Ellis Ranch MUD No. 1 PFD (Item # 2)

1. Projected Construction Costs and Tax Rates are reasonable.

Construction Costs:

- As a part of a MUD creation application, the TCEQ rules require an applicant to submit a preliminary engineering report that includes *tentative* itemized cost *estimates* of the proposed capital improvements and an itemized cost summary for anticipated bond issue requirement. The Applicant's preliminary engineering report includes an itemized table that shows the estimated total water, wastewater, drainage, and erosion control costs, and bond issuance requirement.

- Evidence in the record establishes that the projected costs are based on estimated construction costs in the area and the estimated costs for the wastewater treatment facility were determined by working directly with the contractor to confirm pricing. The ED also testified that the estimated costs appear reasonable compared to other taxing authorities in the area and previous district creation applications that have been filed.

- The Texas Water Code and TCEQ rules do not provide any standards for determining reasonableness of estimated construction costs. However, a determination that the estimated costs are similar to other districts' costs in the area can serve as one way to establish reasonableness at the time the application is filed.

- The conclusory testimony presented by the Protestant is not sufficient to controvert the evidence and testimony provided by the Applicant, especially when the Protestant's witness acknowledged that he has never done any work in Ellis County, is not familiar with what contractors charge in Ellis County, and he did not analyze the costs of other MUDs situated in Ellis County or close to where the District will be located.

- Although the ALJs based their conclusion that the construction costs are unreasonable on there being a difference of opinion between the Applicant and the Protestant on construction costs, the discrepancy between the estimated cost by the Applicant and the Protestant does not render the Applicant's construction costs unreasonable.

- The Commission finds that the Applicant has met its burden to show that the estimated and tentative construction costs are reasonable when compared to other districts in the area.

Tax Rate:

- The evidence establishes that the District's projected tax rate of $0.9941 is below the tax rate cap of one dollar per $100 assessed valuation established by the TCEQ rules. This rate is comparable to other districts in the area and consistent with other recent creation applications in the general area of the proposed District.

- Although the Petition assumes the issuance of bonds to reimburse the developer 100%, the Applicant can only recoup costs through the tax rate up to the tax rate cap of $1.00 per $100 assessed value. As the Applicant and the ED note, if the cost of the facilities increases the developer's reimbursement could be limited.

- Because the evidence in the record demonstrates that the District's tax rate is within the limits imposed by the TCEQ rules and is comparable to other districts' tax rates in the area, the Commission finds that the record demonstrates that the projected tax rate is reasonable.

- To incorporate the Commission's decision that the Applicant's estimated construction costs and projected tax rate are reasonable, delete Findings of Fact Nos. 23, 25, and 29 and amend the following Finding of Facts and Conclusions of Law:

    i) Amend Finding of Fact No. 22 to state, "Applicant's estimated construction costs are reasonable compared to other taxing authorities in the area."

    ii) Amend Finding of Fact No. 24 to state, "Applicant's projected construction costs are reasonable."

    iii) Amend Finding of Fact No. 28 to state, "Although the Petition assumes the issuance of bonds to reimburse the developer 100%, the Applicant can only recoup costs through the tax rate up to the tax rate cap of $1.00 per $100 assessed value."

    iv) Amend Finding of Fact No. 30 to state, "The projected tax rate of $0.9941 per $100 valuation is sufficient to fund a reasonable assessment of costs."

    v) Amend Finding of Fact No. 31 to state, "The tax rate proposed is reasonable compared to other taxing authorities in the area."

    vi) Amend Finding of Fact No. 32 to state, "The District's proposed tax rates are reasonable."

    vii) Amend Finding of Fact No. 33 to state, "The evidence does not show the extent to which construction costs impact the water and sewer rates."

    viii) Amend Conclusion of Law No. 8 to state, "The Applicant submitted sufficient evidence to establish the reasonableness of the District's projected construction costs and tax rates. Tex. Water Code § 54.021(b)(2)."

    ix) Amend Conclusion of Law No. 9 to state, "The Applicant submitted sufficient evidence to establish that the District is economically feasible. 30 Tex. Admin. Code § 293.59(b)."

2. There will not be an unreasonable effect on groundwater levels or recharge capability.

- The Applicant established that since the District will not significantly change current topographical drainage patterns for runoff, whether it be from open space or houses and streets, there will be no anticipated impact to the recharge capability of any groundwater source.

- The ALJs misunderstood a statement made during a previous district creation matter to require an applicant to demonstrate that impervious cover in a proposed district is typical for this type of development to establish that the district will not have an unreasonable effect on groundwater levels and recharge capability. However, the Commission did not create this additional burden. An applicant can provide any type of evidence to satisfy this factor. The standard established in the Texas Water Code is that the Commission must consider if a district will have an unreasonable effect on groundwater levels or recharge capability. Therefore, the focus of this issue is whether there is an *unreasonable* effect.

- The Commission acknowledged that one way this factor can be satisfied is by demonstrating that the impervious cover in a development is similar to other developments. The Applicant in this matter testified that, based upon the proposed development plan, the developer will not be required to construct any infrastructure beyond what is considered normal for the development of a single-family residential community.

- Although the evidence presented by the Protestant may indicate that impervious cover can have an effect on groundwater levels and recharge capability, it does not sufficiently rebut the application or the evidence in the record to establish that there will be an unreasonable effect in this case.

- Regarding groundwater levels, as the Commission has found in the past, the focus of this factor is on the unreasonable effect that impervious cover may have on groundwater levels, not whether the development's water source will be either from surface water or groundwater. The Commission does not have the permitting authority to regulate groundwater and the Legislature did not intend for the Commission to regulate groundwater through district creation applications.

- To incorporate the Commission's decision that there will not be an unreasonable effect on the groundwater levels or recharge capability of a groundwater source and to clarify that the Commission does not consider the proposed District's water supply source to be a consideration for the groundwater issue, delete Finding of Fact No. 37 and 40, add new Finding of Fact No. 39A, and amend the following Findings of Fact and Conclusions of Law:

    i) Add new Finding of Fact No. 39A to state, "Since the District will not significantly change current topographical drainage patterns for runoff, whether it be from open space or houses and streets, there is no anticipated

impact to the recharge capability of any groundwater source."

ii) Amend Finding of Fact No. 41 to state, "The District, its systems, and subsequent development will not have an unreasonable effect on groundwater level within the region and recharge capability of a groundwater source."

iii) Amend Conclusion of Law No. 11 to state, "The Applicant submitted sufficient evidence to establish that the proposed development will not have an unreasonable effect on the groundwater level in the region or the recharge capability of a groundwater source. Tex. Water Code § 54.021(b)(3)(C)-(D) and 30 Tex. Admin. Code § 293.11(d)(5)(H)(iii)-(iv)."

3. Request for Road Powers.

- The evaluation of economic feasibility when considering a request for road powers is separate from the determination of the feasibility of a district as a whole. In this case, the ALJs improperly conflated the two evaluations.

- The Applicant has satisfied its burden regarding its request for road powers. The evidence demonstrates that the Applicant provided the required information regarding the preliminary layout of the roads within the District, detailed costs estimates for the roads, and a report on the tax rate allocation for bonds, which demonstrates the feasibility of the road facilities and improvements.

- The Protestant argues that since the projected construction costs are underestimated by approximately 50%, the District is not economically feasible. However, this argument improperly combines the two analyses that must be performed and provides nothing more than a generalized statement regarding the estimated construction costs. The Protestant did not provide specific information that demonstrates to what extent these costs are individually underestimated. As such, the Protestant did not provide sufficient evidence in the record to specifically rebut the Applicant's evidence establishing that the road powers are economically feasible under the TCEQ's road power rules.

- To incorporate the Commission's decision that the Applicant's request for road powers satisfied all applicable requirements, delete Findings of Fact Nos. 60 and 61, and amend the following Findings of Fact and Conclusions of Law:

  i) Amend Finding of Fact No. 59 to state, "The Applicant provided a preliminary layout of the roads, detailed cost estimates, and reports on the tax rate allocation for bonds."

  ii) Amend Finding of Fact No. 62 to state, "The Applicant established that the funding of the road improvements is financial and economically feasible."

  iii) Amend Conclusion of Law No. 15 to state, "Sufficient evidence was presented to establish that the funding of the road improvements is financially

and economically feasible. 30 Tex. Admin. Code §§ 293.59(b), 293.201, and 293.202."

4. The Applicant has sufficiently satisfied all statutory and regulatory requirements.

- To incorporate the Commission's decision that the Applicant has sufficiently satisfied all applicable statutory and regulatory requirements for its district creation application, amend the following Finding of Fact and Conclusions of Law and add a new Conclusion of Law:

    i) Amend Finding of Fact No. 55 to state, "The Applicant established that the District is feasible, practicable, necessary, and will benefit all of the land included in the District."

    ii) Amend Conclusion of Law No. 13 to state, "The Applicant submitted evidence to establish that the District is feasible, practicable, necessary, and will be a benefit to the land included in the District. Tex. Water Code § 54.021."

    iii) Amend Conclusion of Law No. 16 to state, "The Application provided complete justification for creation of the District supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land included in the district. 30 Tex. Admin. Code § 293.11(d)(5)(J)."

    iv) Amend Conclusion of Law No. 17 to state, "The District is feasible, practicable, necessary, and will benefit all of the land included in the District Tex. Water Code § 54.021."

    v) Add new Conclusion of Law No. 17A to state, "If the Commission finds that the petition conforms to the requirements of Texas Water Code § 54.015 and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the Commission shall find so by its order and grant the petition. Tex. Water Code § 54.021(a)."

5. The proposed temporary directors should be appointed.

- Texas Water Code § 54.022 states that if the Commission grants the petition, it shall appoint five temporary directors to serve until permanent directors are elected.

- The evidence in the record demonstrates that all of the proposed temporary directors qualify to be temporary directors under Texas Water § 54.022.

- To appoint all of the temporary directors requested in the Petition:

    i) Amend Finding of Fact No. 63 to add the names of Emily Subash and Travis Chapman as temporary directors.

ii) Add new Conclusion of Law No. 18A to state, "William Reid Scoggins, Anthony Oliver, Tyler Anderson, Emily Subash, and Travis Chapman qualify to be temporary directors under Texas Water Code § 54.022."

iii) Add new Ordering Provision 1A to state, "William Reid Scoggins, Anthony Oliver, Tyler Anderson, Emily Subash, and Travis Chapman are named and appointed as temporary directors and shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oaths of office. All such bonds shall be approved by the Board of Directors of the District, and each bond and oath shall be filed with the District and retained in its records."

6. Other changes to the ALJs' Proposed order.

- To memorialize the Commission's decision to grant the Petition:

  i) Amend the Order's Title to state: "AN ORDER GRANTING PETITION FOR CREATION OF ELLIS RANCH MUNICIPAL UTILITY DISTRICT NO. 1."

  ii) Amend Conclusion of Law No. 18 to state, "The Applicant's Petition shall be granted. Tex. Water Code § 54.021(a)."

  iii) Amend Ordering Provision No. 1 to state: "The Petition for creation of Ellis Ranch Municipal Utility District No. 1 and the request to acquire road powers is granted, and the District is created under the terms and conditions of Article XVI, Section 59 of the Texas Constitution and Texas Water Code Chapters 49 and 54."

- Add Ordering Provision No. 3A to state, "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."

- To accurately reflect the date the hearing on the merits convened, amend Finding of Fact No. 6 to replace the year "2024" with "2023."