

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 25, 2024

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

Re: Application For Preston Road Municipal Utility District of Grayson County;  
TCEQ Docket No. 2024-1611-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. 2024-1611-DIS**

**APPLICATION FOR THE CREATION  
OF PRESTON ROAD  
MUNICIPAL UTILITY DISTRICT  
OF GRAYSON COUNTY**

**§  
§  
§  
§**

**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**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 Preston 56, L.P. ("Petitioner") for the creation of Preston Road Municipal Utility District of Grayson County ("District").

The proposed District would contain 295.131 acres located within Grayson County, east of FM 289, south of TX 56, and north of Pleasant Home Road generally southeast of the City of Southmayd. The District lies within the extraterritorial jurisdiction (ETJ) of the City of Southmayd. It is not located in the ETJ of any other city, town, or village.

The Petitioner submitted a petition to the City, requesting its consent to the creation. When more than 90 days passed without receiving consent, the Petitioner then submitted a petition to the City to provide water and sewer services to the District. When that 120-day period expired, and there was no mutually agreeable contract for services, the Petitioner moved forward with initiating proceedings to include the land within the proposed District. *TEX. WATER CODE § 54.016; 30 LOCAL GOVERNMENT CODE § 42.042.*

The Petition states that the general nature of the work to be done by the proposed district is: 1) the purchase, construction, acquisition, improvements, or extensions 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) the collection, transportation, processing, and disposal and control of domestic and commercial wastes; 3) to gather, conduct, divert, abate, amend and control local storm water or other harmful excesses of water in the proposed District; 4) the design, acquisition, construction, financing, improving, operating, and maintaining macadamized, graveled, or paved roads and turnpikes, or improvement in aid of those roads; 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. It is further proposed that the District be granted road powers pursuant to TEXAS WATER CODE § 54.234.

The Petition goes on to state that the District's area will, within the immediate future, experience a substantial and sustained residential growth, and there is not currently an adequate water supply and distribution system, sanitary sewer system, drainage system, and public road system.

Included with the ED's response is a TCEQ-generated map of the proposed District, labelled as Attachment A.

## **II. PROCEDURAL HISTORY**

The Petitioner filed an application for the creation of the District on December 27, 2023, and the application was declared administratively complete on December 28, 2023. The Petitioner published the Notice of District Petition in the *Herald Democrat*, a newspaper generally circulated in Grayson County, where the district is proposed to be located, on February 25, 2024, and March 3, 2024. On February 19, 2024, proper notice of the application was posted on the bulletin board used for posting legal notices in the Grayson County Courthouse. The TCEQ received one letter on March 6, 2024, opposing the creation of the district. The period to request a contested case hearing ended on April 2, 2024.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing request on November 20, 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. 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**

The City of Southmayd 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 City requested a contested case hearing pursuant to 30 TAC § 55.251(c)(3) and provided the TCEQ Internal Control Number for the case as required in the notice and pursuant to 30 TAC § 55.251(c)(4). The Executive Director recommends the Commission find that the hearing request by the City complies with the requirements of 30 TAC § 55.251.

As it is undisputed that the proposed District lies within the City's ETJ, the Executive Director recommends finding that the City of Southmayd is an affected person. The City has not consented to the creation of the District, and the issue of city consent is an interest that is protected by the law under which the application will be considered and is reasonably related to the interest claimed by the City and the activity regulated. 30 TEX. ADMIN. CODE § 55.256(a)(1) and (3). Also, to the city consent issue, the City has shown that it has authority under state law over issues contemplated by the application pursuant to 30 TEX. ADMIN. CODE § 55.256(b). Furthermore, the City raised issues relating to water quality which is a factor that the Commission must consider in district creation applications.

## **VI. RECOMMENDATION**


The Executive Director recommends that the Commission find that the City of Southmayd is an affected person and grant its hearing request. Should the Commission deny the City's hearing request, the Executive Director recommends the Commission grant the petition creation.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

Kelly Keel, Executive Director

Charmaine Backens, Deputy Director  
Environmental Law Division

By: 

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REPRESENTING THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Preston Road Municipal Utility District of Grayson County  
DOCKET NO. 2024-1611-DIS; INTERNAL CONTROL NO. D-12272023-031

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<https://www.tceq.texas.gov/goto/efilings>



# Attachment A

# Proposed Preston Road MUD of Grayson County

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

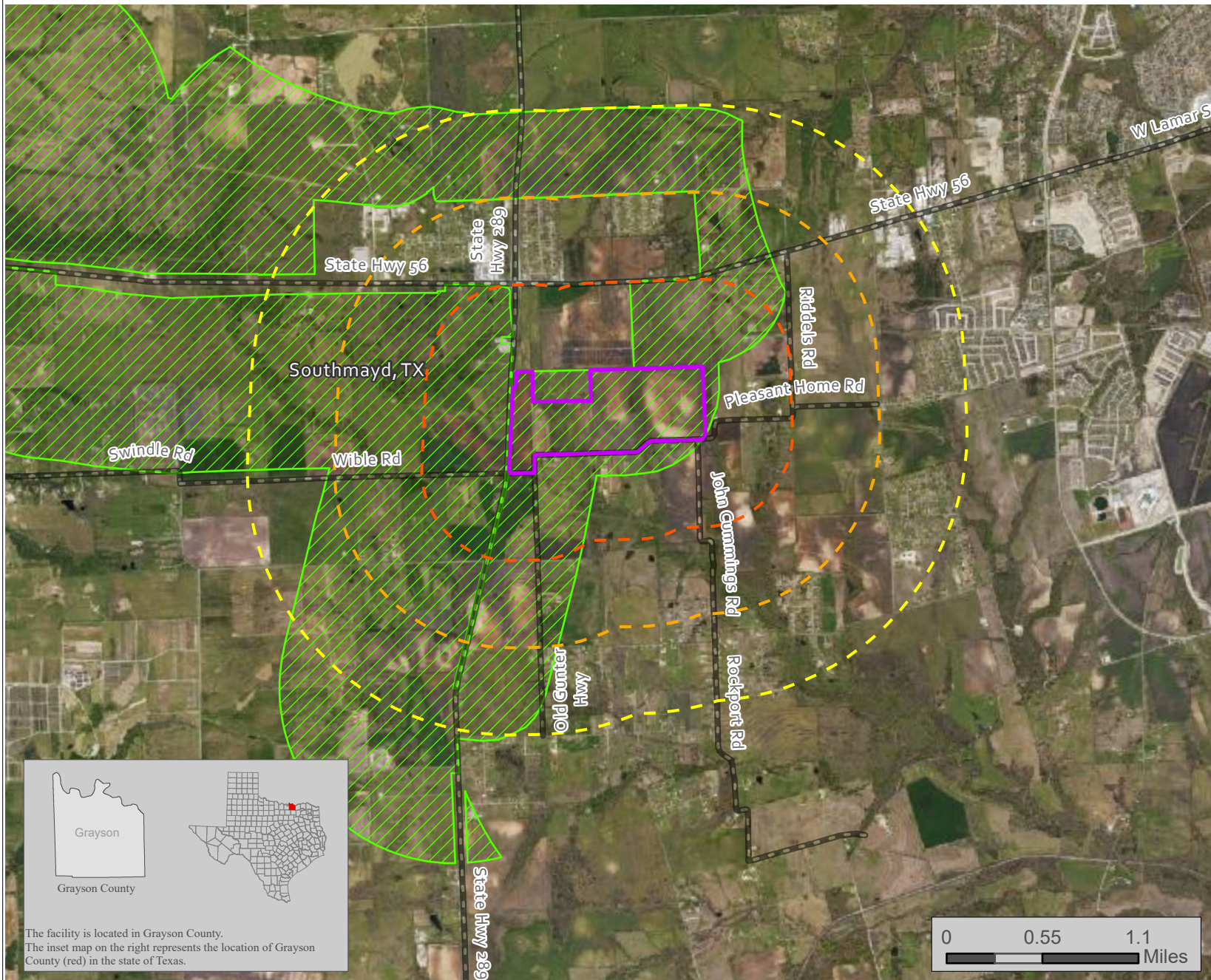


*Protecting Texas by  
Reducing and  
Preventing Pollution*

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 10/11/2024  
CRF 0104534  
Cartographer: jbartlin



- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- MUD Boundary
- Southmayd ETJ



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.

