

TCEQ DOCKET NO. 2024-0135-DIS

APPLICATION FOR THE
CREATION OF CIRCLE S MIDDLE
MUNICIPAL UTILITY DISTRICT OF
ELLIS COUNTY

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests on the petition by Circle S Midlothian, LLC (Petitioner) for the creation of Circle S Middle MUD of Ellis County (District).

The District would contain 407.5 acres located within Ellis County. The proposed District is located approximately six and a half miles southeast of the City of Midlothian (City) central business district, just South of FM Road 875, and approximately one mile west of the intersection of FM Road 875 and Norrell Road. The proposed District is within the extraterritorial jurisdiction (ETJ) of the City. Access to the District will be from FM Road 875.

The Petition states that the proposed District will:

(1) construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate such additional facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is created.

The Petition further states that the planned residential and commercial development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State’s waters and the public health and welfare of the community.

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

As discussed below, the ED recommends granting Ellis County’s (the County) hearing request.

Included with the ED’s response is Attachment A (map of the proposed District in relation to the County).

II. PROCEDURAL HISTORY

The Petitioner filed an application with the TCEQ for the creation of the District and it was declared administratively complete on August 23, 2023. The Notice of District Petition was published on October 12 and 19, 2023, in the *Midlothian Mirror*, a newspaper regularly published or circulated in Ellis County, the county in which the

proposed District is proposed to be located. The Notice of District Petition was also posted on April 18, 2023, on the bulletin boards used for posting legal notices in the Ellis County Clerk's Office. The TCEQ received one timely request for a contested case hearing. The period to request a contested case hearing ended on November 20, 2023.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing request on June 12, 2024.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

A. District Purpose

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. Tex. Water Code § 54.011. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code.

A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

Tex. Water Code § 54.012. The Commission has jurisdiction to hear this case and create the District. Tex. Water Code § 54.014.

B. Required Findings

The Commission must grant or deny a MUD creation application in accordance with Tex. Water Code § 54.021. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the district. Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.13(b)(1). If the Commission fails to make these findings, it shall refuse to grant the petition. Tex. Water Code § 54.021(d); 30 Tex. Admin. Code § 293.13(a).

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

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

Tex. Water Code § 54.021(b).

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings. 30 Tex. Admin. Code § 293.13(b)(2); Tex. Water Code § 54.021(c).

C. City Consent

TCEQ regulations require all district creation applications to contain “a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Local Government Code, § 42.042.” 30 Tex. Admin. Code § 293.11(a)(2). Commission Rules further state that “[i]f the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Local Government Code, § 42.042, have been followed.” *Id.*

MUDs are also subject to the city consent requirements of Tex. Water Code § 54.016, which states that “[n]o land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section.” Tex. Water Code 54.016(a); Loc. Govt. Code § 42.042(a). If the city fails or refuses to give consent within 90 days after receipt of a written request, the land owners in the area “may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.” Tex. Water Code § 54.016(b); Loc. Govt. Code, § 42.042(b). If the landowners and the city then fail to execute a “mutually agreeable contract” for the provisions of the requested services within 120 days after receipt of the petition, “the failure shall constitute authorization for the inclusion of the land in the district under the provisions of this section.” Tex. Water Code § 54.016(c); Loc. Govt. Code § 42.042(c). The Texas Water Code goes on to state that:

If the city fails or refuses to grant permission for the inclusion of land in a district or to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within the time limits contained within Subsection (b) or (c) of this section, the applicant may petition the commission for creation of the district or

inclusion of the land in a district. The commission shall allow creation or inclusion of the land in a proposed district upon a finding that the city either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. The commitment shall provide that construction of the facilities necessary to serve the land shall be commenced within two years, and shall be substantially complete within four and one-half years from the date the petition was filed with the city.

Tex. Water Code § 54.016(d).

IV. EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the Petitioner, or affected persons may request a contested case hearing on this application. 30 Tex. Admin. Code § 55.251(a). The Commission must evaluate the hearing requests and may take one of the following actions:

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

30 Tex. Admin. Code § 55.255(a).

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition. 30 Tex. Admin. Code § 55.251(b) and (d). These two requirements are mandatory. The affected person’s hearing request must also substantially comply with the following:

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

30 Tex. Admin. Code § 55.251(c).

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public. 30 TEX. ADMIN. CODE § 55.256(a). The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

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

30 Tex. Admin. Code § 55.256(c).

VI. HEARING REQUESTS

A. Analysis of Ellis County's Hearing Request

Emily W. Rogers, on behalf of Ellis County, submitted a timely request which contained her name, address, and phone number pursuant to 30 Tex. Admin. Code § 55.251(c)(1). She requested a contested case hearing pursuant to 30 Tex. Admin. Code § 55.251(c)(3). She also provided the internal control number as required in the notice and pursuant to 30 Tex. Admin. Code § 55.251(c)(4). Furthermore, Ms. Rogers identified the County's personal justiciable interest pursuant to 30 Tex. Admin. Code § 55.251(c)(2); she raised issues relating to groundwater levels within the region, the recharge capability of a groundwater source, and water quality, stated how Ellis County would be affected by the District in a way uncommon to the general public, and described that the proposed District lies fully within Ellis County. As such, the Executive Director finds that Ellis County is an affected person pursuant to the criteria in 30 Tex. Admin. Code § 55.256 and recommends the Commission grant its hearing request.

VII. Recommendation

The Executive Director recommends that the Commission grant the hearing request of Ellis County.

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

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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Docket No. 2024-0135-DIS; Internal Control No. D-08232023-047

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Attachment A

For the Creation of Circle S Middle Municipal Utility District of Ellis County



*Protecting Texas by
Reducing and
Preventing Pollution*

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

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 2/15/2024
CRF 0098456
Cartographer: MAttoh

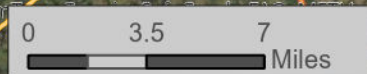


-  Proposed District Boundary
-  County Boundary
-  Texas Outline
-  Interstate
-  Toll Road
-  Highway
-  Intermediate Roads



The facility is located in Ellis 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 Ellis County (red) in the state of Texas.

Texas Parks & Wildlife, COMANP, Esri, TomTom



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.