

**TCEQ DOCKET NO. 2022-0534-DIS**

**APPLICATION FOR FM 875  
MUNICIPAL UTILITY DISTRICT  
OF  
ELLIS COUNTY**

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§**

**BEFORE THE TEXAS  
COMMISSION ON  
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 FM 875 Municipal Utility District of Ellis County (District). The Office of the Chief Clerk received hearing requests from Ellis County and the City of Midlothian.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Maps.

**I. DESCRIPTION OF DISTRICT**

Highland Lakes Midlothian I, LLC applied for the creation of FM 875 Municipal Utility District 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 283.23 acres of land in Ellis County, Texas. The land in the District is entirely within the extraterritorial jurisdiction of the City of Midlothian, Ellis County, Texas.

The petition states that the proposed District will: (1) 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; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in 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; and (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 proposed District is organized. 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 March 8, 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 two timely hearing requests on this Petition. Hearing requests were received from Ellis County and the City of Midlothian.

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. § 54.012. the commission has jurisdiction to hear this case and create the district.<sup>1</sup>

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

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<sup>1</sup> Tex. Water Code § 54.014.

district.<sup>2</sup> If the commission fails to make these findings, it shall refuse to grant the petition.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

#### 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>2</sup> Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.13(b)(1).

<sup>3</sup> Tex. Water Code § 54.021(d); 30 Tex. Admin. Code § 293.13(a).

<sup>4</sup> Tex. Water Code § 54.021(b).

<sup>5</sup> 30 Tex. Admin. Code § 293.13(b)(2); Tex. Water Code § 54.021(c).

<sup>6</sup> 30 Tex. Admin. Code § 55.251(a).

<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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;
- (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.<sup>11</sup>

Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application.<sup>12</sup>

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<sup>8</sup> 30 Tex. Admin. Code § 55.251(b) and (d).

<sup>9</sup> 30 Tex. Admin. Code § 55.251(c).

<sup>10</sup> 30 Tex. Admin. Code § 55.256(a).

<sup>11</sup> 30 Tex. Admin. Code § 55.256(c).

<sup>12</sup> 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 District 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). Specifically, the County stated that it has statutory and constitutional authority over various functions - including but not limited to transportation, emergency services, and health and safety, citing several statutes corresponding with that authority.

The Executive Director recommends that the Commission find that Ellis County is an affected person pursuant to 30 TAC § 55.256 as well as 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 wholly 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). Specifically, the City stated that it has authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial jurisdiction pursuant to Tex. Lox. Gov't Code §§ 42.001, 212.044.

The Executive Director recommends the Commission find that the City of Midlothian is an affected person pursuant to 30 TAC § 55.256 as well as grant the City of Midlothian's hearing request.

#### VI. RECOMMENDATION

The Executive Director recommends that the Commission find Ellis County and the City of Midlothian 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



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## CERTIFICATE OF SERVICE

I certify that on August 30, 2022, the “Executive Director’s Response to Hearing Requests” for the creation of FM 875 Municipal Utility District of Ellis County for Highland Lakes Midlothian I, LLC 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.



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Harrison Cole Malley Staff Attorney  
Environmental Law Division

**MAILING LIST**  
**FM 875 MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY DOCKET**  
**NO. 2022-0534-DIS; INTERNAL CONTROL NO. D-11302021-042**

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<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S)/INTERESTED PERSON(S):

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# Attachment A

# FM 875 Municipal Utility District

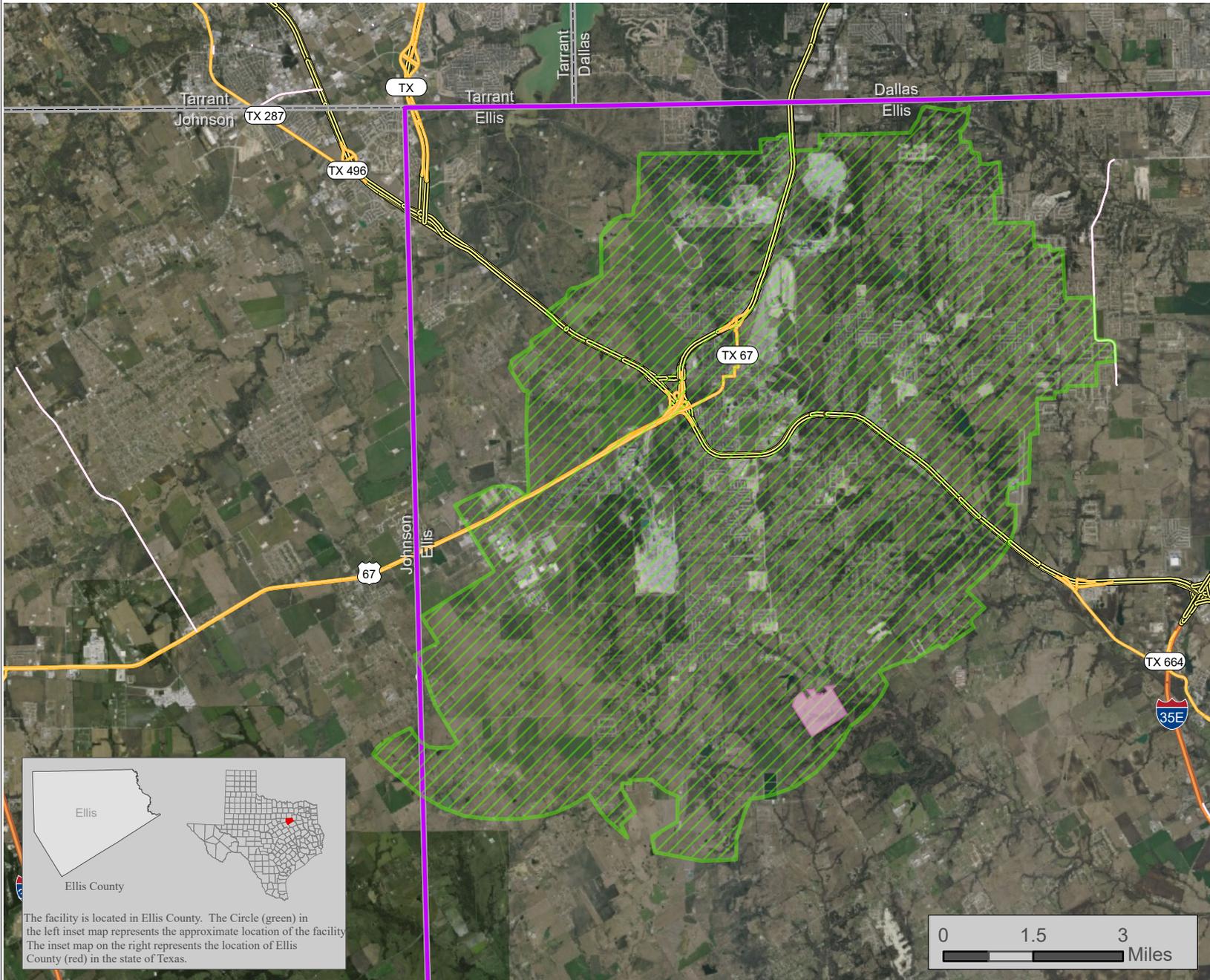
## TCEQ Internal Control No. D-11302021-042

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: 5/3/2022  
CRF 0070421  
Cartographer: ABanda



- MUD
- City of Midlothian ETJ
- Ellis County Boundary
- County Boundary



The facility is located in Ellis County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Ellis County (red) in the state of Texas.



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.

# FM 875 Municipal Utility District

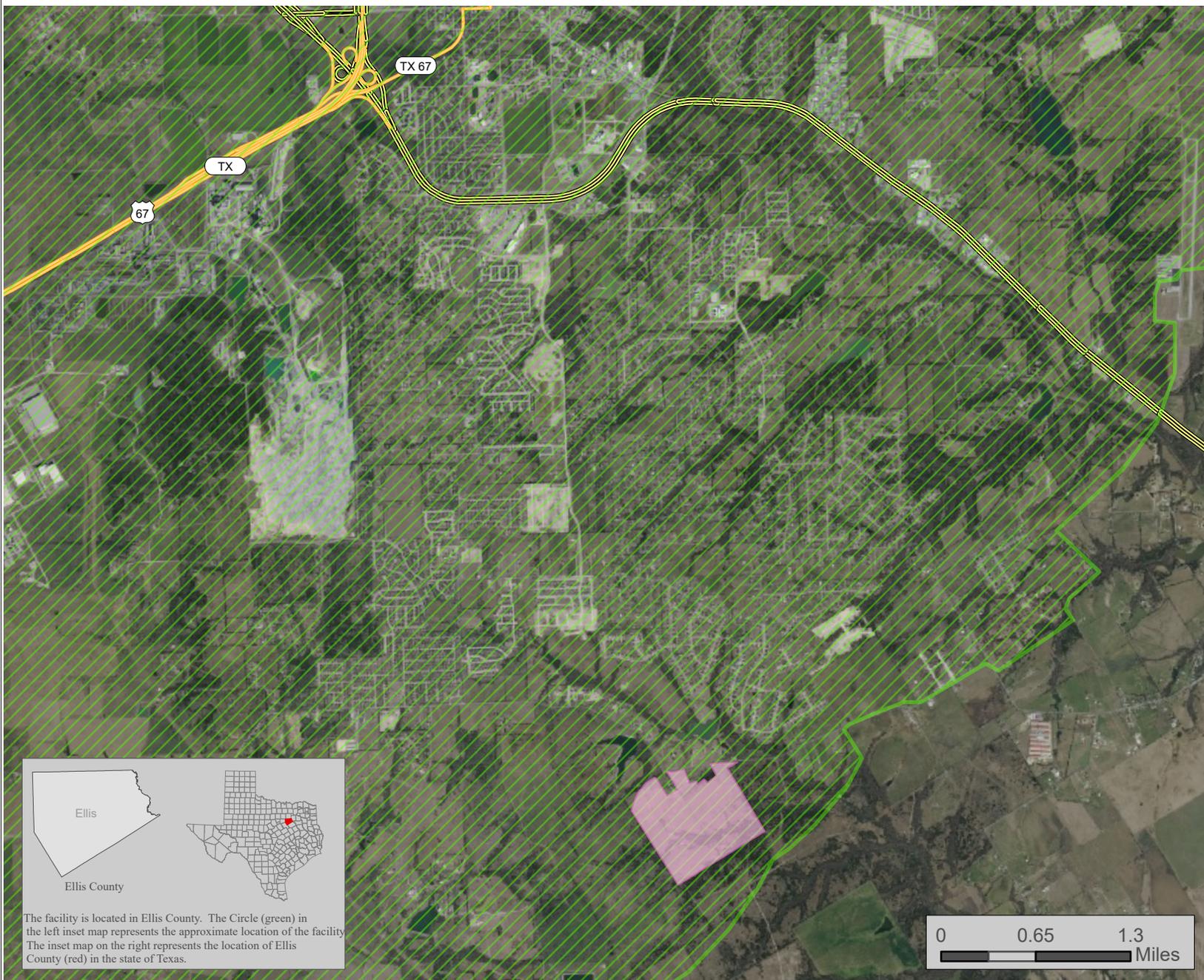
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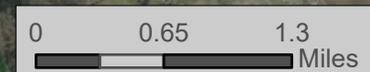
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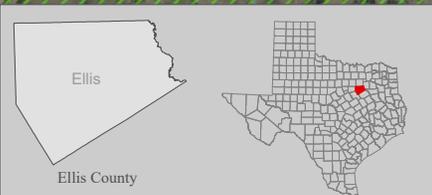
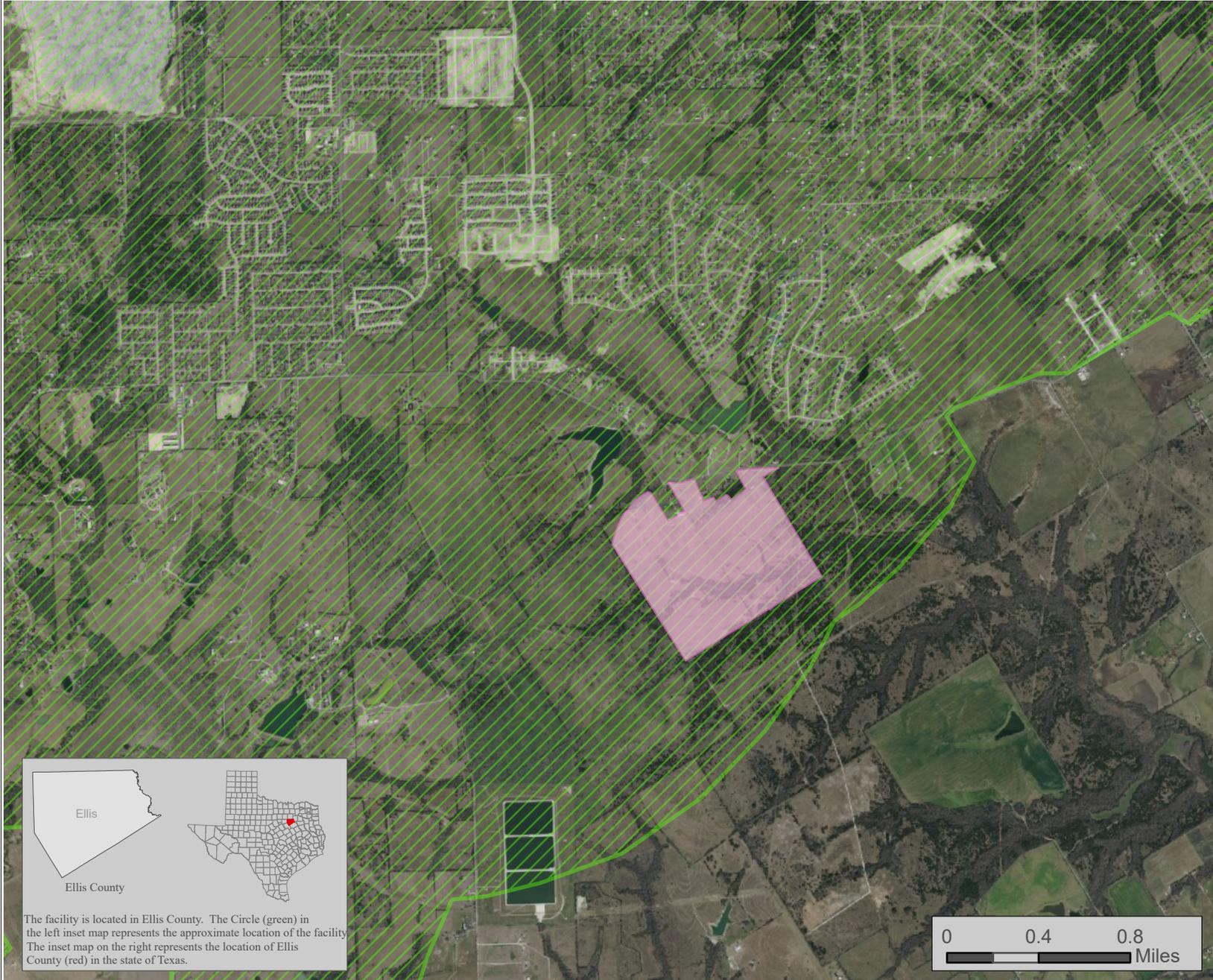


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