TCEQ DOCKET NO. 2025-0119-DIS

PETITION BY VORWERK FARMS, LLC FOR THE CREATION OF WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 52 IN WILLIAMSON COUNTY, TEXAS	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

APPLICANT VORWERK FARMS, LLC'S
RESPONSE TO HEARING REQUEST

Vorwerk Farms, LLC ("Vorwerk") files this response to the request for a contested case submitted on Vorwerk's Petition for the Creation (the "Creation Petition") of Williamson County Municipal Utility District No. 52 ("MUD 52"). Only one Hearing Request (as attached hereto as **Exhibit 1**, the "Hearing Request") was received by the Texas Commission on Environmental Quality (the "Commission" or "TCEQ"), which was submitted by the Hon. Bill Gravell, Jr., Williamson County Judge, on behalf of the Williamson County Commissioners Court (collectively, "Williamson County").

I. Introduction.

This Brief (i) analyzes the Commission's process for determining "affected person" status with respect to counties requesting contested case hearings in response to petitions for creation of municipal utility districts ("MUDs") and for creation of other types of special districts submitted by landowners and (ii) explains why a finding by the Commission that Williamson County is an "affected person" is inconsistent with applicable legal standards, and that such a finding may expose the Commission to future review by a district and/or appellate court and result in a determination that the Commission abused its discretion in granting "affected person" status to Williamson County.

The Commission's discretion to make determinations (including denials) of "affected person" status is settled as a matter of state law. Both the Texas Legislature and Texas courts agree that the Commission has broad discretion to consider relevant legal standards and the administrative record and make "affected person" determinations (See Section V(c), *infra*). Despite the Commission's broad discretion, grant of "affected person" status to Williamson County would not be consistent with current law and would represent an abuse of such grant of discretion.

Grants of "affected person" status to counties allows a county with a "personal justiciable interest" (*e.g.*, a legal or property interest or, for governmental entities, statutory authority under the ***laws governing the application***) a right to an evidentiary hearing as needed to ensure that such interests or statutory powers are protected. The point of restricting this right to the laws governing the application is to ensure that the Commission admits the correct parties to each proceeding. In the interest of efficiency and administration, the Commission has an interest in admitting only correct parties (*i.e.*, those with interests ***affected by the law under which each permit or application will be considered***). As discussed herein, this approach differs from the Commission's approach with respect to allowing public comments to various permit applications, which is to encourage public participation and draw a diverse range of viewpoints and comments. Instead, "affected person" status is reserved for a narrower scope of participants, those who have a legally protected interest and have made a minimally jurisdictional showing of injury to such legally protected interest.

Counties understand that the creation of a MUD (or other special district) does not result in *prima facie* injury to a county's statutory power. Counties assume injury to their statutory powers by potential future violations of law committed by a MUD (or landowners within such MUDs). Nevertheless, counties, such as Williamson County, continue to request contested case hearings for the sole purpose of causing administrative delay. Counties do this in order to effectively bootstrap their own right to consent to a MUD creation (despite having no such right in law), and then seek to assert that right to consent as leverage to obtain concessions from developers. As a result, landowners seeking to develop their property through the use of a MUD often must yield to demands by such counties in an effort to continue to maintain their access to the capital needed to initiate and complete their respective proposed developments. Such actions by counties are not what the Texas Legislature envisioned when enacting the laws that currently govern the creation of MUDs and other special districts, and, as such, should not be sanctioned by the Commission.

This Brief summarizes the current framework of Texas statutory, administrative, and case law governing "affected person" determinations and explains the discretion that the Commission possesses, and should exercise, to deny Williamson County's Hearing Request.

II. Background

a. Politicization of Requests for Contested Case Hearing.

Recent legislative changes prohibiting unilateral annexation by municipalities and allowing landowners to opt out of the extraterritorial jurisdiction ("ETJ") of municipalities have reduced the ability of municipalities to regulate large swaths of the territory located in the extraterritorial jurisdiction ("ETJ") of municipalities. These changes have allowed landowners to opt out of ETJs and create MUDs without any requirement to obtain the consent of nearby municipalities on a more frequent basis. As a result municipalities have lost two important tools with which to regulate development within MUDs: development agreements and consent conditions.

The first significant reduction of municipalities' regulatory authority occurred in 2017 and 2019 as a result of the 85th and 86th sessions of the Texas Legislature when Senate Bill 6 (85(1), 2017) and House Bill 347 (86(R), 2019) were passed (collectively, the "Annexation Legislation"). The passage of the Annexation Legislation ended the ability of municipalities to unilaterally annex territory without the consent of the landowners or voters within such territory.

The second significant reduction of municipalities' regulatory authority occurred in 2023 as a result of the 88th session of the Texas Legislature when Senate Bill 2038 (88(R), 2023) ("SB 2038") was passed. SB 2038 added Subchapters D and E to Chapter 42 of the Local Government Code ("LGC"), which created two different processes for seeking release of property from a municipality's ETJ by the petition of landowners or the petition of registered voters. If the procedural requirements of Subchapters D and E are followed, a municipality is required to immediately release the applicable property from its ETJ or, if a municipality fails to take action to release the property within the prescribed time, the property is released from the applicable ETJ by the operation of law.

The effect of SB 2038 was, for property removed from a municipality's ETJ, to remove any requirement of a landowner to obtain the consent of the adjacent municipality to the landowner's

petition to the Commission for the creation of a MUD or other special district pursuant to the provisions of § 54.016 of the Texas Water Code ("TWC"), and § 42.042, LGC, which only become operable if a landowner petitions for the creation of a MUD or other special district over land that, at the time of such petition, was considered part of the ETJ.

Regardless of the impact of the Annexation Legislation or SB 2038, counties have never had a legal right to consent to the creation of MUDs or other special districts, though they are entitled to certain notice from the Commission when a petition for creation is filed. For example, after receiving a landowner's petition for creation of a proposed MUD, if the proposed MUD is located entirely within the ETJ of one or more municipalities and/or unincorporated county territory, the Commission is required to notify the applicable commissioners court of any county in which the proposed MUD is to be located. *§ 54.0161(a-1), TWC; 30 TAC 293.12(h)*. The applicable commissioners court then has the opportunity to review the applicable petition for creation of a proposed MUD and may vote to submit information and/or a recommendation to the Commission regarding the creation of the proposed MUD and must do so at least 10 days prior to the date on which the Commission may act on the petition. *§ 54.0161(b), TWC*. If the Commission receives any information and/or a recommendation for or against the creation of a proposed MUD, the Commission is required to consider such information in determining whether to grant or deny a petition for creation of such proposed MUD. *§ 54.0161(b), TWC*. The above-described procedures represent a right to notice and a right to have comments, if any, considered by the Commission prior to any Commission action on a petition, ***not*** a right to consent.

Importantly, the Texas Legislature recently considered the role of counties in the MUD creation process, passing Senate Bill 2192 (88(R), 2023) ("SB 2192"), which would have entitled counties to at least thirty (30) days' prior written notice of a petition for creation before filing and would have required such notice to expressly inform the applicable counties of its right to provide written comments pursuant to § 54.0161(b), TWC. Despite passing out of the Senate and the House, SB 2192 was vetoed by the Office of the Governor, citing prioritization of property tax relief before SB 2192 would be reconsidered at a subsequent regular or special session. As discussed repeatedly throughout this Brief, it is critical to understand that counties do ***not*** have a right to consent to the creation of a MUD. Further, despite recent express legislative consideration of the role of a county in the MUD creation process, addition of an express right of counties to consent to MUD creations was ***still not*** considered.

Together, the passage of the Annexation Legislation and SB 2038, and the veto of SB 2192, have had cascading effects on the ability of municipalities and counties to impose conditions on landowners seeking to develop property through the use of MUDs. For instance, the loss of ability to threaten unilateral annexation of adjacent properties or to impose consent conditions for a MUD within a municipality's ETJ has rendered municipalities less able to obtain development agreements, which allow such municipalities to regulate development within an applicable municipality's ETJ pursuant to § 212.172, LGC.

Following the passage of SB 2038, municipalities have lost ETJ and counties have gained additional areas of unincorporated county territory. Previously, municipalities and counties could cooperate via interlocal agreements entered into pursuant to Chapter 242, LGC, Chapter 251, Texas Transportation Code ("TTC"), or Chapter 791, LGC, to set forth jurisdictional responsibilities over activities such as platting, permitting, road construction and maintenance, etc. for areas within ETJs. However, the corresponding increase of unincorporated county

territory has resulted in an increase of the overall territory that counties are responsible for regulating. As a result, counties have sought any means possible to obtain consent conditions and development agreements from landowners seeking to develop their properties through the use of a MUD or other special district. ***Counties legally have no legal authority to do so unless a developer does so voluntarily.***

The attached graphs (attached hereto as **Exhibit 2**) depict historical data regarding the number of contested case hearing requests submitted by municipalities and counties for the period from 2000-2024. Relatively few contested case hearing requests were submitted until 2021, when the Annexation Legislation was passed. The number of requests increased again when SB 2038 was passed. The correlation is not coincidental – municipalities and counties decided to politicize the creation of MUDs as a tool to stop development or extract from developers as much as possible.

The Commission should not sanction such tactics through its grant of "affected person" status on grounds that do not comport with current legal requirements.

b. Williamson County's Improper Use of the Commission's Contested Case Hearing Process.

As discussed herein, Williamson County is not a "correct" party to this proceeding. Williamson County understands this. However, Williamson County has observed the Commission's administrative practice of granting "affected person" status to counties without substantive review to confirm that such counties have made minimally jurisdictional showings of "affected person" status in compliance with current law. Williamson County seeks to take advantage of such practice and opportunistically assert "affected person" status.

By doing so, Williamson County seeks to cause administrative delay and cause the Commission to refer the applicable MUD creation to the State Office of Administrative Hearings ("SOAH") for a contested case hearing. Referral to SOAH, waiting for SOAH to issue its proposal for decision granting or denying petitions for the creations of MUDs ("PFD"), and then for the Commission to accept the PFD can collectively delay the creation of a MUD by 9-18 months from the date of referral to SOAH. Williamson County desires this period of delay as leverage to extract conditions on development that Williamson County would not otherwise be able to obtain ***but for*** the Commission's grant of "affected person" status to Williamson County. Landowners or developers often are forced to give into such demands due to the high cost of capital and accrual of interest. The costs incurred by such delay are substantial and oftentimes forces developers to terminate development plans or cause developers to acquiesce to county demands.

Williamson County includes excerpts of its template Consent and Development Agreement in its Hearing Request. However, it is necessary to review the Consent and Development in its entirety to understand how much Williamson County relies on (and weaponizes) the Commission's improper grant of "affected person" status to counties that do not show injury. Attached hereto, as **Exhibit 3,** is a template Consent and Development Agreement (the "CDA").

Among other things, the CDA establishes that, in exchange for Williamson County's consent to the creation of the applicable MUD, Williamson County (i) requires the dedication of right-of-way, at no cost to Williamson County, for certain proposed corridor roads and arterial roads included within Williamson County's Long Range Transportation Plan ("LRTP") and (ii)

refuses to accept road maintenance for roads (other than corridor and arterial roads identified in the LRTP), instead, requiring the applicable MUD to accept such road maintenance obligations. The CDA also provides that the applicable developer may also be required to dedicate additional right-of-way in the event that changes to the LRTP affect the routing of corridor or arterial roads throughout the applicable MUD's boundaries.

Williamson County references right-of-way dedication and road maintenance in its Hearing Request, but conveniently fails to reference the provision stating that Williamson County does not oppose the creation and will withdraw its Hearing Request so long as the developer enters into this CDA. Section 2.01 of the template CDA provides the following:

> **Section 2.01**. **Creation of District**. The County acknowledges receipt of notice of the Owner's request to the TCEQ for creation of the District over the Land. The County agrees that this Agreement will constitute and evidence the County's non-opposition to the creation of the District and that no further action will be required on the part of the County related to the creation of the District. Within 10 business days after the County's execution of this Agreement, the County shall withdraw its request for a contested case hearing and withdraw as a party from the TCEQ proceeding captioned *Petition by* _____ *for the creation of* _____, TCEQ Docket _____ ("TCEQ Proceeding"). Failure of the County to withdraw from the TCEQ Proceeding in accordance with this paragraph renders this Agreement null and of no further force or effect.

The inclusion of the above language in the template CDA highlights Williamson County's transactional use of the contested case hearing process as a means to obtain concessions from developers. Importantly, Williamson County mentions no injury to its statutory powers in the Hearing Request, clearly demonstrating the misuse of the contested case hearing process, which is not an isolated incident. Williamson County frequently intervenes in MUD creation proceedings and has done so thirteen (13) times in 2023 and 2024 (as shown on **Exhibit 4** attached hereto), in each case submitting requests for hearing very similar in nature, if not identical, to the Hearing Request submitted in this Proceeding. In five of those instances (as noted on **Exhibit 4** attached hereto), Williamson County has withdrawn its request for contested case hearing, citing settlement by the applicable parties or entry into a CDA with the applicable developer. Williamson County's conduct is akin to that of a vexatious litigant and should not be rewarded by the Commission by granting "affected person" status unless the Commission finds that Williamson County has met its minimal burden to prove injury to a legally protected interest under the Commission's administrative rules. As demonstrated herein, Williamson County has not met this minimal burden in this proceeding and should not be granted "affected person" status.

III. Commission Administrative Rules and Practices Regarding Evaluation of Requests for Contested Case Hearings.

After the Districts Creation Review, Water Supply Division of TCEQ (the "Creation Review Staff"), completes its technical review ("Technical Review Completion Date"), a draft technical memorandum and draft order in favor or against creation of the proposed MUD is prepared and recommended to the Manager of TCEQ's District Section, for presentation to, and consideration by the TCEQ Commissioners. The Creation Review Staff issues a notice of the Commission's receipt of a petition for the proposed creation of a MUD (the "Application Notice")

to the applicant which states that the application has been received and sets forth the procedures by which members of the public may request a public hearing. *§ 49.011(a), TWC; 30 TAC 293.12(a) and (b).* The applicant is then required to publish the Application Notice for two consecutive weeks in a newspaper regularly published or circulated in the counties or counties where the proposed MUD will be located. *§ 49.011(b), TWC; 30 TAC 293.12(b).*

The Application Notice is required to specify the time period during which the public may provide comments and, if applicable, request a contested case hearing, which begins on the day after the second date of publication of the Application Notice and ends within 30 days thereafter (the "Comment Period"). *30 TAC 55.251(d); 30 TAC 55.152.* If the Commission receives a hearing request during the Comment Period, a petition for creation will be considered "contested" and will then be considered by the Commission at a Commission meeting. *30 TAC 55.254(c)(2).*

The Commission is required to determine if the requester is an "affected person." If so, and the requester otherwise complies with the procedural requirements of 30 TAC 55.251 and has a right to request a contested case hearing pursuant to other law, then the Commission is required to grant the applicable hearing request. This Brief assumes each hearing request is timely requested and authorized by "other law" pursuant to § 49.011(d), TWC, and 30 TAC 293.12(c). So, the only remaining determination to be made is whether a requester is an "affected person."

Pursuant to 30 TAC 55.103 and 30 TAC 55.256, "affected person" is defined as: "[a] person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest." Relevant to the discussion herein, governmental entities, local governments and public agencies, with authority under state law over issues contemplated by an applicable petition ***may*** be considered affected persons. *30 TAC 55.256(b).* The criteria that the Commission considers in making an "affected person" determination include, but are not limited to, the following (the "Affected Person Factors"):

(a) whether the interest claimed is one protected by the law under which the application will be considered;

(b) distance restrictions or other limitations imposed by law on the affected interest;

(c) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(d) likely impact of the regulated activity on the health, safety, and use of property of the person;

(e) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(f) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC 55.256(b).

If the Commission determines that no requester satisfies the Affected Person Factors, it may act on the applicable petition for creation and approve the Final Order Creating, if appropriate. *30 TAC 50.113; 30 TAC 55.255(a)(4)*. The Commission is required to mail or transmit the Final Order Creating to the applicant, the Executive Director, OPIC, and to other persons that timely filed public comment or requests for contested case hearings, including an explanation of such persons right to file a motion for rehearing pursuant to *30 TAC 80.272*. Any motions for rehearing must be filed with TCEQ's chief clerk within twenty-five (25) days after the date that the Commission's decision or order is signed. *30 TAC 80.272(b)*. Any replies to such motions must be filed not later than forty (40) days after the date that the Commission's decision or order is signed. *30 TAC 80.272(d)*. The Commission may schedule any motion for rehearing for consideration during a Commission meeting. *30 TAC 80.272(e)*. Unless the Commission takes action within fifty-five days after the date that the Commission's decision or order is signed, the applicable motions for rehearing are overruled by operation of law. *30 TAC 80.272(f)*. The Commission's decision or order becomes final and appealable on: (a) the expiration of the period for filing a motion for rehearing, if no parties filed a motion for rehearing; or (b) on the date overruling the final motion for rehearing or on the date that the motion is overruled by law, if motion(s) for rehearing are filed. *§ 5.351, TWC; 30 TAC 80.273*. A party affected by the final decision or order of the Commission must file a petition for judicial review within thirty (30) days after the decision or the order becomes final and appealable. *§ 5.351, TWC; 30 TAC 80.275*.

On the other hand, if the Commission finds that a hearing requester qualifies as an "affected person" pursuant to 30 TAC 55.255(b), then the Commission refers the petition for creation to SOAH for a contested case hearing. For requesters, such as Williamson County, who seek to obtain leverage over applicants seeking to create MUDs, grant of "affected person" status represents a significant victory because the contested case hearing process adds a substantial amount of time to a MUD's creation timeline, thereby driving up development costs and decreasing home affordability. For reference, attached as **Exhibit 5**, is a chart that, based on recent MUD creations, demonstrates the time it takes to reach TCEQ's adoption of a PFD granting or denying an applicable petition for the creation of a MUD, as measured from the end of the comment period for a proposed MUD. For petitions for creation that are referred by the Commission to SOAH, it takes anywhere between sixteen (16) to twenty-four (24) months for the Commission to finally act on and accept a PFD.[1] This is an incredible delay that should only be permitted for legitimate requesters that meet the Affected Person Factors. Protestors, such as counties, who merely utilize the Commission's contested case hearing process to circumvent current law, which does not permit nor require county consent to the creation of a MUD, should not be granted "affected person" status.

IV. Current Law.

a. Standard of Review – Abuse of Discretion.

A reviewing court evaluates the Commission's determinations of "affected person" status utilizing the abuse of discretion standard of review, and finds that an agency abuses its discretion in making a decision if it: (a) fails to consider a factor the legislature directs it to consider; (b) considers an irrelevant factor; or (c) weighs only relevant factors that the legislature directs it to consider but still reaches a completely unreasonable result. *Sierra Club v. Texas Comm'n on Env't Quality*, 455 S.W.3d 214, 223 (Tex. App.—Austin, 2014) (*pet. denied* (Oct. 9, 2015); *reh'g of pet. denied*

[1] As measured from the date of the Commission meeting at which the Commission makes the referral.

(December 18, 2015).

b. Criteria Used to Evaluate "Affected Person" Status.

i. Relationship Between Traditional Notion of "Standing" and the Commission's Prescribed Factors under 30 TAC 55.256.

When considering the Commission's definition of "affected person" (*i.e.*, "a person who has a ***personal justiciable interest*** related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a ***personal justiciable interest***…" (*emphasis added*),[2] Texas courts focus on the Texas Legislature's use of the phrase "personal justiciable interest." *City of Waco v. Texas Comm'n on Env't Quality*, 346 S.W.3d 781, 802 (Tex. App.—Austin, 2011), order vacated (Feb. 1, 2013), *rev'd on other grounds*, 413 S.W.3d 409 (Tex. 2013) ("*City of Waco I*"). Though the Commission has prescribed a non-exclusive list of Affected Person Factors to be evaluated in making such determinations, Texas courts view the statutory reference to "personal justiciable interest" in § 5.115(a), TWC, as the Legislature's unambiguous direction that the jurisprudential principles governing the evaluation of constitutional standing in courts also be utilized in evaluating the grant of "affected person" status to those requesting contested case hearings. *Id.* at 802. The Commission agrees with this position. *Id.* at 801.

However, the Commission disagreed with the 3rd Court of Appeals position regarding ***how much*** discretion the Commission has to weigh and balance the Affected Person Factors in favor of, or against, a finding of "affected person" status. *Id.* at 808. The Commission believed it had broad discretion to balance the Affected Person Factors as well as the Commission's broader concerns of policy and administration as it relates to a particular permit application (or for purposes of this Brief, a petition for creation of a MUD). *Id.* The 3rd Court of Appeals, on the other hand, believed the Legislature's reference to "personal justiciable interest" limits the discretion that the Commission has in weighing and balancing each Affected Person Factor, stating that if the general principles of constitutional standing would dictate finding that a requester has a "personal justiciable interest, then the Commission does not have discretion to "weigh" or "balance" the Affected Person Factors to find otherwise.

Utilizing the abuse of discretion standard of review discussed above, the 3rd Court of Appeals, in reviewing the Commission's decision to deny the City of Waco's request for a contested case hearing regarding an applicant's amendment to its concentrated animal feed operation ("CAFO") permit, determined that the Commission acted arbitrarily by considering, and emphasizing, a "legally irrelevant" factor, the fact that the CAFO permit amendment being issued was more protective than past CAFO permits. *Id.* at 822-23. The Commission's reasoning was that the City of Waco could not show a concrete injury where a "more protective" permit would result in less discharge of manure-related pollutants into the North Bosque River at a discharge point located ~ 80 miles upstream from Lake Waco, the City of Waco's main source of municipal water supply. *Id.* at 820. The 3rd Court of Appeals evaluated the City of Waco's claims of injury through the lens of constitutional standing requirements: (a) injury in fact from the issuance of a CAFO permit amendment (*i.e.*, an invasion of a legally protected interest that was concrete and particularized and actual or imminent); (b) an injury fairly traceable to the issuance of the permit as proposed, as opposed to the independent actions of third parties or other

[2] § 5.115(a), TWC.

alternative causes unrelated to the permit; and (c) likelihood that injury would be redressed by a favorable decision on the City of Waco's complaints regarding the permit. *Id.* at 802. The 3rd Court of Appeals held that the City of Waco met its burden of proof regarding standing due to the City of Waco's property interest in protecting Lake Waco's water quality, traceability to the issuance of an amended CAFO permit, and redressability via potential denial of the applicant's request for the amendment. *Id.* at 810-11.

In addition to considering "irrelevant" factors (besides the Affected Person Factors) and failing to appropriately evaluate the City of Waco's standing in accordance with traditional principles of constitutional standing,[3] the 3rd Court of Appeals held that the Commission inappropriately evaluated disputed facts that were relevant both to the merits of the City of Waco's standing claims and to the merits of the applicant's CAFO permit amendment application. The 3rd Court of Appeals also asserted that the Commission relied on "implied fact findings" based on the Executive Director's unsworn argument and analysis (*i.e.*, unacceptable forms of evidence per the Court), and failed to engage in any "reasoned decision-making" regarding whether the City of Waco otherwise met the requirements for constitutional standing. Accordingly, the 3rd Court of Appeals reversed the underlying district court's affirmation of the Commission's decision to deny "affected person" status to the City of Waco and remanded to the Commission for further consideration. *Id.* at 827.

The Texas Supreme Court accepted petition for review of *City of Waco I* and reversed the 3rd Court of Appeals on other grounds. *Texas Comm'n on Env't Quality v. City of Waco*, 413 S.W.3d 409, 425 (Tex. 2013) ("*City of Waco II*"). The Court did not do so on the basis of any reconsideration of the 3rd Court of Appeals' analysis of the traditional concepts of standing and the Affected Person Factors. *See id. at 420* ("whether we accept this as part of the affected person analysis, as the Commission urges, or follow the court of appeals' analysis of 'affected person' as merely a codification of the constitutional principal of standing does not ultimately determine the City's right to a hearing in this case."). Instead, the Court focused on the requirement that a hearing requester must have a right to request a contested case hearing authorized by law. *Id. See* 30 TAC 55.211(c)(2)(C). The statutory regime governing the issuance of CAFO permits, Subchapter B, Chapter 26, TWC, provides that the Commission has discretion to approve an application for a CAFO permit amendment without a contested case hearing where the amendment improves the quality of any proposed discharge and neither significantly increases the quantity of waste to be discharged nor materially changes the pattern or place of discharge. *Id. See § 26.028(d), TWC*. For this reason, the Court reasoned there was no need to consider the proper application of the Affected Person Factors.

The *City of Waco II* Court's discussion instead centered around the discretion that the Commission has to (i) evaluate a request for a contested case hearing at a regular Commission meeting (and any exemptions to the right to a contested case hearing) and (ii) utilize evidence gathered in the administrative record to evaluate the foregoing. On the first point, because a request for a contested case hearing is not itself a contested case hearing, the Commission may make its decision on such requests using less formal proceedings before the Commission. *See id.* at 423 (citing *Collins v. Tex. Natural Res. Conservation Comm'n,* 94 S.W.3d 876, 884–85 (Tex. App.—Austin, 2002 (*no pet.*)). On the second point, the Court noted that, as part of the discretion granted

[3] The Affected Person Factors analyzed in *City of Waco I* were set forth in 30 TAC 55.203, which governs permit applications, such as CAFOS, filed under Chapters 26, 27, and 32, TWC, and Chapters 361 and 382, Texas Health and Safety Code, not in 30 TAC 55.256, which governs petitions for creations of MUDs.

to the Commission under § 26.028(d) in determining whether an exemption to the right to contested case hearing existed, the Commission ***could*** consider evidence, such as "the sworn application, attached expert reports, the analysis and opinions of professionals on its staff, and reports, opinions and data about the North Bosque watershed gathered and analyzed by the TCEQ for nearly a decade," when considering its decision.[4] *Id.* at 420.

Though the *City of Waco II* Court did not discuss the application of the Affected Person Factors, the Court did note the degree of overlap between the factors considered under § 26.028(d), TWC, and the Affected Person Factors set forth in 30 TAC 55.203. This is relevant as subsequent holdings by the 3rd Court of Appeals refer back to *City of Waco II* when holding that the Commission has the ***same degree of discretion*** in evaluating requests for contested case hearings under 30 TAC 55.256, which governs petitions for the creation of MUDS, and that the Commission may review the same type of evidence in making that decision.

Further, the Texas Supreme Court's acknowledgement, but lack of discussion, of the 3rd Court of Appeals' holding that the principles of constitutional standing serve to guide the Commission and to limit the Commission's discretion in "weighing and balancing" the Affected Person Factors, is significant as it seems to leave the issue undecided. As discussed herein (in Section V(e)(i), *infra*), this means that, for now, the principles of constitutional standing do not serve to limit the Commission's discretion, however, they may serve as additional considerations that the Commission may take into account as part of its non-exclusive list of Affected Person Factors. To that extent, this Brief discusses relevant Federal and State case law related to constitutional standing when discussing how the Commission may justify denials of Williamson County's Hearing Request.

c. Current Case Law re Discretion Permitted TCEQ in Evaluating and Weighing "Affected Person" Factors.

Following the Texas Supreme Court's decision in *City of Waco II*, two subsequent "sister" opinions were issued by the 3rd Court of Appeals: (1) *Sierra Club v. Texas Comm'n on Env't Quality*, 455 S.W.3d 214 (Tex. App.—Austin, 2014) (*reh'g overruled* (Feb. 13, 2015); *pet. denied* (Oct. 9, 2015); *reh'g of pet. denied* (Dec. 18, 2015)) ("Sierra I"); and (2) *Texas Comm'n on Env't Quality v. Sierra Club*, 455 S.W.3d 228 (Tex. App.—Austin, 2014) (*reh'g overruled* (Feb. 17, 2015); *pet. denied* (Oct. 9, 2015); *reh'g of pet. denied* (Dec. 18, 2015)) ("Sierra II"). These cases are significant because they authoritatively state what law governs the Commission's determinations of "affected person" status under Subchapter G, 30 TAC Chapter 55, which govern requests for contested case hearings for petitions for creations of MUDs.

Both cases related to applications by Waste Control Specialists ("WCS") for licenses related to the disposal of radioactive materials either at the surface of WCS's property or in a landfill to be constructed on WCS's property. *See Sierra I* at 219; *Sierra II* at 230. All applications

[4] In response to the 3rd Court of Appeals' characterization of the Commission's administrative record as "insufficient", the opinion notes that the Commission points out that: "a permit application to the TCEQ amounts to an affidavit with expert reports attached. The applicant must verify that the information submitted is true, accurate, and complete. 30 Tex. Admin. Code §§ 305.44(b), 321.34(b). Maps and technical reports must be prepared by a licensed professional engineer, a licensed professional geoscientist, or other qualified person. 30 Tex. Admin. Code §§ 305.45(a)(6), (8), 321.34(f). The applications are then reviewed by the executive director's professional staff." *City of Waco II*, 413 S.W.3d at 421.

(the "WCS Applications") were governed by Chapter 401, THSC. The WCS Applications are governed by Subchapter G, 30 TAC Chapter 55, because they were filed under chapters other than Chapters 26, 27, and 32, TWC, and other than Chapters 361 and 382, THSC. *See* 30 TAC 55.101(d). The Commission reviewed the WCS Applications, declared them administratively complete, and issued draft licenses. *Sierra I* at 219-20; *Sierra II* at 232-33. The Sierra Club timely submitted written comments opposing the WCS Applications on various grounds, including, without limitation, incompleteness, material fact issues regarding technical aspects, negative publicity, possibility of groundwater contamination, possibility that the radioactive by-product materials could be transported via railcar near the homes of the hearing requesters. *Sierra I* at 219-20; *Sierra II* at 232. The Commission denied all hearing requests submitted by the Sierra Club. After exhausting administrative remedies, the Sierra Club sought review in district court pursuant to § 5.351, TWC, alleging that the Commission has ***no discretion*** to deny contested case hearing requests that ***facially*** conform to the pleading requirements set forth in Subchapter G, 30 TAC Chapter 55 (*e.g.*, that the Commission cannot resolve factual disputes on its own). *Sierra I* at 221; *Sierra II* at 232-33.

The 3rd Court of Appeals begins the analysis by stating that the "critical" or "threshold" question is whether the person requesting the contested case hearing is an "affected person," noting that the analysis of "affected person" status is principally controlled by the Affected Person Factors set forth in 30 TAC 55.256. *Sierra I* at 221-22; *Sierra II* at 234. As noted above, the 3rd Court of Appeals conducts its review under the abuse of discretion standard of review, noting that the discretion allowed to the Commission in these instances stems from its "exclusive jurisdiction over certain types of permits for regulated activities – here, the exclusive jurisdiction to issue by-product disposal licenses…" and "more, specifically from its authority to determine the need for a contested case hearing on the merits of any license application under its jurisdiction." *Sierra I* at 222-23 (citing *City of Waco II* at 420 (noting the discretion that § 5.115, TWC, grants the Commission in determining the need for contested case hearings)); *Sierra II* at 232-33.[5]

The 3rd Court of Appeals continues, stating that the Commission's discretion over contested-case hearings includes its "threshold" determination of whether a hearing requester is an "affected person." *Sierra I* at 223; *Sierra II* at 235. The Court acknowledges that the Commission's exercise of this discretion in evaluating "affected person" status permits the Commission to weigh and resolve matters that may go to the merits of the underlying application, including the likely impact that the regulated activity will have on the health, safety, and use of the property. *Sierra I* at 223-24 (citing 30 TAC 55.256(c); *City of Waco II* (noting the overlap between the Affected Person Factors and exemption found to be dispositive in *City of Waco II*)); *Sierra II* at 235. Additionally, the Court states that, in the Commission's evaluation of each Affected Person Factor, the Commission may reference the "permit application, attached expert reports, the analysis and opinions of professionals on its staff, and any reports, opinions, and data it has before it. *Sierra I* at 224 (citing *City of Waco II* at 420-21); *Sierra II* at 235 (same). Frequently, the

[5] The 3rd Court of Appeals derives its holding allowing the Commission discretion to determine "affected person" status from the holding of *City of Waco II*, stating that the "contested-case hearing framework analyzed in the *City of Waco* and *Bosque* is the framework applicable to ***all hearing requests under TCEQ's licensing jurisdiction, including provisions from Chapter 5 of the Water Code and TCEQ regulations in Chapter 55 of Title 30 of the Texas Administrative Code***. As such, and given the lack of supreme court jurisprudence in this area, these two recent opinions firmly guide our disposition of this appeal." *Sierra I* at 223 & n.9 (internal citations omitted) (emphasis added).

presence of substantial evidence in the administrative record supporting the Commission's decision to grant or deny "affected person" status is a dispositive factor in reviewing the Commission's decision for an abuse of discretion. *Sierra I* at 224; *Sierra II* at 235.

Additionally, the Commission may exercise the above-described discretion without holding any evidentiary hearing, provided that the hearing requester has been afforded its regulatory rights to express its dissatisfaction with the proposed license and the agency did not refuse to consider the evidence in support of that satisfaction. *Sierra I* at 224; *Sierra II* at 235-36.

In its application of the above-described law to the facts, the 3rd Court of Appeals, noted that once the Commission received the hearing requests from the Sierra Club, the Commission set the matter for consideration at a Commission meeting, allowed responses to the hearing request, and allowed the Sierra Club to file replies to the responses. *Sierra I* at 224; *Sierra II* at 236. The evidence considered by the Commission included the Executive Director's response to the hearing request, the applicable WCS Application, and an environmental analysis conducted by Commission staff and consulting entities. *Sierra I* at 224; *Sierra II* at 236. Though numerous factors governed the Commission's decision to deny the Sierra Club's requests for hearing, the following are of interest for purposes of this Brief:

(a) 30 TAC 55.256(c)(1) (whether the interest claimed is one protected by the law under which the application will be considered): The Executive Director stated that the requesters' "concerns about groundwater and airborne contamination and financial assurance are addressed ***by the laws under which the application will be considered***." *Sierra II* at 239 (emphasis added). The *Sierra II* Court agreed, noting that it was reasonable for the Commission to determine that design of the subject disposal facilities in compliance with statutory requirements and operation of such facilities as licensed is not likely to adversely affect the environment in amounts that prohibited under law. *See id.* at 240.

(b) 30 TAC 55.256(c)(3) (whether a reasonable relationship exists between the interest claimed and the activity regulated): In response to Sierra Club's concerns that transportation of radioactive materials, by truck or by rail, could adversely affect the hearing requesters, the Executive Director stated "because TCEQ is not authorized to regulate or control traffic and the draft license does not authorize receipt of materials by rail, concerns about traffic or railway accidents could not be addressed in a contested-case hearing." *Id.* at 239. The *Sierra II* Court agreed, stating that it was reasonable for the Commission to determine that the requesters "stated concerns over possible traffic and railway accidents involving by-product materials were not reasonably related to the disposal of by-product at the WCS site because TCEQ has no jurisdiction over the transportation of radioactive materials and because the permit does not allow WCS to receive by-product by rail." *Id.* at 240. The *Sierra II* Court further agreed that any claims by hearing requesters related to potential negative publicity on their businesses was not reasonably related to the WCS Applications because the laws under which the WSC Applications would be considered related to public health, safety, and the environment, not publicity. *See id.* at 240.

(c) 30 TAC 55.256(c)(5) (likely impact of the regulated activity on use of the impacted natural resource by the person): The Executive Director stated there is no likely

> impact of the regulated activity on the requesters' use of ground water resources because the likelihood of groundwater contamination and migration of contaminants into the requesters' water wells is remote ***due, in part, to the design of the facility required pursuant to the draft permit.*** *Id.* The *Sierra II* Court agreed, noting that it was reasonable for the Commission to determine that design of the subject disposal facilities in compliance with statutory requirements and operation of such facilities as licensed is not likely to adversely affect the environment in amounts prohibited under law. *See id.*

The 3rd Court of Appeals ruled that the Commission did not abuse its discretion in denying the Sierra Club's contested case hearing requests and even went so far as to state that granting the contested case hearing requests would have been an abuse of discretion by the Commission. *Sierra I* at 226; *Sierra II* at 240.

In addition to the statement by the 3rd Court of Appeals in footnote 9 to its *Sierra I* opinion, which states broadly that this is the "framework applicable to all hearing requests under TCEQ's licensing jurisdiction, including provisions from Chapter 5 of the Water Code and TCEQ regulations in Chapter 55 of Title 30 of the Texas Administrative Code," the Texas Legislature subsequently recognized the holdings of *Sierra I* and *Sierra II* as good law. The 84th Texas Legislature enacted Senate Bill 709, effective September 1, 2015 ("SB 709"), which expressly codifies the holdings of *Sierra I* and *Sierra II* with respect to certain environmental permits for air, waste, and water issued under Chapters 26 or 27, TWC, or under Chapter 361, THSC, and governed by the environmental permitting procedures set forth in Subchapter M, Chapter 5, TWC. SB 709 amends § 5.115, TWC, by adding subsection (a-1), which allows the Commission to consider the following when evaluating contested case hearings referred under Subchapter M, Chapter 5, TWC:

(a) the merits of the underlying application, including whether the application meets the requirements for permit issuance;

(b) the likely impact of regulated activity on the health, safety, and use of the property of the hearing requester;

(c) the administrative record, including the permit application and any supporting documentation;

(d) the analysis and opinions of the executive director of TCEQ; and

(e) any other expert reports, affidavits, opinions, or data submitted on or before any applicable deadline to TCEQ by the executive director, the applicant, or a hearing requester.

30 TAC 55.203(d), (e) were correspondingly revised by the Commission in response to SB 709, distinguishing between applications filed on or after September 1, 2015 and applications filed before September 1, 2015. The rule recognizes that the Commission may consider the evidence described above when evaluating hearing requests for applications filed before September 1, 2015 "to the extent consistent with case law." 30 TAC 55.203(e).

The express recognition of the application of the *Sierra I* and *Sierra II* holdings (as binding precedent) for pre-September 1, 2015 contested case hearings, is important because the Legislature only partially codified the holdings, omitting any codification for permits governed by 30 TAC 55.251-256 besides the environmental permits governed by Chapters 26 or 27, TWC, or under Chapter 361, THSC. This does not take away from the breadth of the *Sierra I* and *Sierra II* holdings, however, because the 3rd Court of Appeals recognized the application of its holdings to the entirety of the licensing framework set forth in Chapter 5, TWC, and Chapter 55, Title 30, TAC, which includes petitions for creations of MUDs. SB 709 was part of a targeted effort to reform the procedural regime for environmental permitting (including expedited proceedings before SOAH) and should not be interpreted as otherwise limiting the application of *Sierra I* and *Sierra II* to the framework for evaluating contested case hearings in relation to petitions for creations of MUDs.

Even the Sierra Club recognized the import of the *Sierra I* and *Sierra II* holdings, stating, in response to the Senate vote passing the SB 709, that "[t]he bill gives nearly full discretion to the TCEQ to determine who is an affected party, and thus eligible for party status." Legislative Update – April 2015, https://www.sierraclub.org/texas/blog/2015/04/legislative-update-april-2015 (last visited August 25, 2024).

d. Requests for Affected Person Status by Counties: A Tale of Two Commissions.

When it comes to the Commission's evaluation of requests for contested case hearings for individuals versus governmental entities, the Commission lowers the burden of proof necessary for governmental entities to obtain "affected person" status. One only need listen to the Commission's rote recitation of the standard applicable to governmental entities versus individuals to discern the Commission's Jekyll and Hyde nature on the matter.

For instance, at the Commission's January 25, 2023, meeting, the Commission considered the petition for the creation of Lampasas County Municipal Utility District No. 1 (Docket No. 2022-1653-DIS). The Commission received twenty-three (23) hearing requests, twenty-two (22) of which came from individuals. In citing the standard for granting "affected person" status, Chairman Niermann stated:

> As you know we review requests for contested case hearings on MUD creations under Chapter 55, Subchapter G, so we are looking for affected persons. That is… Requesters who have identified personal justiciable interests. And the word "justiciable" refers to what's within the Commission's authority on this item and for a MUD creation what's "justiciable" is whether the MUD is feasible, practical, and necessary and would benefit the land. And that includes questions about the availability of comparable services from other systems as well as economic feasibility and importantly it includes the effect to land with respect to seven (7) factors that are laid out at § 54.021(b)(3), TWC, and those include groundwater levels and recharge, drainage, water quality, subsidence, among other factors. Further in analyzing the effects to land, the Commission considers both the proposed district as well as nearby properties that may be affected. ***And, importantly, we cannot consider factors outside this framework.*** So, for example, we cannot consider noise, or traffic, or property values. These are not justiciable

> issues in the context of a MUD petition, even though they very well may be legitimate concerns.[6]

Here, the Commission correctly calls out that it may ***only*** consider as "justiciable" interests concerns related to the factors set forth in § 54.021(b), TWC (the "54.021(b) Factors"), which are as follows:

> (a) the availability of comparable service from other systems, including but not limited to, water districts, municipalities, and regional authorities;
>
> (b) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
>
> (c) whether or not the proposed MUD and its system and subsequent development will have an unreasonable effect on the following: (1) land elevation, (2) subsidence, (3) groundwater level within the region, (4) recharge capability of a groundwater source, (5) natural run-off rates and drainage, (6) water quality, and (7) total tax assessments on all land located within a district.

§ 54.021(b), TWC. The 54.021(b) Factors are relevant for evaluation of the first Affected Person Factor, i.e., whether the interest claimed is one protected by the law ***under which the application will be considered***. If the Creation Review Staff makes favorable findings with respect to each 54.021(b) Factor, it is ***required to*** find that the proposed MUD is feasible, and practicable and necessary. *§ 54.021, TWC.*

Then, with respect to a request for contested case hearing by Ellis County, Texas, contesting a petition for the creation of Lakeview Municipal Utility District No. 2, Chairman Niermann stated:

> On this item, I would grant the hearing requests by the county and the city. Both filed timely requests. And, again the proposed MUD would be located… This proposed MUD is a little bit different, right. They each are a little different, but this one would also be within the county and the city ETJ. ***Um, Ellis County, for its part, identified several-ish interests within its statutory authority that may be affected by the creation of the district, and it also specifically identified those statutory powers***.[7]

The difference is stark. When considering requests by individuals, the Commission correctly states that it may ***only*** consider as "justiciable" interests concerns related to the factors set forth in § 54.021(b), TWC. On the other hand, when considering requests by governmental entities, the Commission states only that the governmental entities need to prove their statutory authority over or interest in the issues relevant to the application. This tracks the sixth factor set forth in 30 TAC 55.256(c)(6). One is forced to ask why the Commission's inquiry into a particular

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[6] Commissioner's Agenda – January 25, 2023, https://www.youtube.com/watch?app=desktop&v=rxEhHiet64g&embeds_referring_euri=http%3A%2F%2Fblogimam.pl%2F&feature=emb_imp_woyt (last visited August 26, 2024) (emphasis added).

[7] Commissioner's Agenda – August 25, 2021, https://www.youtube.com/watch?v=aGzJ-IknBpc (last visited August 26, 2024) (emphasis added).

governmental entity's statutory interests is not also limited to the 54.021(b) Factors? And why does the Commission not consider expressly the Affected Person Factors set forth in 30 TAC 55.256(c) with respect to individual requesters?

The answer is simply that the Commission is incorrectly and inconsistently applying the criteria by which it must evaluate whether a person or an entity is an "affected person" or not. Counties, especially Williamson County, have come to rely upon, and weaponize, this inconsistency. However, such disparate and favorable treatment towards governmental entities is not merited, and represents an abuse of the Commission's discretion in failing to apply the Affected Person Factors correctly and, more importantly, in failing to ensure that each requester has at least suffered a redressable injury in accordance with constitutional standing requirements.

Counties typically take one of two routes when presenting their requests for contested case hearings. The first route relies on the first five Affected Person Factors, pursuant to which counties attempt to establish some type of injury to their respective legal interests or real or personal property interests. This type of claim to a contested case hearing is less frequent.

The second, much more common, route taken is to claim that counties' respective statutory authority over or interest in the issues relevant to the application ***could*** be affected, pursuant to the sixth Affected Person Factor. Additionally, counties will typically include a general reference to one or more of the 54.021(b) Factors and claim that the general impact of the proposed MUD on the applicable county's statutory powers will negatively impact water quality or another 54.021(b) Factor. Some counties do not even reference any 54.021(b) Factors and rely only on a general recitation of statutory powers that may be affected. What's worse, is that an even more general claim to statutory authority has previously been submitted (see the attached hearing request submitted by Collin County in response to the petition for the creation of Lakehaven Municipal Utility District, attached hereto as **Exhibit 6**) and resulted in the grant of "affected person" status.

A survey of hearing requests submitted by counties reveals a formulaic approach to obtaining "affected person" status that consists of the following: ***A General List of Statutory Powers Possessed by a County + One or More 54.021(b) Factors = "Affected Person" Status***. As discussed herein, recitation of this formula does not amount to the "magic words" needed to obtain "affected person" status without at least some substantiation of a county's claims of injury to its statutory powers and the corresponding link to a 54.021(b) Factor.

An example of this type of claim can be found in the hearing request submitted by Ellis County protesting Lakeview Municipal Utility District No. 2 (attached hereto as **Exhibit 7**, the "Ellis County Request"). In its initial request, dated April 16, 2021, Ellis County vaguely claimed: "[t]he County has authority over various functions –including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of the district and that the application fails to take into account." Ellis County alleged that its ability to provide emergency services and to provide for public health and safety could be negatively impacted by future potential contamination of surface and or groundwater within the region (referencing § 54.021(b)(3)(F)). As discussed further herein, this kind of conjectural or hypothetical allegation of injury (without any scintilla of substantiation) cannot support the grant of "affected person" status (see discussion in Section V(e)(i), *infra*).

In its response to the applicant's general denial of Ellis County's affected person status, Ellis County shored up its claim to statutory authority by citing numerous statutory rights of counties to regulate, including, among others: §§ 232.001-.011, LGC (county authority for road construction in subdivisions as well as other subdivision regulations); § 251.016, TTC (general control over roads, highways and bridges); § 121.003, THSC (enforcement of laws to promote public health); and § 26.171, TWC (enforcement of water quality controls and inspection of public waters).

What is lacking from the above claim to "affected person" status is any actual and concrete injury to Ellis County. If claiming an affirmative right to regulate that was as generally affected by a MUD as claimed by Ellis County above satisfied the Commission's requirement of a statutory authority affected by the petition for creation of Lakeview MUD No. 2, ***virtually any*** governmental authority within the vicinity could claim "affected person" status. As discussed further herein, an injury to Ellis County must still occur or must be imminent – alleging a conjectural or hypothetical future injury is not sufficient. Such an injury, when a right to regulate or enforce is involved must consist of some type of constraint of the ability of the applicable government entity to exercise its right to regulate or enforce.

e. Application of Current Law to the Facts.

i. The Affected Person Factors Cannot Be Interpreted to Allow "Affected Person" Status to Parties Who Haven't Suffered Any Injury.

Despite the Texas Supreme Court's acknowledgment of the 3rd Court of Appeals' statutory analysis of "personal justiciable interest" to mean that constitutional standing requirements should serve as guard rails on the Commission's discretion to make "affected person" determinations, the Texas Supreme Court issued no affirmation or rejection of the 3rd Court of Appeals' dicta. However, regardless of one's position regarding ***how*** constitutional standing should be factored into the Commission's discretion to make "affected person" determinations, the answer ***cannot be*** that governmental entities can be permitted "affected person" status without proving ***any*** injury. The 3rd Court of Appeals addressed this explicitly, rejecting arguments by the City of Waco that the determination of "affected person" status should be interpreted liberally in order to allow, and encourage participation by a diverse group of participants with different viewpoints. Instead, the 3rd Court of Appeals expressly agreed, in part, with the Commission noting: "Consequently, as the Commission observes, the 'personal justiciable interest' requirement is ***more restrictive*** than the standing concepts that ordinarily govern the public's right to participate in executive agency proceedings." *City of Waco I*, 346 S.W.3d 781, 808 (*emphasis added*). This comports with the Commission's limitation of its evaluation of "affected person" status to the 54.021(b) Factors when applied to requests by individuals (as discussed in Section V(d), *supra*). However, the same limitation should be similarly applied to requests submitted by governmental entities in order to avoid an abuse of discretion for failing to consider a factor the legislature directs it to consider, the 54.021(b) Factors.

In *City of Waco I*, both the 3rd Court of Appeals and the Commission agreed that constitutional standing requirements applicable in courts inform the Commission's "affected person" determinations. The 3rd Court of Appeals noted the underlying policy rationale in support of limiting "court intervention to disputes that the judiciary is constitutionally empowered to decide by 'ensur[ing] that the plaintiff' has a sufficient personal stake in the controversy so that the lawsuit would not yield a mere advisory opinion or draw the judiciary

into ***generalized policy disputes that are the province of the other branches***.'" *City of Waco I*, 346 S.W.3d 781, at 803 (quoting *Stop the Ordinances Please v. City of New Braunfels,* 306 S.W.3d 919, 927 (Tex. App.—Austin, 2010) (*no pet.*)) (*emphasis added*). Protection of this policy is especially important in times such as these when cities and counties are resorting to every method they have to prevent development within their boundaries in the face of diminishing regulatory authority (as discussed in Section II(a), *supra*).

Though the Texas Supreme Court granted the Commission discretion in making "affected person" determinations, the principles of standing, though not enumerated in the non-exclusive list of Affected Person Factors, certainly should inform the Commission's determination at the very least in ensuring that any party granted "affected person" status has at least suffered some injury-in-fact. For that reason, the principles of standing (as enumerated below) and the body of case law setting forth those principles are relevant to the Commission's evaluations of county hearing requests. To establish standing a party must show:

(a) an "injury in fact" from the issuance of the permit as proposed—an invasion of a "legally protected interest" that is (a) "concrete and particularized" and (b) "actual or imminent, not conjectural or hypothetical";

(b) the injury must be "fairly traceable" to the issuance of the permit as proposed, as opposed to the independent actions of third parties or other alternative causes unrelated to the permit; and

(c) it must be likely, and not merely speculative, that the injury will be redressed by a favorable decision on its complaints regarding the proposed permit (*i.e.*, refusing to grant the permit or imposing additional conditions).

City of Waco I, S.W.3d 781, at 802.

Several cases setting forth constitutional standing principles are especially relevant as it relates to counties and what constitutes an injury to a county's ability to regulate.

- *Shrimpers & Fishermen of RGV v. Texas Comm'n on Env't Quality*, 968 F.3d 419, 424 (5th Cir. 2020). Petitioners sued in federal court, claiming that the Commission erred in denying requests for contested case hearings protesting the issuance of air permits in connection with a liquefied natural gas plant project. Petitioners generally alleged harms based on increased emissions ***without providing any substantiating evidence***. The Fifth Circuit, applying constitutional standing requirements to evaluate the Commission's grant of "affected person" status, stated: "[w]e do not recognize the concept of 'probabilistic standing' based on a non-particularized 'increased risk'—that is, an increased risk that equally affects the general public. Suits alleging 'generalized grievances' do 'not present constitutional cases or controversies.'" *Id.* at 424 (internal citations omitted).

- *Stop the Ordinances Please v. City of New Braunfels*, 306 S.W.3d 919, 929 (Tex. App.—Austin, 2010) (no pet.). Petitioners sought declarations that ordinances restricting the use of coolers and the consumption of alcohol within the City's waterways exceeded the City's authority by attempting to regulate matters preempted by State authority under the Texas Alcoholic Beverage Code. The 3rd Court of Appeals

> noted that, "[g]overnment regulations that directly impact a plaintiff's customers and restrict its market can support standing… [n]onetheless…where the 'plaintiff's asserted injury arises from the government's allegedly unlawful regulation ... of someone else, ... standing is not precluded, but is ordinarily 'substantially more difficult' to establish.'" *Id.* (internal citations omitted).

When evaluating a county's request for contested case hearing on the basis of an alleged injury to its ability to regulate matters affected by the creation of a MUD, such as, in the case of Ellis County, a potential contamination of groundwater or surface water supply that may render Ellis County unable to provide emergency services in the future. This is the kind of "probabilistic standing" or "increased-risk" harm that gives rise to conjectural or hypothetical injuries, for which courts will not grant standing. Further, in terms of redressability, the Commission's decision to grant or not grant an order creating a MUD does not solve Ellis County's problem. Additionally, the Commission's regulation of MUD creations equates to the governmental regulation of someone else, requiring Ellis County to meet a higher burden of proof to establish injury to its statutory powers. Developers often develop property in unincorporated county territory without the use of a MUD. In that scenario, a developer would seek a wastewater discharge permit from the Commission pursuant to Chapter 26, TWC. Again, Ellis County would be in the same situation, faced with a future potential violation of a discharge permit that might cause Ellis County to be unable to render emergency services. This is a remote possibility, and without more evidence, such as poor compliance history of a habitual violator, is not enough to establish standing.

The above analysis of standing informs the Commission's grant of "affected person" status but does not limit the Commission's discretion, as set forth in *Sierra I* and *Sierra II*. However, as discussed herein, the Commission's "affected person" status is a concept that is narrower than constitutional standing as it is limited to the issues contemplated by MUD creation, which, according to the Commission, is limited to the 54.021(b) Factors. At least this is true of the Commission's evaluation of individual hearing requests. However, this same limitation should be applied when evaluating requests submitted by governmental entities as well, as discussed in the next Section.

In conclusion, regardless of how principles of constitutional standing come into play, a grant of "affected person" status ***cannot*** be made without at least some scintilla of evidence (beyond mere allegations) that a county has suffered some actual or imminent injury to its ability to regulate or enforce or to provide services. Except in unusual circumstances, a county will have difficulty proving such an injury because the creation of a MUD simply authorizes the creation and existence of a local political subdivision, and assumes compliance with applicable laws, such as those cited by Ellis County. Disputes assuming failure to comply on the part of an entity with no compliance history are the very type of conjectural or hypothetical disputes that courts and the Commission are required to avoid litigating.

ii. Tex. Comm'n on Envtl. Quality v. City of Aledo and Collins v. Texas Nat. Res. Conservation Comm'n: A Case Study in What Concerns are Considered "Affected by the Application."

Following *Sierra I* and *Sierra II*, the 3rd Court of Appeals considered the Commission's denial of "affected person" status to two requesting municipalities, the City of Aledo, Texas ("Aledo"), and the City of Willow Park, Texas ("Willow Park," and together with Aledo, the

"Requesting Cities"), that protested the Commission's potential issuance of a permit to Republic Waste Services of Texas, Ltd. for the construction and operation of a new municipal solid waste transfer station (the "Transfer Station") in Parker County, Texas. *Texas Comm'n on Env't Quality v. City of Aledo*, No. 03-13-00113-CV, 2015 WL 4196408, at *1 (Tex. App.—Austin, July 8, 2015) (*no pet.*) ("TCEQ v. Aledo"). The Transfer Station was not located within the corporate limits of either Requesting City but was located within Willow Park's ETJ. *Id.* Issuance of the permit for the Transfer Station is pursuant to Chapter 361, THSC, and consideration of contested case hearings in connection with such permits is governed by Subchapter F, Subchapter F, 30 TAC 55. *See id.* at *8-9. While consideration of contested case hearings for petitions for MUD creations is governed by Subchapter G, 30 TAC 55, per the direction of *Sierra I* and *Sierra II*, analysis of the Affected Person Factors pursuant to 30 TAC 55.203 (Determination of Affected Person) or 30 TAC 55.256 (Determination of Affected Person) should not be distinguished because the holdings of *City of Waco II*, *Sierra I*, and *Sierra II* are applicable to the Commission's entire licensing jurisdiction under Chapter 5, TWC, and 30 TAC 55. *See Section V(c), Footnote 5, supra.*

After the Commission referred the permit application to SOAH, the mayors of each Requesting City attended a preliminary hearing held by SOAH in Parker County, and requested to participate as "affected persons" by personal appearance. The basis for each Requesting City's claim to "affected person" status consisted of the following: (a) location of an elementary school within a half-mile of the Transfer Station's proposed site; (b) the individual residents that were granted party status live within the ETJ; (c) the Requesting City has the duty to provide services within its ETJ; (d) residents within the ETJ could request annexation into a Requesting City; (e) ***the Requesting City has platting authority within the ETJ***; (f) the Requesting City has "health and safety issue concerns" about the proposed Transfer Station; (g) location of city-owned water wells within a half-mile of the Transfer Station's proposed site; (h) ***the Transfer Station would cause a high density volume of traffic to flow through the Requesting City, exacerbating already existing traffic issues***. These types of "affected person" claims are as general in nature as the formulaic requests typically issued by counties when protesting MUD creations.

The ALJ denied the Requesting Cities party status, the Requesting Cities filed motions for rehearing after the Commission adopted the ALJ's PFD, and the Requesting Cities filed a petition for review in Travis County District Court after the Commission overruled the motions for rehearing. *Id.* at 3. However, the 3rd Court of Appeals held that the ALJ's denial of "affected person" status was not an abuse of discretion because neither Requesting City had met its burden of proof to make minimal jurisdictional showing of personal justiciable interest. The Court elaborated that the Requesting Cities' claims did not sufficiently demonstrate that they had any legally protected interests, how such interests would be affected by the issuance of the permit, or how those interests were not common to the general public. The Court emphasized the fact that the initial burden of proof for the grant of "affected person" status lies with the requester, stating:

> a person seeking to be admitted as a party nevertheless has the burden of making a minimum jurisdictional showing of a "justiciable interest." While the showing of such interest need not be in writing (as opposed to the situation when a person requests that the Commission hold a contested-case hearing), the only reasonable interpretation of the applicable Commission rules and Water Code sections squarely places that burden of a showing on the requesting person.

Id. at *4 (*internal citations omitted*). Importantly, this follows the holdings of the Court in *Sierra I* and *Sierra II*, in which the Court established that the Commission did not abuse its discretion in

ruling on "affected person" status without holding any evidentiary hearing, provided that the hearing requester has been afforded its regulatory rights to express its dissatisfaction with the proposed license, permit, or application, and the Commission did not refuse to consider the evidence in support of that satisfaction. Here the Court added to that principle, stating that, even though Commission rules do not specify any rules by which the Commission must make "affected person" determinations (referring to the fact that the rules only require a "brief, written statement" explaining a requester's "affected person" status), the requester must make a minimum showing substantiating its claim to "affected person" status. *Id.* at *10-11. The Court elaborated further, stating:

> While the Commission is required to consider all of the relevant factors that are raised by a person seeking party status, the Cities have pointed to no rule or statute requiring the Commission to request information from a hopeful "affected person" on any one or more of the factors if such information is not offered. ***That burden of offering evidence to support a showing on any given factor must necessarily rest on the person seeking to be admitted as a party***. If no showing is made on any one or more of the factors, there is nothing in the statutes or rules placing the burden on the Commission or ALJ to draw out from the person such information.

Id. at *4 (emphasis added). This comports with the holdings of *Sierra I* and *Sierra II*, which denied the Sierra Club's claim that "facially conforming request[s]" are not subject to any deeper inquiry. *Sierra I*, 455 S.W.3d 214, 221. The formulaic approach of counties to contested case hearing requests is not "magic language" that allows counties to obtain "affected person" status. Counties must make an additional showing of injury, not simply a reference a list of statutory powers and a general reference to 54.021(b) Factors without any substantiation of injury related to the cited 54.021(b) Factors.

Counsel for Ellis County, in another matter (see Ellis County's hearing request protesting the creation of Ellis Ranch Municipal Utility District No. 1, and response to applicant's reply, attached hereto as **Exhibit 8**), disagreed with the *Sierra I* and *II* Courts and the *Aledo* court and cited an outdated 3rd Court of Appeals case, *United Copper v. TNRCC*, 17 S.W.3d 797, Tex. App—Austin, 2000) (*pet. dism'd)* ("United Copper"), as authoritative precedent for the proposition that counties only have to show a potential future harm to their ability to regulate or enforce. Other counties also cite favorably to *Heat Energy Advanced Tech., Inc. v. W. Dallas Coal. for Env't Just.*, 962 S.W.2d 288 (Tex. App.—Austin, 1998) (*pet. denied*) ("Heat"). *United Copper* relates to a protestor's claim that a nearby copper plant could potentially injure his health, and *Heat* relates to protestor group's claim that a nearby hazardous and industrial waste storage and processing facility could harm the use of neighboring properties due to odor production. The *Aledo* Court addresses Heat directly and United Copper (which cites Heat) indirectly, stating that the requesting party ***still*** bears the burden of minimally substantiating its claim to harm or potential harm, not, with respect to a governmental entity, just claiming generally that a statutory power may be constrained or impinged upon in the future. *See Aledo*, at *4. Showing potential harm to a governmental entity's ability to regulate or enforce is more nuanced. While it's true, as discussed herein, that a governmental entity can demonstrate potential harm by showing an imminent constraint on its ability to regulate, such potential harm cannot be hypothetical or conjectural.

Additionally, it is important to note that a likely reason for the ALJ's denial of "affected person" status, particularly as it relates to the bare assertions of statutory authority made by the

Requesting Cities, regarding their respective platting authorities, traffic regulation, and the provision of services to ETJ residents, is that the 3rd Court of Appeals does not view the issuance of a permit (or, in the case of MUDs, an order creating) as authorizing injury to a requester's person or property or an invasion of any other property rights. *See Collins v. Texas Nat. Res. Conservation Comm'n*, 94 S.W.3d 876, 883 (Tex. App.—Austin, 2002) (no pet.) ("Collins"). The issuance of a permit (or an order creating, for purposes of this Brief) requires operation subject to oversight and in accordance with law so that it will not deprive a requester of any "concrete liberty or property interest". *Id.* at 883-84. "Mere speculation of failure" about the actions or omissions of the MUD to comply with applicable law during the prosecution of its activities (*e.g.*, design, construction, operation and maintenance of its facilities) is not sufficient to establish a redressable injury. *Id*. Further, Collins involved a permit application by a farmer for the expansion of its poultry operation by replacing a dry waste-management system with a wet waste-management system. *Id.* at 879. A nearby organic farmer, Mr. Collins, protested the permit and requested a contested case hearing. *Id.* Though this case involved a prior, and now-outdated, version of 30 TAC 55 that allowed the Commission to consider the reasonableness of a hearing request and determine if such request was supported by competent evidence, the list of Affected Person Factors is the same, and the *City of Waco II, Sierra I and Sierra II* courts have expressly authorized the type of evidentiary investigation performed by the *Collins* court in reviewing whether the Commission's denial of "affected person" status was supported by substantial evidence. *See id.* at 882-883. One of the bases for injury raised in *Collins* was that a clay-lined lagoon system authorized by the permit would fail and possibly pollute his groundwater. *Id.* at 883. However, the Commission considered the lagoon system authorized by the permit and noted that Mr. Collins merely assumed the potential failure of the lagoon system (which would have also constituted a violation of the permit authorized) and noted the remote chance of any such failure occurring (and if such failure occurred, the remote chance that Mr. Collins' groundwater would be affected). *Collins*, 94 S.W.3d 876, 883 & 883n.7. The Commission further noted that such speculation does not give rise to personal justiciable interests and should not result in the grant of "affected person" status. *Id.* at 883.

iii. Evaluation of the Affected Person Factors for Counties as Applied to Williamson County.

Herein, this Brief evaluates the formulaic contested case hearing request submitted by Williamson County using the Affected Person Factors (as well as the statutory and case law framework described above). In accordance with the holdings of *Sierra I* and *Sierra II* (as discussed in Section V(c), *supra*), the Commission has discretion to weigh and resolve the Affected Persons Factors, including matters that may go to the merits of the underlying application. This deference to the Commission originates from the Texas Legislature's statutorily granted exclusive jurisdiction over the creation and supervision of MUDs and other types of special districts. *Sierra I*, 455 S.W.3d 214, 223. Such deference arises where the regulatory scheme is pervasive and indicative of the Legislature's intent to grant exclusive jurisdiction to the Commission, which is true here pursuant to the Legislature's grant of general jurisdiction to the Commission over the continuing supervision of districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, Texas Constitution. *See* § 5.013(a)(2), TWC; *Sierra Club & Pub. Citizen v. Texas Comm'n on Env't Quality*, No. 03-14-00130-CV, 2016 WL 1304928, at *3 (Tex. App.—Austin, Mar. 31, 2016) (*no pet.*). This right of supervision includes approval of districts created under TWC Chapters 36, 50, 51, 54, 55, 58, 65, and 66, and Chapter 375, LGC. *See* 30 TAC 293.1(a). Accordingly, the Commission should be afforded the same level of deference in contested case hearing

determinations made pursuant to 30 TAC 55 as is afforded to it under the permitting schemes discussed in *Sierra I* and *Sierra II*.

In its hearing request, Williamson County raises three primary concerns regarding (i) developer cost-participation in Williamson County's LRTP via dedication of corridor and arterial roads, at no cost to Williamson County; (ii) allocation of responsibility for operation of internal subdivision roads to Williamson County and allocation of responsibility for maintenance of such roads to MUD 52; and (iii) increased fiscal burden to be borne by taxpayers residing outside of MUD 52 and by Williamson County with regards to increased costs for providing law enforcement, emergency medical, fire, and animal control services to future residents of MUD 52. Williamson County references only the Affected Person Factors and fails to recognize the import of the 54.021(b) Factors (or make any express reference thereto). Williamson County also fails to provide any evidence of injury to its listed statutory powers and asserts generally, on behalf of its taxpayers, that such taxpayers would be injured by bearing an increased tax burden in order to account for Williamson County's increased costs of providing county services to future residents of MUD 52. This Brief will evaluate Williamson County's request pursuant to the Affected Person Factors set forth in 30 TAC 55.256, which governs MUD creations:

- ***For governmental entities, their statutory authority over or interest in the issues relevant to the application.*** This Brief will take the Affected Person Factors out of order and begin with the sixth Affected Person Factor, which is of primary importance for governmental entities such as Williamson County. This factor, despite what governmental entities like Williamson County may want, does not stand alone and should not serve as the ***sole*** basis for granting a party "affected person" status. No matter which side one picks in the argument between the 3rd Court of Appeals and the Commission in *City of Waco I* regarding whether standing limits the Commission's discretion or is simply a factor to be considered along with the Affected Person Factors, both the Commission and the 3rd Court of Appeals agree that the grant of "affected person" status cannot be liberally construed to include parties that have suffered ***no injury*** or whose allegations of potential harm are ***merely conjectural or hypothetical.*** Accordingly, the formula used by Williamson County requires the addition of one more element as follows (as shown in bold, red text below):

  A List of Statutory Powers Possessed by a County + One or More 54.021(b) Factors + ***a Minimal Showing of a Redressable Injury or Potential Redressable Injury***) = "Affected Person" Status.

  If there is a failure to meet any part of the equation, there is no ability for a governmental entity to obtain "affected person" status.

  As noted above, a bare assertion of a right to regulate MUDs does not equate to a redressable injury – a right to regulate is, by definition, a right to defend Williamson County's interest. A bare assertion of such right is not cured by placing one of the 54.021(b) Factors next to the bare assertion without some minimal substantiation as to why an injury has occurred with respect to a right to regulate.

The list of general regulatory authority cited by Williamson County is consistent across its numerous requests for hearing and includes the following (taken in order from the Hearing Request):

- §§ 232.001-.011, LGC (county authority to implement platting requirements). MUDs (to the extent they own land) and other owners and/or developers of property within such MUDs are subject to these requirements regardless of the Commission's grant or denial of the Creation Petition.

- § 251.003, Transportation Code (county order and rulemaking authority for roads). Roads within MUDs, to the extent not conveyed to a municipality, are typically inspected and accepted by, and conveyed to, the applicable county. Applicable road specifications set forth by a county pursuant to § 232.003, LGC, still apply to roads constructed within MUDs. However, to the extent a county accepts roads for operation but refuses to accept such roads for maintenance, the MUD, as owner of the road would still be subject to the applicable county's road standards and would be responsible for the maintenance of such roads.

- Subchapter C, Chapter 233, LGC (fire code in unincorporated areas). Counties retain the ability to promulgate and implement their fire code and ancillary rules. This does not change upon creation of a MUD.

- §§ Subchapter E, Chapter 232, LGC (Thoroughfare Plan, lot frontage, set-backs). MUDs (to the extent they own land) and other owners and/or developers of property within such MUDs are subject to these requirements regardless of the grant or denial of a proposed MUD.

- §§ Subchapter B, Chapter 233, LGC (Building set-back lines); Counties retain the ability to promulgate and implement their building and set-back lines. This does not change upon creation of a MUD.

- Subchapter E, Chapter 233, LGC. Williamson County included this reference among the list of cited statutory powers with the intent of referencing fire code in unincorporated areas, which is already covered by Subchapter C of Chapter 233. There is otherwise no Subchapter E. This reference appears to be a mistake.

- Chapter 418, Government Code (emergency management). Local government entities subject to this Chapter include MUDs to the extent able to provide ***mutual*** aid. This does not change or restrict the powers of the applicable county upon creation of a MUD.

- § 251.016, Transportation Code (general control over roads, highways and bridges). See note above regarding § 251.003, Transportation Code.

- Chapter 254, Transportation Code (authority to provide drainage on public roads and providing authority to establish a drainage system). The

authority provided under this chapter overlaps with county rulemaking authority provided under § 232.003, LGC, and Chapter 251, Transportation Code, regarding drainage improvements and public roads (which may include drainage in support of such roads (*e.g.*, a curb and gutter system). Like with roads, to the extent a county does not accept drainage improvements or public roads (with associated drainage improvements), the MUD, as owner of the applicable improvements would still be subject to the applicable county's specifications regarding such drainage improvements and roads and would remain responsible for the maintenance of such improvements.

As noted herein, Williamson County only lists its general statutory powers to regulate MUDs (or development activities within MUDs) that ***may be*** affected by the Creation Petition. Williamson County does not assert any injury to its exercise of such statutory powers. In fact, Williamson County's list of statutory powers actually cuts against its first two concerns raised in the Hearing Request.

In citing Subchapter E, Chapter 232, LGC, Williamson County undermines its alleged concern regarding the need to ensure appropriate cost sharing via right-of-way dedication. § 232.110, LGC, expressly provides Williamson County with the authority to, "as a condition of approval for a property development project that the developer bear a portion of the costs of county infrastructure improvements by the making of dedications…" Requiring such right-of-way dedication in the CDA does not mitigate against a future redressable injury and creation of MUD 52 does not cause any injury to any of Williamson County's statutory powers with respect to roads.

In citing § 232.003, LGC, which authorizes Williamson County to adopt certain subdivision regulations, Williamson County again undermines its concern regarding the lack of a clear statement in the Creation Petition that MUD 52 will be responsible for maintenance of its internal subdivision roads. On March 4th, 2025, the Williamson County Commissioner's Court approved the attached subdivision regulations (attached hereto as **Exhibit 9**, the "Subdivision Regulations"). Section 9.9 of the Subdivision Regulations explicitly states that Williamson County "will not consider accepting subdivision roadways for maintenance that are located within newly created Municipal Utility Districts. The only exception will be for roadways that are identified in the Williamson County Long Range Transportation Plan and in accordance with the requirements of this section." Again, including duplicative language in the CDA does not mitigate against a future redressable injury and creation of MUD 52 does not cause any injury to any of Williamson County's statutory powers with respect to roads.

Both of the above examples bolster the fact that Williamson County's asserted list of statutory powers "affected by the application" all represent affirmative rights to regulate MUDs or activities within MUDs and allow

Williamson County the affirmative right to defend its own interests. Accordingly, there is no colorable claim to an injury to any one of Williamson County's listed statutory powers.

Further, even if the Commission believed there was any injury to Williamson County's ability to regulate, denying the creation of MUD 52 does not solve any of Williamson County's problems with respect to the increased costs of providing county services to the growing population within its boundaries. Development within Williamson County will continue without the use of a MUD. However, without the use of MUDs, the citizens of Williamson County will suffer because, without public financing of public infrastructure, the costs of such public infrastructure will be passed through to the lot purchaser and home buyer in the form of higher average purchase prices.

As set forth above, Williamson County failed to show injury to or constraint of the statutory powers it cited. Williamson County also failed to make a minimal showing of any other redressable injury or potential redressable injury because creation of the MUD does not result in any adverse effect on Williamson County's ability to exercise its statutory powers as needed to protect its own interests.

- ***Whether the interest claimed is one protected by the law under which the application will be considered.*** This is where limiting the legally-protected interests to be considered by the Commission, the 54.021(b) Factors, come into play, and, as discussed in Section V(d), *supra*, how the Commission intended to limit the application of "affected person" status when granting or denying contested case hearing requests. This standard must be consistently applied to both individual hearing requests and hearing requests submitted by governmental entities. Despite its own broad statutory grant of authority over district creation matters, once the Commission promulgates rules governing the application process and the process for determining "affected persons," it must follow those rules. *See* § 5.234, TWC.

  Unless a county asserts its own legally protected interests, it may not assert the legally protected interests of any other parties, as governmental entities requesting contested case hearings are not permitted to request on behalf of other parties, acting as *parens patriae* for such parties because this, by definition would be an interest "common to members of the general public." *City of Waco I*, 346 S.W.3d 781, 810. The 3rd Court of Appeals has expressly stated that governmental entities may not merely seek to stand in the shoes of its citizens. *Id.*

  Here, Williamson County states it is concerned that current caps on county tax rates limits its ability to address development and growth within its boundaries. Williamson County goes on to state that future residents of MUD 52 should not "shift the cost of development onto the current residents" and that MUD 52 should "help bear the continued cost of its development." Williamson County fundamentally misrepresents MUD 52's role in "bearing the cost of its development." As development occurs and assessed value comes onto the tax

rolls within MUD 52, the applicable tax payers within MUD 52 will contribute additional county ad valorem tax revenues to more than offset Williamson County's proportionately increased cost of providing county services to MUD 52. Because development occurs in phases, increased county tax revenues will occur concurrently with the development's increased need for county services. Additionally, Williamson County cannot obtain "affected person" status by acting as *parens patriae* and asserting concerns resident tax burdens on behalf of its existing taxpayers. That concern must be lodged by an individual taxpayer.

Further, even if the Commission believes that Williamson County's concerns regarding tax burdens are not asserted as *parens patriae*, Williamson County fails to make express reference to any 54.021(b) Factor. Williamson County's discussion of MUD 52 shifting its costs of development to the tax burden of existing Williamson County residents, as discussed herein, cannot, even indirectly, be construed as addressing the seventh 54.021(b) Factor regarding total tax assessments on all land located within a district because the concern regarding tax burden of taxpayers outside of the MUD does not fall within the confines of the seventh factor, which applies to total tax assessments on all land ***within MUD 52***. This factor is meant to address compliance with TCEQ's feasibility rules regarding MUD 52's projected tax rate and the total combined tax rate of all taxing entities with jurisdiction over the Tract, not tax rates outside of the Tract, which fall outside of the 54.021(b) Factors and are not considered by the Commission when evaluating whether to grant or deny creation of MUD 52.

- ***Distance restrictions or other limitations imposed by law on the affected interest.*** Because Williamson County does not assert any of its own legally protected interests, this Affected Person Factor is not applicable to analysis of Williamson County's hearing request.

- ***Whether a reasonable relationship exists between the interest claimed and the activity regulated.*** Even if the Commission believes that Williamson County asserted its own legally protected interest, there would not be a reasonable relationship as it relates to any of Williamson County's listed statutory powers or with respect to the tax burdens of existing taxpayers within Williamson County. Following *Sierra I*, *Sierra II,* and *TCEQ v. Aledo*, the creation of MUD 52 does not authorize injury to a requester's person or property or an invasion of any other property rights. Williamson County assumes injury to the exercise of its statutory powers and assumes injury to existing Williamson County taxpayers. However, mere speculation of failure about actions or omissions of the MUD to comply with applicable law (including the Commission's feasibility rules) during the prosecution of its activities (*e.g.*, design, construction, operation and maintenance of its facilities) does not give rise to harm or potential harm that is anything other than conjectural or hypothetical. As such, the Commission would be well within its discretion to find that any impact to Williamson County's statutory powers or to the tax burden of Williamson County's existing taxpayers is too attenuated.

- ***Likely impact of the regulated activity on the health, safety, and use of property of the person.*** See analysis above, this ties into claims by governmental entities based on their own legal or property interests.

- ***Likely impact of the regulated activity on use of the impacted natural resource by the person***. See analysis above, this ties into claims by governmental entities based on their own legal or property interests.

V. Conclusion.

"Guidance about a law's application outside of a redressable injury is a proper undertaking for the other two branches of government. The Legislature anticipates and shapes the future. The executive branch implements statutes through rulemaking. But the judiciary dwells in the house of the concrete past, assembled through the gradual accretion of judgments in specific cases." *State v. Zurawski*, 690 S.W.3d 644, 668–69 (Tex. 2024).

Grant or denial of "affected person" status is a serious matter. As demonstrated by **Exhibit 5**, the Commission can see that grant of a contested case hearing results in as much as twenty-four (24) months of delay before the Commission reaches a final decision on a MUD creation petition. Counties, such as Williamson County, are improperly using the administrative domain to create administrative delay and obtain leverage over landowners seeking to develop property through the use of MUDs. The Commission must ensure that the correct parties participate in the correct proceedings. Williamson County cannot establish "affected person" status because it has not established any redressable injury or any valid concerns regarding a 54.021(b) Factor that should be considered by SOAH and is not a correct party for this proceeding. Based on Williamson County's Hearing Request and other recent hearing requests, which fail to establish redressable injury and fail to appropriately address at least one 54.021(b) Factor, it is clear that use of the Commission's contested case hearing process is nothing more than an artifice by which Williamson County seeks to force developers to enter into its template CDA.

Current case law and the Commission's own rules do not permit liberal interpretation of "affected persons" to open Commission (or SOAH) proceedings to all. Instead, in recognition of the Commission's expertise in the area of creating and supervising MUDs and other special districts, the Commission has broad discretion to grant or deny "affected person" status on the basis of the information before it in the administrative record. However, the Commission must do so on a consistent and principled basis that results in application of the same standards to both individuals and governmental entities. A grant of "affected person" status to Williamson County on the basis of conjectural or hypothetical injury, under current law, would likely be determined as an "abuse of discretion" by a reviewing court. The Commission should not permit the weaponization of "affected person" status to effectively create through administrative practice a county right to consent to the creation of MUDs and other special districts. This is not what the Texas Legislature intended.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2025, the original of the Vorwerk Farms, LLC Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list by deposit in the U.S. Mail.

D. Ryan Harper

MAILING LIST
Williamson County Municipal Utility District 52
DOCKET NO. 2025-0119-DIS; INTERNAL CONTROL NO. D-05232024-057

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Bill Gravell Jr., County Judge
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EXHIBIT 1

Marielle Bascon

From: PUBCOMMENT-OCC
Sent: Tuesday, November 12, 2024 5:30 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; Pubcomment-Dis
Subject: FW: Public comment on Permit Number D05232024057
Attachments: TCEQ Comment Letter - Wm Co MUD 52.pdf

H

Jesús Bárcena
Office of the Chief Clerk
Texas Commission on Environmental Quality
Office Phone: 512-239-3319

How is our customer service? Fill out our online customer satisfaction survey at:
www.tceq.texas.gov/customersurvey

From: adam.boatright@wilco.org <adam.boatright@wilco.org>
Sent: Tuesday, November 12, 2024 4:53 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number D05232024057

REGULATED ENTY NAME WILLIAMSON COUNTY MUD 52

RN NUMBER: RN111979654

PERMIT NUMBER: D05232024057

DOCKET NUMBER:

COUNTY: WILLIAMSON

PRINCIPAL NAME: WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT 52

CN NUMBER: CN606267359

NAME: MR Adam D. Boatright

EMAIL: adam.boatright@wilco.org

COMPANY: Williamson County

ADDRESS: 3151 SE INNER LOOP
GEORGETOWN TX 78626-6342

PHONE: 5129433374

FAX:

COMMENTS: Please see the attached comments on behalf of the Williamson County Commissioners Court.

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710 Main Street, Georgetown, TX 78626
512.943.1100
wilcotx.gov

NOVEMBER 5, 2024

OFFICE OF THE CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-105, TCEQ
P.O. BOX 13087
AUSTIN, TX 78711-3087

RE: WILLIAMSON COUNTY MUD NO. 52
TCEQ INTERNAL CONTROL NO. D-05232024-057
CN: 606267359 RN: 111979654

To Whom It May Concern:

Williamson County writes in response to your notice dated August 16, 2024, copy attached, regarding the submission of a petition for the creation of the above-referenced Williamson County MUD No. 52 of Williamson County ("District"). The County opposes the creation of the proposed District unless certain conditions are met.

The County is requesting a contested case hearing.

The County understands that this is a formal protest proceeding and tenders its opinion, findings, conclusions, and any other information that would assist the TCEQ.

The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of the District and that the petition fails to take into account. See, e.g., Tex. Local Gov't Code §§ 232.001-.011 (county authority for road construction in subdivisions as well as other subdivision regulations); Tex. Local Gov't Code § 251.003 (county order and rulemaking authority for roads); Tex. Local Gov't Code, Chapter 233, Subchapter C (fire code in unincorporated areas); Tex. Local Gov't Code, Chapter 232, Subchapter E (infrastructure planning provisions in certain urban counties); Texas Local Gov't Code, Chapter 233, Subchapter B (building and set back lines); Tex. Local Gov't Code, Chapter 233, Subchapter E (fire code in unincorporated area); Tex. Local Gov't Code, Chapter 418 (emergency management); Tex. Transp. Code § 251.016 (general control over roads, highways and bridges); Tex. Transp. Code, Chapter 254 (drainage on public roads). Thus, the County has statutory authority under state law over numerous issues contemplated by this petition and is, therefore, an affected person. 30 Tex. Admin. Code § 55.256(b).

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For example, the County notes that, in your notice item (4), the District seeks traditional road powers including:

> "(4) to purchase, construct, acquire, improve, or extend inside or outside or its boundaries such additional facilities, systems, plants and enterprises, road facilities, and park and recreational facilities, as shall be consonant with the purposes for which the District is created."

However, the District does not state that it will not convey the road, particularly the maintenance, to the County without limitation. Considering the recent legislative changes outlined below, the County no longer accepts roads from newly created MUDs into the County's maintenance system.

Since the 2017 and 2019 legislative sessions effectively ended unilateral annexations by cities, the fiscal burden of developmental control has fallen on counties in general. Historically in Williamson County, MUD creation included agreements between the County and the neighboring municipality that would lead to annexation of that MUD by the municipality after a stated time period, thus limiting the financial exposure of the County in relation to the MUDs. Now however, despite this legislatively created increase in financial exposure to the County by limiting the ability of cities to annex MUDs, the current tax laws cap county tax rates to such a degree that the ability to address growth by counties is severely hampered. Because of these fiscal constraints, new residents of the County, such as those residing in this proposed District, should not shift the cost of development onto the current residents and the County's position and recommendation is that the proposed District help bear the continued cost of its development. This is consistent with recent efforts by the County to share costs between the County and legislatively created MUDs through the enacting legislation and/or Consent and Development Agreements.

For legislatively created MUDs, Williamson County, with the help of Senator Schwertner, has addressed this increased fiscal burden on the County by successfully negotiating Consent and Development Agreements that provide cost sharing between the County, the property developer/owner, and the MUD. The following paragraph from such agreements include standard terms relating to roads and the County argues should also apply to the TCEQ created MUDs for equity and public health and safety:

> ROADS
>
> The County has adopted a Long-Range Transportation Plan ("LRTP") which provides for the planning and future construction of certain road corridors within the County ("Corridor Project"). The County request that the Owner will convey, or cause to be conveyed, by special warranty deed, in fee simple and free and clear of all liens and encumbrances, to County, at no cost to the County, 100% of the right-of-way required for any roads which are shown within the boundaries of the Land as Corridor Projects in the LRTP within either 30 days after the final alignment for any Corridor Project is set; or, in the case that a final alignment for any Corridor Project has not been set, prior to the approval of any preliminary plat containing any Corridor Project within or directly adjacent to the Land.
>
> Furthermore, the Owner will dedicate to the County, in fee simple and free and clear of all liens and encumbrances, at no cost to the County, through plat or otherwise, as determined by the County, 100% of the right-of-way required for any roads which are

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shown within the boundaries of the Land as arterial roadways ("Arterial(s)") in the LRTP. The County agrees that it or another governmental entity will be responsible for the design and construction of any Corridor Project and paying the cost for same. The District shall be solely responsible for any maintenance, repair or reconstruction or both of any Subdivision Road, including paying the cost for same, and, except for traffic operations, the County shall not be responsible those items.

Additionally, MUDs will place an even greater burden on law enforcement, emergency medical, fire and animal control services that are already very strained in the county and that, not only will the health and safety of the residents of the developer's MUD be affected, all other residents for which the county provides such services will also be affected. The first MUD in Williamson County came in 1974 and in the last 10 years the number of MUDs has almost doubled versus the previous 38 years, growing from 41 MUDs to 80 and acreage has increased by 15,620 acres (72% increase) in the last 10 years. In the last 20 years the numbers of MUDs have grown by 627% (from 11 to 80 MUDs) and acreage has grown by 319% (8,926 to 37,373 acres). The burden is too great on the County without the long- term commitment of the MUDS to also bear the burden of growth on the services normally provided by cities and now attempting to be shifted to the County.

In conclusion, the County believes that all MUDs created within the County should have the same or similar provisions that are set out in the County's Consent and Development Agreements regardless of whether they are created by the Legislature or created by the TCEQ. Therefore, the provisions required in either the legislation or Consent and Development Agreements should also be included in a TCEQ created MUD, thus allowing all County residents, especially those living in MUDs, to be treated fairly and equally.

As referenced above, the County opposes the creation of this MUD and requests a contested case hearing.

Sincerely,

Bill Gravell (Nov 5, 2024 20:24 CST)

Bill Gravell, Jr.
Williamson County Judge

Enc.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

NOTICE OF DISTRICT PETITION
TCEQ Internal Control No. D-05232024-057

PETITION. VORWERK FARMS, LLC, a Texas limited liability company (Petitioner) filed a petition for the creation of Williamson County Municipal Utility District No. 52 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 and Article III, § 52 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is no lienholder on the property other than Texas Farm Credit Services, FLCA; (3) the proposed District will contain approximately 152.29 acres of land, more or less, located entirely within Williamson County, Texas; (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas.

The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A," which is attached to this document.

The petition further states that the proposed District will (1) 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 stormwater or other local harmful excesses of water in the District; and (4) to purchase, construct, acquire, improve, or extend inside or outside or its boundaries such additional facilities, systems, plants and enterprises, road facilities, and park and recreational facilities, as shall be consonant with the purposes for which the District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $43,255,000 ($35,200,000 for water, wastewater, and drainage facilities, $1,955,000 for recreational and $6,100,000 for road facilities).

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioners and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a

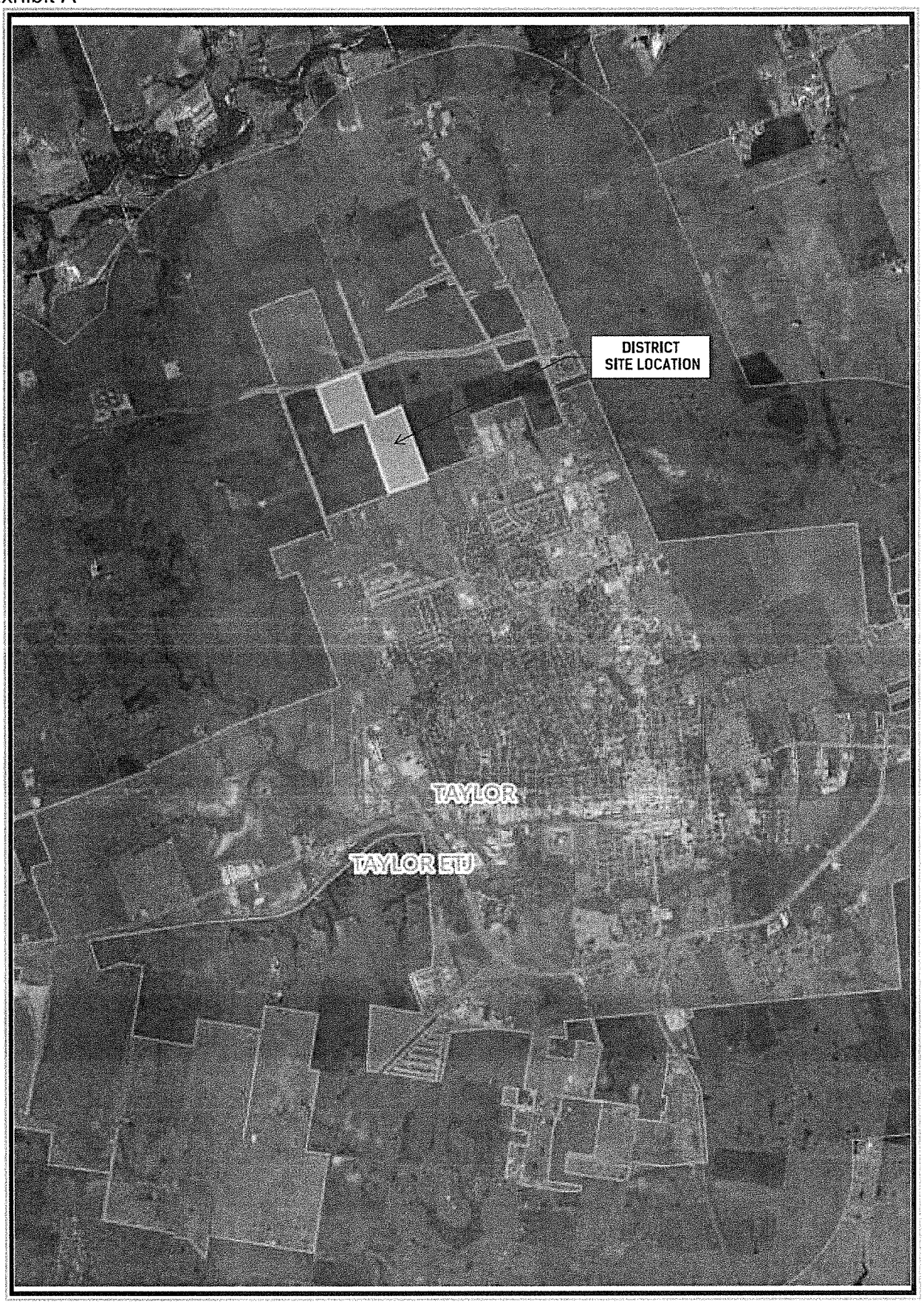
contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

INFORMATION. Written hearing requests should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC-103, at the same address. General information regarding TCEQ can be found at our web site http://www.tceq.texas.gov/.

Issued: August 16, 2024

Exhibit A



WILLIAMSON COUNTY MUD #52

(OR NEXT AVAILABLE NUMERICAL DESIGNATION)

SITE LOCATION MAP

SCALE: 1"=400'

0 200 400

CUDE ENGINEERS
12301 RESEARCH BLVD.,
BUILDING V, #160,
AUSTIN, TX 78759
P:(512) 260.9100

21 11.5.2024 TCEQ contested case hearing petition for the creation of Williamson County MUD 52

Final Audit Report 2024-11-06

Created:	2024-11-05
By:	Rebecca Pruitt (becky.pruitt@wilco.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYxwAUdjr4uD8wlJbQze67T5PST6Dqp5X

"21 11.5.2024 TCEQ contested case hearing petition for the creation of Williamson County MUD 52" History

Document created by Rebecca Pruitt (becky.pruitt@wilco.org)
2024-11-05 - 8:45:12 PM GMT- IP address: 66.76.4.65

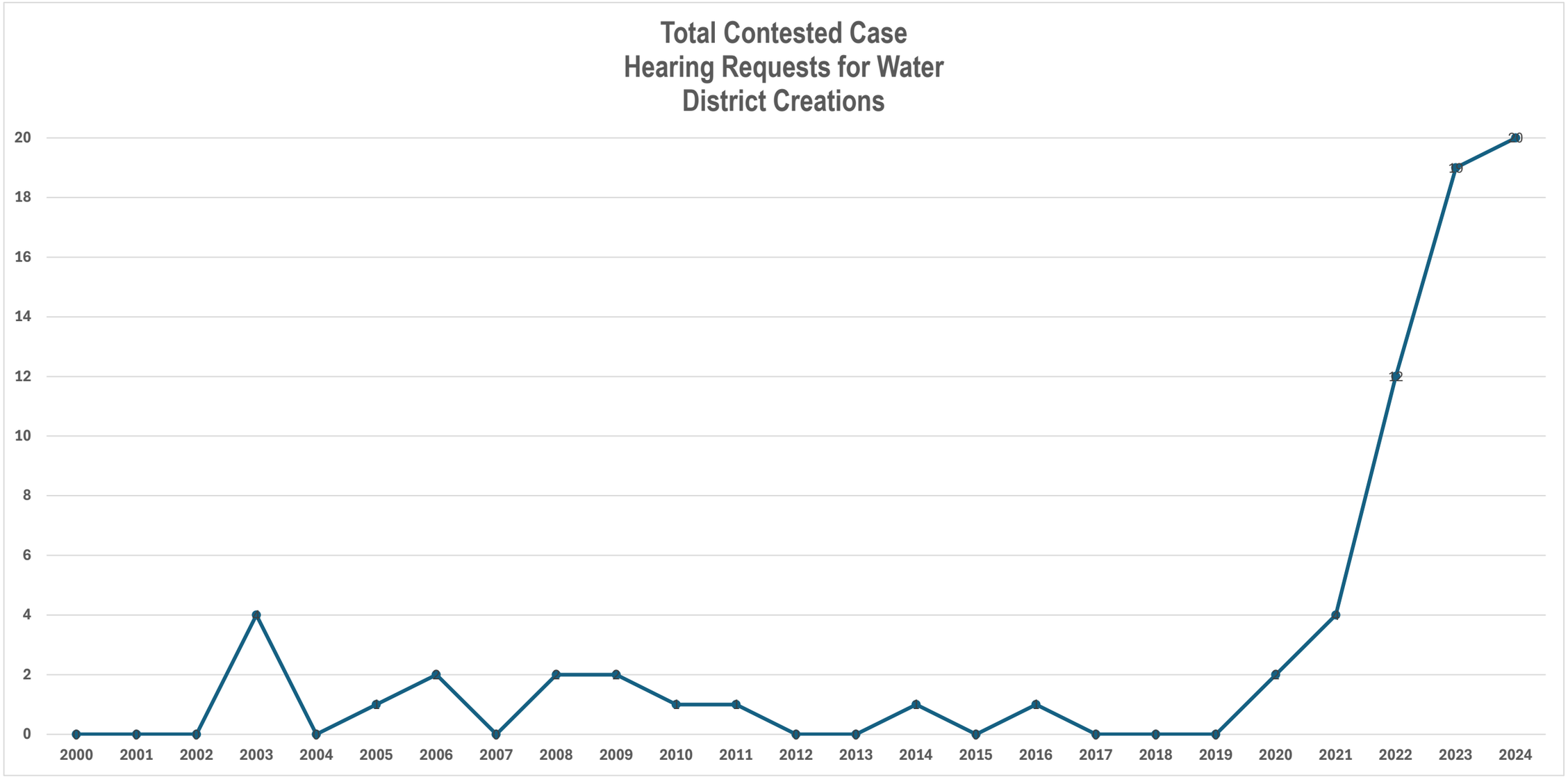
Document emailed to Bill Gravell (bgravell@wilco.org) for signature
2024-11-05 - 8:45:38 PM GMT

Email viewed by Bill Gravell (bgravell@wilco.org)
2024-11-06 - 2:24:12 AM GMT- IP address: 66.76.4.65

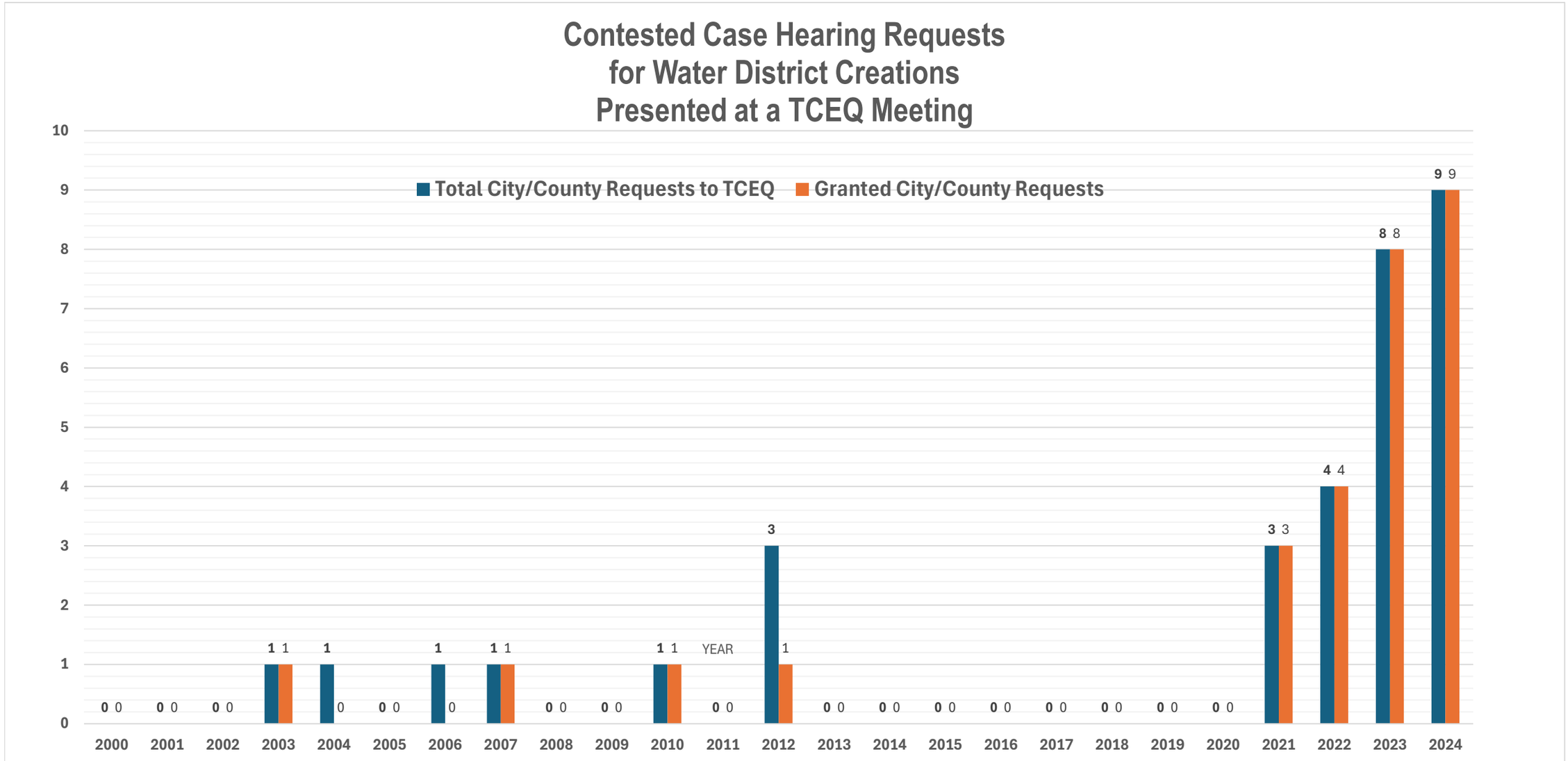
Document e-signed by Bill Gravell (bgravell@wilco.org)
Signature Date: 2024-11-06 - 2:24:30 AM GMT - Time Source: server- IP address: 66.76.4.65

Agreement completed.
2024-11-06 - 2:24:30 AM GMT

EXHIBIT 2



*As of October 15, 2024


Contested Case Hearing Requests
for Water District Creations
Presented at a TCEQ Meeting
Total City/County Requests to TCEQ
Granted City/County Requests
10
9
8
7
6
5
4
3
2
1
0
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0 0
1 1
1 0
0 0
1 0
1 1
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0 0
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3 1
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2023
2024
YEAR

EXHIBIT 3

CONSENT AND DEVELOPMENT AGREEMENT

AMONG

WILLIAMSON COUNTY, TEXAS;

[_____DEVELOPER NAME_____];

AND

_____ MUNICIPAL UTILITY DISTRICT NO. _____

CONSENT AND DEVELOPMENT AGREEMENT

This **CONSENT AND DEVELOPMENT AGREEMENT** (this "*Agreement*") is by **Williamson County, Texas**, a Texas political subdivision (the "*County*"), and _____ (the "*Owner*"). Subsequent to its creation, _____, a proposed municipal utility district to be created pursuant to Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code as contemplated by this Agreement (the "*District*"), will become a party to this Agreement. The County, the Developer and the District are sometimes referred to individually herein as a "*Party*" and collectively as the "*Parties*".

RECITALS

WHEREAS, the Owner has approximately _____ acres of land located within the boundaries of the County (the "*Land*"); and

WHEREAS, the Land is more particularly described by metes and bounds and map depiction on the attached **Exhibit A**; and

WHEREAS, the Owner intends that the Land will be developed in phases as a master-planned, residential community that will include park and recreational facilities to serve the Land; and

WHEREAS, the Owner and the County wish to enter into this Agreement to encourage innovative and comprehensive master-planning of the Land, provide certainty of regulatory requirements throughout the term of this Agreement, and result in a high-quality development for the benefit of the present and future residents of the County and the Land; and

WHEREAS, the Owner has proposed to create the District over the Land pursuant an application to be filed with the Texas Commission on Environmental Quality (the "TCEQ"); and

WHEREAS, the purposes of the proposed District include designing, constructing, acquiring, installing, and financing, water, wastewater, and drainage utilities, roads and improvements in aid of roads, park and recreational facilities, and other public improvements as authorized by the Texas Constitution and Texas Water Code to serve the area within the District (collectively, the "*District Improvements*"); and

WHEREAS, construction of the District Improvements will occur in phases, as determined by the District and the Owner, and in accordance with this Agreement; the applicable regulations of the County; Chapters 49 and 54, Texas Water Code, as amended; the rules and regulations of the TCEQ, as amended; and applicable state and federal regulations (collectively, the "*Applicable Regulations*"); and

WHEREAS, the District is authorized to enter into this Agreement pursuant to the provisions of Texas law, including but not limited to, Chapters 49 and 54, Texas Water Code, as amended; and Chapter 791, Texas Government Code, as amended; and

WHEREAS, the County is a political subdivision of the State of Texas and the County has the authority to enter into this Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the Parties contract as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. In addition to the terms defined elsewhere in this Agreement or in the County's regulations, the following terms and phrases used in this Agreement will have the meanings set out below:

Applicable Rules means the County's rules and regulations in effect as of the date of County's execution of this Agreement, including the County's Long Range Transportation Plan ("LRTP"), as amended by: (i) any amendments authorized by Chapter 245, Texas Local Government Code; (ii) any amendments, approvals, variances, waivers, and exceptions to such rules that are approved by the County; (iii) any applicable interlocal agreement to which the County is a party; and (iv) any additional restrictions or regulations agreed to by Owner in writing.

Agreement means this Consent and Development Agreement.

Commission or TCEQ means the Texas Commission on Environmental Quality or its successor agency.

County means Williamson County, Texas.

District means the Municipal Utility District identified herein-above, a political subdivision of the State of Texas to be created over the Land.

District Improvements means the water, wastewater, and drainage utilities, roads and improvements in aid of roads, park and recreational facilities, and other public improvements, as authorized by the Texas Constitution and Texas Water Code, to serve the District.

Land means approximately _____ acres of land located in Williamson County, Texas, as described by metes and bounds on **Exhibit A**.

LRTP means the Williamson County Long Range Transportation Plan as adopted and as may be amended by the Williamson County Commissioners Court.

Owner means the owner of the Land, identified herein-above, its company or its successors and assigns under this Agreement.

Provisional Acceptance means the County accepting a roadway after the completion of construction and approval by the County for traffic operations only, but not for maintenance.

Reimbursement Agreement means any agreement between Developer and District for the reimbursement of eligible costs associated with the construction of any works, improvements, facilities, plants, equipment and appliances necessary to accomplish any purpose or function permitted by the District.

Road Projects means any road projects or improvements in aid of such road projects that the District is authorized to undertake pursuant to Article III, Section 52, Article XVI, Section 59 of the Texas Constitution, as amended, or Chapters 49 and 54, Texas Water Code, as amended, or otherwise pursuant to any authority granted to the District by special act of the Texas Legislature or by Texas law.

Subdivision Roads means all roads within the Land, regardless of size or functional classification, that are not identified as LRTP Arterials or Corridor Projects within the LRTP. Subdivision Roads include, but are not limited to the pavement structure (including but not limited to HMA or concrete surface, base material, subgrade material, geogrid, pavement striping, curbs, gutters, and shoulders), any stormwater conveyance devices (including but not limited to culverts, ditches, channels, storm drains, and inlets), structural components (including but not limited to bridges, bridge-class culverts, and retaining walls), water quality and detention devices, vegetation control, and any improvements in aid of roads.

ARTICLE II
CREATION OF DISTRICT AND EXECUTION OF AGREEMENTS

Section 2.01. Creation of District. The County acknowledges receipt of notice of the Owner's request to the TCEQ for creation of the District over the Land. The County agrees that this Agreement will constitute and evidence the County's non-opposition to the creation of the District and that no further action will be required on the part of the County related to the creation of the District. Within 10 business days after the County's execution of this Agreement, the County shall withdraw its request for a contested case hearing and withdraw as a party from the TCEQ proceeding captioned *Petition by* _____ *for the creation of* _____, TCEQ Docket _____ ("TCEQ Proceeding"). Failure of the County to withdraw from the TCEQ Proceeding in accordance with this paragraph renders this Agreement null and of no further force or effect.

Section 2.02. District Execution of Agreement. The Owner shall cause the District's Board of Directors to approve, execute, and deliver to the County this Agreement within thirty (30) days after the date the District's Board of Directors holds its organizational meeting.

ARTICLE III
ROADWAY IMPROVEMENTS

Section 3.01. Right of Way Dedications.

(a) LRTP Corridor Project Dedication. The County has adopted a LRTP which provides for the planning and future construction of certain road corridors within the County ("Corridor Project"). The Owner, or an affiliated entity under common control of

the Owner will convey, or cause to be conveyed, by special warranty deed, in fee simple and free and clear of all liens and encumbrances, to County, at no cost to the County, 100% of the right-of-way owned by Owner, or an affiliated entity under common control of the Owner required for any roads which are shown within and/or adjacent to the boundaries of the Land as Corridor Projects in the LRTP, as depicted in **Exhibit B,** within the earlier of thirty (30) days after the final alignment for any Corridor Project is set; or, in the case that a final alignment for any Corridor Project has not been set, prior to the approval of any preliminary plat containing any Corridor Project within or adjacent to the Land. To the extent the right-of-way dedication is needed on land that is outside the boundaries of the Land and is that is not otherwise owned by Owner, or any affiliated entity under common control of Owner, the County shall be responsible for acquiring said right-of-way.

(b) LRTP Arterial(s) Dedication. The Owner, or an affiliated entity under common control of Owner will dedicate to the County, in fee simple and free and clear of all liens and encumbrances, at no cost to the County, through plat or otherwise, as determined by the County, 100% of the right-of-way owned by the Owner, or an affiliated entity under common control of Owner required for any roads which are shown within and/ or adjacent to the boundaries of the Land as arterial roadways in the LRTP ("LRTP Arterial(s)"), as depicted in **Exhibit B**. To the extent the right-of-way dedication is needed on land that is outside the boundaries of the Land and is not owned by Owner, or an affiliated entity under common control of Owner, the County shall be responsible for acquiring said right-of-way.

(c) Right of Way Reimbursements. The Owner reserves the right to seek reimbursement for any such right-of-way dedications from the District in accordance with the laws of the State of Texas. The Parties acknowledge that the final location of any Corridor Project and/or LRTP Arterial(s) right-of-way may be subject to minor changes from those shown on **Exhibit B**, subject to approval by Owner which will not be unreasonably withheld. Owner shall have no obligation to convey any lands to the County not located within or adjacent to the Land.

Section 3.02. Road Construction. Except in cases when the Owner or District constructs a portion of a Corridor Project to serve the District pursuant to the Applicable Rules, the County agrees that it or another governmental entity, not including the District, will be responsible for the design and construction of any Corridor Project and paying the cost for same. The actual construction date of any Corridor Project is at this time undetermined and dependent upon the success of future County or City road bond elections. The construction of all Subdivision Roads shall be the responsibility of the Owner or the District and shall be constructed pursuant to the then existing Williamson County Subdivision Regulations and any other Applicable Rules. The Owner shall be entitled to reimbursement for expenses of such Subdivision Roads from the District, as allowed by the laws of the State of Texas.

Section 3.03. Road Maintenance. The County will not ever accept the Subdivision Roads for maintenance and the Owner, Developer and District acknowledge and agree that the District shall be solely responsible for all maintenance, repair and/or reconstruction of Subdivision Roads, including paying the cost for same, and, except for traffic operations, the County shall not be responsible those items. The Owner hereby

acknowledges and agrees that it shall cause the District creation to include the powers and authority necessary to maintain, repair and or reconstruct such Subdivision Roads. The District shall not be responsible for maintenance of any roads other than Subdivision Roads.

ARTICLE IV
DEVELOPMENT OF LAND

Section 4.01. Uniform and Continued Development. The Parties intend that this Agreement provides for the uniform review and approval of plats and development plans for the Land; and provide other terms and consideration. Accordingly, the portion of the Land within the County will be developed and the infrastructure required for such portion of the Land will be designed and constructed in accordance with the Applicable Rules and this Agreement. Subject to the terms and conditions of this Agreement, the County confirms and agrees that the Owner has vested authority to develop the portion of the Land located in the County in accordance with the Applicable Rules in effect as of the date of the County's execution of this Agreement. Applicable Rules or changes or modifications to the Applicable Rules adopted after the date of County's execution of this Agreement will only be applicable to the extent permitted by Chapter 245, Texas Local Government Code. If there is any conflict between the Applicable Rules and the terms of this Agreement, the terms of this Agreement will control.

Section 4.02. Additional Land. Any land located in Williamson County, Texas that is added to the District in addition to the Land described in **Exhibit A**, whether by annexation or any other means, shall be considered part of the Land and subject to the terms and conditions of this Agreement; provided, however, such additional land shall be excepted from the vesting rights set out in Section 4.02 and shall be developed in accordance the Applicable Rules in effect on the date a complete plat application or development permit is filed with the County for the specific portion of the additional land that is sought to be developed.

Section 4.03. Manufactured Home for District Elections. One (1) HUD-certified manufactured home may be located within the Land solely for the purpose of providing qualified voters within the District for the District's confirmation, director, and bond elections. The manufactured home permitted by this Agreement will not require any permit or other approval by the County and will be promptly removed when no longer needed.

ARTICLE V
TERM, ASSIGNMENT, AND REMEDIES

Section 5.01. Term. The term of this Agreement shall commence following the County's and Owner's execution hereinbelow and shall continue until the District is dissolved in accordance with the laws of the State of Texas or until this Agreement terminates by its terms, whichever is sooner.

Section 5.02. Termination and Amendment by Agreement. This Agreement may be terminated or amended as to all of the Land at any time by mutual

written consent of the County, the Owner, and following creation of the District, the District. This Agreement may be terminated or amended only as to a portion of the Land at any time by the mutual written consent of the County, the owner of the portion of the Land affected by the amendment or termination and, following creation of the District, the District. After full-build out of the Land and issuance of all bonds by the District for reimbursement of Owner's eligible costs, this Agreement may be terminated or amended at any time by the mutual written consent of the County and the District.

Section 5.03. Assignment.

(a) This Agreement, and the rights of the Owner and Developer hereunder, may be assigned by the Owner, with the County's written consent which will not be unreasonably withheld, as to all or any portion of the Land. Any assignment will be in writing, specifically set forth the assigned rights and obligations, be executed by the proposed assignee, and be delivered to the County. Notwithstanding the foregoing, Owner shall have the right to assign the Agreement, in whole or in part, to any affiliated entity under common control of the Owner without the County's written consent; provided, however, that the Owner shall provide the County written notice of the assignment to the affiliated entity under common control.

(b) The terms of this Agreement will run with the Land and will be binding upon the Owner and its permitted assigns, and shall survive judicial or non-judicial foreclosure, for so long as this Agreement remains in effect.

(c) This Agreement is not intended to be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully subdivided, developed, and improved lot within the Land.

Section 5.04. Remedies.

(a) If the County defaults under this Agreement, the Owner or the District may give notice setting forth the event of default ("*Notice*") to the County. If the County fails to cure any default that can be cured by the payment of money ("*Monetary Default*") within forty-five (45) days from the date the County receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within forty-five (45) days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the Owner or the District may enforce this Agreement by a writ of mandamus from a Williamson County District Court or terminate this Agreement.

(b) If the Owner or the District defaults under this Agreement, the County may give Notice to the defaulting party. If the Owner or the District fails to cure any Monetary Default within forty-five (45) days from the date it receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within forty-five (45) days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the County may enforce this Agreement by injunctive relief against the defaulting party from a Williamson County District Court or terminate this Agreement. If Owner fails to cause the District's Board of Directors to approve, execute, and deliver to the County this Agreement as required by Section 2.02 of this Agreement, the County shall have the right to enjoin Owner from executing any Reimbursement

Agreements with the District and collecting reimbursements from the District for Owner's eligible costs.

(c) If any Party defaults, the prevailing Party in the dispute will be entitled to recover its reasonable attorney's fees, expenses, and court costs from the non-prevailing Party.

ARTICLE VI
MISCELLANEOUS PROVISIONS

Section 6.01. Notice. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the Party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the Party to be notified and with all charges prepaid; or (iii) by personally delivering it to the Party, or any agent of the Party listed in this Agreement. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposed of notice, the addresses of the Parties will, until changed as provided below, be as follows:

County: Williamson County
Attn: County Judge
710 Main Street, Ste. 101
Georgetown, Texas 78628

District: At the address set forth under District's execution below

Owner(s):

The Parties may change their respective addresses to any other address within the United States of America by giving at least five days' written notice to the other party.

Section 6.02. Severability. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Section 6.03. Waiver. Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 6.04. Applicable Law and Venue. The interpretation, performance, enforcement, and validity of this Agreement is governed by the laws of the

State of Texas. Venue will be in a court of appropriate jurisdiction in Williamson County, Texas.

Section 6.05. Entire Agreement. This Agreement contains the entire agreement of the Parties. There are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement supersedes all other agreements between the Parties concerning the subject matter.

Section 6.06. Exhibits, Headings, Construction, and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The Parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 6.07. Time. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Section 6.08. Authority for Execution. The County certifies, represents, and warrants that the execution of this Agreement has been duly authorized and adopted in conformity with state law. The Owner and District hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized and adopted in conformity with the constituent documents of each person or entity executing on behalf of the Owner and District.

Section 6.09 Force Majeure. If, by reason of force majeure, any Party is rendered unable, in whole or in part, to carry out its obligations under this Agreement, the Party whose performance is so affected must give notice and the full particulars of such force majeure to the other Parties within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, will, to the extent it is affected by such force majeure, be suspended during the continuance of the inability but for no longer period. The Party claiming force majeure must endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*" means Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, or of any court or agency of competent jurisdiction or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents to machinery,

pipelines or canals, or inability on the part of a Party to perform due to any other causes not reasonably within the control of the Party claiming such inability.

Section 6.10. Interpretation. As used in this Agreement, the term "including" means "including without limitation" and the term "days" means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

Section 6.11. No Third-Party Beneficiary. This Agreement is solely for the benefit of the Parties, and neither the County, the District, nor the Owner intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the County, the District, and the Owner (and any permitted assignee of the Owner).

Section 6.12. Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A - Metes and Bounds Description and Map of the Land

Exhibit B - LRTP Corridor Project and/or Arterial Locations

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the dates indicated below.

(Signatures on the following pages.)

WILLIAMSON COUNTY, TEXAS
(COUNTY)

By:_____

Name: _____

Title: As Presiding Officer of the Williamson County Commissioners Court

Date:_____

THE STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on _____, 20___, by _____, as Presiding Officer of the Williamson County Commissioners Court, on behalf of said County.

_____
Notary Public Signature

(Seal)

OWNER:

_____

By:_____

Name:_____

Its: _____

Date:_____

Address for Notice:

_____
Attn: _____
_____
_____, _____ _____

THE STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 20___, by _____, as _____ of _____, on behalf of Developer.

_____
(SEAL) Notary Public Signature

_____ MUNICIPAL UTILITY DISTRICT NO. _____

By:_____

Name:_____

Title:_____

Date:_____

Address for Notice:

_____
Attn: _____
_____
_____, _____ _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on _____, _____, by _____, President of the Board of Directors of _____ Municipal Utility District No. _____, on behalf of said District.

_____
(SEAL) Notary Public Signature

EXHIBIT A

Metes and Bounds Description
and
Map of the Land

[attached]

EXHIBIT B

Corridor Project and/or LRTP Arterial Locations

[attached]

EXHIBIT 4

District	End of Comment Period	Wilco Hearing Request	TCEQ Agenda-Referral to SOAH	Status
Bartlett Farm MUD of Williamson County	6/18/2024	6/11/2024	2/27/2025	Awaiting SOAH hearing
Burford Ranch MUD	12/5/2023	12/5/2023	6/12/2024	County withdrew protest 2/26/2025 citing reached settlement agreement
Coupland MUD 1 of Williamson County	10/3/2023	9/12/2023		Awaiting TCEQ agenda/other action
Lakshmi MUD 1	9/20/2024	9/20/2024	1/16/2025	County withdrew protest 2/6/2025 citing entered into development agreement
Theon Ranches MUD 2		9/26/2023		Awaiting TCEQ agenda/other action
Theon Ranches MUD 3	10/24/2023	9/26/2023	3/28/2024	County withdrew protest 1/15/25 citing reached settlement agreement
Williamson County MUD 41	8/21/2024	8/20/2024		Awaiting TCEQ agenda/other action
Williamson County MUD 48	12/18/2023	12/11/2023	6/26/2024	County withdrew protest 12/16/24 citing reached settlement agreement
Williamson County MUD 50	6/24/2024	6/18/2024	N/A	County withdrew protest 12/16/24 citing entered into development agreement
Williamson County MUD 52	11/12/2024	11/5/2024	4/3/2025 (scheduled)	Awaiting TCEQ agenda/other action
Williamson County MUD 56	5/17/2024	4/23/2024		Awaiting TCEQ agenda/other action
Williamson County MUD 60	11/22/2024	11/19/2024		Awaiting TCEQ agenda/other action
Williamson County MUD 61	2/14/2025	2/11/2025		Awaiting TCEQ agenda/other action

EXHIBIT 5

Contested Case Hearing Timeline

	Lakeview MUDs 1-3 of Ellis County	**Highland Lakes MUD 1 of Ellis County**	**FM 875 MUD of Ellis County**	**Ellis Ranch MUD No. 1**	**Duck Creek MUD of Denton County**	**Lampasas County MUD No. 1**	**Shankle Road MUD of Ellis County**	**Brahman Ranch MUD of Ellis County & Johnson County**	**Hays Commons MUD**	**White Oaks MUD of Denton County**
End of Comment Period	April 2021	April 2022	April 2022	June 2022	September 2022	October 2022	January 2023	June 2023	September 2023	March 2023
TCEQ Agenda Referral to SOAH	August 2021	June 2022	September 2022	November 2022	January 2023	January 2023	July 2023	November 2023	March 2024	March 2024
SOAH Preliminary Hearing	November 2021	September 2022	March 2023	March 2023	April 2023	May 2023	October 2023	April 2024	May 2024	June 2024
SOAH Hearing on the Merits	December 2022	March 2023	August 2023	October 2023	February 2024	February 2024	May 2024	September 2024	October 2024	November 2024
SOAH Issues PFD	May 2023	June 2023	December 2023	February 2024	June 2024	July 2024				
TCEQ Agenda Approval	August 2023	October 2023	April 2024	June 2024						
	28 months	**18 months**	**24 months**	**24 months**						

Contested Case Hearing Timeline

TAC 55.254

Before or after public notice is issued - ED files statement w/ chief clerk that technical review of application is complete

30 days after last publication of Notice of Application & Preliminary Decision – deadline for hearing requests and end of public comment period (except public comment period automatically extended to the close of any public meeting, including one requested by a member of legislature)

After a hearing request is filed and ED has filed technical review statement, chief clerk shall (1) refer to alternative dispute resolution director and (2) attempt to schedule request for Commission meeting to be held approximately 44 days after the later of (i) deadline to request a hearing or (ii) date ED filed statement that technical review is complete

35+ days prior to meeting - Notice must be mailed to all parties

23+ days prior to meeting – Parties may submit written responses to hearing request

9+ days prior to meeting – Requestor may submit written reply to a response

EXHIBIT 6

COLLIN COUNTY

Administrative Services
2300 Bloomdale Road
Suite 4192
McKinney, Texas 75071
www.collincountytx.gov

July 13, 2011

DIS
77738

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2011 JUL 18 AM 10:13
CHIEF CLERKS OFFICE

HR

Office of the Chief Clerk
MC 105
TCEQ
PO Box 13087
Austin TX 78711

Lakehaven MUD - Control Number 02222011-D02

To Whom It May Concern,

On behalf of the Collin County Commissioners Court, I request a contested case hearing on the application for Lakehaven MUD – Control Number 02222011-D02. The application does not take into account the effect the creation of this special district will have on the County's limited resources in this area including, but not limited to, transportation, health and safety and emergency services.

The proposed district is entirely within Collin County.

I can be contacted at:

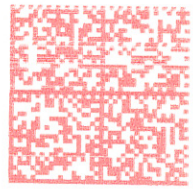
Jack Hatchell Administration Building
2300 Bloomdale Rd, Suite 4192
McKinney TX 75071
972-548-4631

If you have any questions, do not hesitate to contact me.

Sincerely,

Bill Bilyeu
County Administrator

Commissioners Court
Jack Hatchell Collin County
Administration Building
2300 Bloomdale Rd., Suite 4192
McKinney, Texas 75071



Office of the Chief Clerk
MC 105
TCEQ
P.O. Box 13087
Austin, Texas 78711

EXHIBIT 7

Elisa Guerra

From: PUBCOMMENT-OCC
Sent: Friday, April 16, 2021 2:53 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; Pubcomment-Dis
Subject: FW: Public comment on Permit Number D-11042020-004
Attachments: County Comments and Request for CCH re. Lakeview MUD No. 2 (01319256x7A30F)1.PDF

H

From: erogers@bickerstaff.com <erogers@bickerstaff.com>
Sent: Friday, April 16, 2021 1:46 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number D-11042020-004

REGULATED ENTY NAME LAKEVIEW MUNICIPAL UTILITY DISTRICT NO 2 OF ELLIS COUNTY

RN NUMBER: RN111132502

PERMIT NUMBER: D-11042020-004

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: LAKEVIEW MUNICIPAL UTILITY DISTRICT NO 2 OF ELLIS COUNTY

CN NUMBER: CN605831536

FROM

NAME: Emily Rogers

E-MAIL: erogers@bickerstaff.com

COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S. MoPac Expy. Bldg. 1, Ste. 300
Austin TX 78746

PHONE: 5124728021

FAX: 5123205638

COMMENTS: Please see attached.

Bickerstaff
Heath Delgado Acosta LLP

April 16, 2021

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

Re: Application by Finch FP, Ltd. to the Texas Commission on Environmental Quality for creation of Lakeview Municipal Utility District No. 2 of Ellis County, TCEQ Internal Control No. D-11042020-004

Dear Chief Clerk Gharis:

The County of Ellis, Texas (County) formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to me, Emily Rogers, attorney for the County, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. My daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Finch FP, Ltd. is applying to the Texas Commission on Environmental Quality for creation of three new municipal utility districts, including Lakeview Municipal Utility District No. 2 of Ellis County, TCEQ Internal Control No. D-11042020-004.

The County is an "affected person" entitled to a contested case hearing on issues raised in this hearing request because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public and is an affected person under 30 TEX. ADMIN. CODE § 55.256. Local governments, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of the district and that the application fails to take into account. Potential contamination or depletion of groundwater, if groundwater is to be the source of supply, within the region may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure through subsidence. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b). Further, the proposed municipal utility district will be located entirely

outside the corporate limits of a city. Pursuant to TEX. WATER CODE § 54.0161, the County therefore has express authority to review the petition for creation and other evidence and information relating to the proposed district that its commissioners court considers necessary. TEX. WATER CODE § 54.0161(a-2).

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

Sincerely,

Emily W. Rogers

Emily W. Rogers
Attorney for Ellis County

EWR/rfb

TCEQ DOCKET NO. 2021-0571-DIS

APPLICATION FOR THE	§	BEFORE THE
	§	
CREATION OF LAKEVIEW MUNICIPAL	§	
	§	TEXAS COMMISSION ON
UTILITY DISTRICT NO. 2 OF ELLIS	§	
	§	
COUNTY	§	ENVIRONMENTAL QUALITY

ELLIS COUNTY'S
REPLY TO RESPONSES TO REQUEST FOR CONTESTED CASE HEARING
ON APPLICATION FOR CREATION OF
LAKEVIEW MUNICIPAL UTILITY DISTRICT NO. 2

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ):

Ellis County, Texas (the "County") files this Reply to Responses of Applicant Finch FP, Ltd ("Applicant"), the Executive Director ("ED"), and the Office of Public Interest Counsel ("OPIC") to the County's Request for Contested Case Hearing on the Application for the Creation of Lakeview Municipal Utility District No. 1.

I. INTRODUCTION

The County is an "affected person" entitled to a contested case hearing on issues raised in its hearing request because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public, and therefore the County is an affected person under 30 TEX. ADMIN. CODE § 55.256. Local governments, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of the district

and that the application fails to take into account. Potential contamination of surface and/or groundwater within the region may impact the County's ability to effectively provide emergency services, and may impact health and safety by lowering water quality. Moreover, the County's authority over roads, health and safety, and emergency services are potentially impacted by the application. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

II.

REPLY TO APPLICANT'S RESPONSE TO THE COUNTY'S HEARING REQUEST

The Applicant states that the request of each and every individual, elected official, or local governmental entity for a contested case hearing on its application should be denied. While this self-serving position would no doubt smooth the sailing for approval of the application, state law and TCEQ administrative procedure protect the rights of affected persons to an evidentiary hearing as to whether the application meets all relevant requirements and affected any potential party's interests.

Applicant believes that the County is not an affected person, and its request for a hearing should be denied, because, while it acknowledges that the County has authority over transportation, emergency services, and health and safety, these items are purportedly "irrelevant" to TCEQ's consideration of the application. Applicant's Response at 15. The County respectfully suggests that its authority in these areas, and interests therein that are affected by the application, entitle it to affected person status. In fact, numerous statutory powers of a county that are potentially affected by the application include (but are not limited to) various provisions regarding road construction and maintenance, emergency services, and water:

- Local Government Code §§ 232.001-.011 (county authority for road construction in subdivisions as well as other subdivision regulations);
- Transportation Code § 251.016 (general control over roads, highways and bridges);
- Transportation Code § 251.003 (county order and rulemaking authority for roads);
- Local Government Code § 552.101 (regulation of water lines in county right of way);
- Health and Safety Code § 121.003 (enforcement of laws to promote public health);
- Health and Safety Code Chapter 366 (license procedures for private sewage facilities);
- Water Code § 26.171 et seq. (enforcement of water quality controls and inspection of public waters);
- Local Government Code § 352.001 et seq. (emergency fire protection service);
- Government Code Chapter 418 (emergency management);
- Health and Safety Code Chapter 343 (abatement of public nuisances);
- Local Government Code § 561.003 (flood control);
- Local Government Code § 562.016 (authority to own, operate, or acquire wastewater facilities);
- Local Gov't Code Sect. 233.031-.036 (Building set-back lines);
- Local Gov't Code Subchapter C (fire code in unincorporated areas);
- Local Gov't Code Sect. 232.102-104 (Thoroughfare Plan, lot frontage, set-backs);
- Local Gov't Code Sect. 232.110 (Apportionment of County Infrastructure Costs).

The application states Applicant's intent to provide retail water and sewer utility service, construct facilities, manage stormwater, and construct or operate roadways within the proposed municipal utility district. As such, operations of the MUD may impact the County's interests

and regulatory authority, as stated above, regarding public health and safety, roads, flood control, and emergency management pursuant to these and other statutes, including the County's responsibility to provide emergency services that may be affected by the proposed district. The creation of a MUD whose governmental powers overlap in many respects to those of the County affects the County in a way that is different from the general public.

While Applicant's response contends its project will not rely on groundwater, the County's water quality concerns extend to surface water as well, based upon the potential effect of treated effluent from Applicant's project on tributary creeks, rivers, and lakes within Ellis County. Applicant's discharge is a tributary of Lake Bardwell, which is the sole drinking water supply for the City of Ennis, Texas, which is within the County. Lake Bardwell has been designated as a sole-source drinking water supply lake. *See* 30 TEX. ADMIN. CODE § 307.10, Appendix B. Lake Bardwell, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. *See* 2020 Clean Water Act Section 303(d). The County is concerned that the application threatens the water quality for citizens of Ellis County.

Further, as OPIC notes, not only is the County authorized to provide an opinion to TCEQ regarding the potential creation of a MUD within the County,[1] but moreover, a relevant factor in determining whether the County qualifies as an affected person is the County's statutory authority over or interest in issues relevant to the application. 30 TEX. ADMIN. CODE § 55.256(c)(6). In addition to the statutory authority and public health and safety interests of a county listed above, water quality, for example, is a factor relevant to TCEQ's determination of this application. Texas Water Code § 54.021(b)(3)(F). The County is not required to show that it will ultimately prevail on the merits of its claims to be an affected person and request a

[1] Texas Water Code § 54.0161.

hearing; it simply must show a potential harm or justiciable interest that will be affected by the application.[2]

Because the Application affects numerous interests and statutory authority of the County, the County should be considered an affected person and the TCEQ should grant the County's request for a contested case hearing on the Application.

III.

REPLY TO ED'S RESPONSE TO THE COUNTY'S HEARING REQUEST

The County respectfully disagrees with the ED's position that the County is not an affected person. Without any discussion or detail, the ED concluded that that County "failed to identify any specific statutory authority over or interests in the issues relevant to the application," and therefore the County should be denied affected person status. ED Response at 8. As discussed above in the County's reply to the Applicant's response to the County's request for hearing, the application implicates numerous interests (including construction of roads, water quality, emergency services) and statutory bases of authority (See above-referenced provisions of the Texas Water Code, Local Government Code, Government Code, and Health and Safety Code) of the County. The County has thus satisfied the requirement of 30 TEX. ADMIN. CODE § 55.256(b) and (c) by demonstrating that the application concerns matters of County authority granted under state law that are relevant to the application. The County's request for a contested case hearing on the application should be granted.

IV.

REPLY TO OPIC'S RESPONSE TO THE COUNTY'S HEARING REQUEST

The County agrees with OPIC's recommendation related to the County's status as an affected person based upon the City's interest in issues relevant to the application.

[2] *United Copper v. TNRCC*, 17 S.W.3d 797, 903 (Tex. App.—Austin 2000, pet. dism'd).

IV.
CONCLUSION

The County urges the TCEQ to find that the County is an affected person so that it may participate in a SOAH proceeding to protect its authority and interests.

Respectfully submitted,

Emily W. Rogers
State Bar No. 24002863
erogers@bickerstaff.com

Joshua D. Katz
State Bar No. 24044985
Jkatz@bickerstaff.com

Kimberly Kelley
State Bar No. 24086651
kkelley@bickerstaff.com

BICKERSTAFF HEATH DELGADO ACOSTA LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, Texas 78746
Telephone: (512) 472-8021
Facsimile: (512) 320-5638

BY: Emily W. Rogers
Emily W. Rogers

Attorneys for Ellis County, Texas

CERTIFICATE OF SERVICE

I hereby certify by my signature below that on August 16, 2021 a true and correct copy of the above and foregoing document was served on all parties on the attached Mailing List via electronic or regular mail.

Emily W. Rogers

Emily W. Rogers

EXHIBIT 8

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Thursday, May 12, 2022 2:47 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; Pubcomment-Dis
Subject: FW: Public comment on Permit Number D-03212022-036
Attachments: Ellis County Comments on Ellis Ranch MUD No. 1 and Request for CCH.pdf

DIS
127410

H

From: rfburk@bickerstaff.com <rfburk@bickerstaff.com>
Sent: Thursday, May 12, 2022 11:47 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number D-03212022-036

REGULATED ENTY NAME ELLIS RANCH MUD 1

RN NUMBER: RN111461596

PERMIT NUMBER: D-03212022-036

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: ELLIS RANCH MUNICIPAL UTILITY DISTRICT 1

CN NUMBER: CN605997907

FROM

NAME: Emily Rogers

EMAIL: rfburk@bickerstaff.com

COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S MOPAC EXPY STE 300
AUSTIN TX 78746-8013

PHONE: 5124728021

FAX:

COMMENTS: Please see attached letter

Bickerstaff
Heath Delgado Acosta LLP

May 12, 2022

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

Re: Application by GRBK Edgewood, LLC to the Texas Commission on Environmental Quality for creation of Ellis Ranch Municipal Utility District No. 1: TCEQ Internal Control No. D-03212022-036

Dear Chief Clerk Gharis:

Ellis County (the "County") formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to the County's attorneys, Emily Rogers and Joshua Katz, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Our daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

GRBK Edgewood, LLC is applying to the Texas Commission on Environmental Quality for creation of a new municipal utility district, Ellis Ranch Municipal Utility District No. 1, TCEQ Internal Control No. D-03212022-036. Ellis County opposes the creation of the District.

The County is an "affected person" entitled to a contested case hearing on issues raised in this hearing request because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public and is an affected person under 30 TEX. ADMIN. CODE § 55.256. Local governments, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of the district and that the application fails to take into account. Potential contamination or depletion of groundwater, if groundwater is to be the source of supply, within the region may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure through subsidence. Thus, the County has authority under state law over the issues contemplated by this application, and the creation of a MUD whose governmental powers overlap in many respects to those of the County affects the County in a way that is different from the general public. The County is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b). Further, the proposed municipal utility district will be located entirely

outside the corporate limits of a city. Pursuant to TEX. WATER CODE § 54.0161, the County therefore has express authority to review the petition for creation and other evidence and information relating to the proposed district that its commissioners court considers necessary. TEX. WATER CODE § 54.0161(a-2).

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

Sincerely,

Emily W. Rogers

Emily W. Rogers
Joshua D. Katz
Attorneys for Ellis County, Texas

EWR/rfb

TCEQ DOCKET NO. 2022-1157-DIS

APPLICATION FOR THE	§	BEFORE THE
	§	
CREATION OF ELLIS RANCH	§	
	§	TEXAS COMMISSION ON
MUNICIPAL UTILITY DISTRICT NO. 1	§	
	§	
COUNTY	§	ENVIRONMENTAL QUALITY

ELLIS COUNTY'S REPLY TO RESPONSES TO REQUEST FOR CONTESTED CASE HEARING ON APPLICATION FOR CREATION OF ELLIS RANCH MUNICIPAL UTILITY DISTRICT NO. 1

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ"):

Ellis County, Texas (the "County") files this Reply to Responses of Applicant GRBK Edgewood LLC ("Applicant"), the Executive Director ("ED"), and the Office of Public Interest Counsel ("OPIC") to the County's Request for Contested Case Hearing on the Application for the Creation of Ellis Ranch Municipal Utility District No. 1 (the "District").

I. INTRODUCTION

The County is an "affected person" entitled to a contested case hearing on issues raised in its hearing request because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public, and therefore the County is an affected person under 30 TEX. ADMIN. CODE § 55.256. Local governments, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of the District

and that the application fails to take into account. Potential contamination of water within the region may impact the County's ability to effectively provide emergency services, and may impact health and safety by lowering water quality. Moreover, the County's authority over roads, health and safety, and emergency services are potentially impacted by the application. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

II.

REPLY TO APPLICANT'S RESPONSE TO THE COUNTY'S HEARING REQUEST

Applicant believes that the County is not an affected person, and its request for a hearing should be denied, because, while it acknowledges that the County has authority over transportation, emergency services, and health and safety, it mistakenly asserts that the County's argument is entirely based on the assumption that the Applicant will utilize groundwater. Applicant's Response at 6. The County respectfully suggests that its authority in these areas, and interests therein that are affected by the application, entitle it to affected person status regardless of whether the District's proposed water source is surface or groundwater. Numerous statutory powers of a county that are potentially affected by the application include (but are not limited to) various provisions regarding road construction and maintenance, emergency services, and water:

- Local Government Code §§ 232.001-.011 (county authority for road construction in subdivisions as well as other subdivision regulations);
- Transportation Code § 251.016 (general control over roads, highways and bridges);
- Transportation Code § 251.003 (county order and rulemaking authority for roads);
- Local Government Code § 552.101 (regulation of water lines in county right of way);
- Health and Safety Code § 121.003 (enforcement of laws to promote public health);

- Health and Safety Code Chapter 366 (license procedures for private sewage facilities);
- Water Code § 26.171 et seq. (enforcement of water quality controls and inspection of public waters);
- Local Government Code § 352.001 et seq. (emergency fire protection service);
- Government Code Chapter 418 (emergency management);
- Health and Safety Code Chapter 343 (abatement of public nuisances);
- Local Government Code § 561.003 (flood control);
- Local Government Code § 562.016 (authority to own, operate, or acquire wastewater facilities);
- Local Gov't Code Sect. 233.031-.036 (Building set-back lines)
- Local Gov't Code Subchapter C (fire code in unincorporated areas)
- Local Gov't Code Sect. 232.102-104 (Thoroughfare Plan, lot frontage, set-backs)
- Local Gov't Code Sect. 232.110 (Apportionment of County Infrastructure Costs)

The application states Applicant's intent to construct, maintain, and operate a waterworks system, including purchasing and selling water and operating a sewer utility service, and to construct or operate drainage, storm sewer, roadway, and other facilities within the proposed municipal utility district. As such, operations of the MUD may impact the County's interests and regulatory authority, as stated above, regarding public health and safety, roads, flood control, water quality, and emergency management pursuant to these and other statutes, including the County's responsibility to provide emergency services that may be affected by the proposed district. The creation of a MUD whose governmental powers overlap in many respects to those of the County affects the County in a way that is different from the general public.

While Applicant's response contends its project will not rely on groundwater, the County's water quality concerns extend to surface water as well, based upon the potential effect of treated effluent from Applicant's project on tributary creeks, rivers, and lakes within Ellis County. The County is concerned that the application threatens water quality for the citizens of Ellis County.

Further, not only is the County authorized to provide an opinion to TCEQ regarding the potential creation of a MUD within the County,[1] but moreover, a relevant factor in determining whether the County qualifies as an affected person is the County's statutory authority over or interest in issues relevant to the application. 30 TEX. ADMIN. CODE § 55.256(c)(6). In addition to the statutory authority and public health and safety interests of a county listed above, water quality, for example, is a factor relevant to TCEQ's determination of this application. Texas Water Code § 54.021(b)(3)(F). The County is not required to show that it will ultimately prevail on the merits of its claims to be an affected person and request a hearing; it simply must show a potential harm or justiciable interest that will be affected by the application.[2]

Because the application affects numerous interests and statutory authority of the County, the County should be considered an affected person and the TCEQ should grant the County's request for a contested case hearing on the Application.

III.

REPLY TO ED'S RESPONSE TO THE COUNTY'S HEARING REQUEST

The County agrees with the ED's recommendation related to the County's status as an affected person based upon the City's interest in issues relevant to the application.

IV.
REPLY TO OPIC'S RESPONSE TO THE COUNTY'S HEARING REQUEST

[1] Texas Water Code § 54.0161.
[2] *United Copper v. TNRCC*, 17 S.W.3d 797, 903 (Tex. App.—Austin 2000, pet. dism'd).

The County agrees with OPIC's recommendation related to the County's status as an affected person based upon the City's interest in issues relevant to the application.

IV.
CONCLUSION

The County urges the TCEQ to find that the County is an affected person so that it may participate in a SOAH proceeding to protect its authority and interests.

Respectfully submitted,

Emily W. Rogers
State Bar No. 24002863
erogers@bickerstaff.com

Joshua D. Katz
State Bar No. 24044985
Jkatz@bickerstaff.com

Kimberly Kelley
State Bar No. 24086651
kkelley@bickerstaff.com

BICKERSTAFF HEATH DELGADO ACOSTA LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, Texas 78746
Telephone: (512) 472-8021
Facsimile: (512) 320-5638

BY: Emily W. Rogers
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CERTIFICATE OF SERVICE

I hereby certify by my signature below that on October 24, 2022, a true and correct copy of the above and foregoing document was served on all parties on the attached Mailing List via electronic or regular mail.

Emily W. Rogers

Emily W. Rogers

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DOCKET NO. 2022-1157-DIS; INTERNAL CONTROL NO. D-03212022-036

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EXHIBIT 9

Williamson County Subdivision Regulations

Adopted and Effective
as of ~~_____~~March 4, ~~2024~~2025

Resolution & Order

THE STATE OF TEXAS §

§ **KNOW ALL MEN BY THESE PRESENTS:**

COUNTY OF WILLIAMSON §

THAT ON THIS, the ~~7~~4th~~th~~ day of ~~December~~March, 202~~1~~5, the Commissioners Court of Williamson County, Texas, met in duly called and convened lawful Session at the County Courthouse in Georgetown, Texas, with the following members present:

Bill Gravell, Jr.	County Judge
Terry Cook	Commissioner, Precinct One
Cynthia P. Long	Commissioner, Precinct Two
Valerie Covey	Commissioner, Precinct Three
Russ Boles	Commissioner, Precinct Four

And at said meeting, among other business, came up for consideration and adoption the following Resolution and Order:

WHEREAS, the Commissioners Court of Williamson County, Texas, has, after proper notice, held a public hearing concerning a proposed revision of the Williamson County Subdivision Regulation; and

WHEREAS, after soliciting the public's comments, the Commissioners Court finds that the adoption of revised Regulations will be in the public interest;

NOW THEREFORE BE IT RESOLVED, that the Williamson County Commissioners Court hereby adopts the attached document as the revised Williamson County Subdivision Regulations and ***orders*** that they be in full force and effect on _____~~December 7~~___~~th~~, 202~~1~~5; and

FURTHER RESOLVED, that County Judge Bill Gravell, Jr. be, and is hereby authorized to sign this Resolution and Order as the act and deed of the Williamson County Commissioners Court.

The foregoing Resolution and order was lawfully moved by Commissioner ~~Terry Cook~~Motion, duly seconded by Commissioner ~~Russ Boles~~Second, and duly adopted by the Commissioners Court on a vote of _~~5~~_ _ members for the motion and _~~0~~_ members opposed with no commissioner being absent from the dais.

_____ _____, _____

Bill Gravell, Jr., Williamson County Judge Date

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Section 9 - Maintenance

9.1 By accepting a subdivision plat for filing, the Commissioners Court does not thereby accept the roads and associated drainage facilities in the subdivision for ownership or maintenance by the County. The Owner of the platted lots is responsible for maintenance of all roads within subdivision until such time as the construction of the roads have been accepted by the County.

9.2 The County will consider accepting roadways for maintenance after a period of two years from the completion of the infrastructure, the closure of any outstanding items to be repaired (punch list), and upon approval by the County. Upon approval by the County, to begin two-year period, a statement of provisional acceptance will be issued. Provisional acceptance will include the County assuming traffic operations for all applicable roadways. Should the roadways not ultimately receive acceptance for maintenance, the County will release the provisional acceptance and no longer assume traffic operations.

9.3 The County will consider accepting a road for maintenance only after dedication to the public of an easement or fee interest in the roadway.

9.4 Any improvements, roadway easements, or right of way to be accepted by the County ~~should~~ shall be free of existing easements or be accompanied by approval of the encroachment from the easement holder.

9.5 In addition, written certification from a Registered Professional Engineer is required, stating that the facilities were constructed in accordance with the applicable subdivision regulations with any approved variances in effect when the subdivision was recorded (or has been upgraded to those standards). If a final plat for the subdivision where the facilities are located was never recorded, the facilities must meet the current applicable subdivision regulations with any approved variances.

9.6 The enforcement of plat restrictions is the responsibility of the Owner(s) of the subdivision; however, in an Extraterritorial Jurisdiction both the city and the Commissioners Court of Williamson County shall have the right and authority to enforce plat restrictions through appropriate legal procedure to prohibit the construction or connection of utilities or issuing of permits unless or until the requirements of the plat restrictions have been achieved.

9.7 County will assume no responsibility for drainage ways or easements in the subdivision outside of the roadway right-of-way. Maintenance and liability of improvements including but not limited to landscaping, illumination, sidewalks, water quality features, storm water controls, or any other improvements required by other governmental agencies shall not be the responsibility of the County.

9.8 County will assume no responsibility for driveway maintenance. If obstructions occur within the driveway culvert, the County reserves the right to clear obstructions that are causing adverse impacts to the roadway.

~~9.8~~9.9 The County will not consider accepting subdivision roadways for maintenance that are located within newly created Municipal Utility Districts. The only exception will be for roadways that are identified in the Williamson County Long Range Transporation Plan and in accordance to the requirements of this section.