

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

April 2, 2025

All Parties of Record

VIA EFILE TEXAS

RE: SOAH Docket No. 582-24-15646.TCEQ; TCEQ Docket No. 2023-1587-DIS; *Application for the Creation of White Oaks MUD of Denton County*

Dear Parties:

Please find attached a Proposal for Decision in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION FOR THE CREATION OF WHITE OAKS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY

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**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION FOR THE CREATION OF WHITE OAKS
MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY**

PROPOSAL FOR DECISION

White Oaks Ranch Land, LP (Applicant) filed a petition (Petition) with the Texas Commission on Environmental Quality (TCEQ or Commission), requesting the creation of the White Oaks Municipal Utility District of Denton County (District). The District would contain approximately 378 acres in Denton County, located south of FM 455, north of Saint John Road, and west of US 377, southwest of the City of Pilot Point. The proposed District is outside the corporate limits or extraterritorial jurisdiction (ETJ) of any municipality.

The Commission's Executive Director (ED) and Office of Public Interest Counsel (OPIC) recommend that the Petition be granted. However, protestants

Kelly and Phillip Eggers; Darlene Freeman; Robert and Helen McGraw; Capital Properties 2017, LLC; BNR 2012 Holding Company, LLC; David and Bonnie Silva; and Nancy and John Tague (collectively, Individual Protestants) recommend denial of the Petition. Individual Protestants raise concerns about the feasibility of the planned development and reasonableness of cost estimates, among other issues. The Administrative Law Judge (ALJ) recommends that the Commission grant Applicant's Petition.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this case; therefore, those matters are addressed solely in the findings of fact and conclusions of law.

Applicant filed the Petition for creation of the District with the Commission on August 17, 2022. The Petition was declared administratively complete on October 3, 2022. On January 24, 2023, the Denton County Clerk's Office posted notice of the Petition on the bulletin board used for posting legal notices in Denton County.¹ On January 28, 2023, and February 5, 2023, notices of the Petition were published in the *Denton Record-Chronicle*, a newspaper regularly published or circulated in Denton County, the county in which the District is proposed to be located.²

¹ Applicant Ex. 1.

² Applicant Ex. 1.

The Commission received timely hearing requests filed by numerous individuals and entities and, at an open meeting on March 6, 2024, determined that a number of them were affected persons and referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.³ On June 4, 2024, the ALJ held a preliminary hearing in this matter, at which time the jurisdictional exhibits were admitted into evidence.⁴ Applicant, the ED, and OPIC were named as parties, along with the Individual Protestants, the Denton County Commissioners Court (DCCC), and Allen McCracken.⁵

The hearing on the merits convened on November 19, 2024, before ALJ Rachelle Nicolette Robles, by videoconference. Applicant was represented by attorney Natalie Scott; Individual Protestants were represented by attorneys Cody Faulk and Rashmin Asher; Allen McCracken represented himself; Matt Shovlin appeared on behalf of DCCC; the ED was represented by attorneys Fernando Salazar Martinez and Bradford Eckhart; and OPIC was represented by attorney Jennifer Anderson. Additionally, Jason Pool; Rowland Funk; Mark Atchison; Anthony Scamardo, Jr.; and Megan and Joseph Schmidt appeared at the hearing.

³ Applicant Ex. 1.

⁴ Applicant Ex. 1.

⁵ Jason Pool; Rowland Funk; Mark Atchison; Anthony Scamardo, Jr.; and Megan and Joseph Schmidt were also named as parties in the proceeding. Applicant objected to their party status at the hearing since none of them filed direct testimony. The ALJ declined to rule on the record. In this PFD, the ALJ overrules Applicant's objection, and the parties maintain their party status in this proceeding.

At the hearing, Applicant presented testimony from four witnesses:

- Cassie Gibson, who prepared the market study that supports the Petition;
- Jordan Thompson, the Chief Investment Officer for Schlegel Capital;
- Stephanie White, a professional engineer who prepared the preliminary engineering report (Engineering Report) that supports the Petition; and
- Ryan Nesmith, a municipal advisor who addressed financial aspects of the District.

The Individual Protestants presented the witness of Justin Baker, a water resources engineer; Allen McCracken testified on his own behalf; Commissioner Ryan Williams testified for DCCC; and the ED presented testimony from James Walker, the technical reviewer for the Commission who reviewed and recommended approval of the Petition.

Including the witnesses' written testimony, Applicant had 23 exhibits admitted into evidence, and Individual Protestants had 32 exhibits admitted. The ALJ admitted seven exhibits for DCCC, two exhibits for Mr. McCracken, and four exhibits for the ED.⁶ The record closed on February 3, 2025, after submission of written closing arguments.

II. APPLICABLE LAW REGARDING MUNICIPAL UTILITY DISTRICTS

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of:

⁶ OPIC and the remaining protestants did not offer any testimony or exhibits.

- Article XVI, section 59 of the Texas Constitution,
- Chapters 49 and 54 of the Texas Water Code (Code), and
- the Commission’s administrative rules found at 30 Texas Administrative Code chapter 293.

The purposes of a MUD include the control and distribution of storm water, floodwater, rivers and streams for irrigation and “all other useful purposes”; reclamation and irrigation or drainage of lands; and the preservation of water and other natural resources of the state.⁷

To accomplish these purposes, a MUD is given authority and power to “purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside or outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary” to, *inter alia*, distribute water; control wastewater collection and disposal; gather, conduct, divert, and control local storm water; irrigate the land; alter land elevation where needed; and provide parks and recreational facilities for a district’s inhabitants.⁸ A MUD may also exercise eminent domain, acquire power to construct and maintain roads and related improvements, authorize contracts, manage street lighting, enforce real-property restrictions, and (subject to various required approvals and other constraints) issue bonds to finance its projects backed by the MUD’s revenues or ad valorem taxes imposed on the properties within the district.⁹

⁷ Tex. Water Code (Code) § 54.012.

⁸ Code § 54.201.

⁹ Code §§ 54.209, .234-.237, .501-.604.

A MUD may be created either through special law enacted by the Legislature or, pursuant to general law, through administrative order of the Commission.¹⁰ A petition requesting creation of a district by administrative order shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district.¹¹ Further, per Code section 54.015, the petition shall:

1. describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;
2. state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and
3. include a name of the district which shall be generally descriptive of the locale of the district followed by the words Municipal Utility District, or if a district is located within one county, it may be designated “____ County Municipal Utility District No. ____.” (Insert the name of the county and proper consecutive number.) The proposed district shall not have the same name as any other district in the same county.¹²

If the proposed MUD is within the corporate limits or ETJ of an incorporated city, town, or village, the applicant must comply with detailed additional requirements, including seeking the city’s advance approval of the MUD’s creation.¹³ However, if the MUD would lie outside of any city’s limits or ETJ, there

¹⁰ Code §§ 54.018-.021.

¹¹ Code § 54.014.

¹² Code § 54.015.

¹³ Code § 54.014.

are no similar requirements in relation to the county government. Rather, the county commissioners are merely entitled to the opportunity to review the petition and, if they see fit, provide the Commission a “written opinion” conveying their position on the MUD’s creation and any other information they think would assist the Commission’s decision.¹⁴

The Commission’s rules further prescribe that the petition must include, *inter alia*: evidence that it was filed with the county clerk; a map, market study, preliminary plan, and preliminary engineering report; a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district; and affidavits by those persons desiring appointments by the Commission as temporary directors.¹⁵ If the petition includes a request for road powers, the Commission’s rules also require evidence addressing the location and cost of the proposed roads, among other details.¹⁶

Upon receipt of a petition to create a MUD that would be located outside the corporate limits or ETJ of a municipality, the ED (*i.e.*, the Commission staff who initially processes the petition) is to notify the commissioner’s court of any county where the MUD would be located that the petition has been filed.¹⁷ Also, upon receipt of “all required documentation,” the ED is to notify the Commission’s Chief

¹⁴ Code § 54.0161.

¹⁵ 30 Tex. Admin. Code § 293.11(d).

¹⁶ 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a)(4), (7)-(9), (b).

¹⁷ Code § 54.0161; 30 Tex. Admin. Code § 293.12(h).

Clerk that the petition/application is administratively complete.¹⁸ The Chief Clerk, in turn, is to issue notice that the petition/application has been received and procedures by which “interested persons” may request a public hearing on the application.¹⁹

If the Commission receives one or more hearing requests and determines that a hearing is necessary, the petition is referred to SOAH.²⁰ Then, after the required notice is issued by the Chief Clerk, the ALJ convenes a preliminary hearing to consider the Commission’s jurisdiction over the proceeding, name the parties (which must include the ED, OPIC, and the applicant, along with any “affected persons”), and set a final hearing date and procedural schedule.²¹

The issues to be determined at the hearing are the “sufficiency of the petition” (which in context would include compliance with Code section 54.015 or other procedural prerequisites) and “whether the project is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district.”²² In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

¹⁸ 30 Tex. Admin. Code § 293.12(a).

¹⁹ Code §§ 49.011(a)-(b), 54.018; 30 Tex. Admin. Code § 293.12(b).

²⁰ See Code §§ 49.011, 54.018-.020.

²¹ 30 Tex. Admin. Code § 80.105.

²² Code § 54.020(a).

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.²³

The Commission shall grant the petition if it conforms to the requirements of Code section 54.015 and the project is feasible, practicable, necessary, and would be a benefit to the land to be included in the district.²⁴ The Commission shall deny the petition if it does not conform to the requirements of Code section 54.015, or if the project is not feasible, practicable, necessary, or a benefit to the land in the district.²⁵ If the Commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the Commission shall exclude all land

²³ Code § 54.021(b).

²⁴ Code § 54.021(a).

²⁵ Code § 54.021(d).

which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.²⁶

Chapter 231, subchapter F, of the Texas Local Government Code governs zoning surrounding Lake Ray Roberts.²⁷ Under Texas Local Government Code section 231.104(a), the commissioners court of a county subject to this subchapter may adopt ordinances that apply only to the lake area in the county and regulate population density, and location and use of buildings for commercial, industrial, residential, or other purposes, in addition to other requirements.²⁸

Applicant bears the burden of proof by a preponderance of the evidence.²⁹

III. THE PROPOSED DEVELOPMENT

The proposed District is for a planned residential development on a tract owned wholly by Schlegel Capital, in unincorporated Denton County, located south of FM 455, north of St. John Road, and west of US 377, generally southwest of the City of Pilot Point.³⁰ Mustang Special Utility District (SUD) holds the certificates of convenience and necessity (CCN) to provide water and wastewater

²⁶ Code § 54.021(c).

²⁷ Additionally, this subchapter governs the zoning surrounding Lake Tawakoni, but the ALJ will only refer to Lake Ray Roberts, as it is what contains the relevant zoning ordinances.

²⁸ Tex. Loc. Gov't Code § 231.104(a)(4)-(5).

²⁹ 30 Tex. Admin. Code §§ 80.17(a), .117(a)-(b); *see also Granek v. Texas St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.)

³⁰ Applicant Ex. 8 at 007, 086.

services for the area containing the District; the Applicant intends for Mustang SUD to be the retail water and wastewater provider for the District.³¹

Currently, the District is zoned with an agricultural designation and used for residential and agricultural purposes, containing 12 homes on the property, including ancillary barns, stables, and storage facilities.³² There are 42 residents, assuming approximately 3.5 persons per home.³³ The Engineering Report states that constructing additional residential lots would serve a growing market segment within the northwest Dallas-Fort Worth real estate market.³⁴

As currently planned, the proposed development would serve approximately 5,373 residents in 1,535 single-family homes.³⁵ The design of the District contemplates building the following lots:³⁶

Type of Development	Number of Units
40' single family	458
50' single family	770

³¹ Applicant Ex. 8 at 007.

³² Applicant Ex. 8 at 007.

³³ Applicant Ex. 8 at 012.

³⁴ Applicant Ex. 8 at 089.

³⁵ Applicant Ex. 8 at 012.

³⁶ This table is a modification of Table 9 located in Applicant Ex. 8 at 033.

60' single family	154
70' single family	153

New homes would be priced between \$300,000 to \$450,000, for a total assessed valuation of \$516,945,000 for the development once built.³⁷

While the District would contain approximately 420 acres, only 342 acres would be developed as single-family residential lots.³⁸ The District would also include 56 acres allocated to open spaces, three acres for an amenity center, two acres of perimeter right of way dedication, eight acres of internal collector right of way dedication, and 13 acres for water and wastewater facilities.³⁹

The District plans to construct water, sanitary sewer, paving and drainage facilities within its boundaries.⁴⁰ The Engineering Report estimates the ultimate average daily demand for water to be 0.6 million gallons per day (MGD), with a maximum day and peak hour demand of 1.3 MGD and 2.4 MGD, respectively.⁴¹ This would require the construction of up to six water wells, including a raw waterline 14,200 feet long and six-inches wide, a water plant, and a ground storage

³⁷ Applicant Ex. 8 at 033, 080.

³⁸ Applicant Ex. 8 at 008.

³⁹ Applicant Ex. 8 at 008, 080.

⁴⁰ Applicant Ex. 8 at 008.

⁴¹ Applicant Ex. 8 at 009.

tank.⁴² Once the water and wastewater improvements are constructed, then Applicant intends to convey the facilities to Mustang SUD, for it to own, maintain, and operate.⁴³ These improvements will be financed through incremental bond issues as construction progresses.⁴⁴ The District will own, maintain, and operate the onsite storm drainage and roadway improvements.⁴⁵

The Engineering Report estimated total construction costs to be \$99,489,000.⁴⁶

The market study conducted by Residential Strategies, Inc. (Market Study) for the owner concluded that the District could meet the growing demand for homes in the far northwest Dallas-Fort Worth real estate market.⁴⁷

⁴² Applicant Ex. 8 at 009.

⁴³ Applicant Ex. 8 at 008.

⁴⁴ Applicant Ex. 8 at 008.

⁴⁵ Applicant Ex. 8 at 008.

⁴⁶ Applicant Ex. 8 at 018.

⁴⁷ Applicant Ex. 8 at 089.

IV. DISCUSSION OF PETITION FOR THE CREATION OF THE DISTRICT

A. SUFFICIENCY OF THE PETITION

No party disputed that the Petition addressed the components required by Code sections 54.014 and .015. Therefore, the ALJ finds that the Petition satisfied the statutory requirements for what must be included in the Petition.

B. WHETHER THE PROJECT IS FEASIBLE, PRACTICABLE, NECESSARY, AND WOULD BE A BENEFIT TO THE LAND INCLUDED IN THE DISTRICT

After determining that the Petition conforms to the requirements of Code section 54.015 and related rules, the inquiry turns to whether “the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district,” considering the factors listed in Code section 54.021(b).

Applicant argues that it has met its burden and demonstrated that the District is feasible, practicable, necessary, and would benefit the land included in the District.⁴⁸ Individual Protestants take the position that the District is not feasible, the projected construction costs, tax rates, and water and sewer rates are not reasonable, and that it is not necessary.⁴⁹ The ALJ discusses each component in turn below.

⁴⁸ Applicant Initial Br. at 1.

⁴⁹ Individual Protestants Initial Br. at 1-2, 8.

1. Availability of Comparable Service from Other Systems

Code section 54.021(b)(1) requires consideration of “the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities.”

Applicant represents that, after it constructs water and wastewater facilities, they would be dedicated to, owned, and maintained by Mustang SUD.⁵⁰ Individual Protestants argue that Applicant has not demonstrated that water and wastewater service is unavailable from another provider, and, thus, has not established that the District is necessary.⁵¹ They contend that comparable water and wastewater service is available from Mustang SUD and Upper Trinity Regional Water District (UTRWD).⁵²

a) Evidence

Applicant provided information regarding the availability of comparable service from other systems, including, but not limited to, water districts, municipalities, and regional authorities.⁵³ In the Engineering Report, the section entitled, “Investigation and Evaluation of the Availability of Comparable Services from Other Systems,” includes a statement stating that the District will receive

⁵⁰ Applicant Reply Br. at 2.

⁵¹ Individual Protestants Initial Br. at 6.

⁵² Individual Protestants Initial Br. at 6-7.

⁵³ Individual Protestants Ex. 23 at 007.

services from facilities to be built by the District and that it is “necessary since there are no other sources which have the facilities or capacity to serve the project at this time.”⁵⁴

Applicant provided additional information at trial on this issue. Applicant witness Ms. White testified that no additional options for water services were assessed because there were no other known water facilities near the District.⁵⁵ She noted that Applicant contacted the City of Aubrey and the City of Pilot Point regarding providing wastewater services but they were not willing to expand their distribution to accept wastewater from the District.⁵⁶

Presumably because of the above, Applicant plans to construct proposed improvements, including an onsite water plant and six onsite water wells, in addition to a major distribution system consisting of a 12-inch water line constructed throughout the District.⁵⁷ After completion, Applicant intends to convey the facilities to Mustang SUD, for it to own, maintain, and operate, since the entirety of the District lies within the service territory covered by CCNs held by Mustang SUD to provide water and wastewater service.⁵⁸

⁵⁴ Applicant Ex. 8 at 013-14.

⁵⁵ Applicant Ex. 11 at 9.

⁵⁶ Applicant Ex. 11 at 10.

⁵⁷ Applicant Exhibit 8 at 008-09.

⁵⁸ Applicant Exhibit 8 at 008.

As of the date of the trial, although the Applicant has been in discussions with Mustang SUD regarding a request for services, Mustang SUD had not yet agreed to provide water and wastewater services and accept the utility facilities upon completion of construction of those facilities.⁵⁹

Ms. White added that Mustang SUD potentially has an extension policy for developers that would allow Applicant to construct facilities and then dedicate those facilities to Mustang SUD.⁶⁰ However, Applicant did not request her to perform an analysis of whether the extension policy was an option for the project.⁶¹ Ms. White added that Mustang SUD does not have the water and wastewater infrastructure necessary to provide services to the District,⁶² and that, after running feasibility analyses, Mustang SUD determined that the District would need to include system improvements and extensions to be able to connect to Mustang SUD's systems, even if it is able to provide services.⁶³ She testified that Applicant needs the District in order to have the financing mechanism necessary to construct the facilities to connect to Mustang SUD's infrastructure and enter into agreements for the development of the District.⁶⁴

⁵⁹ Transcript (Tr.) Vol. 1 at 111:11-16, 122:6-123:5.

⁶⁰ Tr. Vol. 1 at 145:7-25.

⁶¹ Tr. Vol. 1 at 146:1-7.

⁶² Tr. Vol. 1 at 144:1-7.

⁶³ Tr. Vol. 1 at 122:12-19.

⁶⁴ Tr. Vol. 1 at 145:11-146:14.

Individual Protestants witness Mr. Baker states that the District is not necessary because its proposed location is within the service area of Mustang SUD's already existing CCNs.⁶⁵ He also notes that the District lies within the jurisdictional boundaries of the UTRWD,⁶⁶ a wholesale water provider.⁶⁷

b) Analysis

The ALJ concludes that Applicant met its burden of proof on this issue.

The ALJ does not agree with the Individual Protestants that Applicant had not analyzed whether comparable systems can provide water and wastewater service. Applicant demonstrated that it had at least conducted some type of assessment regarding whether the District may obtain comparable services from other systems because Ms. White testified regarding contacting at least two other systems that refused to provide services and that Applicant was engaged in active negotiations with Mustang SUD regarding its request for water and wastewater services.

The record demonstrates that Mustang SUD is the utility that can potentially provide comparable water and wastewater services, but that improvements were necessary to connect the District to Mustang SUD's current infrastructure. Additionally, due to the current cost of construction and the size of

⁶⁵ Individual Protestants Ex. 1 at 10.

⁶⁶ Individual Protestants Ex. 1 at 10.

⁶⁷ *See* Tr. Vol. 1 194:1-196:1.

the District, Applicant would require financing and to be able to enter into agreements associated with development of the District. The creation of a MUD facilitates this endeavor. The mechanism of building facilities in order to be able to connect to Mustang SUD's infrastructure functionally acts as an extension of Mustang SUD's systems, and creation of the District gives Applicant the ability to finance the system improvements necessary for the development of the District. Thus, the ALJ finds that there are no available comparable services from other systems that can serve the District.

2. The Reasonableness of Projected Construction Costs, Tax Rates, and Water and Sewer Rates

In determining whether the project is feasible, practicable, and necessary, and whether it would be a benefit to the land included in the District, the Commission must also consider the reasonableness of projected construction costs, tax rates, and water and sewer rates. The Commission considers whether these costs and rates were reasonable when the Petition was submitted and does not consider future projections.⁶⁸ The crux of the dispute between Applicant and Individual Protestants on these particular issues lies in the zoning ordinance applicable to a part of the District and its potential effects on the projected construction costs, tax rates, and water and sewer rates.

⁶⁸ *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Final Order at § III.3 (November 6, 2023).

a) Applicant's Evidence and Position

Applicant posits that the projected construction costs, tax rates, and water and sewer tax rates are reasonable, and that it has satisfied its burden of proof on these issues.⁶⁹

Applicant's preliminary total costs to construct the necessary water, sewer, drainage facilities, and roadway systems amount to \$99,489,000, which Ms. White, who prepared the cost estimates for the improvements to be made, recommended was reasonable as of November 2022.⁷⁰ She stated that the amounts align with the costs anticipated for "a typical single-family development of equivalent size."⁷¹

Applicant argues that the applicable Commission rules anticipate that construction costs are tentative.⁷² Ms. White cautioned that unexpected and unprecedented cost inflation has since occurred but that market prices for homes have also similarly increased.⁷³ She stated that she intended to supplement her testimony to reflect current costs, if necessary;⁷⁴ however, no supplemental testimony was filed. At the hearing, Ms. White noted that, although the design of the District anticipated the construction of six wells, not all of them might be

⁶⁹ Applicant Initial Br. at 13-14.

⁷⁰ Applicant Ex. 8 at 012, 019; Applicant Ex. 11 at 11.

⁷¹ Applicant Ex. 11 at 11.

⁷² Applicant Reply Br. at 4.

⁷³ Applicant Ex. 11 at 11.

⁷⁴ Applicant Ex. 11 at 11.

necessary, and the actual number would be determined and adjusted as the project progresses.⁷⁵ She also testifies regarding her awareness that a portion of the District is subject to a zoning ordinance but that Applicant anticipates being granted a variance to that ordinance that would allow it to develop the land.⁷⁶

As to the proposed tax rate, Ms. White provided that she calculated it by reviewing the maximum allowable tax rate for a municipal utility district located in Denton County, using the projected total taxable value in the District, and calculating the amount of total debt service that can be financed by the projected tax rate.⁷⁷ Approximately 342 acres of the entire 420 acres of the MUD will be used for single family residential homes.⁷⁸ Applicant states that the total assessed value of the District will be \$516,945,000, assuming that all 1,535 single-family residential homes will be built according to plan.⁷⁹ The total ad valorem tax rate is \$1.20 per \$100 of assessed valuation.⁸⁰ This calculation assumes a 98 percent tax collection rate and the assessed value at completion, including other assumptions specifically relating to the bonds.⁸¹

⁷⁵ Tr. Vol. 1 at 155:9-22.

⁷⁶ Tr. Vol. 1 at 181:16-182:6.

⁷⁷ Applicant Ex. 11 at 12.

⁷⁸ Applicant Ex. 8 at 017.

⁷⁹ Applicant Ex. 8 at 033.

⁸⁰ Applicant Ex. 8 at 013, 035.

⁸¹ Applicant Ex. 8 at 013, 035.

Applicant’s expert Mr. Nesmith, who testified on financial feasibility of the District, relied on the Engineering Report and Market Study in his analysis.⁸² He recommended that the District would be “feasible and practicable,” with an ad valorem tax rate of \$1.20 per \$100 valuation—with \$0.10 for debt service and \$0.10 for operation and maintenance.⁸³ This satisfies the \$1.20 per \$100 limit set in the Commission’s rules.⁸⁴ Mr. Nesmith added that the District’s total overlapping tax rate, approximately \$2.59 per \$100, is competitive with the overlapping tax rates in other districts and developments in the market, under the threshold of \$2.90 for similarly situated districts, and is reasonable for the type of development proposed.⁸⁵ Applicant witness Ms. Gibson also represented that the proposed tax rate and the total overlapping tax rate “are in line with developments of similar quality and size” in the area.⁸⁶

Based on the forgoing, Applicant argues that the District’s facilities and operations will not have an unreasonable effect on total tax rates because its total overlapping tax rate will be approximately \$2.59 per \$100, consistent with

⁸² Applicant Ex. 15 at 5.

⁸³ Applicant Ex. 15 at 4.

⁸⁴ 30 Tex. Admin. Code § 293.59(k)(11)(C)(ii).

⁸⁵ Applicant Ex. 15 at 5.

⁸⁶ Applicant Ex. 13 at 8.

comparable tax rates in the Dallas Metropolitan area.⁸⁷ Moreover, Applicant posits, the projected tax rate complies with the statutory maximum tax rate.⁸⁸

Finally, the Engineering Report provides that Mustang SUD is expected to be the retail water and sewer provider for the District and lists the proposed water and sewer rates as follows:⁸⁹

WATER RATES		
Monthly Minimum	\$	28.38
0 - 3,000 gallons	\$	2.78 <i>per 1,000 gallons</i>
3,001 - 9,000 gallons	\$	3.89 <i>per 1,000 gallons</i>
9,001 - 15,000 gallons	\$	4.85 <i>per 1,000 gallons</i>
15,001 - 25,000 gallons	\$	5.91 <i>per 1,000 gallons</i>
Over 25,000 gallons	\$	9.04 <i>per 1,000 gallons</i>

WASTEWATER RATES		
Flat Rate (1 - 8,000 gallons)	\$	52.12
Flat Rate (>8,000 gallons)	\$	58.13

Applicant represents that these rates align with what Mustang SUD charges its current customers and are competitive with similar rates charged by other providers.⁹⁰ Ms. White testified that the impacts of any customers from the District

⁸⁷ Applicant Initial Br. at 13-14.

⁸⁸ Applicant Initial Br. at 13. *See* 30 Tex. Admin. Code § 293.59(k)(3), providing that, for a district's first bond issue, the combined projected tax rate must not exceed \$1.20 in Denton County.

⁸⁹ Applicant Ex. 8 at 013.

⁹⁰ Applicant Initial Br. at 14.

added to Mustang SUD's service territory would result in a connection fee analysis, rather than a reflection in their rate schedule.⁹¹

ED witness Mr. Walker, in conducting the technical review, considered Applicant's estimated costs but did no independent investigation or analysis into the reliability of those estimates.⁹² He noted that the Commission is not required to perform an in-depth analysis, only that the Commission is "to *consider* the *reasonableness* of these factors."⁹³ Mr. Walker stated that, in his opinion, based on the information provided, the proposed tax rates, construction costs, and water and wastewater rates appear reasonable.⁹⁴

b) Individual Protestants' and DCCC's Evidence and Positions

Conversely, Individual Protestants argue that the projected construction costs, tax rates, and water and wastewater rates for the District are not reasonable because they are based on faulty presumptions.⁹⁵ Specifically, they posit that the zoning restrictions imposed by an ordinance applicable to the District affect the calculations of the estimated costs and that Applicant's computations are

⁹¹ Tr. Vol. 1 at 167:6-9.

⁹² Ex. ED-JW-1 at 7.

⁹³ Ex. ED-JW-1 at 10, emphases in original text of direct testimony.

⁹⁴ Ex. ED-JW-1 at 10.

⁹⁵ Individual Protestants Initial Br. at 13.

unreliable, and, thus, not reasonable.⁹⁶ Applicant takes the position that the ordinance is not a statutory requirement and is not relevant to the analysis.⁹⁷

Individual Protestants refer to the Denton County Lake Ray Roberts Land Use Ordinance (Ordinance), which provides certain restrictions related to goals intended to guide how land subject to the Ordinance may be used.⁹⁸ Section 1-200 of the Ordinance provides that it was adopted according to a comprehensive land use plan, intended to promote and protect the public health, recreation, safety, morals, and general welfare of the community.⁹⁹ Section 1-401 requires that all land, buildings, or structures located within the boundary of Lake Ray Roberts, Denton County, shall be used, placed, and erected in conformance with the zoning regulations prescribed in the Ordinance.¹⁰⁰

Currently, the parcels located in the proposed District are zoned for agricultural use.¹⁰¹ Under the Ordinance, the DCCC has the authority to grant a special use permit, after proper notice has been provided to all parties affected and a public hearing.¹⁰² A request for a zoning variance is initially reviewed by a

⁹⁶ Individual Protestants Initial Br. at 8, 14.

⁹⁷ Applicant Initial Br. at 3.

⁹⁸ See DCCC Ex. 7 at 2. The ALJ notes that this exhibit is not numbered but it only consists of two pages. *Also see* DCCC Ex. 2.

⁹⁹ DCCC Ex. 2 at 4.

¹⁰⁰ DCCC Ex. 2 at 5.

¹⁰¹ DCCC Ex. 7 at 2.

¹⁰² DCCC Ex. 2 at 21.

committee but may be escalated to the DCCC, who makes the final decision on the request.¹⁰³

In a meeting held on February 27, 2024, well after Applicant filed the Petition, the DCCC unanimously approved a resolution generally opposing the creation of the District.¹⁰⁴ As of the date of the hearing, Applicant had not yet applied for a zoning variance.¹⁰⁵

Individual Protestants argue that, because a portion of the District is currently zoned for agricultural use, this changes Applicant's estimated construction costs, taxes, and water and sewer rates, as presented in this proceeding, and therefore unreasonable.¹⁰⁶ They point out that Applicant only presented calculations premised on the assumption that it would be able to change the zoning designation because it "reasonably anticipated" that the DCCC would approve a zoning variance.¹⁰⁷ DCCC witness Commissioner Ryan Williams testified that it was "absolutely not" reasonable to assume that the DCCC would grant a variance request from Applicant.¹⁰⁸

¹⁰³ Tr. Vol. 2 at 49:18-50:1.

¹⁰⁴ DCCC Ex. 6 at 1.

¹⁰⁵ Tr. Vol. 1 at 181:16-182:6.

¹⁰⁶ Individual Protestants Initial Br. at 1-2, 9-13.

¹⁰⁷ Tr. Vol. 1 182:3-6.

¹⁰⁸ Tr. Vol. 2 49:10-15.

c) Analysis

The ALJ finds that Applicants have met their burden to establish the reasonableness of the projected costs, tax rates, and water and sewer rates.

Individual Protestants argue that Applicant's projected construction costs are not reliable because they do not account for the fact that a portion of the District is subject to the Ordinance and, thus, Applicant's estimates are not reasonable. However, at the time of filing the Petition, the DCCC had not yet issued its resolution against the creation of the District, so it was reasonable for Applicant to anticipate that the zoning might yet be changed to allow for the development.

Moreover, even if the language of the Ordinance was not changed, it allows for a party to apply for an exemption to the Ordinance's requirements. Thus, even though portion of the land in the District subject to the Ordinance is currently zoned for agricultural use, Applicant has the option of applying for, and being granted by the DCCC, a zoning variance that would allow them an exemption to the Ordinance's requirements and developing the land. Although DCCC voted on a resolution stating its general position against the creation of the District approximately a year-and-a-half after the filing of the Petition, an outstanding issue to be decided by that entity is whether Applicant should be granted a zoning variance. As of the date of the hearing, Applicant had not yet applied for a variance and Applicant being granted an exemption still lies within the realm of possibility and, thus, Applicant's cost estimates are reasonable.

The effect of the Ordinance lies at the heart of Individual Protestants' arguments regarding the reasonableness of Applicant's projected construction costs, tax rates, and water and wastewater rates. However, the ALJ is not persuaded that the Ordinance is as outcome-determinative as Individual Protestants argue. Applicant demonstrated the basis for their projected costs and evidence about why those costs should be considered reasonable. The ALJ finds that at this stage, Applicants have met their burden to show that their projected construction costs are reasonable.

Additionally, Individual Protestants argue that estimated tax rates are not reasonable because of downstream effects of the Ordinance. However, as above, that argument would not show that the proposed tax rates are unreasonable.

Finally, the ALJ also finds that Applicant has met its burden to show that the projected water and sewer rates are reasonable by showing support for their projected costs, by showing that water will be provided by a utility, and by showing that the sewer rates are in line with other similar facilities.

3. Unreasonable Effects

In determining whether a proposed MUD is feasible, practicable, necessary, and would be a benefit to the land included in the District, the Commission considers whether the "district and its system and subsequent development within the district will have an unreasonable effect on" seven factors: land elevation; subsidence; groundwater levels in 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.

Here, Individual Protestants contend Applicant has not met its burden on these factors. As a general proposition, Individual Protestants argue that Applicant only provided conclusory statements supporting whether the creation of the proposed District would have an unreasonable effect on these factors.¹⁰⁹

a) Land Elevation and Subsidence

The Engineering Report stated that “the fill and/or excavation associated with the development of the District’s systems will not cause any changes in land elevation other than that normally associated with the construction of the lot construction of the underground utility systems, drainage facilities, and paving.”¹¹⁰ It adds that “adequate design of facilities should not lead to concern for subsidence.”¹¹¹ Moreover, it provides that it is not “aware of Mustang SUD experiencing any land subsidence resulting from groundwater extraction in the area.”¹¹²

¹⁰⁹ Individual Protestants Initial Br. at 16-17.

¹¹⁰ Applicant Ex. 8 at 014.

¹¹¹ Applicant Ex. 8 at 014.

¹¹² Applicant Ex. 8 at 014.

The statements were repeated almost verbatim in ED witness Mr. Walker's technical memorandum.¹¹³ He explained in his testimony that he has never determined that a proposed MUD would have an unreasonable effect on elevation.¹¹⁴ Mr. Walker expanded by stating, for the most part, developments for which he has performed a review tend to use existing topography and land elevations.¹¹⁵ He added that, in evaluating subsidence, the justifications regarding that issue are based on entities that regulate groundwater conservation districts and that TCEQ does not perform an independent analysis because it is a "pretty exhausting exercise."¹¹⁶

Individual Protestants argue that Applicant only provides conclusory statements of the District's effect on land elevation and subsidence, and that Applicant's statements are insufficient to carry the burden of demonstrating there will be no unreasonable effects.¹¹⁷ Additionally, they argue that the Applicant failed to perform their due diligence into whether the District would cause unreasonable effects on subsidence and providing an analysis, pointing out that information was readily available.¹¹⁸ Finally, Individual Protestants argue that Applicant witness Ms. White's admission that the fill, lot grading, and retaining walls may need to be

¹¹³ Ex. ED-JW-3 at 5.

¹¹⁴ Tr. Vol. 1 at 151:14-20.

¹¹⁵ Tr. Vol. 1 at 151:21-152:2.

¹¹⁶ Tr. Vol. 1 at 152:6-22.

¹¹⁷ Individual Protestants Initial Br. at 20, 22.

¹¹⁸ Individual Protestants Initial Br. at 23.

installed to ensure that no lots would drain into each other, without further information, failed to provide meaningful analysis on this particular issue.¹¹⁹

The ALJ agrees that Applicant's opinions are somewhat conclusory but there is nothing in the record that controverts them. Although Individual Protestants point out that some adjustments would need to be made to the design in the Engineering Report, the ALJ is not persuaded that it rises to the level of drastically changing the analysis. The ALJ concludes that Applicant proved by a preponderance of the evidence that the District will not have an unreasonable effect on land elevation or subsidence within the District.

b) Groundwater Levels and Groundwater Recharge

The Engineering Report provides that the water supply used by Mustang SUD near the site appears to be sourced by groundwater.¹²⁰ For planning purposes, the report assumes a "significantly lower well production rate" for the proposed wells in the District.¹²¹ It also notes that, although there is no indication that groundwater supply is a concern in the general vicinity, well production rates should be tested before development to confirm that there is an adequate amount of groundwater available to serve the proposed District.¹²²

¹¹⁹ Individual Protestants Initial Br. at 21.

¹²⁰ Applicant Ex. 8 at 014.

¹²¹ Applicant Ex. 8 at 014.

¹²² Applicant Ex. 8 at 014.

Additionally, the Engineering Report raises the fact that the District will obtain water from groundwater sources through the proposed wells within the District.¹²³ The unconfined portion of aquifers under the surface would recharge from precipitation and seepage of surface water bodies.¹²⁴ The development would render approximately 40 percent of the area in the District impervious, leaving, according to the Engineering Report, ample pervious area to allow for recharge of the groundwater.¹²⁵

ED witness Mr. Walker's technical memorandum uses the same language regarding groundwater levels and recharge as that included in the Engineering Report.¹²⁶

Individual Protestants assert that Applicant's statements should be disregarded as conclusory and unsupported, pointing out that the Engineering Report does not include any information regarding groundwater production or usage for the area.¹²⁷ They concede that, at trial, Ms. White testified that connectivity with Mustang SUD for surface water could potentially provide an adequate supply but they point out that she also acknowledged that the excess surface water would not be available, if at all, until the nearby lake reaches

¹²³ Applicant Ex. 8 at 014.

¹²⁴ Applicant Ex. 8 at 014.

¹²⁵ Applicant Ex. 8 at 014.

¹²⁶ Ex. ED-JW-3 at 0028.

¹²⁷ Individual Protestants Initial Br. at 24.

conservation levels.¹²⁸ Moreover, Ms. White stated that there are points after the creation of a district where feasibility could be evaluated at certain intervals, but Individual Protestants argue that that the evaluation of whether the design meets the statutory requirements must be made at the time of the application for the creation of the District, not at any point after.¹²⁹

As to the recharge rate, Individual Protestants argue that the Applicant's cited amount of 40 percent of impervious cover as a result of the development is only an expectation, without a reference to the basis for that number.¹³⁰ They posit that the site changes proposed by Applicant would unreasonably affect the recharge rate, arguing that slow draining soil, reduced infiltration resulting from soil compaction, a higher amount of fill as causes for concern regarding groundwater recharge.¹³¹ Individual Protestants argue that, if the District were modified to exclude the land subject to the Ordinance, given their concerns cited earlier, it would result in a significantly higher amount of impervious cover if the entire residential development is developed, because there would be a denser area of residential development.¹³² Thus, either way, creation of the District would unreasonably affect groundwater recharge.

¹²⁸ Individual Protestants Initial Br. at 25-26.

¹²⁹ Individual Protestants Initial Br. at 26.

¹³⁰ Individual Protestants Initial Br. at 27.

¹³¹ Individual Protestants Initial Br. at 27-28.

¹³² Individual Protestants Initial Br. at 28.

Individual Protestants note that ED witness Mr. Walker’s statements on these issues echo conclusory statements made by Applicant.¹³³

The Commission has previously explained that it does not consider a proposed MUD’s water supply source to be a consideration for the groundwater factors, deferring those matters to the groundwater conservation districts with specific authority to regulate groundwater.¹³⁴ Instead, the Commission construes Code § 54.021(b)(3)-(4) as relating to how the project’s impervious cover will affect groundwater levels or recharge capacity of groundwater as compared to similar single-family developments in the region.¹³⁵

Here, Mr. Walker testified that, since 50 to 60 percent of the area would be pervious, it would allow stormwater runoff to recharge the aquifers below.¹³⁶ He qualified that his analysis was based on the information based on the Petition and did not perform his own independent analysis.¹³⁷ There is no controverting evidence. The ALJ concludes that a preponderance of the evidence demonstrates

¹³³ Individual Protestants Initial Br. at 25.

¹³⁴ *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Final Order at § III.1 (November 6, 2023) (explaining Commission’s changes to the PFD); *see also* Commissioners’ Agenda Meeting, October 25, 2023, Agenda Item 2, beginning at 1:03:44, available at https://www.youtube.com/watch?v=RgtQnKn8g_c (discussing the *Highland Lakes* PFD, Commissioner Niemann stated, “I don’t think the legislature intended TCEQ to regulate groundwater through the creation of MUDs.”).

¹³⁵ *Petition for Creation of Ellis Ranch Municipal Utility District No. 1*, SOAH Docket No. 582-23-11658, TCEQ No. 2022-1157-DIS, Final Order at 9-10 (July 16, 2024) (explaining Commission’s changes to the PFD).

¹³⁶ Tr. Vol. 1 at 153:9-14.

¹³⁷ Tr. Vol. 1 at 153:15-22.

that the District will not have an unreasonable effect on groundwater levels within the region or recharge capability of a groundwater source.

c) Natural Run-off Rates and Drainage

The Engineering Report states that the District would be located on “gently to moderately sloped pasture land,” where most of the existing drainage is through runoff that collects and is conveyed to tributaries to the Elm Fork Trinity River onsite.¹³⁸ The storm water runoff would be directed within the streets through curb and gutters with inlets, detention ponds, and an internal storm drain conduit.¹³⁹ Nine potential detention pond locations were identified and a final determination will be made for those locations upon development.¹⁴⁰ The Engineering Report represents that the storm drainage improvements will be designed according to applicable design criteria established by Denton County.¹⁴¹ The tributaries to that river create floodplains that lie within the property, which would remain undeveloped.¹⁴² ED witness Mr. Walker’s technical memorandum repeats the language from the Engineering Report regarding runoff rates and drainage.¹⁴³

¹³⁸ Applicant Ex. 8 at 014.

¹³⁹ Applicant Ex. 8 at 010.

¹⁴⁰ Applicant Ex. 8 at 010.

¹⁴¹ Applicant Ex. 8 at 011.

¹⁴² Applicant Ex. 8 at 014.

¹⁴³ Ex. ED-JW-3 at 5.

Individual Protestants witness Mr. Baker states that, given the limited information provided by the Applicant, it is not possible to determine whether the District would have an unreasonable effect on natural runoff rates and drainage.¹⁴⁴ He points out that the Applicant only provided a bare statement that the drainage improvements would be designed according required design criteria and a drainage area map.¹⁴⁵ Mr. Baker states that Applicant failed to provide details on proposed site grading, locations of detention ponds, whether and how existing ponds would be reconfigured, and other relevant information that would be helpful in the analysis.¹⁴⁶ He explains that the only known factor is that there will be a “substantial increase” in impervious cover, resulting in a significantly higher increase in the overall volume of stormwater runoff after development is completed than what is currently discharged.¹⁴⁷ Thus, Mr. Baker concludes the Applicant failed to demonstrate that the District will not have an unreasonable effect on natural runoff rates and drainage.¹⁴⁸

Additionally, Individual Protestants presented testimony from residents, who each expressed concerns that stormwater runoff would transport harmful

¹⁴⁴ Individual Protestants Ex. 1 at 14.

¹⁴⁵ Individual Protestants Ex. 1 at 14-15.

¹⁴⁶ Individual Protestants Ex. 1 at 15.

¹⁴⁷ Individual Protestants Ex. 1 at 15.

¹⁴⁸ Individual Protestants Ex. 1 at 15.

pollutants such as trash, chemicals, and sediment, depositing them into streams, lakes, and groundwater.¹⁴⁹

Individual Protestants' concerns, while understandable, are not sufficient to show that creation of the District would have an unreasonable effect on natural run-off rates and drainage. Consistent with the Commission's orders in other MUD cases, the ALJ finds that, at this preliminary stage, it is enough that Applicant intends to develop the property in compliance with the regulations of Denton County and other regulatory authorities.¹⁵⁰ Applicant has met its burden of proving the planned development will not have an unreasonable effect on natural run-off rates and drainage.

d) Water Quality

The Engineering Report stated that the development is not anticipated to have an adverse effect on water quality because the District will use underground water lines for water service and wastewater, captured through onsite collection and treated at an onsite wastewater treatment plant.¹⁵¹ ED witness Mr. Walker's technical memorandum added that Mustang SUD will provide the treatment and

¹⁴⁹ Individual Protestants Ex. 12 at 8, Ex. 6 at 009-010, Ex. 9 at 008, Ex. 15 at 7, Ex. 17 at 6-7, Ex. 19 at 6-7.

¹⁵⁰ *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Order Granting Petition at FOFs 38-42 and § III.1 (November 6, 2023) (addressing changes to the PFD are explained); *Petitions for Creation of Lakeview Municipal Utility District Nos. 1, 2, and 3*, SOAH Docket Nos. 582-22-0259, -0260, and -0261, TCEQ Docket Nos. 2021-0571, -0573, and -0574, Order Denying Petitions at FOFs 34-36 (August 24, 2023) (findings on effect on natural run-off rates and drainage).

¹⁵¹ Applicant Ex. 8 at 014.

disposal of wastewater in compliance with the terms of the waste discharge permit obtained from TCEQ.¹⁵²

Individual Protestants argue that the Applicant only provides conclusory statements in support of its contention that the District will not have an unreasonable effect on water quality, especially since the Engineering Report does not contain an assessment of either the current quality of stormwater runoff or the impact that the proposed development would have.¹⁵³

Individual Protestants witness Mr. Baker testifies that runoff from the District would flow into the receiving waters and increase pollutant concentrations into the river.¹⁵⁴ He points out that neither the Applicant nor TCEQ evaluated stormwater quality or measures that the Applicant is planning to take to reduce stormwater pollutant concentrations.¹⁵⁵ Additionally, Individual Protestants argue that, concluding that transitioning from an area zoned for agricultural use to residential use would not have an unreasonable effect on the water quality is irrational.¹⁵⁶

¹⁵² Ex. ED-JW-3 at 5.

¹⁵³ Individual Protestants Initial Br. at 30-31.

¹⁵⁴ Individual Protestants Ex. 1 at 17.

¹⁵⁵ Individual Protestants Ex. 1 at 17.

¹⁵⁶ Individual Protestants Initial Br. at 31.

The issues raised by Individual Protestants are more properly addressed in a separate proceeding where Applicant's TPDES permit or enforcement of regulations are being considered. Applicant has represented that the stormwater collection, conveyance, and detention facilities will be constructed, operated, and maintained in compliance with all federal, state, and local requirements, as will the wastewater treatment plant. At this stage, that is sufficient to show that the District will not have an unreasonable effect on water quality.¹⁵⁷ Thus, the ALJ finds that creation of the District will not have an unreasonable effect on water quality.

e) Total Tax Assessments on All Land Located Within District

As addressed above, Applicant contemplates a District tax rate of \$1.20 per \$100 valuation—the limit imposed in the Commission's economic feasibility rules—and a total overlapping tax rate of \$2.59, which is consistent with comparable rates in the region.¹⁵⁸ The technical memorandum compiled by ED witness Mr. Walker incorporates information and states that, in his opinion, the project is considered economically feasible.¹⁵⁹

The arguments the Individual Protestants put forth on this particular issue overlap with the discussion on the projected construction costs and tax rates of the

¹⁵⁷ See *Petition for Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Order Granting Petition at FOFs 43-47 and § III.2 (November 6, 2023) (explaining changes to the PFD).

¹⁵⁸ Applicant Ex. 8 at 015, 035.

¹⁵⁹ Ex. ED-JW-3 at 8-9.

District discussed in section IV(B)(2). There, Individual Protestants contended that, because Applicant based all of its calculations on the assumption that it would obtain a zoning variance and have the ability to build according to the design in the Engineering Report, it had miscalculated the overall assessed valuation of the District, which would affect the resulting tax assessments.¹⁶⁰ However, ED responds that tax rates for each particular bond issue will be reviewed and justified on its own economic feasibility merits prior to the issuance of any bonds by the District.¹⁶¹ Moreover, ED witness Mr. Walker testified that the considerations set out Rule 293.59 relate solely to the bonding stage of the project, not the creation stage, as is the subject of this proceeding.¹⁶²

The parties' arguments echo what they urged in relation to the reasonableness of projected tax rates. For the same reasons set forth in section IV(B)(2) regarding projected tax rates, the ALJ finds that the District, its systems, and subsequent development within the District will not have an unreasonable effect on total tax assessments on all land located within the District.

4. Complete Justification for Creation of the District

Commission rules require that the preliminary engineering report include “complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be

¹⁶⁰ Individual Protestants Initial Br. at 8-13.

¹⁶¹ ED Closing Arg. at 8-9.

¹⁶² Tr. Vol. 2 at 66:2-15.

included in the district,” the substantive statutory standard governing the Commission’s disposition of the Petition. Based on the foregoing analysis of subsidiary factors and other evidence, the ALJ concludes that Applicant has met its burden.

C. ROAD POWERS

Code section 54.234 provides that any district or petitioner seeking the creation of a district may petition the Commission to acquire the power under the authority of Article III, Section 52, of the Texas Constitution, to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to the state, a county, or a municipality for operation and maintenance, a road or any improvement in aid of the road. Applicant posits that it has satisfied the burden of proving compliance with the relevant law, referring to the Engineering Report, which provides details of a preliminary layout as to the major thoroughfares.¹⁶³ No party argued to the contrary. Thus, the ALJ finds that Applicant satisfied its burden of proof on this issue.

V. TRANSCRIPT COSTS

The Commission may assess reporting and transcription costs to one or more of the parties participating in a proceeding, and when doing so, must consider the following factors:

- the party who requested the transcript;

¹⁶³ Applicant Initial Br. at 18.

- 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 costs.¹⁶⁴

Additionally, the Commission will not assess reporting or transcription costs against the ED or OPIC because they are statutory parties who are precluded by law from appealing the Commission's decision.¹⁶⁵

Applicant argues, without elaboration, that each party should bear "their own share" of the transcript cost.¹⁶⁶ Individual Protestants contend that Applicant should bear all transcript expenses because Individual Protestants consist of private individuals relying on their own resources to fund participation in the proceeding and only participated the extent to maintain the status quo and protect individuals' due process rights.¹⁶⁷ However, the Individual Protestants argue, the Applicant

¹⁶⁴ 30 Tex. Admin. Code § 80.23(d)(1).

¹⁶⁵ See 30 Tex. Admin. Code § 80.23(d)(2).

¹⁶⁶ Applicant Initial Br. at 18.

¹⁶⁷ Individual Protestants Initial Br. at 35.

stands to gain a “considerable economic benefit.”¹⁶⁸ The ED and OPIC take no position on cost apportionment.¹⁶⁹

Considering the Commission’s factors, the ALJ finds that all participated in the hearing and all benefitted equally from having the transcript. Through requesting and participating in the hearing, Individual Protestants identified some deficiencies in Applicant’s Petition and incurred significant litigation expenses in doing so. Unlike Applicant, neither Individual Protestants nor DCCC do not stand to profit from the creation of this District and are seeking only to maintain the status quo. Based on these factors, the ALJ recommends that the Commission assess most of the transcript expenses to Applicant, with the costs apportioned 90 percent to Applicant and five percent each to Individual Protestants and DCCC.

VI. CONCLUSION

For the reasons stated, Applicant recommends finding that Applicant met its burden to establish that its Petition to create the District should be granted. In further support of this recommendation, the ALJ has prepared the Findings of Fact and Conclusions of Law incorporated within the accompanying proposed Order of the Commission.

¹⁶⁸ Individual Protestants Initial Br. at 35.

¹⁶⁹ OPIC Initial Br. at 22. The ED does not address the issue in its post-hearing briefing.

Signed April 2, 2025

ALJ Signature:

A handwritten signature in black ink, appearing to read "Rachelle Robles", written over a horizontal line.

Rachelle Nicolette Robles

Presiding Administrative Law Judge



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING PETITION FOR CREATION OF WHITE OAKS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY TCEQ DOCKET NO. 2023-1587-DIS SOAH DOCKET NO. 582-24-15646

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the petition for creation of White Oaks Municipal Utility District of Denton County. A Proposal for Decision (PFD) was issued by Rachelle Nicolette Robles, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) and considered by the Commission.

After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

Procedural History

1. On August 17, 2022, White Oaks Ranch Land, LP (Applicant) filed a petition (Petition) with the Texas Commission on Environmental Quality (TCEQ or

Commission) for the creation of the White Oaks Municipal Utility District of Denton County (District).

2. The Petition was declared administratively complete on October 3, 2022.
3. On January 28, 2023, and February 5, 2023, notices of the Petition were published in the *Denton Record-Chronicle*, a newspaper regularly published or circulated in Denton County, the county in which the district is proposed to be located.
4. On January 24, 2023, the Denton County Clerk's Office posted notice of the Petition on the bulletin board used for posting legal notices in Denton County.
5. The Commission received timely hearing requests filed by numerous parties and, at an open meeting on March 6, 2024, determined that a number of them were affected persons and referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
6. On June 4, 2024, the Administrative Law Judge (ALJ) held a preliminary hearing in this matter, at which time the jurisdictional exhibits were admitted into evidence. Applicant; the Executive Director (ED) of the TCEQ; and Office of Public Interest Council (OPIC) were named as parties, along with Denton County Commissioners Court (DCCC); Kelly and Phillip Eggers, Darlene Freeman, Robert and Helen McGraw, Capital Properties 2017, LLC, BNR 2012 Holding Company, LLC, David and Bonnie Silva, and Nancy and John Tague (collectively, Individual Protestants); Allen McCracken; Jason Pool; Rowland Funk; Mark Atchison; Anthony Scamardo, Jr.; and Megan and Joseph Schmidt.
7. The hearing on the merits was held June 4, 2024, before ALJ Rachelle Nicolette Robles by videoconference. Applicant was represented by attorney Natalie Scott; Individual Protestants were represented by attorneys Cody Faulk and Rashmin Asher; DCCC was represented by Matt Shovlin; Allen McCracken represented himself; the ED was represented by attorneys Fernando Salazar Martinez and Bradford Eckhart; and OPIC was represented by attorney Jennifer Anderson. Jason Pool; Rowland Funk; Mark Atchison; Anthony Scamardo, Jr.; and Megan and Joseph Schmidt did also appeared.

8. The record closed on February 3, 2025, after submission of written closing arguments.

Sufficiency of Petition

9. The proposed District is for a planned residential development on a tract owned wholly by Schlegel Capital, in unincorporated Denton County, located south of FM 455, north of Saint John Road, and west of US 377, generally southwest of the City of Pilot Point. The proposed District is not within the corporate limits or extraterritorial jurisdiction (ETJ) of any city, town, or village.
10. As currently planned, the District would serve approximately 5,373 residents in 1,535 single family homes. Lots would range from 40 to 70 feet wide by 120 feet deep, and new homes would be priced between \$300,000 to \$450,000.
11. While the District would serve approximately 420 acres, only 342 acres would be developed as single-family residential lots. The rest of the property includes 56 acres allocated to open spaces, three acres for an amenity center, two acres of perimeter right of way dedication, eight acres of internal collector right of way dedication, and 13 acres for water and wastewater facilities.
12. The Petition addressed the components required by Texas Water Code sections 54.014 and .015, and included the information required by the Commission's rule at 30 Texas Administrative Code section 293.11(a) and (d).

Availability of Comparable Service from Other Systems

13. The entirety of the District falls within the certificate of convenience and necessity (CCN) of Mustang Special Utility District (Mustang SUD).
14. Applicant has been having preliminary discussions with Mustang SUD regarding its request for water and wastewater service, but, as of the commencement of the hearing, an agreement had not yet been finalized. Applicant intends to construct water and wastewater facilities and, after

completion, convey the facilities to Mustang SUD for it to own, maintain, and operate.

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

15. In the preliminary engineering report (Engineering Report), Applicant estimated the District's total construction costs will be \$99,489,000, including \$10,399,000 for the water distribution system; \$36,875,000 for the wastewater system; and \$20,115,000 for a storm drainage system.
16. A substantial portion of the District is subject to the Denton County Lake Ray Roberts Land Use Ordinance (Ordinance), which provides certain restrictions related to goals intended to guide how land subject to the Ordinance may be used. The portion of the District subject to the Ordinance and is currently zoned for agricultural use.
17. The Ordinance allows for a variance request, to be approved by the DCCC, which would allow certain exemptions from the requirements of the Ordinance.
18. The design of the District anticipates building the following units: 458 40-foot single family lots, 770 50-foot single family lots, 154 60-foot single family lots, and 153 70-foot single family lots, for a total of 1,535 lots. The resulting assessed valuation based on these anticipated lot sizes is \$516,945,000.
19. On February 24, 2024, the DCCC unanimously voted against the creation of the District.
20. As of the date of the hearing, Applicant had not yet applied for an exemption to the Ordinance.
21. Applicant's projected construction costs are reasonable.
22. The proposed District will have an ad valorem tax rate of \$1.20 per \$100 assessed value.
23. Applicant's proposed tax rates are reasonable.

24. District customers would be subject to Mustang SUD's retail water and wastewater rates.
25. The proposed water and wastewater rates are reasonable.

Effect on Land Elevation and Subsidence

26. Development of the District is not expected to cause any changes in land elevation other than that normally associated with lot construction, underground utility systems, drainage facilities, and paving.
27. No mass movement of earth or significant changes to elevations or drainage divides are anticipated during construction of this project.
28. Subsidence is not prevalent, anticipated, or reasonably a predictable concern in the area.
29. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on land elevation or subsidence.

Effect on Groundwater Levels and Groundwater Recharge Capability

30. The impervious cover from the single-family residential lots planned in the District will not have any greater effect on groundwater levels or recharge capacity of groundwater in the region than any other typical single-family development.
31. The Commission does not regulate groundwater and does not consider the source of a proposed MUD's water supply in evaluating how groundwater levels and recharge capability may be impacted.
32. The District, and the systems and subsequent development within the District, 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 Discharge

33. The District will have a storm water collection system designed with street curbs, gutters, and an underground pipe system that will convey runoff to detention ponds.

34. The system will be designed in compliance with the applicable design criteria established by Denton County and will be constructed and operated in compliance with all federal, state, and local requirements.
35. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on natural run-off rates and drainage.

Effect on Water Quality

36. The District will construct a sanitary sewer collection system, including a wastewater treatment plant.
37. The District's stormwater collection, conveyance, and detention facilities will be constructed, operated, and maintained in compliance with all federal, state, and local requirements.
38. The Commission has a separate permitting process for wastewater treatment plants and does not regulate those matters as part of the MUD-approval process.
39. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on water quality.

Effect on Total Tax Assessments

40. The Petition for creation of the District contemplates a District tax rate of \$1.20 per \$100 valuation, which falls within the limits set by the Commission in its economic feasibility rules and is the tax rate cap for this development.
41. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on total tax assessments on all land located within the proposed District.

Complete Justification for Creation of the District

42. Applicant has shown that the District is feasible, practicable, necessary, and will benefit all of the land to be included in the district.

Allocation of Transcript Costs

43. No party has claimed a financial inability to pay transcript costs.
44. The parties all participated in the hearing, and all benefitted equally from having the transcript.
45. Through requesting and participating in the hearing, Individual Protestants identified deficiencies in Applicant's Petition and incurred significant litigation expenses in doing so.
46. Unlike Applicant, Individual Protestants and DCCC do not stand to profit from the creation of the District and are seeking only to maintain the status quo.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Water Code chs. 49, 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 was not required to satisfy the requirements applicable when a MUD is proposed to be located within the limits or ETJ of a city. Tex. Water Code § 54.016.
6. Applicant's Petition conforms to the requirements of Texas Water Code § 54.015 and is otherwise administratively sufficient. Tex. Water Code §§ 54.015, .021; 30 Tex. Admin. Code §§ 293.11(a), (d).

7. 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).
8. If the Commission finds that the project is not feasible, practicable, necessary, or a benefit to the land included in the district, the Commission shall so find by its order and deny the petition. Tex. Water Code § 54.021(d).
9. 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).
10. Applicant has met its burden of proof regarding the availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1).
11. Applicant met its burden of proof regarding reasonableness of projected construction costs, tax rates, and water and wastewater rates. Tex. Water Code § 54.021(b)(2).
12. Applicant has met its burden of proving that the District, its systems, and subsequent development will not have an unreasonable effect on land elevation, subsidence, groundwater levels and recharge capability within the region, natural run-off rates and drainage, water quality, and total tax assessments on all land located within the District. Tex. Water Code § 54.021(b)(3).
13. Applicant met its burden of proof to show that the project and District are feasible, practicable, and necessary and would be a benefit to the land included in the District. Tex. Water Code § 54.021; 30 Tex. Admin. Code § 293.11(d)(5)(J).

14. Applicant's Petition should be granted.
15. No transcript costs may be assessed against the ED or OPIC because the Commission'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).
16. 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).
17. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), an appropriate allocation of transcript costs is 90 percent to Applicant and five percent each to Individual Protestants and DCCC.

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 Petition for creation of the White Oaks Municipal Utility District is granted.
2. The reporting and transcript costs are allocated: 90 percent to Applicant and five percent each to Individual Protestants and DCCC.
3. All other motions, any requests for 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 section 80.273 and Texas Government Code section 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.