

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

May 27, 2022

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. 2022-0532-DIS; Highland Lakes Municipal Utility District No. 1 of Ellis County; Request filed regarding Internal Control No. D-11302021-043.

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 June 15, 2022 Agenda on a hearing request for the creation of Highland Lakes Municipal Utility District No. 1 of Ellis County:

1. Executive Director's Response to the Hearing Request;
2. Hearing requests;
3. Technical memo prepared by staff; and
4. Amended 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 that reads "Bobby Salehi".

Bobby Salehi, Staff Attorney
Environmental Law Division

Enclosures

Attachment 1

TCEQ DOCKET NO. 2022-0532-DIS

APPLICATION FOR HIGHLAND	§	BEFORE THE TEXAS
LAKES MUNICIPAL UTILITY	§	
DISTRICT NO. 1 OF ELLIS COUNTY	§	COMMISSION ON
INTERNAL CONTROL NO.	§	
D-11302021-043	§	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 Petition by Highland Lakes Midlothian I, LLC (Petitioner) for the creation of Highland Lakes Municipal Utility District No. 1 of Ellis County (District). The Office of the Chief Clerk received hearing requests from Ellis County, the City of Midlothian, and the City of Waxahachie.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map.

I. DESCRIPTION OF DISTRICT

Highland Lakes Midlothian I, LLC applied for the creation of Highland Lakes Municipal Utility District No. 1 of Ellis County. The proposed District is comprised of approximately 2,153.60 acres. The Petitioner requests that the Commission create the District pursuant to Chapters 49 and 54, Texas Water Code; and Chapter 293, Title 30 Texas Administrative Code. The proposed District is comprised of approximately 2,153.60 acres of land in Ellis County, Texas. Some of the land of the proposed District is within the extraterritorial jurisdiction of the City of Midlothian, Ellis County, Texas, as well as the City of Waxahachie, Ellis County, Texas.

The petition states that the proposed District will: (1) purchase, construct, improve, or extend a water distribution system for municipal, domestic, and commercial purposes; (2) collect, transport, process, and dispose of and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend, and control storm water and other excesses of water within the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. Additionally, the petitioner requests road powers pursuant to Texas Water Code, Section 54.234.

II. PROCEDURAL HISTORY

The TCEQ received the petition on November 30, 2021. The Application was declared administratively complete on December 02, 2021. On January 28, 2022, notice of the petition was posted on the bulletin board used for posting legal notices in Ellis County. The Petitioner published Notice of District Petition in the *Waxahachie Daily Light*, a newspaper of general circulation in Ellis County, where the district is proposed

to be located, on March 13 and March 20, 2022. The period to request a contested case hearing ended on April 19, 2022.

The TCEQ received three timely hearing requests on this Petition. Hearing requests were received from Ellis County, the City of Midlothian, and the City of Waxahachie.

In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition for consent to both the City of Midlothian and the City of Waxahachie. After 90 days passed without receiving consent, the Petitioner submitted a petition to the City of Midlothian and the City of Waxahachie to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by Texas Water Code § 54.016(c) expired without a contract for service being agreed to. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the district.

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 REQUESTS

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

1. Ellis County

Ellis County 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 County 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 in the notice and pursuant to 30 TAC § 55.251(c)(4). The Executive Director

recommends the Commission find that the hearing request by Ellis County complies with the requirements of 30 TAC § 55.251.

It is undisputed that the proposed MUD is located within Ellis County. The County's request raised issues relating to water quality, subsidence, transportation, emergency services, as well as human health and safety. Therefore, Ellis County identified its personal justiciable interest affected by the application in a manner not common to members of the general public pursuant to 30 TAC § 55.251(c)(2). The request identified the County's statutory authority and interest in the issues relevant to the application pursuant to 30 TAC § 55.256(c)(6). The Executive Director recommends the Commission find that Ellis County is an affected person pursuant to 30 TAC § 55.256.

The Executive Director recommends the Commission grant Ellis County's hearing request.

2. The City Midlothian

The City of Midlothian submitted a timely hearing request which contained all required information for a contested case hearing request pursuant to 30 TAC 55.251(c)(1). The city 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 in the notice and pursuant to 30 TAC 55.251(c)(4). The Executive Director recommends the Commission find that the hearing request by the City of Midlothian complies with the requirements of 30 TAC § 55.251.

It is undisputed that the proposed district is partially located in the extraterritorial jurisdiction of the City of Midlothian. The City's hearing request raised issues relating to subsidence, regionalization, emergency services, as well as public health and safety. Therefore, the City of Midlothian identified its personal justiciable interest affected by the application in a manner not common to members of the general public pursuant to 30 TAC § 55.251(c)(2). The request identified the City's statutory authority and interest in the issues relevant to the application pursuant to 30 TAC § 55.256(c)(6). The Executive Director recommends the Commission find that the City of Midlothian is an affected person pursuant to 30 TAC § 55.256.

The Executive Director recommends the Commission grant the City of Midlothian's hearing request.

3. The City of Waxahachie

The City of Waxahachie submitted a timely hearing request which contained all required information for a contested case hearing request pursuant to 30 TAC 55.251(c)(1). The city 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 in the notice and pursuant to 30 TAC 55.251(c)(4). The Executive Director recommends the Commission find that the hearing request by the City of Waxahachie complies with the requirements of 30 TAC § 55.251.

It is undisputed that the proposed district is partially located in the extraterritorial jurisdiction of the City of Waxahachie. The City's hearing request raised issues relating to subsidence, regionalization, emergency services, as well as public

health and safety. Therefore, the City of Waxahachie identified its personal justiciable interest affected by the application in a manner not common to members of the general public pursuant to 30 TAC § 55.251(c)(2). The request identified the City's statutory authority and interest in the issues relevant to the application pursuant to 30 TAC § 55.256(c)(6). The Executive Director recommends the Commission find that the City of Waxahachie is an affected person pursuant to 30 TAC § 55.256.

The Executive Director recommends the Commission grant the City of Waxahachie's hearing request.

VI. RECOMMENDATION

The Executive Director recommends that the Commission find Ellis County, the City of Midlothian, and the City of Waxahachie are affected persons and grant each of their hearing requests.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

Charmaine Backens, 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 May 23, 2022, the “Executive Director’s Response to Hearing Request” for Highland Lakes Municipal Utility District No. 1 Of Ellis County, Internal Control No.D-11302021-043, was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed 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

MAILING LIST
HIGHLAND LAKES MUNICIPAL UTILITY DISTRICT NO. 1 OF ELLIS COUNTY
DOCKET NO. 2022-0532-DIS; INTERNAL CONTROL NO. D-11302021-043

FOR THE APPLICANT

via electronic mail:

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FOR THE EXECUTIVE DIRECTOR

via electronic mail:

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FOR ALTERNATIVE DISPUTE RESOLUTION

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Texas Commission on Environmental
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FOR THE CHIEF CLERK:

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

REQUESTER(S):

Emily W. Rogers
Bickerstaff Heath Delgado Acosta LLP
3711 South Mopac Expressway
Building One, Suite 300
Austin, Texas 78746

Attachment A

Attachment 2



March 4, 2022

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

Re: Application by Highland Lakes Midlothian I, LLC, to the Texas Commission on Environmental Quality for creation of Highland Lakes Municipal Utility District No. 1 of Ellis County, TCEQ Internal Control No. D-11302021-043

Dear Chief Clerk Gharis:

The County of Ellis, Texas (the “County”) formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to me, Emily Rogers, attorney for the County, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. My daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Highland Lakes Midlothian I, LLC is applying to the Texas Commission on Environmental Quality (the “TCEQ”) for creation of a new municipal utility district entirely within Ellis County, and partially within the extraterritorial jurisdictions of both the cities of Waxahachie, Texas, and Midlothian, Texas. The County opposes the creation of the district.

The County is an “affected person” entitled to a contested case hearing on issues raised in this hearing request because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public and is an affected person under 30 TEX. ADMIN. CODE § 55.256. Local governments, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). First, the Texas Water Code authorizes the County to provide TCEQ with its “findings, conclusions, and other information that the commissioners court thinks would assist the commission in making a final determination on the petition.” Tex. Water Code § 54.0161(b)(2). The TCEQ is then required to consider this information and opinion provided by the County. *Id.* at (c). The County requests a contested case hearing in order to provide all evidence and information to TCEQ that may assist in the Commission’s consideration of the application.

Additionally, the County has statutory and/or constitutional authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of the district and that the application fails to take into

account. *See, e.g.*, TEXAS LOCAL GOVERNMENT CODE §§ 232.001-.011 (county authority for road construction in subdivisions as well as other subdivision regulations); LOCAL GOV'T CODE § 251.003 (county order and rulemaking authority for roads); LOCAL GOV'T CODE Subchapter C (fire code in unincorporated areas); LOCAL GOV'T CODE Subchapter E (infrastructure planning provisions in certain urban counties); LOCAL GOV'T CODE Chapter 233, Subchapter B (building and set back lines); LOCAL GOV'T CODE Chapter 233, Subchapter E (fire code in unincorporated area); TEXAS GOVERNMENT CODE Chapter 418 (emergency management); TEXAS TRANSPORTATION CODE § 251.016 (general control over roads, highways and bridges); TRANSPORTATION CODE Chapter 254 (drainage on public roads). Additionally, potential contamination or depletion of groundwater, if groundwater is to be the source of supply, within the region may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure through subsidence. Moreover, the County has an interest in protecting the water quality in the County, which may be impacted by discharges of treated effluent by Applicant's project. *See, e.g.*, HEALTH AND SAFETY CODE § 121.003 (enforcement of laws to promote public health); HEALTH AND SAFETY CODE Chapter 366 (license procedures for private sewage facilities); TEXAS WATER CODE § 26.171 et seq. (enforcement of water quality controls and inspection of public waters).

Thus, the County has statutory authority under state law over numerous issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b). Further, the proposed municipal utility district will be located entirely outside the corporate limits of a city. Pursuant to TEX. WATER CODE § 54.0161, the County therefore has express authority to review the petition for creation and other evidence and information relating to the proposed district that its commissioners court considers necessary. TEX. WATER CODE § 54.0161(a-2).

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

Sincerely,



Emily W. Rogers
Attorney for Ellis County



March 4, 2022

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

Re: Application by Highland Lakes Midlothian I, LLC, to the Texas Commission on Environmental Quality for creation of Highland Lakes Municipal Utility District No. 1 of Ellis County, TCEQ Internal Control No. D-11302021-043

Dear Chief Clerk Gharis:

The City of Midlothian, Texas (the “City”) formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to me, Emily Rogers, attorney for the City, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. My daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Highland Lakes Midlothian I, LLC is applying to the Texas Commission on Environmental Quality (the “TCEQ”) for creation of a new municipal utility district entirely within Ellis County, and partially within the extraterritorial jurisdictions of both the cities of Waxahachie, Texas, and Midlothian, Texas. The City of Midlothian opposes the creation of the District.

The City is an “affected person” entitled to a contested case hearing on issues raised in this hearing request because the City has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public and is an affected person under 30 TEX. ADMIN. CODE § 55.256. The proposed municipal utility district will be located partially within the extraterritorial jurisdiction of the City. The City does not consent to its creation. Pursuant to Texas Water Code § 54.016(a), land within the City’s extraterritorial jurisdiction cannot be included within the boundaries of a municipal utility district without the City’s consent. For this and additional reasons, local governments, such as the City, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The City has authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial jurisdiction. TEX. LOC. GOV’T CODE §§ 42.001, 212.044. Various city functions and services – including water and sewer services, emergency services, and health and safety concerns – may be affected by the creation of the district and are not taken into account by the application.

March 4, 2022

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As a regional water and sewer service provider, the City has an interest to ensure that new development in its extraterritorial jurisdiction regionalizes with existing system to the greatest extent possible in order to protect the public health, safety, and welfare of its cities. *See* Texas Water Code § 26.081(a). The City therefore has an interest in ensuring the creation and operation of the proposed municipal utility district is protective of the public health and safety within its extraterritorial jurisdiction. Thus, the City has authority under state law over the issues contemplated by this application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing.

Sincerely,



Emily W. Rogers
Attorney for City of Midlothian

EWR/rfb



March 4, 2022

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

Re: Application by Highland Lakes Midlothian I, LLC, to the Texas Commission on Environmental Quality for creation of Highland Lakes Municipal Utility District No. 1 of Ellis County, TCEQ Internal Control No. D-11302021-043

Dear Chief Clerk Gharis:

The City of Waxahachie, Texas (the “City”) formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to me, Emily Rogers, attorney for the City, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. My daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Highland Lakes Midlothian I, LLC is applying to the Texas Commission on Environmental Quality (the “TCEQ”) for creation of a new municipal utility district entirely within Ellis County, and partially within the extraterritorial jurisdictions of both the cities of Waxahachie, Texas, and Midlothian, Texas. The City of Waxahachie opposes the creation of the District.

The City is an “affected person” entitled to a contested case hearing on issues raised in this hearing request because the City has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public and is an affected person under 30 TEX. ADMIN. CODE § 55.256. The proposed municipal utility district will be located partially within the extraterritorial jurisdiction of the City. The City does not consent to its creation. Pursuant to Texas Water Code § 54.016(a), land within the City’s extraterritorial jurisdiction cannot be included within the boundaries of a municipal utility district without the City’s consent. For this and additional reasons, local governments, such as the City, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The City has authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial jurisdiction. TEX. LOC. GOV’T CODE §§ 42.001, 212.044. Various city functions and services – including water and sewer services, emergency services, and health and safety concerns – may be affected by the creation of the district and are not taken into account by the application.

March 4, 2022

Page 2

As a regional water and sewer service provider, the City has an interest to ensure that new development in its extraterritorial jurisdiction regionalizes with existing system to the greatest extent possible in order to protect the public health, safety, and welfare of its cities. *See* Texas Water Code § 26.081(a). The City therefore has an interest in ensuring the creation and operation of the proposed municipal utility district is protective of the public health and safety within its extraterritorial jurisdiction. Thus, the City has authority under state law over the issues contemplated by this application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing.

Sincerely,



Emily W. Rogers
Attorney for City of Waxahachie

EWR/rfb

Attachment 3

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Justin P. Taack, Manager
Districts Section

Date: April 25, 2022

Thru: Andrew Paynter, Technical Specialist
Districts Section

From: James Walker
Districts Creation Review Team

Subject: Petition by Highland Lakes Midlothian I, LLC for Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County; Pursuant to Texas Water Code Chapters 49 and 54.
TCEQ Internal Control No. D-11302021-043 (TC)
CN: 605959881 RN: 111380556

A. GENERAL INFORMATION

The Texas Commission on Environmental Quality (TCEQ) received an amended petition within the application requesting approval for the creation of Highland Lakes Municipal Utility District No. 1 of Ellis County (District). The petition was signed by Shannon Livingston as the Vice President of Highland Lakes Midlothian I, LLC, a Texas limited liability company (Petitioner). The petition states that the Petitioner holds title to a majority in value of the land in the proposed District and it further states that there is one lienholder, Community National Bank and Trust of Texas, on the land in the proposed District and the aforementioned entity has consented to the petition.

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 in Ellis County, Texas, bounded by FM 875 to the north and east, Baucum Road to the west, and approximately 4,500 feet north of Cox Road on the south. The proposed District is located partially within the extraterritorial jurisdiction (ETJ) of the City of Midlothian, Texas and partially within the ETJ of the City of Waxahachie, Texas. Access to the proposed District will be provided by FM 875 in the north and east. Other roads will be extended through the proposed in-city portion of the Highland Lakes development to FM 875 to provide additional access to the District.

Metes and Bounds Description

The proposed District contains 2,153.60 acres of land, approximately 1,270 acres is located within the ETJ of the City of Waxahachie and approximately 883 acres is located within the ETJ of the City of Midlothian. The metes and bounds description of the proposed District has been reviewed and checked by TCEQ's staff and has been found to form an acceptable closure.

City Consent

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

County Notification

In accordance with TWC Section 54.0161, as amended in 2013, certified letter, dated December 7, 2021, was sent to the Commissioners Court of Ellis County which provided notice of the proposed District's pending creation application and provided them an opportunity to make their recommendations. To date, the county has not responded to this notification.

Statements of Filing Petition

Evidence of filing a copy of the petition with the City of Midlothian Secretary's office, City of Waxahachie Secretary's office, the Ellis County Clerks' office, the TCEQ's Dallas/Fort Worth regional office, the Texas state representative, and the Texas state senator was included in the application.

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

Application material indicates that the property is owned by Highland Lakes Midlothian I, LLC. Shannon Livingston is the Vice President of Highland Lakes Midlothian I, LLC and has developed many communities across Texas for over 25 years. Throughout his career, Mr. Livingston has managed in excess of twenty project companies simultaneously and has been responsible for directing all aspects of project processes including identifying raw land, contract negotiation, property review, underwriting, acquisition, entitlements, project financing, creative design oversight, development, builder architectural controls, project management, general contractor for all common area vertical improvements and landscape, project branding, programming company management, and marketing through final divestiture.

Certificate of Ownership

By signed certificate dated November 19, 2021, the Ellis County Appraisal District has certified that the appraisal rolls indicate that the Petitioner is the owner of all of the land in the proposed District.

Temporary Director Affidavits

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

Freeman Bell

Daniel Brunson

Scott Jon Kepple

Michael Wayne Moore

Kenneth Lee Watson

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. Additionally, as required by TWC Section 54.022, the majority are residents of the county in which the proposed District is located, a county adjacent to the county in which the proposed District is located, or if the proposed District is located in a county that is in a metropolitan statistical area designated by the United States Office of Management and Budget or its successor agency, a county in the same metropolitan statistical area as the county in which the proposed District is located.

Notice Requirements

Proper notice of the application was published on March 13 and March 20, 2022, in the *Waxahachie Daily Light*, a newspaper regularly published or circulated in Ellis County, the county in which the district is proposed to be located. Proper notice of the application was posted on January 28, 2022, in the County Courthouse, the place where legal notices in Ellis County are posted. Accordingly, the notice requirements of 30 TAC Section 293.12(b) have been satisfied. The opportunity for the public to request a contested case hearing (comment period) expired April 19, 2022.

B. ENGINEERING ANALYSIS

The creation engineering report indicates the following:

Availability of Comparable Service

The proposed District is located partially within the ETJ of the City of Midlothian and partially within the ETJ of the City of Waxahachie. Mountain Peak Special Utility District (SUD) holds the Certificate of Convenience and Necessity (CCN) (Permit No. 10908), for water for the some of the area within the proposed District and Buena Vista-Bethel SUD (Buena Vista SUD) holds the CCN (Permit No. 10898) for water for the remaining area within the proposed District. The District will construct and dedicate the water distribution system to Mountain Peak SUD and Buena Vista SUD. The District will construct, own, operate, and maintain the wastewater collection and treatment systems, the local storm drainage system, and local roads to serve the District. The District will construct and dedicate to Ellis County the major collector and arterial roadways and will construct and dedicate to the Texas Department of Transportation (TxDOT) the improvements to FM 875. If not for the District the improvements required to provide water service, a wastewater system, local storm drainage system, local roadways, and the collector and arterial roadways to serve the land would not be feasible to construct.

Water Supply Improvements

All water supply and distribution system improvements to serve the proposed District will be designed in accordance with criteria established by the TCEQ, Mountain Peak SUD, and Buena Vista SUD. Per the engineering report, it is estimated that the District will contain 6,550 equivalent single-family connections (ESFCs) at ultimate development. Further, the engineering report indicates that once constructed, the District's water system will be dedicated to, owned, maintained, and operated by Mountain Peak SUD and Buena Vista SUD. When fully developed, the total population of the District is estimated to be 19,620 persons. The ultimate average daily demand of the population is estimated to be 2.9 million gallons per day (MGD) with a maximum day and a peak hour demand of 7.1 MGD and 8.8 MGD, respectively.

Water Distribution Improvements

The water distribution system for full development of the proposed District will consist of 8-inch waterlines at the local level, and approximately 56,300 LF of 12 to 16-inch major lines generally located in collector and arterial roadways. 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, Mountain Peak SUD, and Buena Vista SUD. The water distribution system will be designed 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 gpm per connection. The distribution system will be designed to meet TCEQ, Mountain Peak SUD, and Buena Vista SUD design criteria.

Wastewater Treatment Improvements

It is estimated that the District will contain 6,550 ESFCs at ultimate development, requiring 1.8 million gallons per day of wastewater treatment capacity, using 270 gallons per day per single-family connection and 125 gallons per day per multi-family connection. The proposed wastewater collection system will generally consist of 8 to 12-inch gravity sewer lines at the local level. Lift stations and force mains are proposed in certain areas where gravity solutions are not feasible. These lines will drain to major trunk lines ranging in size from 12 to 36-inches which will convey wastewater to a proposed phased wastewater treatment plant located in the southeastern portion of the proposed District adjacent to South Prong Creek. The plant will be a regional plant that serves the District, FM 875 MUD of Ellis County, and the portion of Highland Lakes development located within the city limits of Midlothian that will not be in either District.

Wastewater Collection Improvements

The internal wastewater collection system for full development of the proposed District will consist of approximately 37,125 LF of 12 to 36-inch PVC pipes, approximately 4,200 LF of 8-inch diameter force main, two lift stations, one regional wastewater treatment plant, along with manholes and all related appurtenances. The collection system will be designed to meet TCEQ design criteria.

Storm Water Drainage System and Drainage Improvements

The storm water runoff within the proposed District will be directed along a proposed combination of curb and street gutters with inlets, reinforced concrete pipes ranging from 18-inch diameter to 60-inch diameter, concrete box culverts, an underground drainage system, and in natural tributaries. Storm water from the western portion of the proposed District

generally flows to the east with the eastern portion flowing to the west in unnamed tributaries which drain to South Prong Creek. South Prong Creek flows through the site to the south, eventually discharging into Lake Waxahachie, approximately 6-miles to the southeast. All storm drainage improvements will be designed in accordance with design criteria established by the City of Midlothian and the City of Waxahachie.

Road Improvements

Application material indicates the proposed District will construct road improvements within the District. It is anticipated that once constructed the District will own, maintain, and operate local public road improvements. Road improvements to FM 875 will be constructed by the District then dedicated to, owned, maintained, and operated by TxDOT. It is anticipated that once constructed by the District, major collector and arterial roads will be dedicated to, owned, maintained, and operated by Ellis County. It is also anticipated that once constructed local roads and minor collector roads within the District will be owned by the District and maintained by the HOA, Ellis County, or the District depending on future agreements. All roadway facilities will be designed in accordance with criteria established by TxDOT and Ellis County.

Topography/Land Elevation

The topography of the proposed District is generally moderate ranging from 0-3%. Steeper topography (3-10%) exists in the vicinity of drainage channels that cut through the District. The proposed District generally slopes from west to east and from north to south. Elevations range from approximately 840 feet to 650 feet mean sea level. South Prong Creek flows through the District from north to south. Several unnamed tributaries collect runoff from the western portions of the District, draining west to east, carrying runoff into South Prong Creek which continues offsite to the south. Smaller tributaries drain the eastern portion of the District from east to west into South Prong Creek. The proposed District primarily consists of prairie land with dense tree canopies adjacent to the creek and contributing tributaries. No structures are located within the proposed District. The fill and/or excavation associated with development of the proposed District's systems will not cause changes in the overall land elevations other than that normally associated with the construction of the underground utility systems, drainage facilities, plants, and paving. Therefore, development within the District is not expected to have an unreasonable effect on overall land elevations.

Floodplain

According to Federal Emergency Management Agency Flood Insurance Rate Map No. 48139C0175F dated June 3, 2013, the proposed District is within Zone X. The areas within the limits of South Prong Creek and its tributaries are designated as Zone A. Zone X is defined as areas determined to be outside the 0.2% annual chance floodplain. Zone A is defined as special flood hazard areas subject to inundation by the 1% annual chance flood where no base flood elevations have been determined.

Subsidence

No facilities are proposed that will cause or contribute to subsidence.

Dam Safety Analysis

The TCEQ Dam Safety Program personnel reviewed the location of the proposed District and confirmed by letter dated August 2, 2021, that there is a dam upstream which could affect the

proposed District if the dam would fall. The engineer should evaluate the possible effects on the proposed District.

Groundwater Levels/Recharge

No facilities are proposed that will cause or contribute to adverse impacts of groundwater levels and recharge capability. The primary source of water will be surface water.

Natural Run-off and Drainage

The proposed District is located on a moderately sloping site. The majority of existing drainage is through overland flow to existing tributaries which drain to South Prong Creek and eventually outfall to Lake Waxahachie. If required, detention facilities will maintain post-development flows at or below pre-development conditions.

Water Quality

No adverse effect on the water quality of ground or surface water is anticipated since the collection and treatment of wastewater flows from the proposed District will be by means of a sanitary sewer collection, transport, and treatment system, all of which is designed and operated in accordance with the rules and regulations of the TCEQ.

C. SUMMARY OF COSTS

WATER, WASTEWATER, AND DRAINAGE

<u>Construction Costs</u>	<u>District Share</u> ⁽¹⁾
A. Local Water Distribution System	\$ 19,627,336
B. Major Water Distribution System	4,784,122
C. Local Wastewater Collection System	19,627,336
D. Major Wastewater Collection System	46,641,197
E. Local Stormwater Drainage System	32,712,226
F. Major Stormwater Drainage System	<u>11,190,109</u>
Total Developer Items	\$ 134,582,326
TOTAL CONSTRUCTION COSTS (80.36% of BIR)	\$ 134,582,326
<u>Non-Construction Costs</u>	
A. Legal Fees	\$ 3,349,285
B. Fiscal Agent Fees	3,349,285
C. Interest Costs	
1. Capitalized Interest (1 year @ 4.5%)	7,535,891
2. Developer Interest (2 years @ 4.5% of Construction Costs)	12,112,409 ⁽²⁾
D. Bond Discount	5,023,927
E. Bond Issuance Expenses	349,999
F. General Operating Cost	100,000
G. District Creation Expenses	75,000

H. Bond Application Report Costs	400,000
I. Attorney General Fee (0.1%)	167,464
J. TCEQ Bond Issuance Fee (0.25%)	<u>418,661</u>
TOTAL NON-CONSTRUCTION COSTS	\$ 32,881,921
TOTAL W, WW, & D BOND ISSUE REQUIREMENT	\$ 167,464,247

Notes: (1) Assumes 96.72% funding of anticipated developer contribution items, where applicable.

(2) Based on developer advancing funds approximately two years prior to reimbursement.

Eligibility of costs for District funding and 30% developer contribution requirements will be determined in accordance with TCEQ rules in effect at the time bond applications are reviewed.

ROAD IMPROVEMENT

<u>Construction Costs</u>	<u>District Share</u> ⁽¹⁾
A. Local Roadways	\$ 52,339,561
B. Major Roadways	<u>36,915,157</u>
TOTAL CONSTRUCTION COSTS (80.87% of BIR)	\$ 89,254,718
<u>Non-Construction Costs</u>	
A. Legal Fees	\$ 2,207,413
B. Fiscal Agent Fees	2,207,413
C. Interest Costs	
1. Capitalized Interest (1 year @ 4.5%)	4,966,679
2. Developer Interest (2 years @ 4.5% of Construction Costs)	8,032,925 ⁽²⁾
D. Bond Discount	3,311,119
E. Bond Issuance Expenses	279,999
F. Attorney General Fee (0.1%)	<u>110,371</u>
TOTAL NON-CONSTRUCTION COSTS	\$ 21,115,919
TOTAL ROAD BOND ISSUE REQUIREMENT	\$ 110,370,637

Notes: (1) Assumes 96.72% funding of anticipated developer contribution items, where applicable.

(2) Based on developer advancing funds approximately two years prior to reimbursement.

A preliminary layout of roads proposed for funding has been provided, and they appear to benefit the proposed District and the land included within the proposed District. TCEQ's review of eligibility of costs may be determined in accordance with TCEQ rules in effect at the time bond applications are reviewed.

D. ECONOMIC ANALYSIS

Land Use

The land use for the proposed District is intended to accommodate single-family residential, multi-family, and commercial development. Planned ultimate development in the proposed District, as shown in the land use plan provided, is as follows:

<u>Land Use</u>	<u>Acreage</u>	<u>ESFCs</u>
Single Family/Residential	1,352.8	6,090
Multi-Family	3.4	60
Single Family Rental	40.6	400
Commercial/Retail	45.1	0
Schools	14.8	0
Public Works	10.0	0
Recreational	21.1	0
Collector & Arterial Road Right-of-Way/Undeveloped Open Space	<u>660.8</u>	<u>0</u>
Total	2,148.6	6,550

Market Study

A market study, prepared in April 2021 by Residential Strategies, Inc., has been submitted in support of the creation of the proposed District. The proposed District is expected to include approximately 6,550 equivalent single-family connections on a tract totaling approximately 2,148.6 acres. The home values within Midlothian ISD and Maypearl ISD are expected to be approximately \$272,500 for 40-foot lots, \$342,500 for 50-foot lots, and \$385,000 for 60-foot lots. The home values within Waxahachie ISD are expected to be approximately \$255,000 for 40-foot lots, \$325,000 for 50-foot lots, and \$355,000 for 60-foot lots. The study indicates single-family homes for that price range within the study’s market area are expected to be absorbed at a rate of approximately 75 homes/year over the first five years for homes within Midlothian ISD and Maypearl ISD and 220 homes/year over the first five years for homes within Waxahachie ISD.

Project Financing

The projected taxable assessed valuation (AV) for the proposed District is as follows:

<u>Development Description</u>	<u>Lots</u>	<u>Developed Unit Value (per home per lot)</u>	<u>Total Buildout Value</u>
<u>Midlothian ISD & Maypearl ISD</u>			
40-foot single-family lots	414	\$ 272,500	\$ 112,815,000
50-foot single-family lots	414	\$ 342,500	\$ 141,795,000
60-foot single-family lots	207	\$ 385,000	\$ 79,695,000
<u>Waxahachie ISD</u>			
40-foot single-family lots	2,022	\$ 255,000	\$ 515,610,000
50-foot single-family lots	2,022	\$ 325,000	\$ 657,150,000
60-foot single-family lots	1,011	\$ 355,000	\$ 358,905,000
<u>Miscellaneous</u>			

Commercial/Retail	\$ 1,000,000/acre	\$ 45,100,000
Multi-Family	\$ 2,750,000/acre	\$ 9,350,000
Single Family Rental	\$ 1,750,000/acre	\$ 71,050,000
Recreational	\$ 1,000,000/acre	<u>\$ 21,100,000</u>
	Total Assessed Valuation	\$2,012,570,000

Considering the issuance of a total of \$277,834,884 (\$167,464,247 for utilities and \$110,370,637 for roads) in bonds, assuming 96.72% financing, a coupon bond interest rate of 4.5%, and a 25-year bond life, the average annual debt service requirement would be \$18,736,915 (\$11,293,626 for utilities and \$7,443,288 for roads). Assuming a 98% collection rate and an ultimate AV of \$2,012,570,000, a projected ultimate tax rate of approximately \$0.95 (\$0.57 for utilities and \$0.38 for roads) per \$100 AV was indicated to be necessary to meet the annual debt service requirements for the proposed District. An additional \$0.05 per \$100 AV is projected to be levied for maintenance and operating expenses, for a combined proposed District tax rate of \$1.00.

Based on the information provided and assuming 96.72% financing, the total year 2020 overlapping tax rates on land within the proposed District are shown as follows:

Areas within the proposed District, Waxahachie ISD, Ellis County Emergency Service District (ESD) No. 6 (Waxahachie), and Ellis County Lateral Road:

<u>Taxing Jurisdiction</u>	<u>Tax Rates</u> <u>(Ellis County)</u> ⁽¹⁾
Highland Lakes MUD No. 1 of Ellis County (District)	⁽²⁾⁽³⁾ \$ 1.000000
Ellis County	\$ 0.320194
Waxahachie ISD	\$ 1.365400
Ellis County ESD No. 6 (Waxahachie)	\$ 0.071100
Ellis County Lateral Road	<u>\$ 0.030082</u>
TOTAL TAX per \$100 AV:	\$ 2.786776

- Notes: (1) Tax rate per \$100 assessed valuation.
(2) Represents \$0.57 for utilities, \$0.38 for roads, and \$0.05 for operation and maintenance tax.
(3) Assuming 96.72% funding of anticipated developer contribution items, where applicable.

Areas within the proposed District, Maypearl ISD, Ellis County ESD No. 1 (Maypearl), and Ellis County Lateral Road:

<u>Taxing Jurisdiction</u>	<u>Tax Rates</u> <u>(Ellis County)</u> ⁽¹⁾
Highland Lakes MUD No. 1 of Ellis County (District)	⁽²⁾⁽³⁾ \$ 1.000000
Ellis County	\$ 0.320194
Maypearl ISD	\$ 1.174400
Ellis County ESD No. 1 (Maypearl)	\$ 0.084100
Ellis County Lateral Road	<u>\$ 0.030082</u>
TOTAL TAX per \$100 AV:	\$ 2.608776

- Notes: (1) Tax rate per \$100 assessed valuation.
(2) Represents \$0.57 for utilities, \$0.38 for roads, and \$0.05 for operation and maintenance tax.

(3) Assuming 96.72% funding of anticipated developer contribution items, where applicable.

Areas within the proposed District, Midlothian ISD, Ellis County ESD No. 2 (Midlothian), and Ellis County Lateral Road:

<u>Taxing Jurisdiction</u>	<u>Tax Rates</u> <u>(Ellis County)</u> ⁽¹⁾
Highland Lakes MUD No. 1 of Ellis County (District)	\$ 1.000000 ⁽²⁾⁽³⁾
Ellis County	\$ 0.320194
Midlothian ISD	\$ 1.379800
Ellis County ESD No. 2 (Midlothian)	\$ 0.099500
Ellis County Lateral Road	<u>\$ 0.030082</u>
TOTAL TAX per \$100 AV:	\$ 2.829576

Notes: (1) Tax rate per \$100 assessed valuation.

(2) Represents \$0.57 for utilities, \$0.38 for roads, and \$0.05 for operation and maintenance tax.

(3) Assuming 96.72% funding of anticipated developer contribution items, where applicable.

Based on the proposed District tax rate and the year 2020 overlapping tax rate on land within the proposed District, and assuming 96.72% financing, the project is considered economically feasible.

Water and Wastewater Rates

According to information provided, Mountain Peak SUD and Buena Vista SUD will provide retail water services and the proposed District will provide retail wastewater services to the proposed District's customers. The current water rates for Mountain Peak SUD and Buena Vista SUD are as follows:

Mountain Peak SUD:

Monthly Base Fee	\$22.84 Flat Fee
0 to 5,000 gallons	\$4.00 per 1,000 gallons
5,001 to 10,000 gallons	\$4.60 per 1,000 gallons
10,001 to 20,000 gallons	\$5.40 per 1,000 gallons
20,001 to 30,000 gallons	\$6.00 per 1,000 gallons
30,001 to 50,000 gallons	\$7.40 per 1,000 gallons
50,001 gallons and above	\$9.60 per 1,000 gallons

Buena Vista SUD:

Monthly Base Fee	\$42.00 Flat Fee
0 to 5,000 gallons	\$5.10 per 1,000 gallons
5,001 to 10,000 gallons	\$5.87 per 1,000 gallons
10,001 to 20,000 gallons	\$6.74 per 1,000 gallons
20,001 to 30,000 gallons	\$7.76 per 1,000 gallons
30,001 gallons and above	\$8.92 per 1,000 gallons

Wastewater rate:

The District will set wastewater rates that are competitive with rates charged by the City of Midlothian and the City of Waxahachie. For comparison, the wastewater rates currently charged by those cities are as follows:

Residential	\$29.93 plus \$7.79 per 1,000 gallons above 2,000 gallons
Multi-family	\$29.93 plus \$7.79 per 1,000 gallons above 2,000 gallons
Commercial	\$60.49 plus \$7.79 per 1,000 gallons above 2,000 gallons

Based on the above rates, the estimated monthly fee for 10,000 gallons of water and wastewater would be \$158.09 for Mountain Peak SUD customers and \$189.10 for Buena Vista SUD customers.

Comparative Water District Tax Rates

A tax rate of \$1.00 (\$0.57 for utilities, \$0.38 for roads, and \$0.05 for operation and maintenance tax) for the proposed District is comparable to other districts in the target market area. 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, a benefit to the land within the proposed District, and 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 facilities, and road facilities; a combined projected tax rate of \$1.00 per \$100 AV when assuming 96.72% financing; the proposed District obtaining a 4.5% bond coupon interest rate; and other supporting data, the proposed District is considered feasible under the feasibility 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 Highland Lakes Municipal Utility District No. 1 of Ellis 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 requirement imposed by the TCEQ and the general laws of the state 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 five persons to serve as temporary directors until permanent directors are elected and qualified:

Freeman Bell

Daniel Brunson

Scott Jon Kepple

Michael Wayne Moore

Kenneth Lee Watson

H. ADDITIONAL INFORMATION

The Petitioner's professional representatives are:

Attorney: Ms. Mindy Koehne - Coats Rose, PC

Creation Engineer: Mr. Thomas G. Coppin, P.E. - Kimley-Horn & Associates, Inc.

Attachment 4

AMENDED PETITION FOR THE CREATION OF
HIGHLAND LAKES MUNICIPAL UTILITY DISTRICT NO. 1 OF ELLIS COUNTY

THE STATE OF TEXAS §

COUNTY OF ELLIS §

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

HIGHLAND LAKES MIDLOTHIAN I, LLC, a Delaware limited liability company (the "Petitioner"), respectfully petitions the Commissioners of the Texas Commission on Environmental Quality (the "Commission") for the creation of a municipal utility district in Ellis County, Texas. The Petitioner holds title to a majority of the assessed value of the real property described in Exhibit "A" attached hereto and incorporated herein for all purposes, as indicated by the appraisal rolls of Ellis County, Texas. The Petitioner, acting pursuant to the provisions of Chapters 49 and 54 of the Texas Water Code, together with all amendments and additions thereto, would respectfully show the following:

I.

The name of the proposed district shall be "HIGHLAND LAKES MUNICIPAL UTILITY DISTRICT NO. 1 OF ELLIS COUNTY" (the "District"). There is no other conservation or reclamation district in Ellis County, Texas with the same name.

II.

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

III.

The area proposed to be within the District is approximately 2,153.6 acres (the "Property"), situated in Ellis County, Texas. The Property consists of one tract described by metes and bounds in Exhibit "A" attached hereto and incorporated herein for all purposes. The approximately 2,153.6 acres described in Exhibit "A" is located partially within the extraterritorial jurisdiction of the City of Midlothian, Ellis County, Texas, and partially within the extraterritorial jurisdiction of the City of Waxahachie, Ellis County, Texas, and the District is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village. All of the Property may be properly included in the District.

IV.

The Petitioner constitutes the holder of title to all of the value of the land within the proposed District, as indicated by the tax rolls of the central appraisal district of Ellis County, Texas, and by conveyances of record since the date of preparation of said tax rolls. There are no lienholders on the Property, except for Community National Bank & Trust of Texas.

V.

Pursuant to Section 42.042, Texas Local Government Code, should a municipality such as the City fail or refuse to give its consent to the creation of the District within ninety (90) days after the date the governing body of the City receives a written request for consent, the owners of at least fifty (50%) percent of the land in the proposed District may petition the governing body of the City to make available to the area the water, sanitary sewer services, or both, that would be provided by the District.

Furthermore, if, within one hundred twenty (120) days after the date the governing body of the City receives the petition for water and sanitary sewer services, the City fails to make a contract with the owners of the land in the proposed District to provide those services, such failure constitutes the City's consent to the creation of the proposed District and authorizes the landowners to initiate proceedings through the Commission to create the District.

The Cities has not consented to the creation of the District and has failed to execute a contract providing for the water or sanitary sewer services requested by the Petitioner within the time limits prescribed by Section 42.042, Texas Local Government Code.

VI.

On August 18, 2020, the Petitioner filed Petitions for Consent to Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County (the "Petitions for Consent"), dated August 7, 2020, with the City of Midlothian, Texas and with the City of Waxahachie, Texas. Copies of each Petition for Consent are attached hereto as Exhibit "B." Copies of the receipts of delivery of the Petitions for Consent (the "City Consent Receipts of Delivery") is attached hereto as Exhibit "C." The Petitioner has received a response from the City of Midlothian, attached hereto as Exhibit "D" but not from the City of Waxahachie related to the Petitions for Consent.

On November 22, 2020, the Petitioner published a Notice of Petitions for Water and Sanitary Sewer Service (the "Notice of Petition"), attached hereto as Exhibit "E," in the *Waxahachie Sun*, a newspaper of general circulation within and around the District. The affidavits of publication of the Notice of Petition (the "Affidavits of Publication") are attached hereto as Exhibit "F."

On November 24, 2020, the Petitioner posted the Notices of Petition in three places for each Notice convenient to the public within the boundaries of the Property sought to be included in the District. The affidavits of posting of the Notices of Petition (the "Affidavits of Posting") are attached hereto as Exhibit "G."

On December 9, 2020, the Petitioner filed Petitions for Water and Sanitary Sewer Service (the "Petitions for Service") with the City of Midlothian, Texas and with the City of Waxahachie, Texas. Copies of each Petition for Service are attached hereto as Exhibit "H." The Receipts of Delivery of the Petitions for Service (the "Receipts of Petitions for Service") are attached hereto as Exhibit "I."

The Petitioner has not received any response from either City related to the Petitions for Service.

VII.

The general nature of the work proposed to be done by the District at the present time is to purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; to collect, transport, process, dispose of and control domestic and commercial wastes; to gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and to purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition, to which reference is made for a more detailed description. It is further proposed that the District be granted road powers pursuant to Texas Water Code, Section 54.234.

VIII.

There is, for the following reasons, a necessity for the above-described work, services and improvements: the area proposed to be within the District is in a developing area of Ellis County, Texas, and within the foreseeable future will experience a substantial and sustained residential growth. There is not now available within the area, which will be developed as residential subdivisions, an adequate water supply and distribution system, sanitary sewer system, drainage system, and public road system. The protection of the purity and sanitary condition of the State's water and the health and welfare of the present and future inhabitants of the area and of territories adjacent thereto require the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension, and development of an adequate water supply and distribution system, sanitary sewer system, and drainage system. A public necessity therefore exists for the organization of the District to provide for the purchase, construction, acquisition, improvement, extension, and development of a water supply and distribution system, sanitary sewer system, drainage system, and roadway system.

IX.

The proposed improvements are feasible and practicable, and the terrain of the territory to be included within the District is such that a waterworks system, a sanitary sewer system, a drainage and storm sewer system, and a roadway system can be constructed and developed at a reasonable cost. A preliminary investigation has been instituted to determine the cost of the project, and it is now estimated by the Petitioners, from such information as it has at this time, that the ultimate cost of the project contemplated will be approximately \$277,834,884.

X.

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. Freeman Bell
2. Daniel Brunson
3. Scott Jon Kepple
4. Michael Wayne Moore
5. Kenneth Lee Watson

XI.

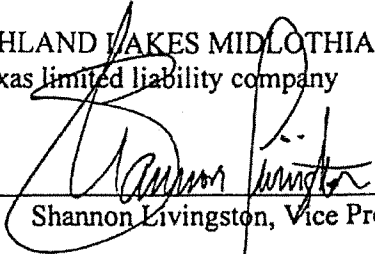
WHEREFORE, the Petitioner respectfully prays that this Petition be properly filed, as provided by law, that notice of the application be given as provided therein, that a hearing be held if necessary and that this Petition be in all things granted, that the proposed municipal utility district be organized and five (5) temporary directors named herein be appointed to serve 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.

[EXECUTION PAGES FOLLOW]

RESPECTFULLY SUBMITTED this the 19th day of November, 2021.

PETITIONER:

HIGHLAND LAKES MIDLOTHIAN I, LLC,
a Texas limited liability company

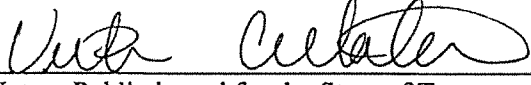
By: 
Shannon Livingston, Vice President

STATE OF TEXAS

COUNTY OF Dallas

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This instrument was acknowledged before me on the 19th day of November, 2021 by Shannon Livingston, Vice President of HIGHLAND LAKES MIDLOTHIAN I, LLC, a ~~Delaware~~ Texas limited liability company, on behalf of said company.


Notary Public in and for the State of Texas

(NOTARY SEAL)

