

**TCEQ DOCKET NO. 2022-0532-DIS**

**PETITION FOR THE CREATION OF                    §                    BEFORE THE TEXAS  
HIGHLAND LAKES MUNICIPAL                    §                    COMMISSION ON  
UTILITY DISTRICT NO. 1                    §                    ENVIRONMENTAL QUALITY**

**APPLICANTS' RESPONSE TO HEARING REQUESTS**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant Highland Lakes Midlothian I, LLC (“Applicant”) file its Response to Hearing Requests and shows as follows:

**I.     Introduction and Procedural History**

The proposed Highland Lakes Municipal Utility District No. 1 of Ellis County (the “District”) contains 2,153.60 acres located in Ellis County. The proposed District is partially located within the extraterritorial jurisdiction of the City of Midlothian and is partially located within the extraterritorial jurisdiction of the City of Waxahachie.

Applicant filed its Amended Petition for creation of the District on July 30, 2021. The Petition was deemed administratively complete on December 2, 2021. Applicant published the Notice of District Petition in the Waxahachie Daily Light on February 2, 2022 and February 9, 2022, a newspaper generally circulated in Ellis County. On January 28, 2022, notice of the Petition was posted in the Ellis County Courthouse. Subsequently, the Texas Commission on Environmental Quality (the “Commission”) received a number of requests for a contested case hearing.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission’s consideration of the hearing requests and setting the hearing on the requests for June 15, 2022.

As more fully set forth below, a contested case hearing is not warranted in this matter and Applicant's Petition should be granted.

## II. Applicable Law

A municipal utility district ("MUD" or "district") may be created under and subject to the authority, of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, and the Commission's administrative. A district 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.

To create a MUD, a petition requesting creation shall be filed with the Commission. *See* TEX. WATER CODE § 54.014. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. *See id.* The petition shall: (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number; (2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and (3) include a name of the district which shall be generally

descriptive of the locale of the district. *See* TEX. WATER CODE § 54.015, 30 TEX. ADMIN. CODE § 293.11(a) and (d).

If all of the district is proposed to be located outside corporate limits of a municipality, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. *See* TEX. WATER CODE § 54.0161(a). If the commissioners court votes to make a recommendation to the Commission, the commissioners court shall submit to the Commission, at least 10 days before the date set for the hearing on the petition, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners court thinks would assist the Commission in making a final determination on the petition. *See id.* at § 54.0161(b). The Commission shall consider the written opinion submitted by the county commissioners. *See id.* at § 54.0161(c).

The Commission shall grant the petition if it conforms to the requirements of section 54.015 and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. *See* TEX. WATER CODE § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial 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 applicant must publish notice of the petition to create a district once a week for two consecutive weeks in a newspaper regularly published or circulated in the county where the district is proposed to be located not later than the 30th day before the date of the Commission's decision on the application. *See* TEX. WATER CODE §§ 49.011(b), 54.018. Additionally, the applicant must post notice of the petition on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located. *See* 30 TEX. ADMIN. CODE § 293.12(b)(2). The Commission shall hold a public hearing if requested by the Commission, Executive Director, or an "affected person" under the factors in 30 Texas Administrative Code, Chapter 55 and Texas Water Code section 49.011(c).

A hearing requestor must make the request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically explaining 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." 30 TEX. ADMIN. CODE § 55.251(b)—(d).

An affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest." 30 TEX. ADMIN. CODE § 55.256(a). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. *See* 30 TEX. ADMIN. CODE §

55.256(b). Relevant factors to be considered in determining whether a person is affected include, but are not limited to:

- (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, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c).

The Commission shall grant a request for a contested case hearing if: (1) the request is made by the applicant or the ED; or (2) the request is made by an affected person, complies with the requirements of section 55.251, is timely filed with the chief clerk, and is made pursuant to a right to hearing authorized by law. *See* 30 TEX. ADMIN. CODE § 55.255(b).

### III. Analysis of the Hearing Requests

#### A. The County of Ellis, Texas' Request Should be Denied.

On March 4, 2022, The County of Ellis, Texas (the “County”) requested a contested case hearing on its bare assertion that it is an affected person. The County must prove its status as an “affected person” to be granted a contested case hearing through a showing it has statutory authority over or an interest in the issues relevant to the application. *See* 30 TEX. ADMIN. CODE § 55.251 § (c)(6). In its hearing request, the County did not provide the basis for its assertion that it is an “affected person” but simply stated that it has jurisdiction over transportation, emergency services, and health and safety. While the County may have statutory authority or an interest in transportation, emergency services, and health and safety,

these items are irrelevant to the application itself and the determination of the Districts' feasibility. The Commission *shall* grant the petition if it conforms to the requirements of section Texas Water Code section 54.015 and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. *See* TEX. WATER CODE § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial 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 County failed to raise any issue within the scope of what the Commission may consider when reviewing the Petition. *See* TEX. WATER CODE § 54.021(b). In addition, it failed to articulate any way that it would be affected by the proposed District in a having statutory authority over or an interest in the issues relevant to the application. *See* 30 TEX. ADMIN. CODE § 55.251 § (c)(6). Accordingly, the County's hearing request should be denied.

**B. The City of Midlothian, Texas' Request Should be Denied.**

The City of Midlothian, Texas ("Midlothian"), also requested a contested case hearing on March 4, 2022. Midlothian asserts that it has an interest in water, sewer, emergency services, and health and safety. If this is the case, Midlothian has failed to demonstrate any nexus

between these items and the proposed Districts. Governmental entities may be an “affected person” if they have statutory authority over or an interest in the issues relevant to the applications. What Midlothian describes as its interest pertains to development in its extraterritorial jurisdiction (“ETJ”); not the application itself. Moreover, Midlothian has very little authority to regulate development in its ETJ. Its limited authority does not extend to water, sewer, and drainage, which the Districts would provide. Additionally, Midlothian cites to the fact that it is a regional water and sewer provider and has an interest in the Districts regionalizing with its sewer system. Again, this might be relevant to development within the ETJ but not to the Districts’ applications.

Midlothian failed to raise any issue within the scope of what the Commission may consider when reviewing the Petition. *See* TEX. WATER CODE § 54.021(b). In addition, it failed to articulate any way that it would be affected by the proposed District in a manner not common to members of the general public have statutory authority over or an interest in the issues relevant to the applications. *See* 30 TEX. ADMIN. CODE § 55.251 § (c)(6). As such, Midlothian’s hearing request does not demonstrate how it meets the definition of an affected person.

**C. The City of Waxahachie, Texas’ Request Should be Denied.**

The City of Waxahachie, Texas (“Waxahachie”), requested a contested case hearing on March 4, 2022. Waxahachie asserts that it has an interest in water, sewer, emergency services, and health and safety. If this is the case, Waxahachie has failed to demonstrate any nexus between these items and the proposed Districts. Governmental entities may be an “affected person” if they have statutory authority over or an interest in the issues relevant to the applications. What Waxahachie describes as its interest pertains to development in its extraterritorial jurisdiction (“ETJ”); not the application itself. Moreover, Waxahachie has very little authority

to regulate development in its ETJ. Its limited authority does not extend to water, sewer, and drainage, which the Districts would provide. Additionally, Waxahachie cites to the fact that it is a regional water and sewer provider and has an interest in the Districts regionalizing with its sewer system. Again, this might be relevant to development within the ETJ but not to the Districts' applications.

Waxahachie failed to raise any issue within the scope of what the Commission may consider when reviewing the Petition. *See* TEX. WATER CODE § 54.021(b). In addition, it failed to articulate any way that it would be affected by the proposed District in a manner not common to members of the general public have statutory authority over or an interest in the issues relevant to the applications. *See* 30 TEX. ADMIN. CODE § 55.251 § (c)(6). As such, Waxahachie's hearing request does not demonstrate how it meets the definition of an affected person.

#### **IV. Conclusion**

None of the requests for contested case hearing identify any personal justiciable interest as required under the Texas Administrative Code. Specifically, the requests have not shown that any entity would be affected by the proposed District in a manner not common to members of the general public or have statutory authority over or an interest in the issues relevant to the applications. Therefore, the requests do not meet the definition of an "affected person" and the hearing requests should be denied.



WHEREFORE, Applicant requests that both hearing requests be denied and that the Petition be granted.

Respectfully submitted,

**COATS | ROSE**

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**ATTORNEYS FOR APPLICANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on May 23<sup>rd</sup>, 2022, the original of Applicant's Response to Hearing Requests was filed with the Chief Clerk of the TECQ and a copy was served on all person listed on the attached mailing list either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.



Natalie B. Scott

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