

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

June 4, 2025

David Tuckfield
Attorney for Applicant

VIA EFILE TEXAS

Kayla Murray and Allie Soileau
Attorneys for ED

Pranjal Mehta
Attorney for OPIC

Joshua Katz
Attorney for City of Hays

Victoria Rose
Attorney for Aligned Protestants

**RE: SOAH Docket Number 582-24-15644; TCEQ No. 2023-1588-DIS;
*Petition of Hays Commons Land Investments, LP for Creation of Hays
Commons Municipal Utility District***

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

PETITION OF HAYS COMMONS LAND INVESTMENTS, LP FOR CREATION OF HAYS COMMONS MUNICIPAL UTILITY DISTRICT

I.	Notice, Jurisdiction, and Procedural History	1
II.	Applicable Law	3
III.	The Proposed Development and the Request for Service.....	8
IV.	Petition	10
A.	Whether the Project is Feasible, Practicable, Necessary, and Would Benefit the Land Included in the District	10
1.	Availability of Comparable Service	10
a.	Applicant’s Evidence and Position	11
b.	Aligned Protestants’ Evidence and Position	12
c.	City’s Evidence and Position.....	12
d.	ALJ’s Analysis	13

2.	Construction Costs, Tax Rates, and Water and Sewer Rates ...	13
a.	Applicant’s Evidence and Position	14
b.	City’s and Aligned Protestants’ Evidence and Position .	17
c.	ED’s Evidence and Position	19
d.	ALJ’s Analysis	19
3.	Unreasonable Effects	21
a.	Water Quality.....	21
1)	Applicant’s Evidence	22
2)	Aligned Protestants’ Evidence and Argument	22
3)	City’s Evidence and Argument	24
4)	OPIC’s Arguments	24
5)	ED’s Evidence and Position	25
6)	ALJ’s Analysis	25
b.	Land Elevation or Subsidence	26
c.	Groundwater Levels in the Region and Recharge Capability of a Groundwater Source.....	26
d.	Natural Run-off Rates and Drainage.....	29
e.	Total Tax Assessment	31
B.	Complete Justification	32
C.	Road Powers	32
V.	Transcript Costs	33
VI.	Conclusion.....	35

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PETITION OF HAYS COMMONS LAND INVESTMENTS, LP FOR CREATION OF HAYS COMMONS MUNICIPAL UTILITY DISTRICT

PROPOSAL FOR DECISION

Hays Commons Land Investments, LP (Applicant) filed a petition (Petition) with the Texas Commission on Environmental Quality (TCEQ or Commission) requesting the creation of the Hays Commons Municipal Utility District (District) for a planned residential and commercial development. The Administrative Law Judge (ALJ) recommends that the Commission grant the 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 in the Proposed Order attached to this Proposal for Decision (PFD).

Applicant filed the Petition with the Commission on June 20, 2023.¹ The Petition was declared administratively complete on June 29, 2023. At its March 6, 2024 open meeting, TCEQ voted to refer this matter to the State Office of Administrative Hearing (SOAH).² On April 9, 2024, this matter was docketed at SOAH.

A preliminary hearing was held on May 28, 2024. Applicant, TCEQ's Executive Director (ED), the TCEQ Office of Public Interest Counsel (OPIC), the City of Hays (City), Save Our Springs Alliance (SOS), Philip Brisky, Darlene and Michael Starr, Antonio Valdez, Lydia Bryan Valdez, and Keith Whittington were named as parties. The individual protestants, except for Mr. Whittington,³ were aligned with SOS. The group consisting of SOS and the aligned individual protestants will be referred to as Aligned Protestants.

Applicant and Aligned Protestants each filed cross motions for partial summary disposition on certain issues. At the prehearing conference on February 7, 2025, the ALJ orally granted Applicant's motion as to the issue of required signatures on the Petition. This part of Applicant's motion was unopposed. Aligned Protestants' motion was denied. An order memorializing those rulings was issued.

¹ App. Ex. 3-02.

² App. Ex. 1 (Admin. Record) at Tab A.

³ Mr. Whittington did not participate in the hearing on the merits or file closing briefs.

The hearing on the merits was held on February 11-12, 2025, before ALJ Rebecca Smith via Zoom videoconference. Applicant was represented by attorney David Tuckfield; City was represented by attorney Joshua Katz; Aligned Protestants were represented by attorneys Victoria Rose and Bobby Levinski; the ED was represented by attorneys Kayla Murray and Allie Soileau; and OPIC was represented by attorney Pranjal Mehta.

Applicant introduced 20 exhibits into evidence and presented the testimony of four witnesses: experts Daniel Ryan, P.E.; Shani Armbruster; Eldon Rude; Kaveh Khorzad, P.G.; and Garry Kimball. The City introduced eight exhibits and presented the testimony of its expert witness Donald Rauschuber, P.E. Aligned Protestants introduced ten exhibits and presented the testimony of their expert witness Nico Hauwert, Ph.D. The ED introduced four exhibits into evidence and presented the testimony of technical reviewer James Walker.

The record closed on April 9, 2025, after submission of written closing arguments.

II. APPLICABLE LAW

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, chapters 49 and 54 of the Texas Water Code, and the Commission's administrative rules found at 30 Texas Administrative Code chapter 293. A MUD

may be created either through special law enacted by the Legislature or, pursuant to general law, through administrative order of the Commission.⁴

The purposes of a MUD include the control and distribution of storm water, floodwater, and the water of 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.⁵ 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, among other things, 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.⁶ 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.⁷

⁴ Tex. Water Code §§ 54.018-.021.

⁵ Tex. Water Code § 54.012.

⁶ Tex. Water Code § 54.201.

⁷ Tex. Water Code §§ 54.209, .234-.237, .501-.604.

Land within the corporate limits or extraterritorial jurisdiction (ETJ) of a city may not be included within a district without the city's written consent.⁸ An applicant must send a request for consent to the city, signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls.⁹ If the city does not give consent within 90 days after receipt of the request, "a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included 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."¹⁰ If the city and the petitioners fail to execute a mutually agreeable contract for the requested water or sanitary service within 120 days after the city received the petition, this failure "shall constitute authorization for the inclusion of the land in the district under the provisions of this section."¹¹ At that point, the applicant may file a petition with the Commission for the creation of the district.¹²

A petition requesting creation of a district 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.¹³ Further, under Texas Water Code section 54.015, the petition shall:

⁸ Tex. Water Code § 54.016(a).

⁹ Tex. Water Code § 54.016(a); *see also* Tex. Local Gov't Code § 42.042(b).

¹⁰ Tex. Water Code § 54.016(b); *see also* Tex. Local Gov't Code § 42.042(b).

¹¹ Tex. Water Code § 54.016(c); *see also* Tex. Local Gov't Code § 42.042(c).

¹² Tex. Water Code § 54.016(d).

¹³ Tex. Water Code § 54.014.

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[.]¹⁴

The Commission's rules also require the petition to include the following: 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

If the Commission receives one or more hearing requests and determines that a hearing is necessary, the petition is referred to SOAH for hearing.¹⁷ The issues to be determined at the hearing are the "sufficiency of the petition" (which in context would include compliance with Texas Water Code section 54.015 or other procedural

¹⁴ Tex. Water Code § 54.015.

¹⁵ 30 Tex. Admin. Code § 293.11(a)(6), (d).

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

¹⁷ See Tex. Water Code §§ 49.011, 54.018-.020; Tex. Gov't Code § 2003.047.

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.”¹⁸ In determining if the project is feasible, practicable, necessary, and beneficial 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.¹⁹

The Commission shall grant the petition if it conforms to the requirements of Texas Water 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.²⁰ The Commission shall deny the petition if it does not conform to the requirements of Texas Water

¹⁸ Tex. Water Code § 54.020(a).

¹⁹ Tex. Water Code § 54.021(b).

²⁰ Tex. Water Code § 54.021(a).

Code section 54.015, or if the project is not feasible, practicable, necessary, or a benefit to the land in the district.²¹ 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 which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.²²

Applicant bears the burden of proof by a preponderance of the evidence.²³

III. THE PROPOSED DEVELOPMENT AND THE REQUEST FOR SERVICE

The District consists of approximately 290.388 acres located in Hays County, immediately north of the City.²⁴ It is located west of the intersection of State Highway 45 and FM 1626. Approximately 90 percent of the District's area lies within the Edwards Aquifer Recharge Zone.²⁵

At the time the Petition was filed, this area was located in the City's ETJ. On September 1, 2022, Applicant submitted a request for consent to the creation of the District to the City.²⁶ The City did not grant consent within 90 days.²⁷ On

²¹ Tex. Water Code § 54.021(d).

²² Tex. Water Code § 54.021(c).

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

²⁴ App. Ex. 2-02 at 1-2.

²⁵ City Ex. 1 at 17.

²⁶ App. Ex. 3-02, Exhibit B.

²⁷ App. Ex. 2 at 12.

November 18, 2022, Applicant petitioned the City for water and sewer services.²⁸ Applicant and the City did not enter into a mutually agreeable contract for water or sewer service within 120 days.²⁹ On September 26, 2023, the area of the proposed District was removed from the ETJ.³⁰

The District's proposed development would consist of 278 single family lots, on approximately 111.09 acres. It could also contain an amenity center and approximately 139.67 acres of parks and open spaces. Another 13.84 acres are proposed for commercial development.³¹ The single-family portion would be constructed in three phases, and other facilities, such as those for water, wastewater, drainage, and road improvements would also be constructed in phases.³² The District intends to obtain water from three wells completed within the Lower Trinity Aquifer.³³ It intends to handle wastewater by treating the water and then using the treated water to irrigate a specified area. To do so, it must first obtain a Texas Land Application Permit (TLAP) from TCEQ.

The District makes up only part of a larger development project: the entire Hays Commons project, in total, consists of 500 acres. The Petition, and the

²⁸ App. Ex. 2 at 12-13.

²⁹ App. Ex. 2 at 13.

³⁰ App. Ex. 2 at 10.

³¹ App. Ex. 2 at 8-9; App. Ex. 2-02 at 2.

³² App. Ex. 2 at 10.

³³ App. Ex. 5 at 11.

infrastructure discussed in it, covers the portion of the intended project that is located outside of the ETJ of the City of Austin (Austin).³⁴

IV. PETITION

Neither Aligned Protestants nor the City contend that the Petition failed to address the components required by Texas Water Code sections 54.014 and .015.³⁵ Those requirements will be set out in the findings of fact and conclusions of law without further discussion in the PFD.

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

Once it is determined that the Petition conforms to the requirements of Texas Water Code sections 54.014 and 54.015, the next consideration is whether “the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district.”³⁶ This analysis is made by considering the factors listed in Texas Water Code section 54.021(b).

1. Availability of Comparable Service

The first factor is “the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional

³⁴ Transcript (Tr.) Vol. 1 at 117-18.

³⁵ Summary disposition was granted in Applicant’s favor on the issue of whether the Petition complied with the signature requirements set out in Texas Water Code section 54.104.

³⁶ Tex. Water Code § 54.021(a).

authorities.”³⁷ It is undisputed that the City does not have a collective wastewater system and lacks available capacity for water service.³⁸ The parties’ disagreement focuses on whether water and wastewater services are available from Austin.

a. Applicant’s Evidence and Position

Applicant’s witness Daniel Ryan testified that Austin originally responded to Applicant’s request for service by stating that the project area would not be served because it was outside the impact fee area boundary.³⁹ He also testified that “despite lengthy discussions and negotiations from the original application filed in October 2022, . . . Austin has not yet agreed to provide water and wastewater service to the property.”⁴⁰ Austin would require annexation as a condition of service.⁴¹ He agreed that obtaining service from Austin would be feasible, but emphasized that Austin has not yet agreed to provide it.⁴²

Applicant also notes that SOS, one of the Aligned Protestants, has opposed the effort to have Austin serve the project.⁴³ Applicant’s witness Shani Armbruster testified that it is her belief that the dispute involves Applicant’s request for a variance to Austin’s 15 percent impervious cover limit. Applicant and some Austin

³⁷ Tex. Water Code § 54.021(b)(1).

³⁸ App. Ex. 2 at 14.

³⁹ App. Ex. 2 at 14.

⁴⁰ App. Ex. 2 at 15.

⁴¹ Tr. Vol. 1 at 126.

⁴² App. Ex. 2 at 15.

⁴³ Tr. Vol. 1 at 62 (“Save Our Springs has been one of the most vocal opponents of our City of Austin plan.”).

staff members have had discussions, but the request has not been formally considered.⁴⁴ Mr. Ryan testified that progress was made but then, in his view, thwarted:

I think the overall approach would be that there are a lot of gives by both sides, both the City of Austin and the developer in order to make that service plan work. And everyone thought they had an agreement on it, but I think SOS was able to politically pressure the City to avoid doing that.⁴⁵

b. Aligned Protestants' Evidence and Position

Aligned Protestants argue that because Applicant is still actively seeking water and wastewater service from Austin, it cannot meet its burden to show that comparable service is unavailable.⁴⁶

c. City's Evidence and Position

The City, like Aligned Protestants, contends that service is available, even if it is conditioned on compliance with an otherwise inapplicable regulation. The City analogizes this to compliance with other regulations:

Applicant could comply with the requirements of Austin to receive water and wastewater service, just as it would have to comply with the requirements of the Barton Springs-Edwards Aquifer Conservation District in order to obtain permits to drill the water wells it will need to supply its development if it cannot obtain service from Austin, or

⁴⁴ Tr. Vol. 1 at 64-65.

⁴⁵ Tr. Vol. 1 at 126.

⁴⁶ Aligned Protestants' Closing at 17-18; Aligned Protestants' Reply at 1.

TCEQ's requirements to construct a wastewater facility. Neither make service unavailable.⁴⁷

d. ALJ's Analysis

It appears that service from Austin would be preferable to the protestants in many ways. Obtaining that service would remove Aligned Protestants' and the City's concerns with the TLAP, which are discussed below. Similarly, there would be no concerns about the District's effects on groundwater levels, also discussed below. And from all the evidence, Applicant has attempted to obtain service from Austin. But an agreement has not been reached, and therefore Austin has not agreed to provide service. The City's analogy to complying with the Commission's and groundwater conservation district's regulations is inapt: Applicant is not currently subject to Austin's regulations. Unless Applicant and Austin reach an agreement, Austin has no say over the project. Applicant cannot be required to wait in limbo indefinitely.⁴⁸ Applicant has established that comparable water and wastewater service is not available from Austin.⁴⁹

2. 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

⁴⁷ City's Response at 2.

⁴⁸ What's more, Aligned Protestants have not disputed that SOS played a significant role in preventing the service agreement from being considered, much less adopted. It cannot both block service and argue it is available.

⁴⁹ Additionally, under Commission precedent, service is unavailable when it is conditioned on annexation. *Application by Crystal Clear Special Utility District and MCLB Land, LLC for TPDES Permit No. WQ0015266002 in Hays County, Texas*, TCEQ Docket No. 2020-0411-MWD, SOAH Docket No. 582-20-4141, Commission Order, Finding of Fact 47 (June 14, 2021).

must next consider the reasonableness of projected construction costs, tax rates, and water and sewer rates.⁵⁰ The Commission considers whether these costs and rates were reasonable at the time the Petition was submitted and does not consider future projections.⁵¹

a. Applicant's Evidence and Position

Applicant presented the testimony of Mr. Ryan, who has 29 years of experience in the design, specification, permitting, and construction of drainage, water quality, water, and wastewater facilities.⁵² He has worked on site development, residential subdivision, and utility system improvement projects.⁵³ He has also worked as a district engineer for special utility districts.⁵⁴ Mr. Ryan prepared the preliminary engineering report (Creation Report) and assisted with the Petition.⁵⁵ He testified that the cost estimates in the Creation Report, which total \$20,791,828, are reasonable estimates and that Applicant will not be required to construct any infrastructure or incur development expenses beyond those that are normal for a similar development.⁵⁶

⁵⁰ Tex. Water Code § 54.021(b)(2).

⁵¹ *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).

⁵² App. Ex. 2 at 3.

⁵³ App. Ex. 2 at 3.

⁵⁴ App. Ex. 2 at 3.

⁵⁵ App. Ex. 2 at 7.

⁵⁶ App. Ex. 2 at 16.

At hearing, Mr. Ryan agreed that Hays County regulations could create difficulties with building as planned, but described possible alternatives:

There are some requirements or regulations in Hays County development ordinances relating to the type of water source and the type of wastewater treatment associated with a project. And so if we were doing a conventional subdivision with a platted single family lots, then you would have to comply with those, or perhaps go under their conservation development regulations, which makes some allowances, you know, in exchange for buffers for other approaches.

And then another alternative would be to go with what's called a condominium plat where you still have detached single family units, but they're all within one master lot, and you would still potentially comply with regulations. That way, because you wouldn't be subdividing per se, you would be just doing a condominium and conveying interest in the condo units.

The method of the developments is probably, you know, something that's beyond the scope of my creation, but there are ways to address it other than just a traditional platted development.⁵⁷

Mr. Ryan also determined that the District's projected tax rate is \$1.20 per \$100 of assessed valuation,⁵⁸ and witness Garry Kimball determined that the projected total tax rate for all taxing entities overlapping the District is \$2.9724 per \$100 valuation.⁵⁹ Mr. Ryan testified that this was a reasonable tax rate.⁶⁰ Mr. Kimball added that the overlapping tax rate is within the generally accepted rate of \$2.75 to

⁵⁷ Tr. Vol. 1 at 145-46.

⁵⁸ This total is broken into \$1.13 per \$100 of assessed valuation for debt service and an operations and maintenance tax rate of \$0.07 per \$100 of assessed valuation. App. Ex. 2 at 17.

⁵⁹ App. Ex. 6 at 10.

⁶⁰ App. Ex. 2 at 17.

\$3.00 per \$100 of assessed valuation.⁶¹ He testified that the rate is in line with similar MUDs in the central Texas area.⁶²

Under TCEQ regulations, tax rates for MUDs generally must remain at or below \$1.20 per \$100 of taxable property valuation.⁶³ If costs exceed that amount, then the developer cannot be fully reimbursed.⁶⁴ Mr. Kimball testified that a developer “would simply make less profit at the end of the day because they would end up having to finance more of the infrastructure than could legally be reimbursed through the issuance of MUD bonds.”⁶⁵ According to Mr. Kimball, developers not being fully reimbursed “happens all the time.”⁶⁶

Mr. Ryan testified that the District is expected to provide retail water service at rates that are comparable to other utilities with comparable groundwater facilities. Specifically, he testified that the monthly average water bill is estimated to be approximately \$105 for a 10,000 gallon per month use.⁶⁷

⁶¹ App. Ex. 6 at 10.

⁶² App. Ex. 6 at 11.

⁶³ App. Ex. 6 at 9.

⁶⁴ Tr. Vol. 1 at 25.

⁶⁵ Tr. Vol. 1 at 26.

⁶⁶ Tr. Vol. 1 at 26.

⁶⁷ App. Ex. 2 at 18.

Similarly, he testified that the wastewater rates were projected based on the rates charged by similar districts that use comparable facilities. The average monthly wastewater bill is estimated to be \$115 for a 10,000 gallon per month use.⁶⁸

b. City's and Aligned Protestants' Evidence and Position

The City's expert Mr. Rauschuber, who is a professional engineer with a specialty in water resources engineering,⁶⁹ testified that he believed Applicant underestimated the cost of wells. Instead of Applicant's estimate of \$400,000 each,⁷⁰ Mr. Rauschuber opined that wells of that type and depth in the area would cost \$750,000 each.⁷¹ The City also argues that costs have increased by approximately 15 percent, according to Mr. Ryan, since the Petition was filed.⁷²

Although Mr. Rauschuber is a City witness, Aligned Protestants relied on his testimony in arguing about costs. In his testimony, Mr. Rauschuber stated that the Hays County development regulations provide for a minimum lot size of 0.75 acre for any development that relies upon a public groundwater system and that is located over the Edwards Aquifer Recharge Zone.⁷³ Despite that minimum, according to the

⁶⁸ App. Ex. 2 at 18.

⁶⁹ City Ex. 1 at 4.

⁷⁰ App. Ex. 2-02 at 22.

⁷¹ City Ex. 1 at 17. (Mr. Rauschuber testified that Applicant failed to include costs for wells. However, they are included as a line item in the Creation Report's cost tables. App. Ex. 2-02 at 22.)

⁷² City's Response at 4; Tr. Vol. 1 at 119-20.

⁷³ City Ex. 1 at 26.

Petition, the proposed single family lot size within the District would be between 0.25 to 0.33 acre.⁷⁴

Based on Mr. Rauschuber's testimony, Aligned Protestants argue that development cannot take place as contemplated by the District's development plan because the proposed lots are smaller than the minimum lot sizes. They also note that Hays County Commissioner's Court rejected Applicant's subdivision plan.⁷⁵ They argue that because the development plan cannot be followed, the projected construction costs, tax rates, and water and sewer rates based on that plan are not possible and, thus, unreasonable.⁷⁶ They also argue that the subdivision cannot be turned into condominiums based on the definition of condominiums in the Texas Property Code because the proposed development's homeowners' association would manage the common spaces, but membership would include all homeowners, not just condominium owners.⁷⁷

Aligned Protestants also argue that Applicant presented no evidence that the market study "is still accurate in 2025."⁷⁸

Finally, Aligned Protestants argue that the amount and nature of evidence of costs resembles the evidence in *Application for the Creation of Shankle Road MUD of*

⁷⁴ City Ex. 1 at 26.

⁷⁵ Tr. Vol. 1 at 151.

⁷⁶ Aligned Protestants' Closing at 4.

⁷⁷ Aligned Protestants' Closing at 4-5, citing Tex. Property Code § 82.003(8) and Tr. Vol. 1 at 40.

⁷⁸ Aligned Protestants' Closing at 9.

Ellis County.⁷⁹ In *Shankle Road*, a MUD creation petition was denied because of the lack of evidence about the reasonableness of the costs.⁸⁰

c. ED's Evidence and Position

The ED presented the testimony of James Walker, who testified that the construction costs, tax rates, and sewer rates appear in line with other recent applications in the same general area.⁸¹ The ED also distinguishes this case from *Shankle Road*, in that the then-Chair of the Commission noted that *Shankle Road* presented a situation where it was extremely difficult, “perhaps impossible” to assess costs because of the almost complete lack of evidence or analysis to back up a conclusory statement.⁸²

d. ALJ's Analysis

Initially, the ALJ notes that the Commission analyzes costs as of the date of the Petition.⁸³ Therefore, whether costs have increased since the petition date is irrelevant.

⁷⁹ Aligned Protestants' Response at 2 (citing *Application for the Creation of Shankle Road Municipal Utility District of Ellis County*, SOAH Docket No. 582-23-26772, TCEQ Docket No. 2023-0566-DIS, Proposal for Decision (Sept. 6, 2024)).

⁸⁰ *Application for the Creation of Shankle Road Municipal Utility District of Ellis County*, SOAH Docket No. 582-23-26772, TCEQ Docket No. 2023-0566-DIS, Final Order at Finding of Fact 50 (Dec. 5, 2024)).

⁸¹ Ex. ED-JW-1 at 15.

⁸² ED Response at 3 (citing Commissioners' Agenda Meeting, November 20, 2024, Agenda Item 1, available at <https://www.youtube.com/watch?v=yGGNgFt8ReM>).

⁸³ *Petition by Pitt Creek Ranch LLC for the Creation of Lampasas County Municipal Utility District No. 1*, SOAH Docket No. 582-23-16963, TCEQ Docket No. 2022-1653-DIS, Final Order, Finding of Fact 22 and Explanation of Changes 2 (Nov. 12, 2024).

Additionally, the evidence in this case differs dramatically from the evidence (or lack thereof) in *Shankle Road*. There, the applicant failed to include estimates for groundwater wells or a wastewater treatment plant, both significant costs.⁸⁴ In contrast, the Creation Report has not excluded cost estimates for major components. In *Shankle Road*, the expert had no experience with residential development or water infrastructure.⁸⁵ Here, Mr. Ryan (and Mr. Rauschuber, to be sure) have relevant experience. The only specific cost line item that there is testimony about is the cost of wells, and the two experts' estimates differ by \$350,000 per well. Although that is not an insignificant amount of money, in the grand scheme of the cost analysis, that difference is not enough to render the cost estimates in the Creation Report unreasonable.⁸⁶

The ALJ rejects the argument that costs, tax rates, and water and sewer rates are unreasonable because they are based on development plans that might need to be significantly altered to comply with Hays County's regulations. The statutory inquiry is whether the costs and rates are reasonable. Those construction costs almost certainly will not be what Applicant would ultimately incur should the development be built. Presumably some aspects of the development plan will alter as well. The cost estimates can still be reasonable. Applicant has evidence that the costs, tax rates, and water and sewer rates are in line with other construction. Other than a different estimate of the cost of drilling three wells, discussed above,

⁸⁴ *Shankle Road* PFD at 43.

⁸⁵ *Shankle Road* PFD at 44.

⁸⁶ Additionally, it is unclear whether Mr. Rauschuber's \$750,000 estimate was as of the date of the Petition or the date of the hearing.

Aligned Protestants do not contend those costs exceed what would be expected for the area. The Commission is not charged with determining what Hays County will do. It can only look at whether the proposed costs and rates are reasonable. The ALJ finds that the Applicant has established they are.

3. Unreasonable Effects

In determining whether a proposed MUD project is feasible, practicable, necessary, and would be a benefit to the land included, 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 with a district.⁸⁷ In their briefing, the City and Aligned Protestants challenge all of these factors but land elevation and subsidence. OPIC also challenges water quality. Because water quality is the most heavily contested factor, it will be addressed first.

a. Water Quality

Aligned Protestants and OPIC argue that Applicant has not met its burden to show that the District and its subsequent development will not have an unreasonable effect on water quality. Applicant and ED argue that this issue is meant to be addressed in a separate TCEQ TLAP proceeding.

⁸⁷ Tex. Water Code § 54.021(b)(3).

1) Applicant's Evidence

Applicant intends to build a wastewater facility through a separately-permitted facility that would treat the wastewater and then use it for irrigation in a specified location.⁸⁸ This kind of use may be authorized by a TLAP. Mr. Ryan testified that the wastewater facility would be designed, constructed, owned, and operated in compliance with its TCEQ permit.⁸⁹ He also testified that storm water facilities would be designed, constructed, operated, and maintained in accordance with federal, state, and local requirements.⁹⁰

2) Aligned Protestants' Evidence and Argument

In his testimony, Aligned Protestants' expert Dr. Hauwert described studies he and others conducted on the Edwards Aquifer near the proposed development site.⁹¹ Those studies include a dye tracing performed in 2012, the result of which suggested that the alluvial fill and the aquifer were not significantly filtering the water.⁹² He testified, "In the 1980's until early 1990's TCEQ permitted wastewater irrigation over the Edwards Aquifer Recharge Zone, which turned out disastrous despite engineer's assertions that the treatment was safe."⁹³ He added that "the Hays Common site is expected to be more sensitive [than] other portions of the

⁸⁸ Ex. PR-NH-10.

⁸⁹ App. Ex. 2 at 20.

⁹⁰ App. Ex. 2 at 20.

⁹¹ Ex. PR-NH-1 at 5.

⁹² Ex. PR-NH-1 at 5.

⁹³ Ex. PR-NH-1 at 7.

Edwards Aquifer.”⁹⁴ Dr. Hauwert did note, however, that the draft TLAP permit requires a “geological assessment to determine best management practices to prevent impact to recharge features from wastewater application and to prevent groundwater application.”⁹⁵ He testified that the proposed TLAP would affect water quality, concluding that “because of the high sensitivity of the proposed development and effluent irrigation, re-introduction of effluent irrigation to the Barton Springs recharge zone after multiple failures in the 1980’s and 1990’s, and lack of consideration of groundwater impacts, the proposed development seems likely to result in significant groundwater contamination.”⁹⁶

Aligned Protestants also argue:

Throwing caution to the wind, the draft permit issued by TCEQ for the proposed district’s TLAP does not have a limit on bacteria, nor does [the] draft permit have any limits on nutrients like phosphorus or nitrogen. But lessons from the past show that the irrigation of wastewater on the Edwards Aquifer Recharge Zone is a recipe for disaster that will unreasonably harm water quality and there is not even one scintilla of evidence in the record to suggest that this instance will be any different.⁹⁷

⁹⁴ Ex. PR-NH-1 at 7.

⁹⁵ Ex. PR-NH-1 at 6.

⁹⁶ Ex. PR-NH-1 at 9.

⁹⁷ Aligned Protestants’ Closing at 11 (citations omitted).

3) City's Evidence and Argument

The City argues that the Petition does not fully address significant groundwater quality concerns that the TLAP poses.⁹⁸ It notes that the ED's staff did not perform modeling and that Daniel Ryan, the Applicant's engineer, has never personally designed a TLAP facility.⁹⁹

City's witness Mr. Rauschuber testified that 90 percent of the land within the District is within the Edwards Aquifer Recharge Zone.¹⁰⁰ He testified that the area where the proposed TLAP is located is within an area of sensitive karst features.¹⁰¹ He described a study that found the existence of "52 surface karst features within the MUD boundaries, 27 of which have the TCEQ rating of sensitive."¹⁰² He expressed concern that this TLAP could pollute and degrade the City's sole source of public water supply, which comes from wells located close to the District.¹⁰³

4) OPIC's Arguments

OPIC points to Mr. Rauschuber's and Dr. Hauwert's testimony to argue that the characteristics of the recharge zone where the District's proposed TLAP would be located are inappropriate for a TLAP. OPIC argues "[c]oncerns about potential

⁹⁸ City Closing at 13.

⁹⁹ City Closing at 13.

¹⁰⁰ City Ex. 1 at 17.

¹⁰¹ City Ex. 1 at 23.

¹⁰² City Ex. 1 at 21.

¹⁰³ City Ex. 1 at 19, 23.

long-term effects on regional water quality and public health risks associated with wastewater disposal in such a sensitive recharge area cannot be overlooked during the District creation proceedings or deferred to a separate water quality permit process at a later stage.”¹⁰⁴

5) ED’s Evidence and Position

The ED’s witness James Walker testified that this level of water quality analysis is addressed with the TLAP application, not in the MUD application.¹⁰⁵ Mr. Walker agreed that he did not confirm that the TLAP application went through a full evaluation, but that he assumed it did because all permits do.¹⁰⁶ The ED argues that the creation of the District would not give Applicant permission to construct the wastewater system.¹⁰⁷

6) ALJ’s Analysis

Aligned Protestants, the City, and OPIC contend that a TLAP in the proposed location in the Edwards Aquifer Recharge Zone is potentially harmful to water quality. But this proceeding addresses the petition for a MUD creation, not the TLAP application, which is subject to its own review and hearing process. The MUD itself could exist without the TLAP. This MUD creation hearing is not the

¹⁰⁴ OPIC Closing at 11.

¹⁰⁵ Ex. ED-JW-1 at 13.

¹⁰⁶ Tr. Vol. 1 at 193.

¹⁰⁷ ED’s Response at 2.

appropriate forum to evaluate the merits of the TLAP. Applicant's plan to discharge water subject to a TCEQ permit is sufficient to meet its burden.

b. Land Elevation or Subsidence

Neither Aligned Protestants nor the City addressed land elevation or subsidence in their briefing. Applicant presented evidence that the formations of the Lower Trinity Aquifer consist of material that is not known to cause subsidence,¹⁰⁸ that no facilities are proposed that would cause any unusual effect on subsidence,¹⁰⁹ and that the fill and excavation associated with the development will not cause significant changes to elevation beyond what would normally be associated with the construction of the development and its systems.¹¹⁰ Applicant established that the District and its system and subsequent development within the District will not have an unreasonable effect on subsidence or land elevation.

c. Groundwater Levels in the Region and Recharge Capability of a Groundwater Source

According to Mr. Ryan, Applicant intends to file an application for groundwater production permits with the Barton Springs-Edwards Aquifer Conservation District (BSEACD), which will limit the impact to groundwater because the groundwater conservation district will regulate it.¹¹¹ He testified that the

¹⁰⁸ App. Ex. 5 at 10.

¹⁰⁹ App. Ex. 5 at 10.

¹¹⁰ App. Ex. 2 at 18-19.

¹¹¹ App. Ex. 2 at 19.

proposed density “is consistent with the use of groundwater”¹¹² and added that “[n]o facilities are proposed that will adversely impact the recharge capability of a groundwater source in any unusual way.”¹¹³ He also noted that the District’s development plan includes “considerable pervious surface in the form of open space, natural drainage corridors, and the predominantly single family residential land use.”¹¹⁴

Applicant’s expert Kaveh Khorzad, P.G., testified that based on his modeling, the wells for the MUD would have no significant impact on groundwater levels within the region.¹¹⁵ Using a worst-case scenario, his model suggested a small drawdown.¹¹⁶ He testified that he used the annual water volume demand from the engineer’s water demand report, which was 277.5 acre-feet per year.¹¹⁷ He agreed that he did not use the state groundwater availability models (GAM) because:

the resolution of the [GAM] is [coarse], so it’s -- it doesn’t really work for looking at well field or single well scale impacts.

. . . .

The difference between the two models is the GAM model is a regional model. It is looking at the entire aquifer and is too coarse to accurately model single well impacts. So if we’re looking at three wells to model it

¹¹² App. Ex. 2 at 19.

¹¹³ App. Ex. 2 at 19.

¹¹⁴ App. Ex. 2 at 19.

¹¹⁵ App. Ex. 5 at 11-12.

¹¹⁶ App. Ex. 5 at 12.

¹¹⁷ App. Ex. 5-02.

in the GAM, it wouldn't do as good a job. And in every GAM report they state this.¹¹⁸

Aligned Protestants use this testimony to argue that Mr. Khorzad did not examine regional effects, even though that is what the statute requires.¹¹⁹ They also emphasize that a BSEACD report, which Mr. Khorzad described in his testimony, states that additional evaluation is needed to determine long-term effects on pumping from the Lower Trinity.¹²⁰ They further point out that the demand in the water demand report, on which Mr. Khorzad based his modeling, does not match the demand in the Creation Report.¹²¹

In addition to the issue of modeling, Aligned Protestants address impervious cover. Their expert, Dr. Hauwert, testified that increasing the amount of impervious cover would impact groundwater levels.¹²² Aligned Protestants argue that Applicant has not sufficiently addressed the issue of impervious cover to meet its burden of proof.

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

¹¹⁸ Tr. Vol. 1 at 76-77.

¹¹⁹ Aligned Protestants' Closing at 13.

¹²⁰ Aligned Protestants' Closing at 13; App. Ex. 5-01 at 11; App. Ex. 5-03 at 21.

¹²¹ Compare App. Ex. 5-02 with App. Ex. 2-02 at 8.

¹²² Ex. PR-NH-1 at 8.

authority to regulate groundwater.¹²³ Instead, the Commission construes these factors 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.¹²⁴ In this case, there is testimony that the development plan includes “considerable pervious surface in the form of open space, natural drainage corridors, and the predominantly single family residential land use.” There is also testimony that no facilities are planned that would impact groundwater recharge in any unusual way. The development plan involves more impervious cover than would be allowed under Austin rules without a variance. Nevertheless, no evidence suggests that the development anticipated in the Petition and in the District’s development plan, which provides for considerable pervious surface, would lead to an unreasonable effect on groundwater levels or recharge.¹²⁵ Applicant has met its burden on this factor.

d. Natural Run-off Rates and Drainage

Applicant’s witness Mr. Ryan testified that the District plans to design and construct stormwater detention facilities in compliance with applicable regulations:

¹²³ *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 (November 6, 2023), Final Order at § III.1 (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 Niermann stated, “I don’t think the legislature intended TCEQ to regulate groundwater through the creation of MUDs”).

¹²⁴ *Petition for Creation of Ellis Ranch Municipal Utility District No. 1*, SOAH Docket No. 582-23-11658, TCEQ No. 2022-1157-DIS (July 16, 2024), Final Order at 9-10 (July 16, 2024) (explaining Commission’s changes to the PFD).

¹²⁵ Additionally, the ALJ notes that the evidence indicates that Mr. Khorzad’s decision not to use the regional GAM in modeling was appropriate.

Existing drainage patterns flow east to the Little Bear Creek watershed before eventually reaching Onion Creek. Detention facilities are proposed for each watershed to return peak flows for the 2, 10, 25, and 100-year events to pre-development levels. No downstream property owners will be adversely affected by the proposed improvements contained within the District. Design of stormwater detention facilities will comply with Hays County drainage criteria and development code.¹²⁶

The City argues that this information, and maps included in the Creation Report, are too conclusory to meet the burden of proof.¹²⁷ Aligned Protestants agree with this and suggest, without authority, that until a subdivision plan acceptable to Hays County is submitted, the impacts of run-off rates cannot be assessed.¹²⁸

The ED's witness Mr. Walker testified that review of the specifications for proposed detention facilities will occur during the District's design phase, not at the MUD creation stage.¹²⁹ The ED contends that Applicant has met its burden on this issue.¹³⁰

The ALJ finds that the evidence Applicant presented is sufficient for this stage of the evaluation. Consistent with the Commission's orders in other recent MUD

¹²⁶ App. Ex. 2 at 20.

¹²⁷ City Closing at 11-12.

¹²⁸ Aligned Protestants' Response at 4.

¹²⁹ Tr. Vol. 1 at 190.

¹³⁰ ED Closing at 4.

cases, the ALJ finds that, at this preliminary stage, it is enough that Applicant intends to develop the property in compliance with Hays County stormwater regulations.¹³¹

e. Total Tax Assessment

As discussed above, Applicant's witness Mr. Kimball testified that the projected total tax rate for all taxing entities overlapping the District is \$2.9724 per \$100 valuation, which is within the generally accepted rate of \$2.75 to \$3.00 per \$100 of assessed valuation.¹³² He testified that the rate is in line with other similar MUDs in the central Texas area.¹³³

The ED argues 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.¹³⁴

The City and Aligned Protestants' arguments on the total tax assessment resemble those they made when discussing the reasonableness of the projected tax rates. Similarly, because there is evidence that the projected total tax assessment is in line with similar jurisdictions, because there is a statutory cap to the District's tax rate, and because TCEQ will conduct a later review, the ALJ finds that the District,

¹³¹ *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)(explaining changes to the PFD); *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 Findings of Fact 34-36 (August 24, 2023) (findings on effect on natural run-off rates and drainage).

¹³² App. Ex. 6 at 10.

¹³³ App. Ex. 6 at 11.

¹³⁴ Ex. ED-JW-1 at 15.

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.

B. COMPLETE JUSTIFICATION

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 included in the district,” the substantive statutory standard governing the Commission’s disposition of the Petition.¹³⁵ Based on the foregoing analysis of subsidiary factors and other evidence, the ALJ concludes that Applicant has met this burden.

C. ROAD POWERS

Although Aligned Protestants opposed granting summary disposition on the issue of road powers, neither they nor the City addressed road powers in their closing briefs.

With respect to its request for road powers, Commission rules require an applicant to include (1) a “preliminary layout” showing the proposed location for all road facilities to be constructed, acquired, or improved by the proposed district; (2) a “cost analysis and detailed cost estimate of the proposed road facilities . . . with a statement of the amount of bonds estimated to be necessary to finance the proposed design, acquisition, construction, operation, maintenance, and improvement;” and

¹³⁵ Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.11(c)(5)(J).

(3) a “narrative statement that will analyze the effect of the proposed facilities upon the district’s financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district.”¹³⁶ The Creation Report addressed each of these matters,¹³⁷ and the ED determined that the proposed roads “appear to benefit the proposed District,” that “financing appears feasible,” and that Applicant’s request for road powers should be granted.¹³⁸ The ALJ concludes that Applicant met its burden of proof as to road powers.

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;
- 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; and
- any other factor which is relevant to a just and reasonable assessment of costs.¹³⁹

¹³⁶ 30 Tex. Admin. Code § 293.202(a)(7)-(9), (b).

¹³⁷ App. Ex. 2-02 at 66 (preliminary layout), 22 (cost analysis), 17 (narrative statement).

¹³⁸ Ex. ED-JT-3 at 0025.

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

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.¹⁴⁰

Applicant incurred \$3,513.50 in transcript costs and argues that the costs should be allocated $\frac{1}{4}$ to Applicant, $\frac{1}{4}$ to City, $\frac{1}{4}$ to Aligned Protestants, and $\frac{1}{4}$ to Mr. Whittington. Aligned Protestants and the City argue that the costs should all fall on Applicant.

Considering the Commission's factors, the ALJ finds that the transcript was ordered by the ALJ, not requested by a party, and no party has claimed a financial inability to pay transcript costs. The parties, except for Mr. Whittington, all participated in the hearing, and all benefitted equally from having the transcript. Because Mr. Whittington did not participate in the hearing and did not file closing briefs, he did not benefit from the transcript. Unlike Applicant, Aligned Protestants and the City do not stand to profit from the creation of this MUD. As there are more members of the Aligned Protestants, they may more easily share the cost of the transcript. Based on these factors, the ALJ recommends that the Commission assess most of the transcript expenses to Applicant, with the costs apportioned 75 percent to Applicant, 15 percent (or \$527.03) to Aligned Protestants and 10 percent (or \$351.35) to the City.

¹⁴⁰ 30 Tex. Admin. Code § 80.23(d)(2); *see* Tex. Water Code §§ 5.228, .273, .275, .356.

VI. CONCLUSION

For the reasons stated above, the ALJ recommends finding that Applicant met its burden to establish that its Petition to create the District should be granted.¹⁴¹ In further support of this recommendation, the ALJ has prepared the Findings of Fact and Conclusions of Law incorporated with the accompanying proposed Order of the Commission.

Signed June 4, 2025



Rebecca Smith

Presiding Administrative Law Judge

¹⁴¹ The ALJ notes that the Petition “certifies that a majority of the proposed temporary directors are residents of Hays County, a county adjacent to Hays County, or of a county in the same metropolitan statistical area as Hays County.” (App. Ex. 3-02 at 4). The Petition does not name those temporary directors. No party addresses the appointment of temporary directors in its briefs.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING PETITION OF HAYS COMMONS LAND INVESTMENTS, LP FOR CREATION OF HAYS COMMONS MUNICIPAL UTILITY DISTRICT

SOAH DOCKET NO. 582-24-15644, TCEQ DOCKET NO. 2023-1588-DIS

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the petition (Petition) filed by Hays Commons Land Investments, LP for creation of Hays Commons Municipal Utility District. A Proposal for Decision (PFD) was presented by Administrative Law Judge (ALJ) Rebecca Smith with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the matter on February 11-12, 2025, via Zoom videoconference.

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

I. FINDINGS OF FACT

1. On June 20, 2023, Hays Commons Land Investments, LP (Applicant) filed a Petition with the Commission for the creation of the Hays Commons Municipal Utility District (District).
2. The District is a municipal utility district (MUD) covering a planned residential and commercial development on approximately 290.388 acres located in Hays County, Texas.

3. The Petition was declared administratively complete on June 29, 2023.
4. On August 17 and 24, 2023, notices of the Petition were published in the *San Marcos Daily Record*.
5. On August 11, 2023, notice of the Petition was posted at the Hays County Courthouse, which is a convenient place for the public and is also a place used for posting notices of meetings of political subdivisions in Hays County.
6. The Commission received timely hearing requests and at its March 6, 2024 open meeting, granted the hearing requests of the City of Hays (City) and several individuals, and voted to refer this matter to SOAH for a contested case hearing.
7. A preliminary hearing was held on May 28, 2024. Applicant, TCEQ's Executive Director (ED), the TCEQ Office of Public Interest Counsel (OPIC), the City, Save Our Springs Alliance (SOS), Philip Brisky, Darlene and Michael Starr, Antonio Valdez, Lydia Bryan Valdez, and Keith Whittington were named as parties. The individual protestants, except for Mr. Whittington, were aligned with SOS (together, Aligned Protestants).
8. At a prehearing conference on February 7, 2025, the ALJ granted Applicant's Motion for Summary Disposition as to the issue of required signatures on the Petition.
9. The hearing on the merits was held on February 11-12, 2025, before ALJ Rebecca Smith via Zoom videoconference. Applicant was represented by attorney David Tuckfield; the City was represented by attorney Joshua Katz; Aligned Protestants were represented by attorneys Victoria Rose and Bobby Levinski; the ED was represented by attorneys Kayla Murray and Allie Soileau; and OPIC was represented by attorney Pranjal Mehta.
10. The record closed on April 9, 2025, after submission of written closing arguments.

11. At the time the Petition was filed, the area in the proposed District was located within the City's extraterritorial jurisdiction (ETJ).
12. On September 1, 2022, Applicant submitted request for consent to the creation of the District to the City and did not receive the City's consent within 90 days.
13. On November 1, 2022, Applicant petitioned the City for water and sewer services.
14. The 120-day period for reaching a mutually-agreeable contract expired without a contract for service.
15. On September 26, 2023, the area of the proposed District was removed from the City's ETJ.

Sufficiency of the Petition

16. The Petition is signed by a majority in value of the holders of title of the land within the proposed district.
17. The Petition describes the boundaries of the proposed district by metes and bounds.
18. The Petition states 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.
19. The Petition includes a name of the district that is generally descriptive of the locale of the district followed by the words Municipal Utility District.

Availability of Comparable Service from Other Systems

20. The City does not have a collective wastewater system and lacks available capacity for water service.
21. Applicant and the City of Austin (Austin) have engaged in discussions and negotiations for the District to obtain water and wastewater service, but Austin has not yet agreed to provide water and wastewater service.

22. Water and wastewater service is not available from other systems.

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

23. The proposed construction costs set out in the preliminary engineering report, which total \$20,791,828, are reasonable.
24. The reasonableness of projected costs is analyzed as of the date of the MUD creation petition.
25. The District's projected tax rate is \$1.20 per \$100 of assessed valuation, which is line with TCEQ regulation.
26. The average retail water bill from the District is estimated to be approximately \$105 per month for a 10,000 gallon per month use, which is similar to other utilities with comparable groundwater facilities.
27. The average wastewater bill is estimated to be \$115 per month for a 10,000 gallon per month use, which is similar to rates from other districts that use comparable facilities.
28. The proposed water and wastewater rates are reasonable.

Effect on Land Elevation

29. The fill and excavation associated with the development will not cause significant changes to elevation beyond what would normally be associated with the construction of the development and its systems.
30. The District and its system and subsequent development within the District will not have an unreasonable effect on land elevation.

Effect on Subsidence

31. The formations of the Lower Trinity Aquifer, the proposed groundwater source for the District, consist of material that is not known to cause subsidence.

32. The District is not proposing any facilities that would cause any unusual effect on subsidence.
33. The District and its system and subsequent development within the District will not have an unreasonable effect on subsidence.

Effect on Groundwater Levels and Groundwater Recharge Capability

34. Applicant intends to file an application for groundwater production permits with the Barton Springs–Edwards Aquifer Conservation District, which has regulatory authority over groundwater permits in the area.
35. No facilities are planned that would have an unusual impact on groundwater recharge.
36. The District’s development plan includes considerable pervious surface in the form of open space, natural drainage corridors, and predominantly single-family residential land use.
37. Applicant established that the District and its system and subsequent development within the District will not have an unreasonable effect on groundwater levels in the region or recharge capability of a groundwater source.

Effect on Natural Run-off Rates and Drainage

38. Applicant intends to develop the property in compliance with Hays County, state, and federal stormwater regulations.

Effect on Water Quality

39. The Petition anticipates discharging treated wastewater and using that discharge to irrigate specific land.
40. Applicant’s discharge plan requires a separate TCEQ permit, and the application for that permit is separate from the Petition.
41. Applicant’s plan to discharge water subject to a TCEQ permit is sufficient to meet its burden to show that the District and its system and subsequent

development within the District will not have an unreasonable effect on water quality.

Effect on Total Tax Assessments

42. The projected total tax rate for all taxing entities overlapping the District is \$2.9724 per \$100 valuation, which is within the generally accepted rate of \$2.75 to \$3.00 per \$100 of assessed valuation.
43. The projected total tax rate is in line with other similar MUDs in the central Texas area.
44. 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

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

Request for Road Powers

46. The Petition requests the Commission to grant the District the authority to provide roads.
47. Applicant provided a preliminary layout as to the known roads and major thoroughfares and a cost estimate of the proposed road facilities.
48. Applicant established that the funding of the road improvements is financially and economically feasible.

Allocation of Transcript Costs

49. The transcript was ordered by the ALJ, not requested by a party.
50. No party has claimed a financial inability to pay transcript costs.
51. The parties, except for Mr. Whittington, all participated in the hearing, and except for Mr. Whittington, all benefitted equally from having the transcript.

52. Unlike Applicant, Aligned Protestants do not stand to profit from the creation of this MUD.

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 matter, 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), .117(a)-(b); *Granek v. Texas State Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
5. Applicant's Petition conforms to the requirements of Texas Water Code sections 54.014 and 54.015 and is otherwise sufficient. Tex. Water Code §§ 54.014, .015, .021; 30 Tex. Admin. Code § 293.11(a), (d).
6. If the Commission finds that the petition conforms to the requirements of Texas Water Code section 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).
7. If the Commission finds that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the Commission shall so find by its order and deny the petition. Tex. Water Code § 54.021(d).
8. 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).

9. Applicant met its burden of proof regarding the availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1).
10. Applicant met its burden of proof regarding reasonableness of projected construction costs, tax rates, and water and sewer rates. Tex. Water Code § 54.021(b)(2).
11. Applicant 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, or total tax assessments on all land located within the District. Tex. Water Code § 54.021(b)(3).
12. Applicant's request for road powers meets all applicable requirements. Tex. Water Code § 54.234; 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a), (b).
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; 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 75 percent to Applicant, 15 percent to Aligned Protestants, and 10 percent to the City.

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 by Applicant Hays Commons Land Investments, LP for creation of Hays Commons Municipal Utility District and the request to acquire road powers is granted.
2. The District is created under the terms and conditions of Article XVI, §59 of the Texas Constitution and chapters 49 and 54, Texas Water Code. The District shall have, and shall be subject to, all of the rights, duties, powers, privileges, authority, and functions conferred and imposed by the Commission and the general laws of the State of Texas relating to municipal utility districts, including road powers under Texas Water Code §54.234, subject to the requirements of the TCEQ and the general laws of the State of Texas relating to the exercise of such powers. The District shall be composed of the area situated in Hays County, Texas, described by metes and bounds in Exhibit A attached hereto and incorporated herein for all purposes.
3. The reporting and transcript costs are allocated 75 percent to Applicant, 15 percent to Aligned Protestants, and 10 percent to the City.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The effective date of this Order is the date the Order is final, as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.
6. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.

7. 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.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Brooke Paup, Chair

For the Commission