

SOAH DOCKET NO. 582-23-26772  
TCEQ DOCKET NO. 2023-0566-DIS

APPLICATION FOR THE CREATION § BEFORE THE STATE OFFICE  
OF SHANKLE ROAD MUNICIPAL §  
UTILITY DISTRICT OF ELLIS § OF  
COUNTY § ADMINISTRATIVE HEARINGS  
§

**CITIZENS AGAINST ELLIS COUNTY MUDS, INC.’S  
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE CHAIRMAN NIERMANN AND COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Protestant Citizens Against Ellis County MUDs, Inc. (“CAECM”) file these Exceptions to the Proposal for Decision (“PFD”) in the above-referenced matter.

**I. Introduction and Background**

CAECM supports the ALJs’ recommendation of denial of the Petition for all of the reasons articulated in the PFD and in the Proposed Order. The ALJs properly found that the Petitioner failed to meet his burden of proof to demonstrate that the proposed project is feasible, practicable, necessary, and would be a benefit to the land included in the district because the proposed construction costs are unreasonable. Even so, CAECM excepts to the ALJs’ recommendation that CAECM be assessed 15% of the transcript costs associated with consideration of the Petitioner’s deficient Petition.

**II. The Petitioner Failed to Demonstrate that the Construction Costs for the Municipal Utility District are Reasonable.**

The ALJs have properly found that the Petitioner has not met his burden to demonstrate that projected construction costs are reasonable, as required under Tex. Water Code § 54.016(b)(2). Reasonableness of construction costs is one requirement under § 54.016(b) that the Commission “shall consider” to determine whether the proposed project is feasible, practicable, necessary, and

would be a benefit to the land included in the district. If the Applicant’s Petition fails to satisfy *any* of these requirements, the Commission “shall” deny the Petition. Tex. Water Code § 54.016(d). The ALJ properly found that the Petitioner’s expert “pulled his cost estimates out of thin air” and that Petitioners provided more substantial and reliable evidence regarding construction costs. Thus, the Petitioner failed to demonstrate by *preponderance of the evidence* that the proposed construction costs were reasonable.

In fact, the present case is similar to another instance in which the Commission recently denied a MUD petition *solely on the sole basis* that construction costs were unreasonable. CAECM asks that the ALJs take official notice of the Commission’s Final Order in the *Petitions for Creation of Lakeview Municipal Utility District Nos. 2, 1, and 3*, attached here as Exhibit 1. *See* Conclusion of Law 12 (“Insufficient evidence was presented to establish the reasonableness of projected construction costs. Tex. Water Code § 54.021(b)(2).”). The Commission found in the Lakeview MUDs case that the construction cost estimates for the wastewater treatment plant were underestimated. Denial of the Petition in the immediate case is consistent with that precedent.

In the present case, the ALJs properly found that Ellis County’s expert Gary Hendricks—who opined that construction costs for the proposed MUD were severely underestimated by the Petitioner—presented more reliable testimony because he has superior experience estimating construction costs of residential developments. Mr. Hendricks, P.E., R.P.L.S., is a partner at an engineering firm that singularly focuses on municipal engineering and provides professional engineering and surveying services to communities in North Texas. He also serves as City Engineer for several municipalities, and his duties include developing construction plans and

preparing capital improvement plans for water and wastewater systems. Mr. Hendricks has provided expert testimony for Ellis County’s protest of the creation of three other MUDs.<sup>1</sup>

In contrast, the Petitioner’s engineer Yash Farah has no experience with residential developments. ED technical reviewer James Walker also has no apparent experience estimating costs for real estate development, testified that he did not consider Mr. Farah’s lack of experience, and did not independently investigate how Mr. Farah had arrived at his estimates or whether they were reasonable.

As observed by the ALJs, Mr. Farah’s construction cost estimates lacked any real explanation or detail for his comparison to other developments and contained several mistakes. For example, the preliminary engineering report omitted significant costs for the anticipated groundwater wells or a wastewater treatment plant. The ALJs accurately observed that, “a petition that entirely fails to anticipate costs for major, required components does not contain a reasonable cost estimate.”<sup>2</sup>

The ALJs are in the best position to evaluate the credibility of these witnesses, given that the ALJs carefully examined and considered the testimony and evidence presented while also evaluating the credibility of the witnesses during their live testimony. As the Austin Court of Appeals has noted, “[t]he resolution of adjudicative facts often requires making credibility determinations, which an ALJ is better suited to do than an agency or board reviewing a PFD.” *Hyundai Motor Am. v. New World Car Nissan, Inc.*, 581 S.W.3d 831, 838 (Tex. App.—Austin 2019, no pet.). Thus, the ALJs’ finding that Mr. Hendricks presented the most reliable construction estimates should not be disturbed.

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<sup>1</sup> Ellis Co. Ex. No. 4 at 7:1-9.

<sup>2</sup> PFD at 44.

In addition to Mr. Farah's lack of credibility, the ALJs also found that there is *no evidence in the record* showing how Mr. Farah or the Petitioner arrived at any of their construction cost estimates or why they believe them to be reasonable. Petitioner's bid for a sewer plant (Applicant's Exhibit 21) was stricken by the ALJs during the preliminary hearing as hearsay.<sup>3</sup> Mr. Farah himself characterized his estimates of the proposed construction costs of the District's water supply plan as "imaginary numbers."<sup>4</sup> These estimates may be "tentative" and "anticipated" rather than final costs, but the estimations must still be reasonable at the time of the report in order for the Petitioner to carry his burden under Tex. Water Code § 54.021(b).

Such conclusory opinions cannot support granting the Petition. As the Texas Supreme Court has noted, "if no basis for the [expert] opinion is offered, or the basis offered provides no support, the opinion is merely a conclusory statement and cannot be considered probative evidence, regardless of whether there is no objection. '[A] claim will not stand or fall on the mere ipse dixit of a credentialed witness.'" *City of San Antonio v. Pollock*, 284 S.W.3d 809, 818 (Tex. 2009) (quoting *Burrow v. Arce*, 997 S.W.2d 229, 235 (Tex. 1999)).

In contrast, Mr. Hendricks gave clear explanations for the different assumptions and factors that informed his estimates. Mr. Hendricks relied on his extensive experience and current construction cost data from his engineering firm's internal database "for a comparison of construction cost for the proposed wastewater treatment plant and the estimate cost for development of public groundwater wells, ground storage tanks, high service pump stations, elevated tanks, pressure tanks, and drainage system and roadway system components."<sup>5</sup> Mr.

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<sup>3</sup> Prehearing Conf. Tr. at 11:2-13.

<sup>4</sup> HOM Tr. at 84:17.

<sup>5</sup> Ellis Co. Ex. No. 4 at 8:21-9:2.

Hendrick's credibility is demonstrated by the fact that, unlike Mr. Farah, Mr. Hendricks anticipated costs for major, required components of the proposed project.

The ALJs also properly find that *even if* Petitioner's future revenues absorb substantially higher construction costs, "the Commission's stated focus is on whether the costs and taxes were reasonable when the Petition was filed," and that "reasonableness of cost estimates is a separate issue."<sup>6</sup>

Therefore, the ALJs accurately found that the Petitioner failed to meet his burden to show that construction costs for Shankle Road MUD are reasonable. This finding should not be disturbed.

### **III. Transcript Costs**

CAECM excepts to the ALJs' recommendation that CAECM pay 15% of the transcript costs in this matter. CAECM participated in the hearing to a reasonable degree to protect its members' due process rights. Witnesses presented by CAECM were limited to fact witnesses and occupied very little of the transcript. Cross-examination by CAECM was limited to issues relevant to the Petition at issue and not unduly cumulative. Consequently, the hearing in this matter lasted less than a full day.

As a small group of local landowners, CAECM has already borne the cost of engaging legal counsel with expertise in the field. CAECM has no opportunity to recover such costs incurred to demonstrate the deeply flawed nature of the Petition. The most CAECM stands to gain from the current proceedings is maintenance of the status quo. On the other hand, the Petitioner stands to gain considerable economic benefit from the proceedings and from the existence of the transcript.

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<sup>6</sup> PFD at 47.

The transcript facilitates the creation of a record which the Petitioner can use in his attempt to meet his burden of proof.

Ellis County is a local governmental entity, expending taxpayer funds in this hearing to further its own government functions. It would likewise be inappropriate to burden local taxpayers with the transcript costs necessitated to address such a flawed Petition.

Considering that all costs of the proceeding were necessitated by the Petitioner's pursuit of a fatally flawed Petition, all transcript costs should be borne by the Petitioner.

#### **IV. Conclusion**

For the reasons described above, CAECM respectfully requests that the Commission deny the Petition for the creation of the Shankle Road Municipal Utility District, because Steve Selinger has not met his burden and has not demonstrated that his Petition meets the applicable statutory and regulatory requirements. CAECM further requests such other and further relief to which it may be justly entitled.

Respectfully submitted,

*/s/ Eric Allmon*

Eric Allmon

State Bar No. 24031819

[eallmon@txenvirolaw.com](mailto:eallmon@txenvirolaw.com)

Lauren Alexander

State Bar No. 24138403

[lalexander@txenvirolaw.com](mailto:lalexander@txenvirolaw.com)

**PERALES, ALLMON & ICE, P.C.**

1206 San Antonio St.

Austin, Texas 78701

(512) 469-6000 (t) | (512) 482-9346 (f)

*Counsel for CAECM*

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the above and foregoing document has been served via eFile to the following parties of record, on September 26, 2024.

/s/ Eric Allmon  
Eric Allmon

**For the Applicant:**

Natalie B. Scott  
Kevin R. Bartz  
Coats | Rose, P.C. Austin  
2700 Via Fortuna, Ste. 350  
Austin, Texas 78746  
[nscott@coatsrose.com](mailto:nscott@coatsrose.com)  
[kbartz@coatsrose.com](mailto:kbartz@coatsrose.com)

Tim Green  
Mindy Koehne  
Coats | Rose, P.C. Dallas  
16000 North Dallas Parkway, Ste. 350  
Dallas, Texas 75248  
[tgreen@coatsrose.com](mailto:tgreen@coatsrose.com)  
[mkoehne@coatsrose.com](mailto:mkoehne@coatsrose.com)

**For Ellis County:**

Emily Rogers  
Stefanie Albright  
Joshua Katz  
Bickerstaff Heath Delgado Acosta LLP  
Two Barton Skyway  
1601 S. Mopac Expy., Suite C400  
Austin, Texas 78746  
(512) 472-5021 (t)  
(512) 320-5638 (f)  
[erogers@bickerstaff.com](mailto:erogers@bickerstaff.com)  
[salbright@bickerstaff.com](mailto:salbright@bickerstaff.com)  
[jkatz@bickerstaff.com](mailto:jkatz@bickerstaff.com)

**For the Executive Director:**

Kayla Murray  
Fernando Salazar Martinez  
TCEQ Environmental Law Division  
P.O. Box 13087, MC-173  
Austin, Texas 78711-3087  
(512) 239-4761 (Murray)  
(512) 239-6635 (Martinez)  
[kayla.murray@tceq.texas.gov](mailto:kayla.murray@tceq.texas.gov)  
[fernando.martinez@tceq.texas.gov](mailto:fernando.martinez@tceq.texas.gov)

**For the Office of Public Interest Counsel:**

Jennifer Jamison  
TCEQ Office of Public Interest Counsel  
P.O. Box 13087, MC-103  
Austin, Texas 78711-3087  
(512) 239-3974 (t)  
(512) 239-6377 (f)  
[jennifer.jamison@tceq.texas.gov](mailto:jennifer.jamison@tceq.texas.gov)

# EXHIBIT 1



Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 28, 2023

TO: Persons on the attached mailing list.

RE: Lakeview Municipal Utility Districts Nos. 1, 2, and 3  
TCEQ Docket Nos. 2021-0571-DIS, 2021-0572-DIS, and 2021-0573-DIS  
SOAH Docket Nos. 582-22-0259, 582-22-0260, and 582-22-0261

### **Decision of the Commission on Petition.**

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to deny the above-referenced petition. Enclosed with this letter is a copy of the Commission's order. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

### **Deadline for Filing Motion for Rehearing.**

A MFR must be received by the chief clerk's office no later than the 25<sup>th</sup> day after the date that the Commission's order on this application is signed. The date of signature is indicated on the last page of the enclosed order.

Motions may be filed in accordance with the requirements in Senate Bill 1267 (84th Regular Session, effective September 1, 2015) and Texas Government Code § 2001.146 with the chief clerk electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or by filing an original and 7 copies with the Chief Clerk at the following address:

Laurie Gharis, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 512/239-3311

In addition, a copy of the motion must be sent on the same day to each of the individuals on the attached mailing list as indicated by an asterisk (\*). A certificate of service stating that copies of the motion were sent to those on the mailing list must also be sent to the chief clerk. The procedures for filing and serving a MFR and responses are located in 30 TAC § 80.272, Texas Governmental Code § 2001.146 as revised by Senate Bill 1267 (84th Regular Session, effective September 1, 2015), and 30 TAC §§ 1.10 and 1.11. The hardcopy filing requirement is waived by the General Counsel pursuant to 30 TAC § 1.10(h).

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH and official docket number assigned by the Commission; (3) the date of the order; (4) the particular findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous; and (5) the legal and factual basis for the claimed error.

Unless the time for the Commission to act on the MFR is extended, the MFR is overruled by operation of law at 5:00 p.m. on the 55th day after the date that the Commission's order on this matter is signed.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis  
Chief Clerk

LG/mt

Enclosure

Lakeview Municipal Utility Districts Nos. 1, 2, and 3  
TCEQ Docket Nos. 2021-0571-DIS, 2021-0572-DIS, and 2021-0573-DIS  
SOAH Docket Nos. 582-22-0259, 582-22-0260, and 582-22-0261

FOR THE APPLICANT:

\*Natalie Scott, Director  
Coats Rose, P.C.  
Terrace 2 – 2700 Via Fortuna, Suite 350  
Austin, Texas 78746

\*Tim Green, Director  
Coats Rose, P.C.  
9 Greenway Plaza, Suite 1000  
Houston, Texas 77046

\*Mindy Koehne, Director  
Coats Rose, P.C.  
16000 North Dallas Parkway  
Suite 350  
Dallas, Texas 75248

FOR THE CITY OF WAXAHACHIE AND  
ELLIS COUNTY:

\*Emily Rogers, Attorney  
\*Joshua Katz, Attorney  
\*Kimberly Kelly, Attorney  
Bickerstaff Heath Delgado &  
Acosta, LLP  
3711 South Mopac Expressway  
Suite 300  
Austin, Texas 78746

FOR THE PROTESTANTS:

\*Eric Allmon, Attorney  
Perales, Allmon & Ice, PC  
1206 San Antonio Avenue  
Austin, Texas 78710

INTERESTED PERSON(S):

See attached mailing list.

FOR THE EXECUTIVE DIRECTOR  
*via electronic mail:*

\*Kayla Murray, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711

Justin Taack, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division MC-150  
P.O. Box 13087  
Austin, Texas 78711

Ryan Vise, Deputy Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program MC-108  
P.O. Box 13087  
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL  
*via electronic mail:*

\*Sheldon Wayne, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711

FOR THE STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

*via eFile Texas:*

The Honorable Linda Brite  
The Honorable Megan Johnson  
Administrative Law Judge  
300 West 15<sup>th</sup> Street  
Austin, Texas 78701  
<https://www.soah.texas.gov/e-filing-soah>

FOR THE CHIEF CLERK

*via eFilings:*

Docket Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711  
<https://www.tceq.texas.gov/goto/efilings>

ALLEN , DYLAN  
176 DENALI WAY  
WAXAHACHIE TX 75167-0122

ALLEN , ERIKA  
176 DENALI WAY  
WAXAHACHIE TX 75167-0122

ALLISON , CLAY & SHEILA  
1425 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9335

ARWINE , BETTY & ROBERT  
2041 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9341

ASHCRAFT , RACHEL  
7421 FAITH LN  
WAXAHACHIE TX 75167-6017

BAIRD , JUSTIN  
1031 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9331

BAIRD , REGGIE  
1031 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9331

BAIRD , STEPHANIE  
1031 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9331

BEASLEY , RONNETT  
215 BUCKSKIN DR  
WAXAHACHIE TX 75167-4852

BIRDWELL , THE HONORABLE BRIAN STATE  
SENATOR  
THE SENATE OF TEXAS DISTRICT 22  
PO BOX 12068  
AUSTIN TX 78711-2068

BISCAMP , LAUREN  
929 INDIAN TRL  
OAK LEAF TX 75154-5875

BIZZELLI , RON  
2231 MARSHALL RD  
WAXAHACHIE TX 75167-9407

BOLEMAN , JESSE  
1021 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9331

BOSWELL , JOHN  
7881 FAITH LN  
WAXAHACHIE TX 75167-7299

BOWEN , CURTIS  
144 DENALI WAY  
WAXAHACHIE TX 75167-0122

BRAVENEC , BARBIE  
3720 S HAMPTON RD  
OAK LEAF TX 75154-6018

BRINDLE , RAY  
927 E HIGHLAND RD  
OAK LEAF TX 75154-5829

BUNTING , CARRIE  
219 CARSON DR  
WAXAHACHIE TX 75167-0131

BUNTING , JOSH  
219 CARSON DR  
WAXAHACHIE TX 75167-0131

BUTLER , RICKY  
200 MCKINLEY CIR  
WAXAHACHIE TX 75167-0124

CALDERON , HECTOR M  
240 MCKINLEY CIR  
WAXAHACHIE TX 75167-0124

CARPENTER , BRIAN  
256 MCKINLEY CIR  
WAXAHACHIE TX 75167-0124

CARR , KRISTIE  
217 DENALI WAY  
WAXAHACHIE TX 75167-0115

CARR , THOMAS  
217 DENALI WAY  
WAXAHACHIE TX 75167-0115

CARRICK , BEV  
508 S WESTMORELAND RD  
WAXAHACHIE TX 75167-9275

CARROLL , RICHARD & ROBIN  
2345 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9344

CARTER , VICKY  
180 DENALI WAY  
WAXAHACHIE TX 75167-0122

CATE , RICK  
1448 E HIGHLAND RD  
OAK LEAF TX 75154

CHAMBERS , MICHAEL  
2291 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9343

CONCERNED CITIZEN ,  
THE RESIDENTS OF ELLIS COUNTY  
2011 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9341

CONCERNED CITIZEN ,  
2325 MARSHALL RD  
WAXAHACHIE TX 75167-9409

CONCERNED CITIZEN ,  
192 DENALI WAY  
WAXAHACHIE TX 75167-0122

CONCERNED CITIZEN ,  
204 DENALI WAY  
WAXAHACHIE TX 75167-0116

CONCERNED CITIZEN ,  
212 DENALI WAY  
WAXAHACHIE TX 75167-0116

CONCERNED CITIZEN ,  
145 VAIL LN  
WAXAHACHIE TX 75167-0121

CONCERNED CITIZEN ,  
145 DENALI WAY  
WAXAHACHIE TX 75167-0123

CUPP , BRIAN  
924 INDIAN TRL  
OAK LEAF TX 75154-5874

DAVILA , AMANDA  
121 DENALI WAY  
WAXAHACHIE TX 75167-0123

DAVILA , RYAN  
121 DENALI WAY  
WAXAHACHIE TX 75167-0123

DILLOW , CHRISTOPHER & KORI  
880 LONGBRANCH RD  
MIDLOTHIAN TX 76065-5245

DILLOW , KYLE  
470 DAVENPORT DR  
WAXAHACHIE TX 75167-7228

DILLOW , MEGAN  
470 DAVENPORT DR  
WAXAHACHIE TX 75167-7228

DILLOW , TRAVIS  
420 DAVENPORT DR  
WAXAHACHIE TX 75167-7228

DILLOW , VICKIE  
7881 FAITH LN  
WAXAHACHIE TX 75167-7299

DONNER , LINDA A  
2060 MARSHALL RD  
WAXAHACHIE TX 75167-9419

DUNIS , DIANE  
1107 OVILLA RD  
WAXAHACHIE TX 75167-9434

DURRETT , JEFF  
420 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9300

DURRETT , SHERRI  
420 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9300

ELLZEY , THE HONORABLE JAKE STATE  
REPRESENTATIVE  
TEXAS HOUSE OF REPRESENTATIVES DISTRICT 10  
PO BOX 2910  
AUSTIN TX 78768-2910

ESTRADA , JESSE  
461 REESE RD  
WAXAHACHIE TX 75167-7213

ESTRADA , SYLVIA  
461 REESE RD  
WAXAHACHIE TX 75167-7213

EUBANK , DAVID  
1209 INDIAN WELLS TRL  
MIDLOTHIAN TX 76065-5065

EUBANK , DAVID  
168 DENALI WAY  
WAXAHACHIE TX 75167-0122

EUBANKS , BILL  
205 MCKINLEY CIR  
WAXAHACHIE TX 75167-0125

EVATT , TRACY  
441 WALKER CT S  
WAXAHACHIE TX 75167-6000

FAULKNER , TABITHA  
230 WALKER CT N  
WAXAHACHIE TX 75167-6001

FEDAKO , TRUDY  
2357 MARSHALL RD  
WAXAHACHIE TX 75167-9409

FIELDS , JOE & PAMELA  
212 MCKINLEY CIR  
WAXAHACHIE TX 75167-0124

FINEL , KEITH  
2181 MARSHALL RD  
WAXAHACHIE TX 75167-9405

FORAN ,  
461 DAVENPORT DR  
WAXAHACHIE TX 75167-7229

FOSTER , LYNN & PATRICIA  
423 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9325

FRISSE , DANIEL  
480 DAVENPORT DR  
WAXAHACHIE TX 75167-7228

FRISSE , STEPHANIE  
480 DAVENPORT DR  
WAXAHACHIE TX 75167-7228

GAGE , EVELENE  
212 EVEREST LN  
WAXAHACHIE TX 75167-0119

GAMM , ANDREW  
192 DENALI WAY  
WAXAHACHIE TX 75167-0122

GARCIA , JO  
212 DENALI WAY  
WAXAHACHIE TX 75167-0116

GEESLIN , JUDY  
118 WOODHAVEN CT  
OAK LEAF TX 75154-6008

GIFFORD , JOSHUA  
148 DENALI WAY  
WAXAHACHIE TX 75167-0122

GRANATINO , JOHN  
2305 MARSHALL RD  
WAXAHACHIE TX 75167-9409

GREEN , CURTIS  
252 MCKINLEY CIR  
WAXAHACHIE TX 75167-0124

GREEN , ELIZABETH  
252 MCKINLEY CIR  
WAXAHACHIE TX 75167-0124

GREEN , J D  
265 MCKINLEY CIR  
WAXAHACHIE TX 75167-0125

GREEN , KELLY  
101 DENALI WAY  
WAXAHACHIE TX 75167-0123

HALL , ANN  
661 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

HALL , KENNETH  
661 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

HALL SR , KENNETH  
661 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

HALL , MONICA  
661 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

HARDIN , GREGG & JULIE  
1051 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9331

HARLOW , TODD  
1236 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9308

HARLOW , TRUDY  
1236 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9308

HARPER , CRAIG & KELLY  
137 VAIL LN  
WAXAHACHIE TX 75167-0121

HEARN , TIFFANY  
2281 MARSHALL RD  
WAXAHACHIE TX 75167-9407

HEITMAN , SARITA  
440 WALKER CT S  
WAXAHACHIE TX 75167-6000

HENSON , BRIAN  
933 E HIGHLAND RD  
OAK LEAF TX 75154-5829

HENSON , LISA  
933 E HIGHLAND RD  
OAK LEAF TX 75154-5829

HILLERY , MICHELLE  
3710 S HAMPTON RD  
OAK LEAF TX 75154-6018

HORVATICH , NICHOLAS  
213 RANIER ST  
WAXAHACHIE TX 75167-0118

HORVATICH , NICHOLAS  
131 FIRE WHEEL DR  
WAXAHACHIE TX 75167-1221

JENSEN , JON  
224 DENALI WAY  
WAXAHACHIE TX 75167-0116

JENSEN , SARAH  
224 DENALI WAY  
WAXAHACHIE TX 75167-0116

KOCIAN , CAMERON  
2081 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9341

KOCIAN JR , JAMES  
2081 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9341

KOCIAN SR , JAMES  
2241 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9343

KOCIAN , MARY  
2081 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9341

KOCIAN , MELINDA  
2241 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9343

KOONCE , WILLIAM E  
651 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

KROGER , GREGORY  
160 DENALI WAY  
WAXAHACHIE TX 75167-0122

KROGER , JENNIFER  
160 DENALI WAY  
WAXAHACHIE TX 75167-0122

LEE , BRANDON  
471 DAVENPORT DR  
WAXAHACHIE TX 75167-7229

LEE , PAULA  
471 DAVENPORT DR  
WAXAHACHIE TX 75167-7229

LEWIS , CARLOS  
149 VAIL LN  
WAXAHACHIE TX 75167-0121

LITTLE , DENNIS  
145 DENALI WAY  
WAXAHACHIE TX 75167-0123

LOPEZ JR , DAVID  
141 VAIL LN  
WAXAHACHIE TX 75167-0121

LOPEZ , ERIN  
141 VAIL LN  
WAXAHACHIE TX 75167-0121

LOVITT , JOE & KATIE  
208 DENALI WAY  
WAXAHACHIE TX 75167-0116

LOWERY , KATHY  
431 WALKER CT S  
WAXAHACHIE TX 75167-6000

LUCAS , RICHARD J  
2060 MARSHALL RD  
WAXAHACHIE TX 75167-9419

LUNA , ASHLEY  
132 DENALI WAY  
WAXAHACHIE TX 75167-0122

LUNA , PHIL  
132 DENALI WAY  
WAXAHACHIE TX 75167-0122

MALATRA , JULIE  
136 DENALI WAY  
WAXAHACHIE TX 75167-0122

MARTINEZ , ALFREDO  
209 EVEREST LN  
WAXAHACHIE TX 75167-0120

MARTINEZ JR , ALFREDO  
209 EVEREST LN  
WAXAHACHIE TX 75167-0120

MARTINEZ , NEREYDA  
APT 1321  
1003 WINDMILL FARMS BLVD  
FORNEY TX 75126-6326

MARTINEZ , NEREYDA  
600 FARRAR RD  
WAXAHACHIE TX 75165-8465

MARTINEZ , NEREYDA  
321 PALMER VIEW DR  
PALMER TX 75152-8216

MARTINEZ , TONYA  
209 EVEREST LN  
WAXAHACHIE TX 75167-0120

MCALLISTER , WILLIAM  
37367 SEA WINDS CT  
GREENBACKVILE VA 23356-3005

MCALLISTER , WILLIAM  
208 EVEREST LN  
WAXAHACHIE TX 75167-0119

MCDANIEL , KIM  
939 E HIGHLAND RD  
OAK LEAF TX 75154-5829

MENDOZA , INOCENTE  
2401 MARSHALL RD  
WAXAHACHIE TX 75167-9416



MENTZEL , TIM R  
440 CROSS CREEK CT  
WAXAHACHIE TX 75167-7201

MILAM , MR & MRS JACKIE  
2380 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9319

MIRANDA , ALBERTO  
258 MOONSHADOW DR  
WAXAHACHIE TX 75165-1647

MIRANDA , ALBERTO  
213 DENALI WAY  
WAXAHACHIE TX 75167-0115

MIRANDA , ALEJANDRA  
258 MOONSHADOW DR  
WAXAHACHIE TX 75165-1647

MIRANDA , ALEJANDRA  
213 DENALI WAY  
WAXAHACHIE TX 75167-0115

MONTOYA , ANGELICA  
209 EVEREST LN  
WAXAHACHIE TX 75167-0120

MORALES , EDGAR  
204 EVEREST LN  
WAXAHACHIE TX 75167-0119

MORALES , EDGAR  
145 WAGON MOUND  
WAXAHACHIE TX 75167-4843

MYERS , A  
141 DENALI WAY  
WAXAHACHIE TX 75167-0123

MYERS , CYROUS  
141 DENALI WAY  
WAXAHACHIE TX 75167-0123

MYERS , DREW  
141 DENALI WAY  
WAXAHACHIE TX 75167-0123

NEAL , MELISSA  
1030 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9306

NOACK , DAVID & JOY  
415 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9325

OGLETREE , SHEELA  
213 RANIER ST  
WAXAHACHIE TX 75167-0118

OGLETREE , SHEELA  
131 FIRE WHEEL DR  
WAXAHACHIE TX 75167-1221

OKPUZOR , JANIECE  
217 RANIER ST  
WAXAHACHIE TX 75167-0118

OLMOS , RICHARD  
248 DAKOTA DR  
WAXAHACHIE TX 75167-0127

ORTIZ , ELIZABETH  
201 RANIER ST  
WAXAHACHIE TX 75167-0118

PALMER , MATTHEW  
1011 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9331

PATENAUDE , JUDY  
6210 MULBERRY LN  
MIDLOTHIAN TX 76065-5260

PEAVY , DANIEL  
460 REESE RD  
WAXAHACHIE TX 75167-7212

PEAVY , HEATHER  
460 REESE RD  
WAXAHACHIE TX 75167-7212

PHILLIPS , LORETTE  
188 DENALI WAY  
WAXAHACHIE TX 75167-0122

PIEKOS , CHRISTI  
3613 RAFFIELD CT  
MIDLOTHIAN TX 76065-1376

PLUNKETT , KENNETH & SHARON  
425 TIERRA LN  
WAXAHACHIE TX 75167-7269

PLUNKETT , KENNETH  
425 TIERRA LN  
WAXAHACHIE TX 75167-7269

PLUNKETT , SHARON  
425 TIERRA LN  
WAXAHACHIE TX 75167-7269

RADANOVIC , SHERRY  
1210 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9308

REED , GARY  
631 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

REED , STACY  
631 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

ROBERTS , WILLIAM J  
5620 S LAKE RDG  
SPRINGFIELD MO 65804-7122

ROBERTS , WILLIAM J  
236 MCKINLEY CIR  
WAXAHACHIE TX 75167-0124

RODRIGUEZ , KERMIT  
133 VAIL LN  
WAXAHACHIE TX 75167-0121

ROGERS , CASEY  
460 DAVENPORT DR  
WAXAHACHIE TX 75167-7228

ROGERS , EMILY W  
BICKERSTAFF HEATH DELGADO ACOSTA LLP  
BLDG 1 STE 300  
3711 S MOPAC EXPY  
AUSTIN TX 78746-8013

ROGERS , RANDY  
460 DAVENPORT DR  
WAXAHACHIE TX 75167-7228

ROGERS , WILLIAM  
651 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

ROQUE , ALAN  
1071 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9331

ROSS , JOHN  
2143 MARSHALL RD  
WAXAHACHIE TX 75167-9405

ROWAN , JOHN E  
2341 MARSHALL RD  
WAXAHACHIE TX 75167-9409

ROWAN , MARSHA  
2341 MARSHALL RD  
WAXAHACHIE TX 75167-9409

RYBAK , JORDAN  
221 RANIER ST  
WAXAHACHIE TX 75167-0118

RYBAK , MELISSA  
221 RANIER ST  
WAXAHACHIE TX 75167-0118

SCHULTZ , LUCY J  
215 BUCKSKIN DR  
WAXAHACHIE TX 75167-4852

SIMMONS , MISTY  
213 EVEREST LN  
WAXAHACHIE TX 75167-0120

SIMMONS , SAGE  
213 EVEREST LN  
WAXAHACHIE TX 75167-0120

SIMMONS , STEPHEN  
213 EVEREST LN  
WAXAHACHIE TX 75167-0120

SIMMONS JR , STEPHEN  
213 EVEREST LN  
WAXAHACHIE TX 75167-0120

SKIPPER , LANETTE  
2431 MARSHALL RD  
WAXAHACHIE TX 75167-9416

SKIPPER , TERRY  
2431 MARSHALL RD  
WAXAHACHIE TX 75167-9416

SPILLERS , CODI  
145 VAIL LN  
WAXAHACHIE TX 75167-0121

SPILLERS , DON & JODI  
145 VAIL LN  
WAXAHACHIE TX 75167-0121

SPILLERS , JODI  
145 VAIL LN  
WAXAHACHIE TX 75167-0121

STANTON , DANA  
113 DENALI WAY  
WAXAHACHIE TX 75167-0123

STEWART , SCOTT  
172 DENALI WAY  
WAXAHACHIE TX 75167-0122

STONE , ROBERT  
430 CROSS CREEK CT  
WAXAHACHIE TX 75167-7201

STONE , SARAH LOIS  
430 CROSS CREEK CT  
WAXAHACHIE TX 75167-7201

TAYLOR , CAROLINE  
2051 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9341

TAYLOR , CHRIS  
2051 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9341

TAYLOR , DAWN  
205 MCKINLEY CIR  
WAXAHACHIE TX 75167-0125

THOMAS , BETTY  
811 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9329

THOMAS , JIM  
811 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9329

TRICOMI-ROGERS , TABITHA A  
651 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9327

TRYON , JOHN & SHARON  
2011 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9341

TUMA , GAYLE  
943 E HIGHLAND RD  
OAK LEAF TX 75154-5829

TURNER , ANGELA  
100 CANYON CT  
WAXAHACHIE TX 75167-4805

UFRET , ROSA  
133 VAIL LN  
WAXAHACHIE TX 75167-0121

ULMER , SHEREE  
213 MCKINLEY CIR  
WAXAHACHIE TX 75167-0125

ULMER , TED  
213 MCKINLEY CIR  
WAXAHACHIE TX 75167-0125

WARSING , KATY  
632 W PALO ALTO AVE  
CLOVIS CA 93612-0180

WARSING , KATY  
216 DENALI WAY  
WAXAHACHIE TX 75167-0116

WARSING , PAUL  
632 W PALO ALTO AVE  
CLOVIS CA 93612-0180

WARSING , PAUL  
216 DENALI WAY  
WAXAHACHIE TX 75167-0116

WEBER , GARY D  
101 VAIL LN  
WAXAHACHIE TX 75167-0121

WELLS , CAROLE  
101 VAIL LN  
WAXAHACHIE TX 75167-0121

WEST , CODY  
125 DENALI WAY  
WAXAHACHIE TX 75167-0123

WEST , MARCEY  
125 DENALI WAY  
WAXAHACHIE TX 75167-0123

WILKINS , CATHY  
1150 WESTMORELAND RD  
OVILLA TX 75154-5831

WILKINS , MARVIN  
1150 WESTMORELAND RD  
OVILLA TX 75154-5831

WILLIAMS , REBECCA  
105 VAIL LN  
WAXAHACHIE TX 75167-0121

WILSON , JARRETT  
121 VAIL LN  
WAXAHACHIE TX 75167-0121

WIMBISH , GREG & TAMMY  
1465 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9335

WOLFE , BRAD & JENNIFER  
1235 BLACK CHAMP RD  
WAXAHACHIE TX 75167-9333

WRIGHT , STEVEN  
508 HIWASEE RD  
WAXAHACHIE TX 75165-6447



## **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

### **AN ORDER DENYING PETITIONS FOR CREATION OF LAKEVIEW MUNICIPAL UTILITY DISTRICT NOS. 2, 1, AND 3; TCEQ DOCKET NOS. 2021-0571-DIS, 2021-0572-DIS, AND 2021-0573-DIS; SOAH DOCKET NOS. 582-22-0259, 582-22-0260, AND 582-22-0261**

On August 16, 2023, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the petitions for creation of Lakeview Municipal Utility Districts Nos. 2, 1, and 3. A Proposal for Decision (PFD) was issued by Linda Brite and Megan Johnson, Administrative Law Judges (ALJs) with the State Office of Administrative Hearings and considered by the Commission. After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

#### **I. FINDINGS OF FACT**

1. On October 26, 2020, Finch FP, Ltd. and Brian Edward Finch (collectively, "Applicant") filed petitions (Petitions) for creation of Lakeview Municipal Utility Districts (MUDs) Nos. 1, 2, and 3 (Districts) with the Commission.
2. The Petitions were declared administratively complete on November 13, 2020.
3. Finch FP, Ltd. filed a petition for the creation of Lakeview MUD No. 1.
4. Finch FP, Ltd. and Brian Edward Finch filed a petition for creation of Lakeview MUD No. 2.
5. Finch FP, Ltd. filed a petition for creation of Lakeview MUD No. 3.
6. On March 24 and 31, 2021, notice of the Petitions was published in the *Waxahachie Daily Light*.

7. On March 17, 2021, the Ellis County Clerk posted the notice of the bulletin board used for posting legal notices in Ellis County.

8. On September 2, 2021, the Commissioners referred these matters to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

9. At the preliminary hearing for the creation of MUD No. 2 on November 1, 2021, Applicant, the Executive Director (ED) of TCEQ, the Office of Public Interest Counsel (OPIC), the City of Waxahachie (City), Ellis County (County), Vickie Dillow, Michelle Hillery, Sharon and John Wesley Tryon, Tammy and Greg Wimbish, Jackie and Carlton Milam, James and Melinda Kocian, and Caroline Taylor were named as parties.

10. At the preliminary hearing for the creation of MUD No. 1 on November 8, 2021, Applicant, ED, OPIC, the City, the County, Vickie Dillow, Michelle Hillery, Sharon and John Wesley Tryon, Tammy and Greg Wimbish, Jackie and Carlton Milam, James and Melinda Kocian, Caroline Taylor, Betty and Robert Arwine, Clay Allison, Jim and Mary Kocian, Richard Carrol, and Sherry Radanovic were named as parties.

11. At the preliminary hearing for the creation of MUD No. 3 on November 15, 2021, Applicant, ED, OPIC, the City, the County, Jackie and Carlton Milam, Richard and Robin Carroll, Sharon and John Wesley Tryon, Sherry Radanovic, Betty and Robert Arwine, James and Melinda Kocian, Jim and Mary Kocian, Vickie and Mike Dillow, Caroline and Christopher Taylor, Clay Allison, Jackie Milam, Tammy and Greg Wimbish, Michelle Hillery, Thomas and Melissa Baker, Jon Hammond, Jerry and Teresa Ann Fisk, Joseph Brooks, and Bart and Lisa Dooley were named as parties.

12. By SOAH Order No. 3, the Petitions were consolidated. Each party remained designated for only the petition(s) for which they were originally named a party.

13. SOAH ALJs Linda Brite and Megan Johnson convened the hearing via videoconference on December 6-7, 2022. Applicant was represented by attorney Natalie Scott. The City and County were represented by attorney Emily Rogers. Individual Protestants were represented by attorney Eric Allmon. The ED of the Texas Commission on Environmental Quality (Commission) was represented by attorney Kayla Murray. The Office of Public Interest Council (OPIC) was represented by attorney Sheldon Wayne. The record closed after submission of written closing arguments on March 9, 2023.

Request for Service

14. The Districts are proposed to be located within the extra-territorial jurisdiction of the City.

15. Applicant delivered its request for consent to the creation of the Districts to the City on February 14, 2020, and did not receive a written response within 90 days.

16. Applicant petitioned the City for water and sewer services on June 2, 2020, and did not receive a written response.

17. The 120-day period for reaching a mutually agreeable contract expired without contracts for service.

18. Thereafter, Applicant filed its Petitions for the creation of the Districts with the Commission.

19. The City did not grant written consent, by resolution or ordinance, to the inclusion of the land within the Districts.

20. Applicant complied with the requirements to submit a request for service where a proposed municipal utility district would be located within the extraterritorial jurisdiction of a city.

Availability of Comparable Service from Other Systems

21. The Districts are located within Sardis-Lone Elm Water Supply Corporation's (Sardis) Certificate of Convenience and Necessity. Sardis has agreed to provide water service to the Districts once the developer constructs the necessary infrastructure.

22. The City has sanitary sewer facilities approximately 2.2 miles from the land within the Districts with capacity to provide sanitary sewer service if upgrades are made to the facilities.

23. The City has no currently existing infrastructure to provide wastewater services to the Districts. No other wastewater service system is available.

Reasonableness of Projected Construction Costs, Tax Rates, and Water and Sewer Rates

24. Applicant's preliminary engineering reports provided a construction cost estimate of \$1,750,000 for a 1.10 million gallons per day (MGD) wastewater treatment plant to serve the Districts.

25. Based on Applicant's representation of the wastewater capacity needed for each District, the total wastewater capacity needed to serve the Districts is approximately 1.587 MGD.

26. Applicant's cost estimate for the wastewater treatment plant did not account for the higher capacity needed and higher construction costs.

27.

28. Insufficient evidence was presented to establish that Applicant's projected construction costs are reasonable. The Applicant provided sufficient evidence to establish that the estimated construction costs for all other facilities besides the wastewater treatment plant are reasonable.

29. The developer will pay all up-front utility costs and can only be reimbursed in the amount allowed by a MUD tax rate of \$1.00 per \$100 assessed value.

30. The proposed tax rates are reasonable.

31. The proposed water and sewer rates are reasonable.

Effect on Groundwater Levels and Recharge Within the Region

32. The proposed developments' resulting impervious cover from mostly single-family residential lots will not have any greater effect on groundwater levels or recharge capacity of groundwater in the region than any other typical single-family development.

33. The Districts, their systems, and subsequent development will not have an unreasonable effect on groundwater level within the region and recharge capability of a groundwater source.

Effect on Natural Run-off Rates and Drainage

34. The Districts' drainage systems will include storm sewers, drainage ditches, and if required, detention facilities.

35. The Districts' stormwater, sewer, and drainage systems will be constructed in accordance with the City's design criteria.

36. The Districts, their systems, and subsequent development will not have an unreasonable effect on natural run-off rates and drainage.

Effect on Water Quality

37. The Districts will own and operate a wastewater treatment plant pursuant to a permit issued by TCEQ, which entails its own permitting process.

38. The Districts, their systems, and subsequent development will not have an unreasonable effect on water quality.

Effect on Total Tax Assessments on All Land Located Within the Districts

39. The total overlapping rates in the Districts are projected to range between \$2.73 and \$2.83 per \$100 valuation, which is reasonable and comparable to other districts in North Texas.

40. The combined projected tax rate for the Districts must not exceed \$1.00 per \$100 valuation pursuant to 30 Texas Administrative Code section 293.59(k)(d)(C).

41. The Districts and their systems and subsequent development within the Districts will not have an unreasonable effect on total tax assessments on all land located within the Districts.

Feasible, Practicable, Necessary, and Will Benefit All of the Land to be Included in the District

42. Due to the discrepancy in the cost estimate for the wastewater treatment plant, insufficient evidence was presented to establish the Districts are feasible, practicable, necessary and will benefit all of the land included in the Districts.

Petition Signature of a Majority in Value of the Landowners



43. The petitions for the creation of the Districts were signed by Eleanor M. Finch, as president of FP Management LLC, general partner of Finch FP, Ltd. and Brian Finch.

44. The petitions state that Applicant constitutes a majority of value of the holders of title as indicated by the tax rolls.

45. Finch FP, Ltd. and Brian Finch owned 100 percent of the appraised value of the land within the Districts at the time the petitions were submitted.

Request for Road Powers

46. Each of the Petitions request the TCEQ grant the District the authority to provide roads.

47. Applicant provided a preliminary layout as to the known roads and major thoroughfares and a cost estimate of the proposed road facilities.

48. Applicant established that the funding of the road improvements is financially and economically feasible.

Allocation of Transcript Costs

49. No party requested the transcript because SOAH required a transcript.

50. All parties fully participated in the hearing and benefitted from the transcript.

51. Applicant consists of a company that owns, maintains, subdivides, and develops land.

52. By participating in the hearing, Protestants pointed out deficiencies in Applicant's Petitions.

Land Elevation and Subsidence

53. The Districts, their systems, and subsequent development will not have an unreasonable effect on land elevation and subsidence.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Water Code ch. 49 and 54; Texas Constitution, article XVI, section 59.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this hearing, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Applicant and TCEQ have satisfied all applicable public notice requirements. Tex. Water Code § 49.011; 30 Tex. Admin. Code § 293.12.
4. Applicant carries the burden of proof by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(a).
5. Applicant satisfied the requirements related to requests for service when a MUD is proposed to be located within the extraterritorial jurisdiction of a city. Tex. Water Code § 54.016(a)-(d); Tex. Gov't Code § 42.042(a)-(f).
6. Applicant satisfied the requirements related to availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1) and 30 Tex. Admin. Code § 293.11(d)(5)(G).
7. The Districts and their systems and subsequent developments will not have an unreasonable effect on: land elevation and subsidence, groundwater levels and recharge within the region, natural run-off rates and drainage; water quality; or total tax assessments on all land located within the districts. Tex. Water Code § 54.021(b)(3).
8. Applicant's requests for road powers meets all applicable requirements. Tex. Water Code § 54.234; 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a), (b).
9. If the Commission finds that the petition conforms to the requirements of Texas Water Code section 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).
10. If the Commission finds that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the Commission shall so find by its order and

deny the petition. Tex. Water Code § 54.021(d).

11. 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: the availability of comparable service from other systems; the reasonableness of projected construction costs, tax rates, and water and sewer rates; and whether the district and its system and subsequent development within the district will have an unreasonable effect on land elevation, subsidence, ground water level within the region, recharge capability of a groundwater source, natural run-off rates and drainage, water quality, and total tax assessments on all land located within a district. Tex. Water Code § 54.021(b).

12. Insufficient evidence was presented to establish the reasonableness of projected construction costs. Tex. Water Code § 54.021(b)(2).

13. Insufficient evidence was presented to establish the projects are feasible, practicable, and necessary and would be a benefit to the land included in the Districts. Tex. Water Code § 54.021.

14. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).

15. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; the budgetary constraints of a state or federal administrative agency participating in the proceeding; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).

16. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), an appropriate allocation of transcript costs is: 70 percent to Applicant, 15 percent to the City and County, and 15 percent to Individual Protestants.

17. Applicant's Petitions should be denied.

### III. EXPLANATION OF CHANGES

1. The Commission adopted the Administrative Law Judges' proposed Order with a number of changes.
2. The Commission amended Finding of Fact No 25 to change the total wastewater capacity needed from 1.56 MGD to 1.587 MGD to more accurately reflect the testimony and evidence in the record.
3. The Commission deleted Finding of Fact No. 27 because it is not supported by the evidentiary record, which includes only conclusory testimony from all parties.
4. To memorialize that the ALJs recommended that the Applicant's other estimated construction costs, including the stormwater facilities costs, were reasonable, the Commission modified Finding of Fact No. 28 to state: "The Applicant provided sufficient evidence to establish that the estimated construction costs for all other facilities besides the wastewater treatment plant are reasonable."
5. To clarify that the Commission does not consider the proposed districts' water supply source to be a consideration for the groundwater factor and to identify the record evidence that the Commission finds better supports the analysis of the groundwater factor, the Commission deleted proposed Finding of Fact No. 32 and replace it with: "The proposed developments' resulting impervious cover from mostly single-family residential lots will not have any greater effect on groundwater levels or recharge capacity of groundwater in the region than any other typical single-family development."
6. To address all seven statutory factors within the Commission's review, the Commission added new Finding of Fact No. 53 to state: "The Districts, their systems, and subsequent development will not have an unreasonable effect on land elevation and subsidence."
7. The Commission amended proposed Conclusion of Law No. 7 to add "land elevation and subsidence" into the list of issues to memorialize that the record supports concluding that the Districts, their systems, and subsequent development will not have an unreasonable effect on land elevation and subsidence under TWC § 54.021(b)(3)(A)&(B).
8. The Commission amended proposed Conclusion of Law No. 13 by removing the regulatory cite to 30 Tex. Admin. Code § 293.11(d)(5)(J) to emphasize that the

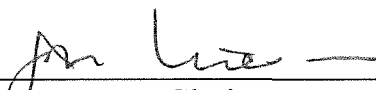
regulatory preliminary engineering report content requirements are not a separate burden from the necessary statutory determination.

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. The Petitions for Creation of Lakeview Municipal Utility District Nos. 1, 2, and 3 are denied.
2. The transcript costs are allocated 70 percent to the Applicant, 15 percent to the City and County, and 15 percent to the Individual Protestants.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
4. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to all parties.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:** August 24, 2023

**TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

  
\_\_\_\_\_  
Jon Niermann, Chairman