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Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Erin E. Chancellor, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 19, 2022

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

Re: Application For Duck Creek Municipal Utility District of Denton County;  
TCEQ Docket No. 2022-1631-DIS

Dear Ms. Gharis:

I have enclosed for filing the "Executive Director's Response to Hearing Requests."  
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. 2022-1631-DIS

APPLICATION FOR THE CREATION	§	BEFORE THE TEXAS
OF DUCK CREEK	§	COMMISSION ON
MUNICIPAL UTILITY DISTRICT	§	ENVIRONMENTAL QUALITY
OF DENTON COUNTY	§	

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests on the petition by Earthland Farms, LLC (Petitioner) for the creation of Duck Creek Municipal Utility District of Denton County (District).

The District would contain 320.41 acres located within Denton County. It is located west of Lois Road West and east of FM 2450. It is outside the corporate limits and extraterritorial jurisdiction of any city, town, or village.

The Petition states that the general nature of the work to be done by the 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 District will be considered a “developer project” as defined by 30 TEX. ADMIN. CODE § 293.44(a). Therefore, developer cost participation in accordance with 30 TEX. ADMIN. CODE § 293.47 will be required.

Included with the ED’s response is a map of the proposed District with the hearing requestors numbered and labeled.

II. PROCEDURAL HISTORY

The Petitioner filed an application with the TCEQ for the creation of the District and it was declared administratively complete on June 20, 2022. The Notice of District Petition was published in *The Denton Record-Chronicle*, a newspaper generally circulated in Denton County, where the District is proposed to be located, on August 14, 2022, and August 21, 2022. The Notice of District Petition was also posted on the bulletin board used for posting legal notices in the Denton County Courthouse on August 10, 2022. The TCEQ received 9 requests for a hearing, as well as one comment. The period to request a contested case hearing ended on September 20, 2022.

### **III. CREATION OF MUNICIPAL UTILITY DISTRICTS**

#### **A. *District Purpose***

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.

#### **B. *Required Findings***

The Commission must grant or deny a MUD creation application in accordance with TEX. WATER CODE § 54.021. 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 a 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. 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 Petitioner, 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).

## **V. ANALYSIS OF THE HEARING REQUESTS**

### **A. Hearing Requests that the ED Recommends Granting**

Shaun and Colleen Wilson (#1 on the map) submitted an individual, timely request which contained their names, address, and phone numbers pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, they are located approximately 0.03 miles from the boundary of the proposed district. They requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). They also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). Furthermore, they identified their personal justiciable interests pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2); they raised issues relating to water quality and natural run-off rates/drainage, stated how they would be affected by the District in a way uncommon to the general public, and described where their property is situated in relation to the District. Due to the location of their property relative to the proposed district and the concerns raised, the Executive Director recommends that the Commission find that they are affected persons and grant their hearing request.

Stacy and Brian Rushing (#2 on the map) submitted an individual, timely request which contained their names and address pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, they are located approximately 0.15 miles from the boundary of the proposed district. They requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). They also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). Furthermore, they identified their personal justiciable interests pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2); they raised issues relating to water quality and natural run-off rates/drainage, stated how they would be affected by the District in a way uncommon to the general public, and described where their property is situated in relation to the District. Due to the location of their property relative to the proposed district and the concerns raised, the Executive Director recommends that the Commission find that they are affected persons and grant their hearing request. It should be noted that the Rushings signed their names on their hearing request, along with "Stonecreek Residents" and "HOA." However, their hearing request did not explain

their relationship with the HOA or a group of residents, so the ED has only provided an analysis on the Rushings as individual hearing requestors.

Lisa and Scott Cody (#8 on the map) submitted an individual, timely request which contained their names and address pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, they are located approximately 0.63 miles from the boundary of the proposed district. They requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). They also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). Furthermore, they identified their personal justiciable interests pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2); they raised issues relating to water quality, stated how they would be affected by the District in a way uncommon to the general public, and described where their property is situated in relation to the District. Due to the location of their property relative to the proposed district and the concerns raised, the Executive Director recommends that the Commission find that they are affected persons and grant their hearing request.

#### **B. Hearing Requests that the ED Recommends Denying**

Janis Massie (#3 on the map) submitted an individual, timely request which contained her name, address and phone number pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, she is located approximately 0.73 miles from the boundary of the proposed district. She requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). She also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). However, the issues raised in her hearing request, odors, traffic, and additional housing developments, are not issues the Commission may consider when reviewing a MUD creation application. Additionally, Ms. Massie's concerns appear to be tied to a future wastewater treatment plant, and not the proposed district creation application that is the subject of this Agenda item. While Ms. Massie also raised the issue of increased taxes, her property is located outside the proposed district boundaries and thus the issue of her property taxes is not something the commission could consider. As a result, she has not identified a personal justiciable interest pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2). The Executive Director recommends the Commission deny this hearing request.

Stephen and Jennifer Sutton (#4 on the map) submitted an individual, timely request which contained their names, address and phone number pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, they are located approximately 0.74 miles from the boundary of the proposed district. They requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). They also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). However, the issues raised in their hearing request, odors, traffic, and additional housing developments, are not issues the Commission may consider when reviewing a MUD creation application. Additionally, the Suttons' concerns appear to be tied to a future wastewater treatment plant, and not the proposed district creation application that is the subject of this Agenda item. While the Suttons also raised the issue of increased taxes, their property is located outside the proposed district boundaries and thus the issue of their property taxes is not something the commission could consider. As a result, they have not identified a

personal justiciable interest pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2). The Executive Director recommends the Commission deny this hearing request.

Bryan and Kristina Sipp (#5 on the map) submitted an individual, timely request which contained their names, address, and phone numbers pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, they are located approximately 0.43 miles from the boundary of the proposed district. They requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). They also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). The concerns raised by the Sipp appear to be tied to a future wastewater treatment plant, and not the proposed district creation application that is the subject of this Agenda item. As a result, they have not identified a personal justiciable interest pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2). The Executive Director recommends the Commission deny this hearing request.

Gray and Janell Shelton (#6 on the map) submitted an individual, timely request which contained their names, address, and phone numbers pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, they are located approximately 2.17 miles from the boundary of the proposed district. They requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). They also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). The Sheltons' concerns appear to be tied to a future wastewater treatment plant, and not the proposed district creation application that is the subject of this Agenda item. As a result, the Sheltons have not identified a personal justiciable interest pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2). The Executive Director recommends the Commission deny this hearing request.

Marion Odom (#7 on the map) submitted an individual, timely request which contained their name, address, and phone numbers pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, they are located approximately 0.38 miles from the boundary of the proposed district. They requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). They also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). The concerns raised by Marion Odom appear to be tied to a future wastewater treatment plant, and not the proposed district creation application that is the subject of this Agenda item. As a result, they have not identified their personal justiciable interest pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2). The Executive Director recommends that the Commission deny their hearing request.

Glenn and Cathy McDaniel (#9 on the map) submitted an individual, timely request which contained their names, address and phone number pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(1). Based on the address provided in the hearing request, they are located approximately 0.64 miles from the boundary of the proposed district. They requested a contested case hearing pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(3). They also provided the internal control number as required in the notice and pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(4). However, the issues raised in their hearing request, odors and traffic, are not issues the Commission may consider when reviewing a MUD creation application. Additionally, the McDaniels' concerns appear to be tied to a future wastewater treatment plant, and not the proposed district creation application that is the subject of this Agenda item. While the McDaniels also raised the issue of increased taxes, their property is located outside the proposed district boundaries and thus the issue of their property taxes is not something the commission

could consider. As a result, they have not identified a personal justiciable interest pursuant to 30 TEX. ADMIN. CODE § 55.251(c)(2). The Executive Director recommends the Commission deny this hearing request.

## **VII. Recommendation**

The Executive Director recommends that the Commission grant the hearing requests of Shaun and Colleen Wilson; Stacy and Brian Rushing; and Lisa and Scott Cody.

The Executive Director recommends that the Commission find that Janis Massie; Stephen and Jennifer Sutton; Bryan and Kristina Sipp; Marion Odom; Gray and Janell Shelton; and Glenn and Cathy McDaniel are not affected persons and deny their hearing requests.

If the Commission chooses to deny all the hearing requests, then the Executive Director recommends that the creation petition be granted.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor,  
Interim Executive Director

Charmaine Backens,  
Deputy Director, Environmental Law Division  
and Acting Director, Office of Legal Services



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REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY



**MAILING LIST**  
**DUCK CREEK MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY**  
**DOCKET NO. 2022-1631-DIS; INTERNAL CONTROL NO. D-06142022-031**

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

REQUESTER(S)/INTERESTED PERSON(S):  
See attached list.

REQUESTER(S)

Lisa & Scott Cody  
14255 Cashes Mill Rd  
Sanger, TX 76266-5168

Janis Massie  
14430 Cashes Mill Rd  
Sanger, TX 76266-5176

Cathy & Glenn McDaniel  
PO Box 852  
Sanger, TX 76266-0852

Marion Odom  
14134 Cashes Mill Rd  
Sanger, TX 76266-2120

Brian & Stacy Rushing  
5692 Stone Creek Dr  
Sanger, TX 76266-5121

Gray & Janell Shelton  
12370 Chisum Rd  
Sanger, TX 76266-1965

Bryan & Kristina Sipp  
14110 Cashes Mill Rd  
Sanger, TX 76266-2120

Jennifer Sutton  
14440 Cashes Mill Rd  
Sanger, TX 76266-5176

Colleen & Shaun Wilson  
106 Carolyn Dr  
Sanger, TX 76266-9674

INTERESTED PERSON(S)

Joshua Lee Prator  
12840 Cashes Mill Rd  
Sanger, TX 76266-5116

# Attachment A

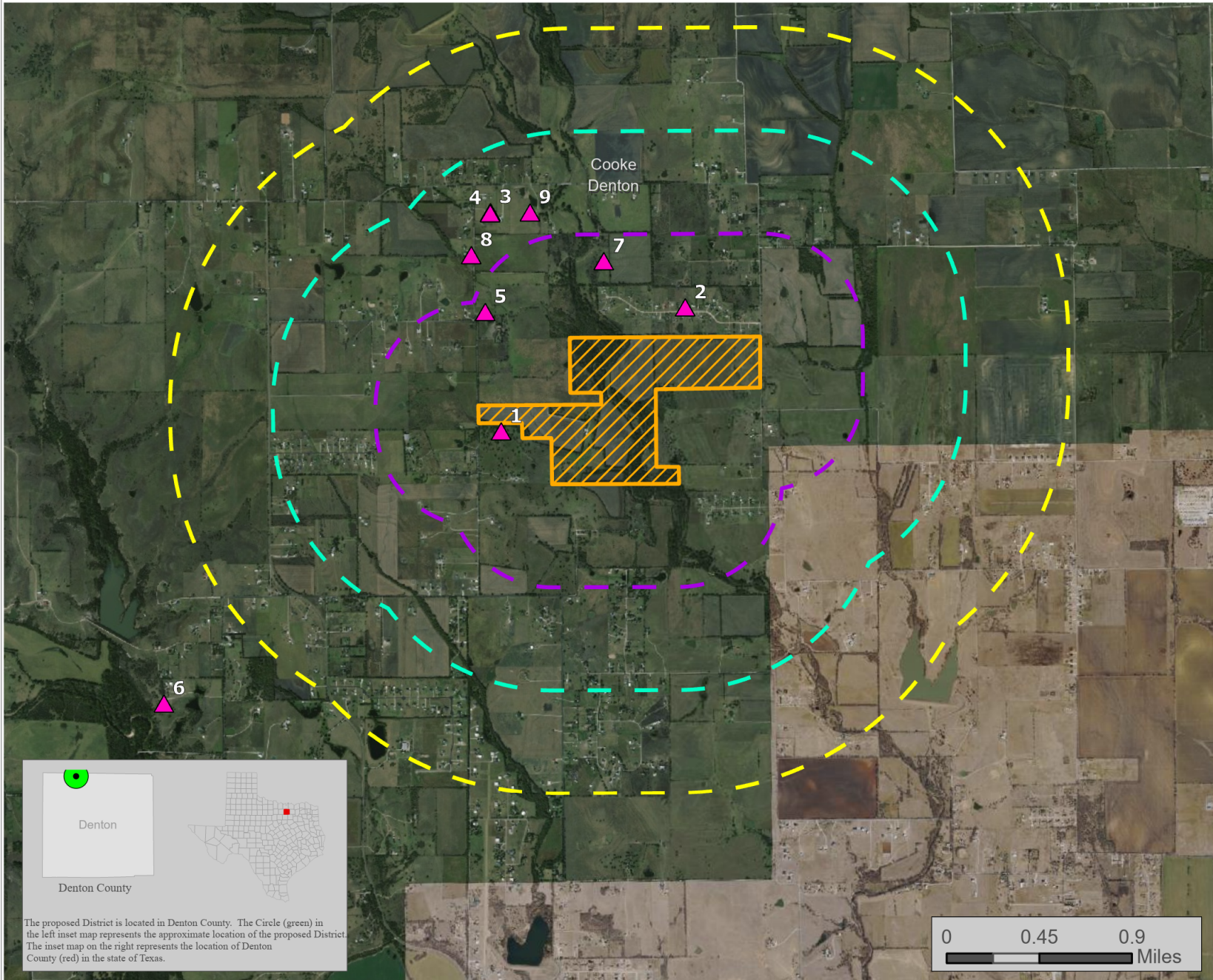
# Duck Creek MUD of Denton County - Proposed Creation



*Protecting Texas by  
Reducing and  
Preventing Pollution*

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

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 12/16/2022  
CRF 0078231  
Cartographer: ABanda



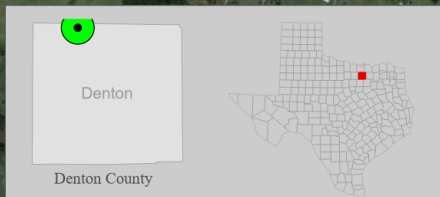
- Requestors
- Duck Creek MUD
- 0.5- Mile Radius
- 1.5- Mile Radius
- 1.0- Mile Radius
- County Boundary

Distance between requestor and proposed District boundary in miles:

- 1 - Shaun and Colleen Wilson - 0.03
- 2 - Stacy and Brian Rushing - 0.15
- 3 - Janis Massie - 0.73
- 4 - Jennifer and Stephen Sutton - 0.74
- 5 - Bryan and Kristina Sipp - 0.43
- 6 - Gray and Janell Shelton - 2.17
- 7 - Marion Odom - 0.38
- 8 - Lisa and Scott Cody - 0.63
- 9 - Glenn & Cathy McDaniel - 0.64

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.



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

