

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 3, 2024

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

Re: Williamson County Municipal Utility District No. 48; TCEQ Docket No. 2024-0669-DIS

Dear Ms. Gharis:

I have enclosed for filing the "Executive Director's Response to a Hearing Request."
Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kayla Murray".

Kayla Murray
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2024-0669-DIS

APPLICATION FOR THE CREATION OF WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 48	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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EXECUTIVE DIRECTOR’S RESPONSE TO A HEARING REQUEST

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) files this Response to a Hearing Request on the petition by Cathy Moore and Marl Albrecht (“Petitioner”) for the creation of Williamson County Municipal Utility District No. 48 (“District”).

The proposed District would contain 506.558 acres located within Williamson County. The proposed District is located east of CR 101 and is bound by Chandler Road to the south and the San Gabriel River to the north. The proposed District is located outside the corporate boundaries or extraterritorial jurisdiction of any municipality.

The Petition states that the general nature of the work to be done by the proposed district is: 1) to purchase, construct, acquire, 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, and commercial purposes; 2) to collect, transport, process, dispose of and control domestic, and commercial wastes; 3) to gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; 4) to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; design, acquire, construct, finance, improve, and maintain parks and recreational facilities; 5) and to purchase, construct, acquire, 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 District is created. The Petition also requests the Commission grant the Petitioner authority to design, acquire, construct, finance, and issue bonds for a roadway system as well as for parks and recreational facilities, pursuant to TEX. WATER CODE §§ 54.234 and 54.201, respectively.

The Petition goes on to state that the area proposed to be within the District is in a developing area of Williamson County, Texas, and within the foreseeable future will experience a substantial and sustained residential growth, and there is not now available within the area, which will be developed as residential subdivisions, an adequate water supply and distribution system, sanitary sewer system, and drainage system.

Included with the ED’s response is a TCEQ-generated map of the proposed District; it is labeled Attachment A.

II. PROCEDURAL HISTORY

The Petitioner filed an application for the creation of the District on August 25, 2023, and the application was declared administratively complete on August 25, 2023. The Petitioner published the Notice of District Petition in the *Austin Chronicle*, a newspaper

generally circulated in Williamson County, where the district is proposed to be located, on November 10, 2023, and November 17, 2023. On October 31, 2023, proper notice of the application was posted in the Williamson County Courthouse, the place where legal notices in Williamson County are posted. The TCEQ received one letter on December 6, 2023, opposing the creation of the district. The period to request a contested case hearing ended on December 18, 2023.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing request on June 26, 2024.

III. THE CREATION OF MUNICIPAL UTILITY DISTRICTS

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.

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. 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 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:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and

- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

Tex. Water Code § 54.021(b).

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

IV. THE 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 applicant 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). Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application. *30 TEX. ADMIN. CODE § 55.256(b)*.

V. THE HEARING REQUEST AND ANALYSIS

J. Grady Randle, on behalf of Williamson County ("County"), submitted a timely hearing request which included all of the required information for a contested case hearing request pursuant to 30 TAC § 55.251(c)(1).

The proposed MUD is located within Williamson County. Mr. Randle's request raised issues relating to roads, law enforcement, fire and EMS services, and animal control services. The request asserted that Williamson County has statutory authority over these issues and has statutory authority over or interest in issues relevant to the application as required by 30 TAC § 55.256(b).

In evaluating whether a MUD is feasible, practicable, 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, included but not limited to water districts, municipalities, and regional authorities; the reasonableness of projected construction costs, tax rates, and water and sewer rates; and 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)(1-3)*.

Although the issue of road construction is not included in the factors set forth in Texas Water Code § 54.021(b) for the Commission to consider when reviewing a district creation application, the granting of road powers to the proposed district is an issue that is part of the creation petition review process and part of the TCEQ's decision on the petition. As a result, the issue of road powers is an issue that is relevant to the application. *Tex. Water Code § 54.234(d)(1)* provides that an approved

district may undertake a road project if, “the... county with platting jurisdiction has approved the plans and specifications.”¹ As such, the County has shown that it has statutory authority over an issue relevant to the application and is an affected person pursuant to 30 TAC § 55.256(c)(6). The other issues raised by the County are outside of TCEQ’s jurisdiction to consider as part of the MUD creation process.

VI. RECOMMENDATION

The Executive Director recommends that the Commission find that Williamson County is an affected person and grant its hearing request. Should the Commission deny the County’s hearing request, the Executive Director recommends the Commission grant the creation petition.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

Kelly Keel, Executive Director

Charmaine Backens, Deputy Director
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By: 

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

¹ Tex. Water Code § 54.234(d)(2) allows for an approved district to undertake a road project if the Texas Transportation Commission has approved the plans and specifications, and the state is to maintain and operate the road.

MAILING LIST
Williamson County Municipal Utility District No. 48
Docket No. 2024-0669-DIS; Internal Control No. D-08252023-052

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Attachment A

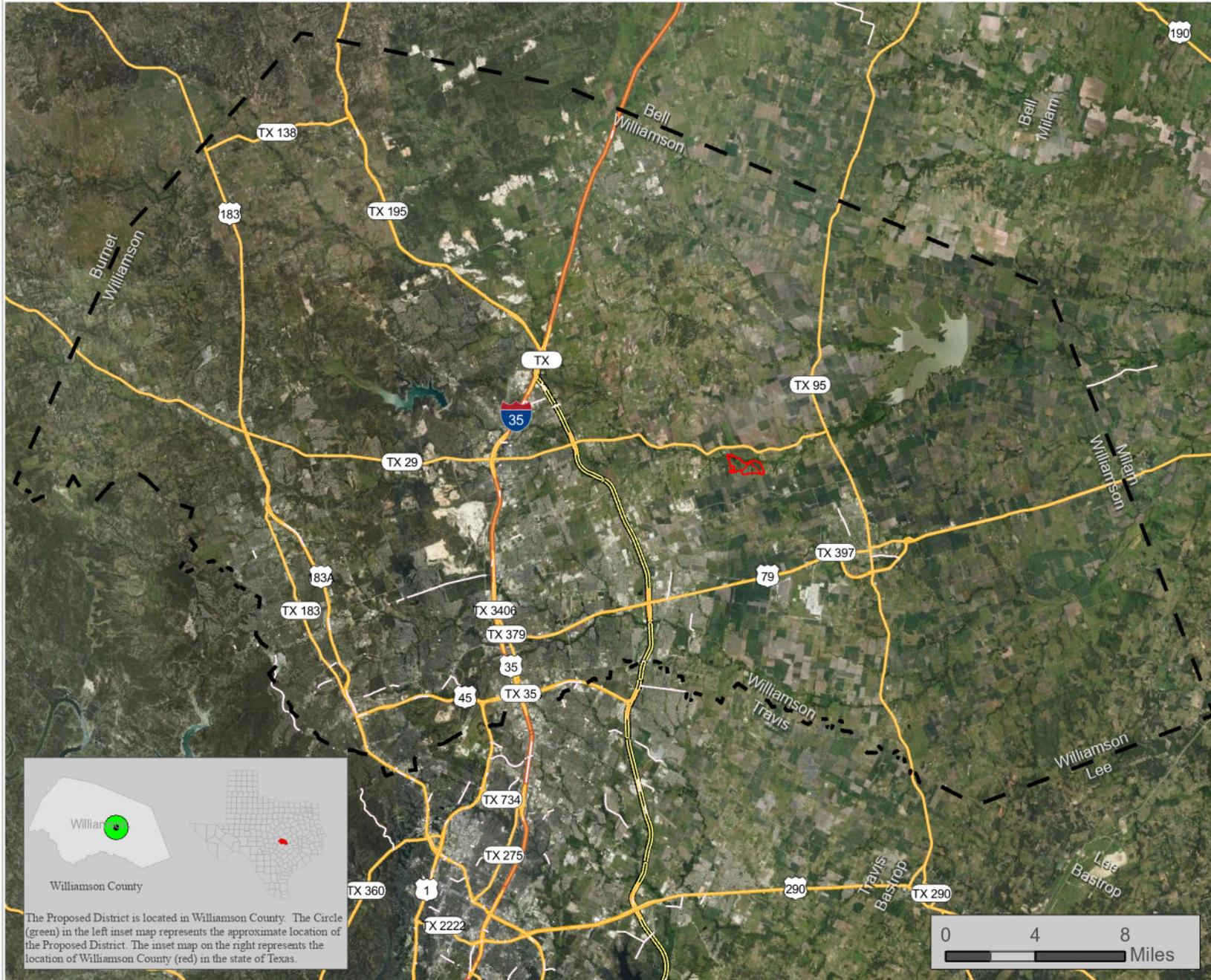
Proposed Williamson County MUD No. 48

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: 3/5/2024
CRF 0100193
Cartographer: MAttoh



- Williamson County
- Proposed District Boundary
- Interstate
- Toll Road
- Highway
- Intermediate Roads

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

Source: The location of the Proposed District 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.