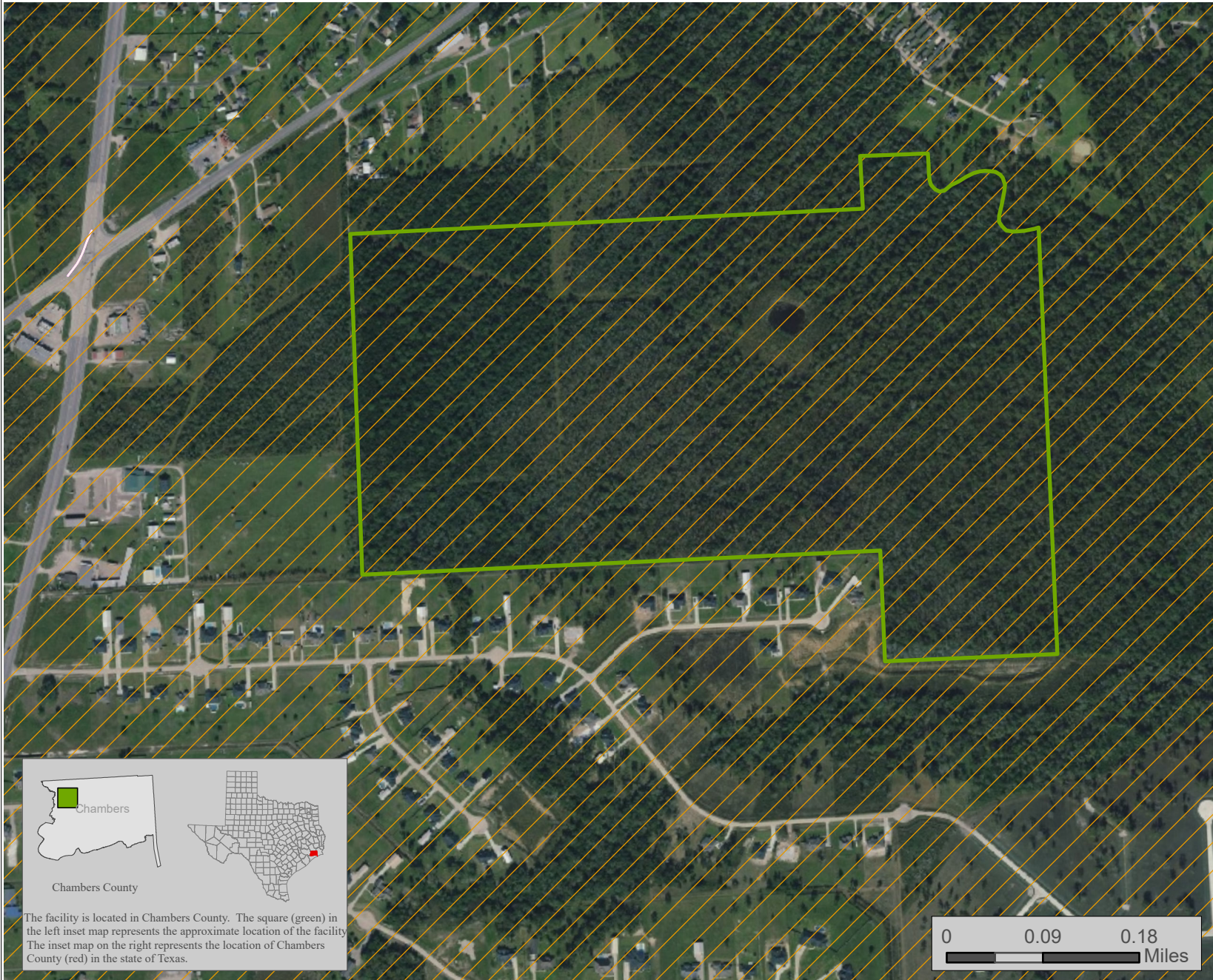


*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 12/20/2021
CRF 0063819
Cartographer: CHoddePi

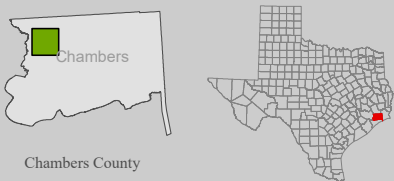


-  Proposed MUD
-  Chambers County Commissioners Court



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 Chambers County. The square (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Chambers County (red) in the state of Texas.

