

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*

October 7, 2022

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

Re: Application For Ellis Ranch Municipal Utility District No. 1;  
TCEQ Docket No. 2022-1157-DIS

Dear Ms. Gharis:

I have enclosed for filing the "Executive Director's Response to a Hearing Request" on the above-referenced matter. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kayla Murray".

Kayla Murray  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Mailing List

**TCEQ DOCKET NO. 2022-1157-DIS**

**APPLICATION FOR THE CREATION  
OF ELLIS RANCH  
MUNICIPAL UTILITY DISTRICT  
NO. 1**

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§**

**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S RESPONSE TO A HEARING REQUEST**

**I. INTRODUCTION**

The Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") files this Response to a Hearing Request on the petition by GRBK Edgewood, LLC ("Petitioner") for the creation of Ellis Ranch Municipal Utility District No. 1 ("District").

The proposed District would contain 571.147 acres located within Ellis County, approximately 4 miles east of the City of Waxahachie (City). The proposed District is located northeast of the intersection of Farm-to-Market Road (FM) 878 and Gibson Road. It is located partially within the extraterritorial jurisdiction of the City, partially within the unincorporated area of Ellis County, and outside the corporate limits or extraterritorial jurisdiction of any other city or town. Access to the proposed District is provided by FM 878.

The Petitioner submitted a petition to the City, requesting its consent to the creation. When more than 90 days passed without receiving consent, the Petitioner then submitted a petition to the City to provide water and sewer services to the District. When that 120-day period expired, and there was no mutually agreeable contract for services, the Petitioner moved forward with initiating proceedings to include the land within the proposed District. It should also be noted that the City did not file a hearing request. *TEX. WATER CODE § 54.016; 30 LOCAL GOVERNMENT CODE § 42.042.*

The Petition states that the general nature of the work to be done by the proposed district is: 1) the construction, maintenance, and operation of a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; 2) the construction, maintenance, and operation of a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes; 3) the construction, installation, maintenance, purchase, and operation of drainage and roadway facilities and improvements; and 4) the construction, installation, maintenance, purchase and operation of facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized.

The Petition goes on to state that the District's area will, within the immediate future, experience substantial residential and commercial growth, and there is not currently an adequate water supply and distribution system, sanitary sewer system, drainage system, and public road system.

Included with the ED's response is Attachment A, which is a map of the proposed District.

## II. PROCEDURAL HISTORY

The Petitioner filed an application for the creation of the District on March 21, 2022, and the application was declared administratively complete on March 23, 2022. The Petitioner published the Notice of District Petition in the *Waxahachie Daily Light*, a newspaper generally circulated in Ellis County, where the district is proposed to be located, on May 1, 2022, and May 8, 2022. On June 9, 2022, proper notice of the application was posted on the bulletin board used for posting legal notices in the Ellis County Courthouse. The TCEQ received one letter on May 12, 2022, opposing the creation of the district. The period to request a contested case hearing ended on June 7, 2022.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing request on November 2, 2022.

## III. THE 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 § 54.011. 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 one 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 requests 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 REQUEST AND ANALYSIS**

Emily Rogers, on behalf of 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). Ms. Rogers 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.

The proposed MUD is located partially within the unincorporated area of Ellis County. Ms. Rogers' request raised issues relating to water quality, subsidence, transportation, emergency services, groundwater contamination and depletion, 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 also identified the County's statutory

authority found in TWC § 54.0161(a-2)<sup>1</sup> as well as its interest in the issues relevant to the application pursuant to 30 TAC § 55.256(c)(6).

In evaluating whether a MUD is feasible, practicable, necessary and would be a benefit to the land included in the district, the commission shall consider "the availability of comparable service from other systems, included but not limited to water districts, municipalities, and regional authorities; the reasonableness of projected construction costs, tax rates, and water and sewer rates; and 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)(1-3).

Of the issues raised by Ms. Rogers, the concerns regarding subsidence, groundwater levels, and water quality are within the scope of what the Commission may consider when reviewing a district creation application pursuant to Texas Water Code § 54.021(b). As stated above, Ms. Rogers also explained how the County would be affected by the activity in a manner not common to members of the general public, required by 30 TEX. ADMIN. CODE 55.251 § (c)(2). As such, the Executive Director recommends the Commission find that Ellis County is an affected person pursuant to 30 TAC § 55.256.

## **VI. RECOMMENDATION**

The Executive Director recommends that the Commission find that Ellis County is an affected person and grant its hearing request.

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<sup>1</sup> Tex. Water Code § 54.0161(a-2): The commissioners court of a county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. Petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

Toby Baker, Executive Director

Charmaine Backens, Deputy Director  
Environmental Law Division

  
By: \_\_\_\_\_

Kayla Murray, Staff Attorney  
Environmental Law Division

State Bar No. 24049282

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REPRESENTING THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

#### CERTIFICATE OF SERVICE

I certify that on October 7, 2022, the "Executive Director's Response to Hearing Request" for Ellis Ranch Municipal Utility District No. 1, TCEQ Docket No. 2022-1157-DIS, 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.

  
By: \_\_\_\_\_

Kayla Murray, Staff Attorney  
Environmental Law Division

# Attachment A



# Ellis Ranch MUD No. 1

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

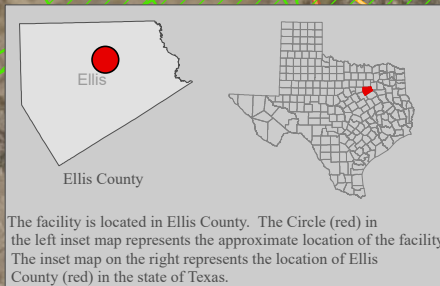
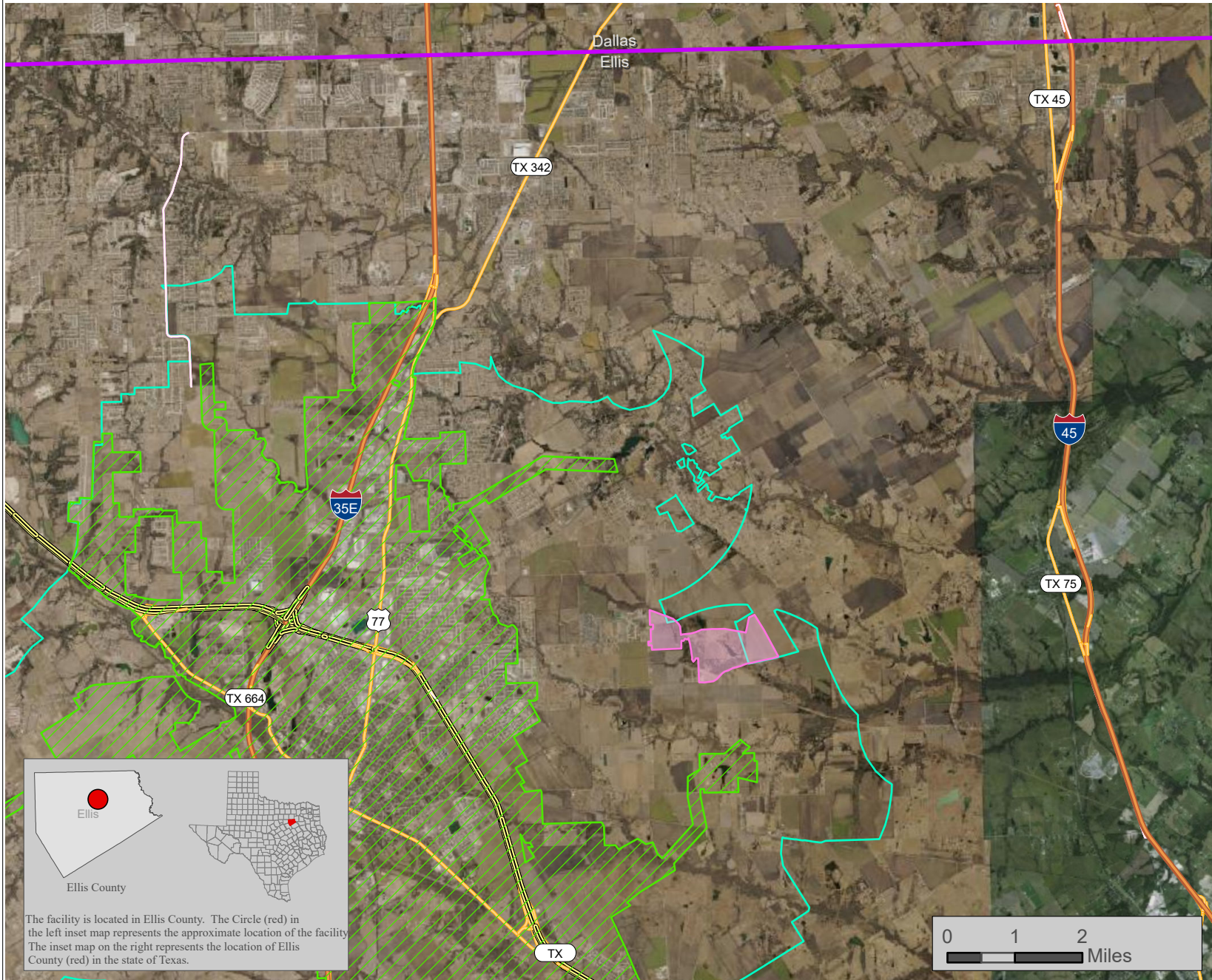


*Protecting Texas by  
Reducing and  
Preventing Pollution*

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 9/26/2022  
CRF 0076618  
Cartographer: jbartlin



- MUD
- City of Waxahachie
- Extraterritorial Jurisdiction
- Ellis County
- County Boundary



The facility is located in Ellis County. The Circle (red) 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.

**MAILING LIST**  
**ELLIS RANCH MUNICIPAL UTILITY DISTRICT NO. 1**  
**DOCKET NO. 2022-1157-DIS; INTERNAL CONTROL NO. D-03212022-036**

**FOR THE APPLICANT**

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**FOR THE CHIEF CLERK:**

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