

TCEQ DOCKET NO. 2023-1666-DIS

APPLICATION FOR	§	BEFORE THE TEXAS
THE CREATION OF THEON RANCHES	§	COMMISSION ON
MUNICIPAL UTILITY DISTRICT NO. 3	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. SUMMARY

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

II. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests on the Petition by Theon Ranches, LP, a Texas limited partnership, Daniel S. Voss, and Kathryn S. Voss (Petitioners), for the creation of Theon Ranches Municipal Utility District No. 3 (District).

The petition states that: (1) the Petitioner holds title to the majority in value of the land within the proposed district; (2) there are no liens on the property to be included in the proposed District; (3) the proposed District will contain approximately 271.34 acres located within Williamson County, Texas; (4) the land within the proposed District is not within the corporate boundaries or extraterritorial jurisdiction of any municipality.

The proposed District is located outside the corporate limits and extraterritorial jurisdiction of any city, town, or village. Therefore, city consent is not required under Local Government Code § 42.042 and Tex. Water Code § 54.016. In accordance with Tex. Water Code § 54.0161, a certified letter, dated August 17, 2023, was sent to the Commissioners Court of Williamson County which provided notice of the proposed District's pending creation application and provided them an opportunity to make their recommendations. In response to the proposed District's creation application, the County has requested a contested hearing based on a letter received by the Office of the Chief Clerk on September 26, 2023. Evidence of filing a copy of the petition with

the Williamson County Clerks' office, the TCEQ's Austin regional office, the Texas state representative, and the Texas state senator was included in the application.

According to the Petition, the proposed District is located entirely in Williamson County, Texas approximately 45 miles north of downtown Austin, Texas via I-35. The land tract is approximately 2 miles west of the city limits of Jarrell, Texas situated west of I-35, south of FM 487, and east of CR 234. The proposed District can be accessed from FM 487.

The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, and commercial purposes; (2) to collect, transport, process, dispose of and control domestic, industrial, and commercial wastes; (3) to gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the proposed District; (4) construct, maintain, improve, and operate graveled or paved roads or turnpikes that serve or are intended to serve as arterial or main feeder roads, or works, facilities, or improvements in aid of those roads or turnpikes inside or outside the boundaries of the proposed District to the extent authorized by Article III, Section 52 of the Texas Constitution; (5) purchase, construct, acquire, provide, operate, maintain, repair, improve, extend, and develop park and recreation facilities for the inhabitants of the proposed District; (6) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is created.

The proposed District will be considered a "developer project" as defined by 30 Tex. Admin. Code § 293.44(a). Therefore, in accordance with 30 Tex. Admin. Code § 293.47, developer cost participation will be required.

Included with the ED's Response to Hearing Requests is a satellite map of the proposed District (Attachment A).

III. PROCEDURAL HISTORY

The Petitioner filed an application with the TCEQ for the creation of the District and it was declared administratively complete on July 11, 2023. The Notice of District Petition was published in the *Sunday Sun*, a newspaper generally circulated in Williamson County, where the District is proposed to be located, on September 17 and September 24, 2023. The Notice of District Petition was also posted on the bulletin board used for posting legal notices in the Williamson County Courthouse on September 11, 2023.

The TCEQ received comments opposing the creation of the district and one requests for a contested case hearing from Williamson County. The period to request a contested case hearing ended on October 24, 2023. The Office of the Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing requests on February 21, 2024.

IV. CREATION OF MUNICIPAL UTILITY DISTRICTS

A. District Purpose

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution.¹ The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Tex. Water Code.

A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;

¹ TEX. WATER CODE § 54.011.

- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.²

The Commission has jurisdiction to hear this case and create the District.³

B. Required Findings

The Commission must grant or deny a MUD creation application in accordance with Tex. Water Code § 54.021. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the district.⁴ If the Commission fails to make these findings, it shall refuse to grant the petition.⁵

In determining if a project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the Commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;

² TEX. WATER CODE § 54.012.

³ TEX. WATER CODE § 54.014.

⁴ TEX. WATER CODE § 54.021(a); 30 TEX. ADMIN. CODE § 293.13(b)(1).

⁵ TEX. WATER CODE § 54.021(d); 30 TEX. ADMIN. CODE § 293.13(a).

- (F) water quality; and
- (G) total tax assessments on all land located within a district.⁶

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings.⁷

V. EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Tex. Admin. Code. The Commission, the Executive Director, the Petitioner, or affected persons may request a contested case hearing on this application.⁸ The Commission must evaluate the hearing requests and may take one of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings (“SOAH”) for a hearing; or
- (4) refer the hearing requests to SOAH for a hearing on whether the hearing requests meet the rule requirements.⁹

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition.¹⁰ These two requirements are mandatory. The affected person’s hearing request must also substantially comply with the following:

⁶ TEX. WATER CODE § 54.021(b).

⁷ 30 TEX. ADMIN. CODE § 293.13(b)(2); TEX. WATER CODE § 54.021(c).

⁸ 30 TEX. ADMIN. CODE § 55.251(a).

⁹ 30 TEX. ADMIN. CODE § 55.255(a).

¹⁰ 30 TEX. ADMIN. CODE § 55.251(b) and (d).

- (1) give the name, address, and daytime telephone number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.¹¹

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public.¹² The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person; and
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person.
- (6) For governmental entities, their statutory authority over or interest in the issues relevant to the application.¹³

¹¹ 30 TEX. ADMIN. CODE § 55.251(c).

¹² 30 TEX. ADMIN. CODE § 55.256(a).

¹³ 30 TEX. ADMIN. CODE § 55.256(c).

VI. HEARING REQUESTS

Analysis of Williamson County's Request

Williamson County, through its representative, J. Grady Randle, submitted a timely request containing the name, address, and telephone number of Mr. Randle, pursuant to 30 Tex. Admin. Code § 55.251(c)(1). The submission included a request for a contested case hearing, pursuant to 30 Tax. Admin. Code § 55.251(c)(3). The submission also included the internal control number as required in the notice and pursuant to 30 Tex. Admin. Code § 55.251(c)(4).

In its request, Williamson County raised the following interests related to their statutory authority: (i) county authority to construct roads in subdivisions; (ii) county rulemaking authority over roads; (iii) county authority over fire code in unincorporated areas; (iv) county authority over infrastructure planning; (v) county authority to set building and set back lines; (vi) county management of emergency services; (vii) county general control over roads, highways, and bridges; and (viii) county authority over drainage on public roads. Williamson County claims that the proposed District will place a great burden on law enforcement, emergency medical, fire and animal control services that are already very strained in the county and that, not only will the health and safety of the residents of the developer's MUD be affected, all other residents to whom the county provides such services will also be affected.

Because the Petition also included a request for traditional road powers, Williamson County's authority over and interest in roads is relevant to the application. The county's interest in drainage over public roads also correlates to the natural run-off rates and drainage factor found in Tex. Water Code § 54.021(b)(3)(e). Therefore, Williamson County does raise a justiciable interest in its hearing request pursuant to 30 Tex. Admin. Code § 55.251(c)(2). Because the district is located within Williamson County and because of the concerns raised, the Executive Director recommends that the Commission find that Williamson County is an affected person and grant its hearing request.

VII. RECOMMENDATION

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

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

Respectfully submitted,

Texas Commission on Environmental Quality

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Executive Director

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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on March 4, 2024, the original of the “Executive Director’s Response to Hearing Requests” for Creation of Theon Ranches Municipal Utility District No. 3, Internal Control No. D-07112023-012, was filed with the Texas Commission on Environmental Quality’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.

A handwritten signature in black ink, appearing to read 'Fernando Salazar Martinez', is positioned above a horizontal line.

Fernando Salazar Martinez, Staff Attorney
State Bar No. 24136087

Attachment A

Theon Ranches Municipal Utility District No. 3




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

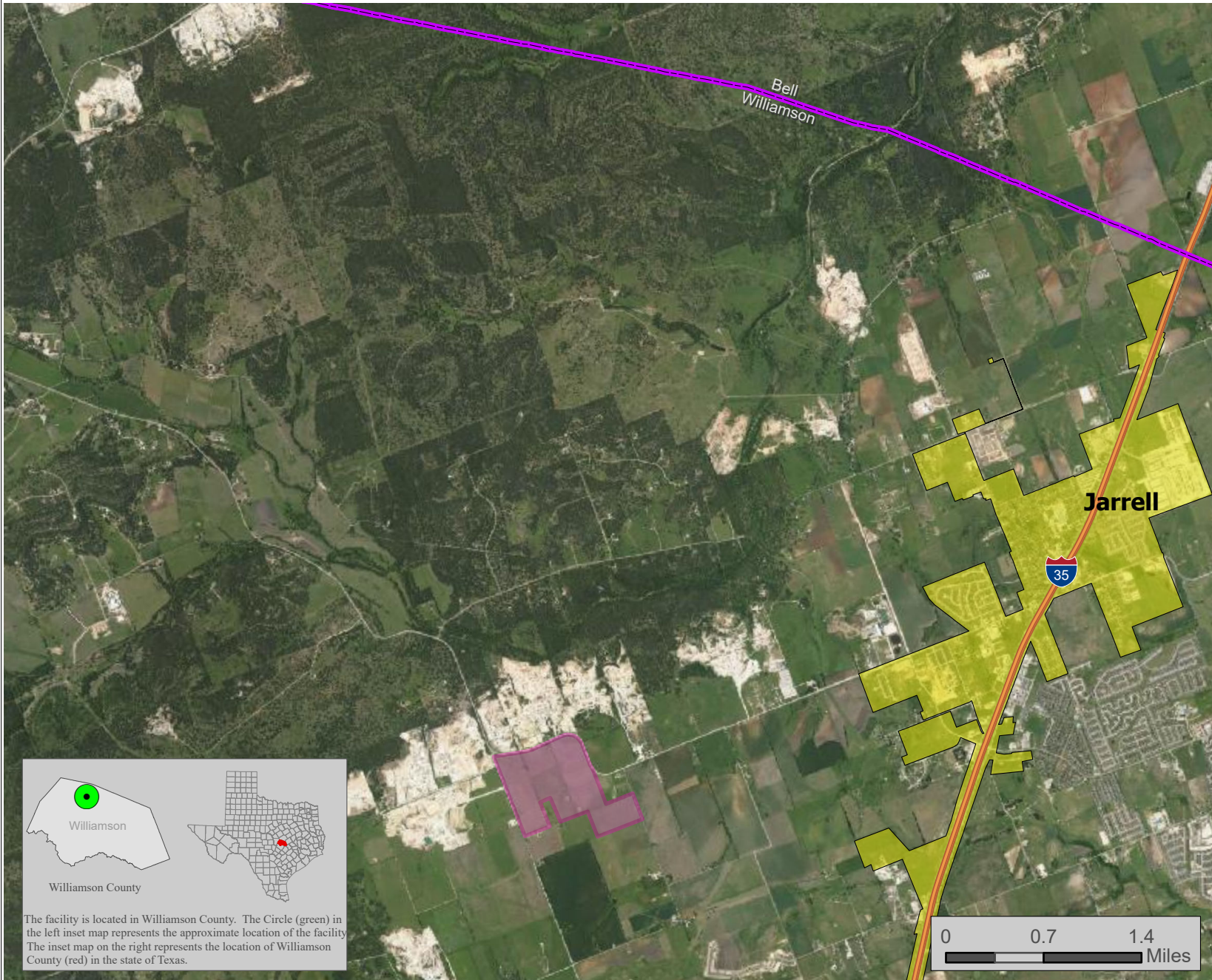


*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 11/8/2023
CRF 0097108
Cartographer: jbartlin



-  MUD Boundary
-  City Boundary
-  County Boundary



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



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

MAILING LIST

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TCEQ Docket No. 2023-1666-DIS; Internal Control No. D-07112023-012

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