

TCEQ DOCKET NO. 2025-0542-DIS

**PETITION BY BISSONNET 136, LLC
FOR THE CREATION OF HARRIS
COUNTY MUNICIPAL UTILITY
DISTRICT NO. 584 IN HARRIS
COUNTY, TEXAS**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**APPLICANT BISSONNET 136, LLC'S
RESPONSE TO HEARING REQUEST**

Bissonnet 136, LLC ("Bissonnet" or the "Applicant") files this response to the request for a contested case hearing (the "Hearing Request") submitted in response to Bissonnet's Petition for the Creation (the "Petition") of Harris County Municipal Utility District No. 584 (the "District" or "HC 584"). Only one Hearing Request was received by the Texas Commission on Environmental Quality (the "Commission" or "TCEQ"), which was submitted by The Office of The Harris County Attorney, Christian D. Menefee, on behalf of its client, Harris County Pollution Control (collectively, "Harris County").

I. Summary of Findings

The Applicant's Petition requests approval of creation of HC 584, consisting of 136 acres located entirely within the corporate limits of the City of Houston (the "City"). The TCEQ Districts section, after considering the Petition materials, concluded in its technical memorandum dated June 28, 2024, that the District proposed to be created satisfies all regulatory criteria, including engineering and economic feasibility factors, and recommended that the Petition be granted.

On June 24, 2024, Harris County submitted its Hearing Request, asserting its status as a potential "affected person." In its Hearing Request, Harris County states that it is concerned that the District poses a potential threat to the environment, health and welfare of Harris County and its residents, and questions whether MUD 584 is feasible, practicable, and necessary. To illustrate Harris County's concerns about the creation of the District, it attached to its Hearing Request four letters bearing dates between November 17, 2023, and May 21, 2024, that comment on various TCEQ environmental permits or permit modifications that are associated with proposed development within the boundaries of the proposed District, and are all governed by separate TCEQ public hearing, comment, and/or meeting processes.

This Brief will establish the following:

- Applicant has satisfied the TCEQ criteria for District creation.
- The District is located entirely within the City of Houston, which has consented to the creation of the District.
- Harris County lacks "affected person" status under TCEQ rules and current law.
- TCEQ governs permitting over municipal solid waste landfills under Chapter 330 of the Texas Administrative Code ("TAC"), and Harris County may address its environmental concerns through that permitting process.

- Harris County has not shown any injury to its right to regulate. The creation of HC 584 will not limit or disrupt Harris County's current regulatory authority. Harris County has not established any other legally protected interest in real or personal property that would be adversely affected by the creation of HC 584. As result, Harris County cannot establish the requisite injury to its interests to obtain "affected person" status.
- Harris County has not established that the Commission can take any action that would redress its environmental concerns. The only legally protected interests that Harris County raises are environmental concerns that are irrelevant to the Commission in the context of the proposed creation of HC 584. Denial of the proposed creation cannot redress such environmental concerns. The development proposed within the District can occur with or without the District and Harris County will still have to address its concerns through the TCEQ's other permitting processes.
- Harris County has established interests that may be addressed by potential TCEQ action through the imposition of MSW or discharge permit conditions *in separate proceedings*. However, such interests are not affected under the laws governing the creation of municipal utility districts ("MUD") and have no reasonable relationship to the creation of HC 584, and, as such, cannot be used to establish "affected person" status in this proceeding.
- As a matter of public policy, the TCEQ should not allow Harris County to undermine the environmental jurisdiction of the TCEQ with respect to MSW and discharge permitting. Harris County should not be permitted to circumvent prescribed MSW and discharge permitting processes by intervening in an entirely separate administrative process dedicated to MUD creation.

For ease of reference and discussion among Commission staff, attached to this Brief, as **Exhibit 1**, is a separate Executive Summary.

II. Introduction.

The Commission's evaluation and determination of "affected person" status is settled as a matter of state law. This Brief explains that a finding by the Commission that Harris County is an "affected person" is inconsistent with applicable legal standards and requests that the Commission exercise its discretion to deny Harris County's Hearing Request.

As this Brief demonstrates, Harris County does *not* have a legal or property interest or a statutory power over matters affected by the law under which the creation of HC 584 will be considered. 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.

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*). Harris County has alternate TCEQ regulatory schemes through which it may address the environmental concerns outlined in its Hearing Request. This Brief explains that bifurcation of proceedings governed by different regulatory schemes is a key consideration when you have parties, such as Harris County, who should not be permitted to intervene in unrelated proceedings but should be re-directed by the Commission to the remedies permitted to Harris County under the Commission's MSW and wastewater discharge permitting schemes.

III. Background

a. Applicant Has Complied With All Requirements for District Creation, Including Obtaining Municipal Consent

Title 30 of the Texas Administrative Code, Chapter 293, specifies the required contents of creation applications for MUDs. As noted in the draft technical memorandum and draft order issued by the TCEQ Districts section on June 28, 2024, the preliminary engineering report prepared by Kimley-Horn & Associates, Inc., dated January 10, 2024, was found by the TCEQ Districts section to include and satisfy all of the requisite information: description of the existing area, conditions, proposed improvements, land plan, cost estimates of proposed capital improvements, evaluation of District systems including groundwater, financial feasibility information, market study, and all other information required by the Commission. The TCEQ Districts section recommends District creation.

Subsequent to creation, the District will be subject to the continuing jurisdiction and supervision of the TCEQ, both from an infrastructure and financing standpoint. Prior to issuance of bonds, the District must seek TCEQ approval of its engineering projects it proposes to fund. Additionally, the District must meet the TCEQ economic feasibility thresholds prior to issuance of its bonds including assessed value and tax rate thresholds. Thus, the County's concerns as to whether the District is feasible, practicable and necessary, is appropriately addressed through the TCEQ's rules and continuing supervisory role.

The proposed District is located entirely within the corporate limits of the City of Houston. Applicant has complied with the requirements of § 54.016, Texas Water Code ("TWC"), and has obtained City of Houston Ordinance No. 2023-1109, consenting to the creation of HC 584, attached hereto as **Exhibit 2** (the "City Consent").

b. Applicant is Pursuing Development Permitting Through Separate TCEQ Permitting Schemes.

Bissonnet is the owner of an approximate 137-acre parcel located in Southwest Houston (the "Tract"). A closed, Type IV landfill under post-closure care (MSW Permit No. 1247) is located within the Tract, the Doty Sand Pit Venture Landfill (the "DSPV Landfill"). Another closed, Type IV landfill, the Olshan Demolishing Landfill (MSW Permit No. 1259, revoked), is also located within the Tract (the "Olshan Landfill", and together with the DSPV Landfill, the

“Landfills”). The Landfills have been properly permitted by TCEQ through its permit process under Chapter 330 of the Texas Administrative Code.

Bissonnet acquired title to the Tract in June 2019. Since Bissonnet’s acquisition of the Tract, Bissonnet, its affiliates, and developers of vertical infrastructure within the Tract, have begun the processes to obtain the proper permits necessary to prepare the Tract for mixed use development. Bissonnet sought and obtained a Municipal Setting Designation (“MSD”) from the City of Houston and from the Commission so that the City will provide potable water and avoid any potential contamination of public drinking water supply due to the use of groundwater within the Tract as a potable water source. Houston issued its MSD Ordinance on January 11, 2022 (Ordinance 2022-7, attached hereto as Exhibit 3), and the Commission issued its MSD certification on October 12, 2022 (attached hereto as Exhibit 4).

With the MSD in place, Bissonnet continued to permit its public infrastructure through submission of an Authorization Request to Disturb Final Cover Over a Closed Municipal Solid Waste Landfill for Non-Enclosed Structures (the “Final Cover Permit”) to the Commission on September 22, 2023, pursuant to Subchapter T, 30 TAC 330. Harris County has no right to a contested case hearing or other similar evidentiary hearing for Final Cover Permits. Harris County was given proper notice of the Final Cover Permit and has provided comments. The TCEQ may respond to Harris County’s commits through its permitting process.

Finally, on June 4, 2020, shortly after Bissonnet acquired the Tract in June 2019, Northwest Metro Holdings, CS 34, LLC (“NW Metro”), an affiliate of Bissonnet, became the permittee under MSW Permit No. 1247 (the “MSW Permit”), which governs the post-closure care obligations related to the DSPV Landfill. Though permitting for MSW facilities generally requires a public hearing, Subchapter F, 30 TAC 55.201(i)(1), expressly carves out minor amendments or modifications of permits under 30 TAC 305. Thus, there is, again, no right to a contested case hearing or other similar evidentiary hearing for NW Metro’s proposed modification to the MSW Permit (the “MSW Permit Modification”).

In its Hearing Request, Harris County has enumerated environmental concerns related to vapor migration and post closure care obligations primarily as it relates to above ground improvements over the Landfills. As noted above, TCEQ has an extensive permitting process for proposed development over municipal solid waste (“MSW”) landfills. Before issuing any of the above-referenced permits, the TCEQ Waste Permits Division will have the opportunity to consider Harris County’s comments and impose whatever permit conditions it believes are appropriate to address Harris County’s concerns.

Harris County seeks to assert its own *extralegal* right to consent to the creation of HC 584 in order to gain a foothold and impose conditions above and beyond the conditions issued by the Commission in the Final Cover Permit and the MSW Permit Modification. Harris County may be concerned about the environmental impacts of development within the District’s boundaries, but its proper and legal recourse is through public meetings and comment periods during the TCEQ’s MSW and discharge permitting process.

The Commission should not grant “affected person” status to Harris County (i) when Harris County cannot establish the requisite injury and (ii) where Harris County’s request for

contested case hearing does not reasonably relate to the creation of the District because Harris County's environmental concerns are the subject of separate TCEQ permitting schemes. The Commission should not allow Harris County to improperly intervene in an entirely separate MUD creation process as a way to circumvent the Commission's own rules and environmental jurisdiction.

c. **City of Houston Consent and Regulatory Authority**

Granting Harris County "affected person" status has the practical effect of giving Harris County a right to consent to the creation of the District. Counties do not otherwise have any legal right to consent to the creation of MUDs.¹ This undermines the City of Houston's right to consent, which is one that is expressly contemplated under Section 54.016, Water Code.

In addition, the City (along with the TCEQ) has the primary regulatory authority over the proposed District's water and sewer system. The City will approve the lines and routes to connect to the City water and wastewater system, and the City will provide retail water and sewer service to users within the District. Engineering plans to connect to the City's water and wastewater system have been filed with the City's engineering department, and the Applicant has received a utility capacity letter from the City committing sufficient retail water and wastewater service to serve the District at full build-out. Harris County has no role in the District's water and sewer system.

As to stormwater quality, the Applicant is subject to the TCEQ General Permit to Discharge under Texas Pollutant Discharge Elimination System (TPDES) TXR 150000. Applicant has also applied for an individual industrial wastewater application for limited discharges of landfill leachate encountered during certain development activities, and Harris County has provided comments to this permit application. Applicant will be required to comply with both permits during its construction and development activities.

IV. Current Law.

The question now before the Commission is whether Harris County 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

¹ Counties have never had a legal right to consent to the creation of MUDs. The *exclusive remedy* provided to counties by the Texas Legislature is set forth in Section 54.0161, TWC, requiring notices by an applicant and the Commission to be provided to a county of a petition for creation for a MUD proposed to be created entirely within the ETJ of a municipality and/or unincorporated county territory, and permitting a county to provide comments and have those comments considered by the Commission prior to the grant or denial of a petition for the creation of a MUD. § 54.0161(a-1), TWC; 30 TAC 293.12(h). The Legislature's specific provision for county notice and comment, *not consent*, to MUD creations control over any more general statute that could be construed otherwise.

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).

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.

Following *City of Waco I*, the Texas Supreme Court accepted petition for review 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*”). In doing so, the Court acknowledged, but did not resolve, an open question regarding the degree to which the principles of constitutional standing should guide the Commission’s “affected person” determinations. *See id.* at 420. The Commission believed it has broad discretion to weigh and balance the Affected Person Factors, as informed by the principles of constitutional standing. *City of Waco I* at 808. 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. *Id.* In other

words, the Commission does not have the discretion to grant “affected person” status to a party who doesn’t meet the legal requirements.

No matter how this question is decided, the principles of constitutional standing inform the Commission’s determination of the first Affected Person Factor, at the very least ensuring that any party granted “affected person” status has at least suffered some injury-in-fact. 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*). 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.

Further, the Commission’s “affected person” status is a concept that is narrower than constitutional standing because it is limited to *only* the following issues contemplated by a MUD creation application (the “54.021(b) Factors”):

- (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.

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*.

To synthesize the above with respect to governmental entities seeking “affected person” status on the basis of their statutory authority or interest in the issues relevant to a MUD creation application, not on the basis of any independent real or personal property interest, a governmental entity must show that it can satisfy each element of the following equation:

A List of Statutory Powers or Interests 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. Further, unless a governmental entity 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.*

When making its “affected person” determination under the above-discussed framework, the Commission has broad discretion to do so at a Commission meeting at which the proposed MUD is being considered, without any requirement for a further evidentiary hearing, provided that the hearing requester has been afforded the ability to express its dissatisfaction with the proposed MUD and the Commission does not refuse to consider the submitted evidence in support of that dissatisfaction. *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*”); *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*”).² Further, the 3rd Court of Appeals holds that the initial burden of proof lies with the hearing requester to make a minimum showing substantiating its claim to “affected person” status. *Texas Comm'n on Env't Quality v. City of Aledo*, No. 03-13-00113-CV, 2015 WL 4196408, at *1, *10-11 (Tex. App.—Austin, July 8, 2015) (*no pet.*).

The *Sierra I* and *Sierra II* Courts acknowledge that the Commission may weigh and resolve matters that may go to the merits of the underlying application, including whether 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 *Sierra I* and *Sierra II* Courts state that the Commission may reference the “permit application,

² *Sierra I* and *Sierra II* are controlling 3rd Court of Appeals cases that 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. The 3rd Court of Appeals stated in *Sierra I*, 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).

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 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.

Finally, with respect to TCEQ's issuance of a license or permit, including an order granting creation of a MUD, the 3rd Court of Appeals does not view such issuances 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 Commission's issuance of an order creating a District 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" and "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). *Id.* at 883-84. "Mere speculation of failure" about the actions or omissions of the District (or developers within the District) 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, the 3rd Court of Appeals has confirmed that the TCEQ, when evaluating the fifth Affected Person Factor (likely impact of a regulated activity on a hearing requester), may assume that certain permitted activities, such as those under the Final Cover Permit or the MSW Permit Modification, will be done in compliance such permits and, accordingly, will not have the negative impact alleged by a hearing requester such as Harris County. See *Sierra II* at 240. Simply put, neither Harris County nor the Commission may assume that the District will break the law.

V. Application of Current Law to the Facts.

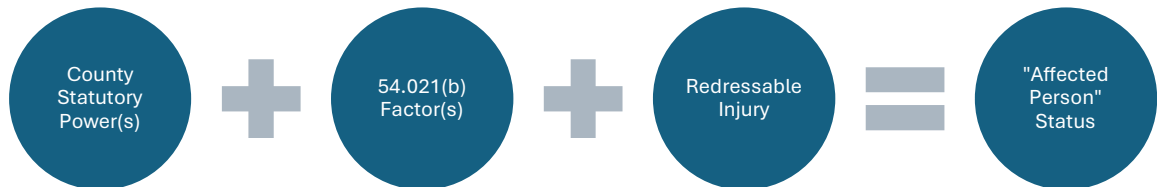
Herein, this Brief evaluates Harris County's Hearing Request using the Affected Person Factors (as well as the statutory and case law framework described above). Harris County has not met its burden to make a minimal showing in support of its "affected person" status because it cannot show how denial of the proposed MUD will resolve its environmental concerns, which are all addressed via procedural remedies made available to Harris County under different TCEQ permitting schemes. The inability to establish a redressable injury is fatal to its claim to "affected person" status.

In its Hearing Request, Harris County generally alleges that it is concerned about the impact that development of the Tract will have on human health and the environment, citing general concerns regarding the impact on drainage, water quality, vapor migration, and post-closure care obligations. This Brief will evaluate Harris County's request pursuant to the Affected Person Factors set forth in 30 TAC 55.256, which govern MUD creations:³

- ***For governmental entities, their statutory authority over or interest in the issues relevant to the application.*** This Affected Person Factor does not stand alone and should not serve as the *sole* basis for granting a party "affected person" status.

³ Harris County cites to the wrong administrative rule when explaining why it qualifies as an "affected persons," citing Subchapter F, 30 TAC 55, which is the rule governing the MSW and discharge permits.

Both the Commission and the 3rd Court of Appeals agree that the grant of “affected person” status cannot be liberally construed to allow in parties that have suffered *no injury* or whose allegations of potential harm are *merely conjectural or hypothetical*. Harris County must establish each element of the following equation in order to establish “affected person” status:



If there is a failure to meet any part of the equation, there is no ability for Harris County to obtain “affected person” status.

Harris County can only establish injury by establishing its statutory power or a real or personal property interest that is affected by the laws under which the application for the creation of HC 584 is governed. Harris County has asserted no interests of its own but has asserted general concerns regarding the environmental wellbeing of the City’s residents. Harris County cannot act *parens patriae* on behalf of any other party besides itself and, without more, cannot establish “affected person” status via any of its own legally protected interests.

Instead, Harris County seeks to establish “affected person” status through its statutory power, stating that it has a right to “affected person” status as an environmental regulator, describing Harris County Pollution Control as the Harris County department designated to inspect facilities in Harris County for compliance with environmental quality laws and regulations (air, water, and waste), and tasked with reviewing permit applications. Harris County makes general reference to the following investigatory powers and also notes its ability to file suit for injunctive relief, civil penalties, or both pursuant to § 7.351, TWC.

Harris County only asserts its affirmative rights to regulate and does not establish any injury to such regulatory authority. The regulatory authority of MUDs is related to the financing, construction, operation, and maintenance of water, sewer, drainage, detention, road, and, in some cases, park and recreational facilities. Generally speaking, these facilities must be constructed pursuant to the applicable jurisdiction’s regulations, including the environmental regulations of TCEQ and, if applicable, Harris County. However, without more, the mere creation of a MUD does not constitute an injury to a county’s right to regulate activities that may occur within the MUD’s boundaries in the future.

Further, even if the Commission believed there was any injury to Harris County's ability to regulate, denying creation of a MUD does not resolve any of Harris County's concerns with respect to the Final Cover Permit and the MSW Permit Modification. If Bissonnet or NW Metro decide to proceed with development without the use of a MUD, Harris County will still not be able to require TCEQ to incorporate any of Harris County's comments as permit conditions.

Using the equation set forth above, Harris County failed to show injury to or constraint of the statutory powers it cited. Harris County also failed to make a minimal showing of a redressable injury or a potential redressable injury because creation of the MUD does not injure Harris County's right to regulate activity within the MUD and does not have any effect on whether the Commission includes Harris County's proposed modifications to the Final Cover Permit or the MSW Permit Modification.

- ***Whether the interest claimed is one protected by the law under which the application will be considered.*** This factor requires the Commission to limit the legally-protected interests it considers to the 54.021(b) Factors, which, as discussed in Section IV, is consistent with how the Commission intended to limit the application of "affected person" status when granting or denying contested case hearing requests for MUD creations. 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*.

Here, Harris County states that it is concerned generally about the impact of the Tract's development on human health and the environment. Harris County also asserts that the Tract's development will have a negative effect on water quality and drainage, which appears to be a reference to two of the 54.021(b) Factors. This is not enough and equates to a prohibited assertion of the interests of its citizens, acting as *parens patriae*.

To the extent Harris County has concerns about representing the interests of its constituents (including Houston), it is worth noting again that HC 584 is an in-city MUD and has already obtained consent to its creation from Houston pursuant to the City Consent.

- ***Distance restrictions or other limitations imposed by law on the affected interest.*** Because Harris County does not assert any of its own legally protected interests, this Affected Person Factor is not applicable to analysis of Harris County's hearing request.
- ***Whether a reasonable relationship exists between the interest claimed and the activity regulated.*** As noted herein, "affected person" status is narrower than standing and the interest claimed must be "one protected by the law under which the application will be considered." This means that, to the extent that a concern raised by Harris County is governed by another regulatory scheme, then it is not

relevant or reasonably related to the application nor is it “a law under which the application will be considered.” This applies for Harris County’s concerns regarding water quality, which is governed by the Commission’s discharge permit scheme under Chapter 26, TWC. This also applies for Harris County’s concerns regarding vapor migration and post-closure care obligations, which is governed by the Commission’s MSW permit scheme under Chapter 361, THSC.

The Commission separates different permissible activities to be examined independently. This is consistent with how the Commission and the State Office of Administrative Hearings (“SOAH”) dispose of complaints that water, wastewater, or stormwater drainage facilities may violate design criteria set forth by local authorities, which is to say that, at the feasibility stage of a MUD creation, the Commission defers to the local authorities’ governance over the design of water, wastewater, or stormwater drainage facilities. See Proposal for Decision (Dec. 4, 2023), FM 875 Municipal Utility District, SOAH Docket No. 582-23-11662, TCEQ Docket No. 2022-0534-DIS, at pp. 28, 31-32 (attached hereto as **Exhibit 5**). The Commission defers to the other regulatory scheme(s) and accepts an applicant’s representation that it will comply with local requirements, which Bissonnet did in Section III.G of its engineering report submitted as part of its creation application.

The land within the proposed MUD may be developed with or without the MUD. The point made by the *Collins* Court is especially relevant here (See Section IV). The issuance of an order creating a MUD authorizes the creation of a MUD, which, in and of itself, does not cause injury to Harris County’s ability to regulate a MUD and activity occurring on the land within the MUD. Grant of an order creating a MUD requires operation subject to oversight and in accordance with applicable law, including any Harris County inspection of facilities for water quality issues and enforcement of its regulations related to the MS4 within the MUD. Mere speculation of failure about 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) does not give rise to a harm or a potential harm that is anything other than conjectural or hypothetical.

- ***Likely impact of the regulated activity on the health, safety, and use of property of the person.*** Even if the Commission believes that Harris County asserted its own legally protected interest, instead of acting *parens patriae*, there would not be any likely impact as it relates to water quality or drainage. With respect to water quality, the Tract is subject to a MSD pursuant to which Houston and the Commission agreed that the groundwater associated with the Tract is non-potable and pursuant to which Houston agreed to provide water supply from Houston’s water system via an off-site line to be constructed. Following *Sierra I* and *Sierra II*, the Commission should find that any impact to groundwater would be remote due to the MSD. In addition to the fact that drainage is supervised by several additional layers of regulatory entities, including the Commission (via discharge permit), and Harris County, as co-permittee under the JTF MS4 Permit, the MSD

is also relevant to drainage because it renders inapplicable any impact that leaching may have on the existing groundwater.

- ***Likely impact of the regulated activity on use of the impacted natural resource by the person.*** Again, even if the Commission believes that Harris County asserted its own legally protected interest, instead of acting *parens patriae*, there would not be any likely impact as it relates to water quality or drainage because TCEQ has or will otherwise address such impacts through alternative permitting schemes.

VI. Conclusion.

Harris County cannot establish “affected person” status because it has not established any redressable injury that should be considered by SOAH and is not a correct party for this proceeding. Harris County has shown no injury to its right to regulate or to any other legally protected interest in real or personal property. Instead, Harris County has asserted interests that are not relevant for purposes of the creation of HC 584 but are the appropriate subject of different TCEQ permitting schemes. Harris County is a party to ongoing proceedings before the Commission for the Final Cover Permit and the MSW Permit Modification and can seek redress through such proceedings. No redress is available to Harris County in this proceeding as Harris County would still have to pursue redress through the above-referenced permit proceedings.

Allowing Harris County to intervene in unrelated proceedings for the purpose of obtaining leverage against a developer, such as the Applicant, represents bad public policy as it directly undermines the Commission’s own regulatory authority. 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, the Commission has broad discretion to grant or deny “affected person” status on the basis of the information before it in the administrative record. The Commission should not allow Harris County to engage in administrative forum-shopping and should exercise its broad discretion under state law to deny “affected person” status to Harris County and, instead, direct Harris County to continue to prosecute its interests under the separate TCEQ permitting schemes that actually relate to, and could potentially mitigate, Harris County’s environmental concerns.

Respectfully Submitted,

ALLEN BOONE HUMPHRIES ROBINSON, LLP
919 Congress Avenue, Suite 1500
Austin, Texas 78701
(512) 518-2424

ATTORNEYS FOR BISSONNET 136, LLC

A handwritten signature in cursive script, reading "Trey Lary", written over a horizontal line.

TREY LARY
State Bar No. 24007534
tlary@abhr.com

A handwritten signature in cursive script, reading "Annette Stephens", written over a horizontal line.

ANNETTE F. STEPHENS
State Bar No. 06852300
astephens@abhr.com

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2025, the original of the Bissonnet 136, 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.


Trey Lary

MAILING LIST

Harrison County Municipal Utility District No. 584

DOCKET NO. 2025-0542-DIS; INTERNAL CONTROL NO. D-01182024-023

FOR THE APPLICANT

Annette Stephens
Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

Kelly Bosworth Alling, PE
Kimley-Horn
1400 Woodloch Forest Drive, Suite 225
The Woodlands, Texas 77380

REQUESTER(S)/INTERESTED PERSON(S)

Sarah Jane Utley, Environmental Division
Director
Harris County Attorney's Office
1019 Congress Street, Floor 15
Houston, Texas 77002

FOR THE EXECUTIVE DIRECTOR

via mail:
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RESOLUTION

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FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
<https://www.tceq.texas.gov/goto/efilings>

Exhibit 1

Executive Summary

Introduction

A petition presented to the Executive Director of the TCEQ by Bissonnet 136, LLC (“Petitioner”) requests approval of creation of Harris County Municipal Utility District No. 584 (the “District”), consisting of 136 acres located entirely within the corporate limits of the City of Houston (the “City”). The TCEQ Districts section, after considering the petition and application material, concluded in its technical memorandum dated June 28, 2024, that the District proposed to be created satisfies all regulatory criteria, including engineering and economic feasibility factors, and recommended that the petition for creation be granted.

On June 24, 2024, Harris County Attorney’s Office on behalf of Harris County Pollution Control, submitted a request for a contested case hearing regarding the petition as a potential affected party. In its request, Harris County states that it is concerned that the District poses a potential threat to the environment, health and welfare of Harris County and its residents and questions whether MUD 584 is feasible, practicable, and necessary. To illustrate Harris County’s concerns about the creation of the District, it attached to its request for a hearing four letters bearing dates between November 17, 2023, and May 21, 2024, that comment on various TCEQ environmental permits or permit modifications that are associated with proposed development within the boundaries of the proposed District. Notably, none of these permit actions provides an opportunity for a request for a contested case hearing.

Summary

The attached memorandum will address the following:

- Petitioner has satisfied the TCEQ criteria for District creation.
- The District is located entirely within the City of Houston, which has consented the creation of the District.
- Harris County lacks affected party status under TCEQ rules and current law.
- TCEQ governs permitting over municipal solid waste landfills under Chapter 330 of the Texas Administrative Code, and Harris County may address its environmental concerns through that permitting process.
- TCEQ should not allow Harris County to circumvent the environmental jurisdiction of the TCEQ and its administrative processes through its attempt to intervene in a wholly separate administrative process dedicated to municipal utility district creation.

Petition Satisfies District Creation Criteria in 1 TAC Sec. 293.

Title 30 of the Texas Administrative Code, Chapter 293, specifies the required contents of creation applications for all types of Districts. The preliminary engineering report

prepared by Kimley-Horn & Associates, Inc., dated January 10, 2024, was found by the TCEQ Districts section to include and satisfy all of the requisite information: description of the existing area, conditions, proposed improvements, land plan, cost estimates of proposed capital improvements, evaluation of District systems including groundwater, financial feasibility information, market study, and all other information required by the executive director. The TCEQ Districts section recommends District creation.

Subsequent to creation, the District will be subject to continuing jurisdictional control of the TCEQ, both from an infrastructure and financing standpoint. Prior to issuance of bonds, the District must seek TCEQ approval of its engineering projects it proposes to fund. Additionally, the District must meet the TCEQ economic feasibility thresholds prior to issuance of its bonds including assessed value and tax rate thresholds. Thus, the County's concerns as to the whether the District is feasible, practicable and necessary is appropriately addressed through the TCEQ's rules and continuing supervisory role.

Harris County Lacks Affected Party Status

Harris County has not shown any injury to its right to regulate. The creation of HC 584 will not limit or disrupt Harris County's current regulatory authority. Harris County has not established any other legally protected interest in real or personal property that would be adversely affected by the creation of HC 584. As result, Harris County cannot establish the requisite injury to its interests to obtain "affected person" status.

Harris County has not established that the Commission can take any action that would redress its environmental concerns. The only legally protected interests that Harris County raises are environmental concerns that are irrelevant to the Commission in the context of the proposed creation of HC 584. Denial of the proposed creation cannot redress such environmental concerns. The development proposed within the District can occur with or without the District and Harris County will still have to address its concerns through the TCEQ's other permitting processes.

Harris County has established interests that may be addressed by potential TCEQ action through the imposition of MSW or discharge permit conditions *in separate proceedings*. However, such interests are not affected under the laws governing the creation of municipal utility districts ("MUD") and have no reasonable relationship to the creation of HC 584, and, as such, cannot be used to establish "affected person" status in this proceeding.

City of Houston as Regulatory Authority

Granting Harris County affected party status (and giving the County control over District creations) circumvents the authority of the City of Houston, which has been granted regulatory authority over District creation by the Legislature. In addition, Harris County has no regulatory authority over in-City infrastructure.

The proposed District is located entirely within the corporate limits of the City of Houston. The Texas Local Government Code and Texas Water Code require municipal consent to a district created within its corporate boundaries, and the City consented to the creation by passing City of Houston Ordinance No. 2023-1109. In addition, the City (along with the TCEQ) has the regulatory authority over the proposed District's water and sewer system. The City will approve the lines and routes to connect to the City system, and the City will provide retail water and sewer service to the District. Engineering plans to connect to the City's system have been filed with City engineering, and developer has a utility capacity letter from the City. The Petitioner received a TCEQ Municipal Setting Designation Certificate No. 488, dated October 12, 2022, and the City has approved a Municipal Setting Designation, effective January 11, 2022, so that the groundwater beneath the Petitioner's tract will not be used for potable water.

As to stormwater quality, Petitioner is subject to the TCEQ General Permit to Discharge under Texas Pollutant Discharge Elimination System (TPDES) TXR 150000. Petitioner has also applied for an individual industrial wastewater application for limited discharges of landfill leachate encountered during certain development activities, and Harris County has provided comments to this permit application. Petitioner will be required to comply with both permits during its construction and development activities.

TCEQ Has Existing Regulatory Structure for Environmental Permitting over MSW

Harris County in its petition has enumerated environmental concerns related to vapor migration and post closure care obligations primarily as it relates to above ground improvements over municipal solid waste landfills (MSWs). TCEQ has an extensive permitting process for proposed development over MSWs. Petitioner has filed the following applications: Application for Authorization to Disturb Final Cover over Closed Municipal Solid Waste Landfill for Non-Enclosed Structures; and Application for Permit Modification with Public Notice Post-Closure Land Use and Access Control Modifications. Other developers (not Petitioner) had filed applications for development for Proposed Enclosed Structure over Closed Municipal Solid Waste Landfill. Harris County was properly noticed under such applications and submitted comments on each of them. Before issuing any of these permits, the TCEQ Waste Permits Division will have the opportunity to consider Harris County's comments and impose whatever permit conditions it believes are appropriate to address the County's concerns. However, the TCEQ rules do not provide the opportunity to contest such applications through a contested case hearing process.

Harris County may be concerned about the environmental impacts of Petitioner's development, but its proper and legal recourse granted by the TCEQ is through the Municipal Solid Waste permitting process. The TCEQ should not allow Harris County to improperly use the District creation process to circumvent its own rules and environmental jurisdiction.

Exhibit 2

City of Houston, Texas, Ordinance No. 2023 - 1109

AN ORDINANCE CONSENTING TO THE CREATION OF HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 584, CONSISTING OF 136.892 ACRES OF LAND LOCATED IN HARRIS COUNTY WITHIN THE CITY OF HOUSTON; GRANTING CONSENT TO EXERCISE WATER, SEWER, DRAINAGE, ROAD AND RECREATIONAL FACILITIES POWERS AND AUTHORIZING THE DISTRICT TO ISSUE BONDS SUBJECT TO CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Bissonnet 136, LLC, a Texas limited liability company (the "Petitioner"), owner of the land described herein, submitted a petition ("Petition"), attached hereto, to the City of Houston, Texas ("City"), requesting consent to the City to the creation of Harris County Municipal Utility District No. 584 ("District"), containing approximately 136.892 acres of land, consisting of one (1) tract and within the City boundaries; and

WHEREAS, Ordinance No. 2006-160, passed and adopted by the City Council on February 21, 2006, set forth conditions for the creation or inclusion of land within a conservation and reclamation district in the ETJ, and permitting such district to issue bonds for certain recreation, road, and fire-fighting facilities; and

WHEREAS, the Petitioner has petitioned the City (the "Petition") to consent to the creation of Harris County Municipal Utility District No 584 (the "District") comprised of 136.892 acres of land and to authorize the exercise of water, sewer, drainage, road, and recreational facilities powers within its boundaries; and

WHEREAS, the District shall be created and organized under the terms and provisions of Article XVI, Section 59 of the Constitution of Texas, and Chapters 49 and 54, Texas Water Code, together with all amendments and additions thereto; and

WHEREAS, the District is located in the City of Houston, Texas ("City"), and one or more drainage plans for grading, fill, construction of buildings or infrastructure within the proposed District will be required to be submitted to, and approved by, the City; and

WHEREAS, components of the drainage plan may include a variety of engineering solutions to manage and mitigate flooding based on the City's floodplain management rules and regulations; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That attached to this ordinance and made a part hereof is the Petition requesting the consent of the City to the creation of Harris County Municipal Utility District No. 584, consisting of 136.892 acres of land, more or less, within the corporate boundaries of the City, for the City to grant the District road and recreational powers within this annexed area, and for the City to consent to the issuance by the District of bonds for the purpose of purchasing, constructing, or otherwise acquiring certain road and recreational facilities. The 136.892 acres of land to be included in the District is described by metes and bounds in Exhibit "A" attached to the Petition. The Petition is hereby granted, subject to the terms and conditions set forth in Exhibit "B" attached to the Petition and further set out below:

- A. The District shall not levy a municipal utility district ("MUD") tax where the combined MUD tax rate and the City tax rate would exceed \$1.50 per \$100.00 valuation. The combined MUD tax rate shall include the tax components for all MUD indebtedness, including maintenance, road construction and acquisition, and any other component that may apply.

- B. The District shall notify all property owners within the District of any proposed increase in the MUD tax rate prior to the required public hearing, to ensure that all property owners have an opportunity to speak in favor of or in opposition to the proposed increase.
- C. The District shall provide the notice required in Paragraph B above by both mailing the notice to all property owners and posting the notice at one or more locations that are highly visible and accessible to the property owners.
- D. The District shall notify the City's Chief Development Officer or his designee (the "CDO") of the public hearing at least seven (7) days prior to the public hearing date.
- E. The District shall provide the CDO and the City's Houston Public Works Department with updated analysis prepared by the District's financial advisors and engineers, demonstrating the feasibility of the road bonds, prior to the issuance of the road bonds. The report shall be substantially similar to the documents provided to the Texas Commission on Environmental Quality under Chapter 293, Subchapter P, Rule §293.202 (8) and (9).

Section 2. That a public emergency exists requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor; provided, however, that if the Mayor fails to sign this ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 13th day of December, 2023.

APPROVED this _____ day of _____, 2023.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC. 19 2023.

Pat J. Hensel
City Secretary

Prepared by Legal Dept.

KM/llm 7/26/23

Requested by Carol Ellinger Haddock, P.E.

Director – Houston Public Works Department

L.D. File No.LD-RE-0000001695

Kimberly Hock
Senior Assistant City Attorney

Meeting 12/13/2023

Aye	No	
✓		Mayor Turner
....	Council Members
✓		Peck
Absent due to being ill		Jackson
✓		Kamin
✓		Evans-Shabazz
✓		Martin
✓		Thomas
✓		Huffman
✓		Cisneros
✓		Gallegos
✓		Pollard
✓		Castex-Tatum
✓		Knox
✓		Robinson
✓		Kubosh
Absent on personal business		Plummer
✓		Alcorn
Caption	Adopted	

Captions Published in DAILY COURT REVIEW

Date: 9/19/2023

PETITION FOR CONSENT TO THE CREATION
OF A MUNICIPAL UTILITY DISTRICT

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF HOUSTON,
TEXAS:

BISSONNET 136, LLC, a Texas limited liability company (herein the "Petitioner"), acting pursuant to the provisions of Chapters 49 and 54, Texas Water Code, respectfully petition the City Council of the City of Houston, Texas (the "City"), for its written consent to the creation of a municipal utility district and would show the following:

I.

The name of the proposed District shall be HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 584 (the "District").

II.

The District shall be created and organized under the terms and provisions of Article XVI, Section 59 of the Constitution of Texas and Chapters 49 and 54, Texas Water Code, together with all amendments and additions thereto.

III.

The District shall contain an area of 136.892 acres of land, more or less, situated in Harris County, Texas. All of the land proposed to be included within the District is within the corporate limits of the City. All of the land proposed to be included may properly be included in the District. The land proposed to be included within the District is described in Exhibit A, which is attached hereto and incorporated herein for all purposes (the "Land").

IV.

Petitioner holds fee simple title to the Land. Petitioner hereby represents that they own a majority in value of the Land, which is proposed to be included in the District, as indicated by the certificate of ownership provided by the Harris County Appraisal District.

V.

Petitioner represents that there are no lienholders on the Land, except International Interests, LP, and that there are no residents on the Land.

VI.

The general nature of the work proposed to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, and enterprises as shall be consistent with all of the purposes for which the District is created (the "Project").

VII.

There is, for the following reasons, a necessity for the above-described work. The area proposed to be within the District is urban in nature, is within the growing environs of the City, and is in close proximity to populous and developed sections of Harris County, Texas. There is not now available within the area, which will be developed for multifamily and commercial uses, an adequate waterworks system, sanitary sewer system, or drainage and storm sewer system, or roads, or parks and recreational facilities. The health and welfare of the present and future inhabitants of the area and of the territories adjacent thereto require the purchase, design, construction, acquisition, ownership, operation, repair, improvement and extension of an adequate waterworks system, sanitary sewer system, and drainage and storm sewer system, roads, or parks and recreational facilities. A public necessity, therefore, exists for the creation of the District, to provide for the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such waterworks system, sanitary sewer system, and drainage and storm sewer system, roads, and parks and recreational facilities to promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

VIII.

The Petitioner, by submission of this Petition, requests the City's consent to the creation of the District containing the Land under the same conditions as set forth in Exhibit B, which is attached hereto and incorporated herein for all purposes

IX.

A preliminary investigation has been made to determine the cost of the proposed District's waterworks system, sanitary sewer system, and drainage and storm sewer

system projects, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$27,000,000.

X.

A preliminary investigation has been made to determine the cost of the proposed District's road projects, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$7,100,000.

XI.

A preliminary investigation has been made to determine the cost of the proposed District's park and recreational facilities, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$5,000,000.

XII.

The total cost of the proposed District's projects is estimated by the Petitioner to be approximately \$39,100,000.

WHEREFORE, the Petitioner prays that this petition be heard and that the City Council duly pass and approve an ordinance granting the consent to the creation of the District and authorizing the inclusion of the Land within the District.

[EXECUTION PAGES FOLLOW]

RESPECTFULLY SUBMITTED this 20 day of September, 2022.

BISSONNET 136, LLC,
a Texas limited liability company

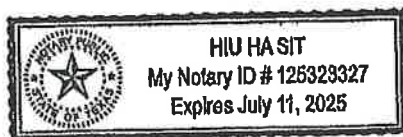
By: The Ireland Family Limited Partnership
a Texas limited partnership
its member

By: Dublin, Inc.
a Texas corporation
it general partner

By: John Orlan
Name: JOHN Orlan
Title: President

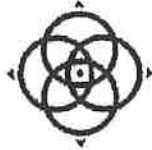
THE STATE OF Texas §
§
COUNTY OF Harris §

This instrument was acknowledged before me on the 20 day of September 2022, by John Orlan, President of Dublin, Inc., a Texas corporation and general partner of The Ireland Family Limited Partnership, a Texas limited partnership and member of BISSONNET 136, LLC, a Texas limited liability company, on behalf of said corporation, company and limited partnership.



[Signature]
Notary Public, State of Texas

(NOTARY SEAL)



WINDROSE
LAND SURVEYING | PLATTING

EXHIBIT A

**DESCRIPTION OF
136.892 ACRES OR 5,963,017 SQ. FT.**

A TRACT OR PARCEL CONTAINING 136.892 ACRES OR 5,963,017 SQUARE FEET OF LAND SITUATED IN THE HT&B RR CO. SURVEY, SECTION 11, ABSTRACT NO. 406, AND HT&B RR CO. SURVEY, SECTION 9, ABSTRACT NO. 407, HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 136.888 ACRE TRACT OF LAND CONVEYED TO BISSONNET 136, LLC, RECORDED IN HARRIS COUNTY CLERK'S FILE (H.C.C.F.) NO. RP-2019-275311 AND ALL OF UNRESTRICTED RESERVE "A" BLOCK 1, SUGARHILL ADDITION, MAP OR PLAT THEREOF RECORDED IN FILM CODE (F.C.) NO. 450135, HARRIS COUNTY MAP RECORDS (H.C.M.R.), SAID UNRESTRICTED RESERVE "A" BEING PART OF AFORESAID 136.888 ACRE TRACT, WITH SAID 136.9 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83):

BEGINNING AT A 3/4 INCH IRON ROD FOUND ON THE NORTH RIGHT-OF-WAY (R.O.W.) LINE OF BISSONNET STREET, MARKING THE SOUTHWEST CORNER OF UNRESTRICTED RESERVE "A" BLOCK 1, GOLF PLAZA, RECORDED IN FC. NO. 580258, H.C.M.R., THE SOUTHEAST CORNER OF SAID UNRESTRICTED RESERVE "A", BLOCK 1, SUGARHILL ADDITION AND THE MOST SOUTHERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 87 DEG. 39 MIN. 35 SEC. WEST, ALONG THE NORTH R.O.W. LINE OF SAID BISSONNET STREET, A DISTANCE OF 259.02 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE SOUTHWEST CORNER OF SAID UNRESTRICTED RESERVE "A", BLOCK 1, SUGARHILL ADDITION, THE SOUTHEAST CORNER OF A CALLED 1.25 ACRE TRACT OF LAND CONVEYED TO SOUTHWEST REGION CONFERENCE ASSOCIATION OF SEVENTH-DAY ADVENTIST, RECORDED IN H.C.C.F. NO. 20130528522, AND THE MOST SOUTHERLY SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 02 DEG. 39 MIN. 18 SEC. WEST, ALONG THE COMMON LINE OF SAID 1.25 ACRE TRACT AND SAID UNRESTRICTED RESERVE "A", BLOCK 1, SUGARHILL ADDITION, A DISTANCE OF 370.99 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHEAST CORNER OF SAID 1.25 ACRE TRACT AND AN INTERIOR CORNER OF SAID UNRESTRICTED RESERVE "A" BLOCK 1, SUGARHILL ADDITION AND OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 18 MIN. 08 SEC. WEST, CONTINUING ALONG AFORESAID COMMON LINE, A DISTANCE OF 149.40 FEET TO THE NORTHWEST CORNER OF SAID 1.25 ACRE TRACT, SAME BEING A POINT ON THE EAST LINE OF A CALLED 3.581 ACRE TRACT CONVEYED TO SOCIETY OF HOUSTON, RECORDED IN H.C.C.F. NO. RP-2021-23206 AND AN EAST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A 1/2 INCH IRON ROD FOUND BEARS FOR REFERENCE NORTH 78 DEG. 20 MIN. EAST - 0.49 FEET;

THENCE, NORTH 02 DEG. 39 MIN. 18 SEC. WEST, ALONG THE COMMON LINE OF SAID 3.581 ACRE TRACT, SAID 136.888 ACRE TRACT AND SAID UNRESTRICTED RESERVE "A", BLOCK 1, SUGARHILL ADDITION, A DISTANCE OF 441.31 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "1943 4349" MARKING THE NORTHEAST CORNER OF SAID 3.581 ACRE TRACT AND AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 20 MIN. 42 SEC. WEST, ALONG THE COMMON LINE OF SAID 3.581 ACRE TRACT AND SAID 136.88 ACRE TRACT, A DISTANCE OF 200.00 FEET TO A CAPPED 5/8 INCH IRON ROD (NOT LEGIBLE), MARKING THE NORTHWEST CORNER OF SAID 3.581 ACRE TRACT, THE NORTHEAST CORNER OF A CALLED 2.215 ACRE TRACT OF LAND CONVEYED TO DN77 ADVANCE INVESTMENT, INC., RECORDED IN H.C.C.F. NO. RP-2019-82754 AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 87 DEG. 43 MIN. 51 SEC. WEST, ALONG THE COMMON LINE OF SAID 2.215 ACRE TRACT, RESTRICTED RESERVE "A", BLOCK 1, MOUNTAIN OF FIRE AND MIRACLES MINISTRIES PROPERTIES, MAP OR PLAT THEREOF RECORDED IN FC. NO. 689392, H.C.M.R., AND SAID 136.888 ACRE TRACT, A DISTANCE OF 255.23 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHWEST CORNER OF SAID RESTRICTED RESERVE "A" AND AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 02 DEG. 38 MIN. 51 SEC. EAST, ALONG THE COMMON LINE OF SAID RESTRICTED RESERVE "A" AND SAID 136.888 ACRE TRACT, A DISTANCE OF 32.14 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHEAST CORNER OF A CALLED 4.7386 ACRE TRACT OF LAND CONVEYED TO COVENTRY APARTMENTS, LLC, RECORDED IN H.C.C.F. NO. RP-2020-643000, AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 21 MIN. 09 SEC. WEST, ALONG THE COMMON LINE OF SAID 4.7386 ACRE TRACT AND SAID 136.888 ACRE TRACT, A DISTANCE OF 446.00 FEET TO A 5/8 INCH IRON ROD FOUND ON THE EAST R.O.W. LINE OF COVENTRY SQUARE DRIVE (60' R.O.W.), RECORDED IN VOL. 311, PG. 55, H.C.M.R., MARKING THE NORTHWEST CORNER OF SAID 4.7386 ACRE TRACT AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 02 DEG. 38 MIN. 51 SEC. WEST, ALONG THE EAST R.O.W. LINE OF SAID COVENTRY SQUARE DRIVE, A DISTANCE OF 65.00 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR NORTHEAST POINT OF TERMINUS OF SAID COVENTRY SQUARE DRIVE, AND AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 21 MIN. 09 SEC. WEST, ALONG THE NORTH TERMINUS R.O.W. LINE OF SAID COVENTRY SQUARE DRIVE, PASSING AT A DISTANCE OF 60.00 FEET THE NORTHWEST POINT OF TERMINUS OF SAID COVENTRY SQUARE DRIVE AND THE NORTHEAST CORNER OF A CALLED 5.3907 ACRE TRACT OF LAND CONVEYED TO GCH-THE VICTORIAN, LLC, RECORDED IN H.C.C.F. NO. RP-2020-128148, CONTINUING ALONG THE COMMON LINE OF SAID 136.888 ACRE TRACT AND SAID 5.3907 ACRE TRACT, FOR A TOTAL DISTANCE OF 80.00 FEET TO A CAPPED 5/8 INCH IRON ROD (NOT LEGIBLE) FOUND MARKING AN ANGLE POINT OF SAID 5.3907 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 80 DEG. 35 MIN. 21 SEC. WEST, ALONG THE COMMON LINE OF SAID 136.888 ACRE TRACT AND SAID 5.3907 ACRE TRACT, A DISTANCE OF 455.69 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET ON THE EAST R.O.W. LINE OF COOK ROAD (80' R.O.W.), FOR THE NORTHWEST CORNER OF SAID 5.3907 ACRE TRACT AND THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A CUT "X" FOUND BEARS FOR REFERENCE SOUTH 17 DEG. 24 MIN. WEST - 1.27 FEET;

THENCE, NORTH 02 DEG. 29 MIN. 48 SEC. WEST, ALONG THE EAST R.O.W. LINE OF SAID COOK ROAD, A DISTANCE OF 1,786.89 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET ON THE SOUTH R.O.W. LINE OF SAID WILDWOOD GLEN DRIVE (60' R.O.W.), RECORDED IN H.C.C.F. NO. D305424, MARKING THE NORTHWEST CORNER OF SAID 136.888 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 87 DEG. 42 MIN. 00 SEC. EAST, ALONG THE SOUTH R.O.W. LINE OF SAID WILDWOOD GLEN DRIVE, PASSING AT A DISTANCE OF 733.75 FEET THE SOUTHEAST POINT OF TERMINUS OF WILWOOD GLEN DRIVE, AND CONTINUING ALONG THE COMMON LINE OF SAID 136.888 ACRE TRACT AND A CALLED 2.645 ACRE TRACT OF LAND CONVEYED TO HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 123, RECORDED IN H.C.C.F. NO. D305422 FOR A TOTAL DISTANCE OF 1,219.88 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "1943 4349", MARKING THE SOUTHEAST CORNER OF SAID 2.645 ACRE TRACT AND AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 02 DEG. 38 MIN. 49 SEC. WEST, ALONG AN WEST CORNER OF SAID 136.888 ACRE TRACT, A DISTANCE OF 407.10 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "1943 4349", MARKING THE SOUTHWEST CORNER OF A CALLED 43,380 SQ. FT. TRACT OF LAND CONVEYED TO HARRIS COUNTY FLOOD CONTROL DISTRICT, RECORDED IN H.C.C.F. NO. D363109 AND A NORTH CORNER OF SAID 136.888 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 28 DEG. 36 MIN. 11 SEC. EAST, ALONG THE COMMON LINE OF SAID 43,380 SQ. FT. TRACT AND SAID 136.888 ACRE TRACT, A DISTANCE OF 109.68 FEET TO AN ANGLE POINT OF SAID 43,380 SQ. FT. TRACT, SAID 136.888 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 87 DEG. 21 MIN. 38 SEC. EAST, ALONG THE COMMON LINE OF SAID 43,380 SQ. FT. TRACT AND SAID 136.888 ACRE TRACT, A DISTANCE OF 1,286.07 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET ON THE WEST R.O.W. LINE OF SOUTH KIRKWOOD ROAD (100' R.O.W.), RECORDED IN H.C.C.F. NO. U623067 AND VOL. 285, PG. 1, H.C.M.R., MARKING THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 02 DEG. 34 MIN. 25 SEC. EAST, ALONG THE WEST R.O.W. LINE OF SAID SOUTH KIRKWOOD ROAD, A DISTANCE OF 2,210.99 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHEAST CORNER OF UNRESTRICTED RESERVE "A", BLOCK 1, ROAD TRIP, MAP OR PLAT THEREOF RECORDED IN F.C. NO. 690693, H.C.M.R., AND THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 23 MIN. 31 SEC. WEST, ALONG THE COMMON LINE OF SAID UNRESTRICTED RESERVE "A", BLOCK 1, ROAD TRIP AND SAID 136.888 ACRE TRACT, A DISTANCE OF 240.00 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHWEST CORNER OF SAID UNRESTRICTED RESERVE "A", BLOCK 1, ROAD TRIP, AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 02 DEG. 36 MIN. 17 SEC. EAST, CONTINUING ALONG AFORESAID COMMON LINE, A DISTANCE OF 167.53 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF SAID UNRESTRICTED RESERVE "A" BLOCK 1M ROAD TRIP, AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 23 MIN. 29 SEC. WEST, ALONG THE COMMON LINE OF SAID 136.888 ACRE TRACT AND A CALLED 1.377 ACRE TRACT OF LAND CONVEYED TO SOUTHWESTERN BELL TELEPHONE COMPANY, RECORDED IN H.C.C.F. NO. C287739, A DISTANCE OF 40.00 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHWEST CORNER OF SAID 1.377 ACRE TRACT AND AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 02 DEG. 36 MIN. 31 SEC. EAST, ALONG AFORESAID COMMON LINE, A DISTANCE OF 200.00 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET ON THE NORTH LINE OF UNRESTRICTED RESERVE "B", BLOCK 1, KIRKWOOD COMMERCIAL, MAP OR PLAT THEREOF RECORDED IN FC. NO. 679786, H.C.M.R., FOR THE SOUTHWEST CORNER OF SAID 1.377 ACRE TRACT AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 23 MIN. 29 SEC. WEST, ALONG THE COMMON LINE OF SAID UNRESTRICTED RESERVE "B" AND SAID 136.888 ACRE TRACT, A DISTANCE OF 100.00 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHWEST CORNER OF SAID UNRESTRICTED RESERVE "B" AND AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A 5/8 INCH IRON ROD FOUND BEARS FOR REFERENCE NORTH 54 DEG. 11 MIN. EAST - 1.55 FEET;

THENCE, SOUTH 02 DEG. 33 MIN. 31 SEC. EAST, ALONG AFORESAID COMMON LINE, A DISTANCE OF 286.14 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHEAST CORNER OF SAID UNRESTRICTED RESERVE "A", BLOCK 1, GOLF PLAZA, AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 26 MIN. 29 SEC. WEST, ALONG THE COMMON LINE OF SAID 136.888 ACRE TRACT AND SAID UNRESTRICTED RESERVE "A", BLOCK 1, GOLF PLAZA, A DISTANCE OF 350.00 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE NORTHWEST CORNER OF SAID UNRESTRICTED RESERVE "A" BLOCK 1, GOLF PLAZA, THE NORTHEAST CORNER OF SAID UNRESTRICTED RESERVE "A" BLOCK 1, SUGAR HILL, AND AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 02 DEG. 34 MIN. 28 SEC. EAST, ALONG THE COMMON LINE OF SAID UNRESTRICTED RESERVE "A" BLOCK 1, GOLF PLAZA, AND SAID UNRESTRICTED RESERVE "A", BLOCK 1, SUGARHILL ADDITION, A DISTANCE OF 400.90 FEET TO THE POINT OF BEGINNING AND CONTAINING 136.892 ACRES OR 5,963,017 SQUARE FEET OF LAND, AS SHOWN ON JOB NO. 57093, PREPARED BY WINDROSE LAND SERVICES.


ROBERT KNESS
R.P.L.S. NO. 6486
STATE OF TEXAS
FIRM REGISTRATION NO. 10108800



12-01-2021
DATE:

**STANDARD CONDITIONS APPLICABLE TO
CREATION OF CONSERVATION AND RECLAMATION
DISTRICTS WITHIN THE CORPORATE LIMITS OF
THE CITY OF HOUSTON, TEXAS**

(a) DEFINITIONS. As used in this document, the following terms and phrases shall have the following meanings:

(1) "BONDS" means bonds, notes, warrants or any other forms or types of indebtedness payable from or secured by any funds to be raised through the taxing power of the District or the operation of the District's utility facilities.

(2) "BUILDING OFFICIAL" means the Director of the Department of Public Works and Engineering of the City of Houston, Texas, or his designee.

(3) "CITY" means the City of Houston, Texas.

(4) "CITY ATTORNEY" means the City Attorney of the City of Houston, Texas.

(5) "CONDITIONS" means this document which is entitled "Standard Conditions Applicable to Creation of Conservation and Reclamation Districts within the Corporate Limits of the City of Houston, Texas."

(6) "DAILY BOND BUYER" means the publication entitled the Daily Bond Buyer or, should it cease to be published, such other publication as is determined by the City to have an index substantially equivalent to the Daily Bond Buyer's weekly "20 Bond Index."

(7) "DISTRICT" means the conservation and reclamation district which has been created subject to and which has adopted the Conditions.

(8) "FIRE SUPPRESSION FACILITIES" means facilities, equipment and water supply designed or utilized for performing fire fighting services which, under the

provisions of state law, may be financed through the issuance of the District's Bonds, and includes, without limitation, buildings, trucks, equipment and water supply facilities.

(9) "PARKS LAND" means real property, and interests therein, which, because of location, character or other reason is suited for use as a public park.

(10) "STORM WATER DRAINAGE FACILITIES" means facilities designed or utilized for the primary purpose of collecting, storing, detaining, pumping, transporting or disposing of storm water, and includes, without limitation, storm sewers, detention ponds and drainage ditches.

(11) "WASTEWATER FACILITIES" means facilities designed or utilized for the purpose of collecting, conveying, pumping, treating or disposing of wastewater and by-products of wastewater treatment and includes, without limitation, sewer lines, sewer mains, wastewater pumping stations, wastewater lift stations, wastewater treatment plants, and sludge handling facilities.

(12) "WATER WORKS FACILITIES" means facilities designed or utilized for producing, storing, conveying, metering, pumping, or treating fresh water, and includes, without limitation, water lines, water mains, pipes, meters, wells, chlorinators, canals, pumps, and treatment plants.

(b) BONDS

(1) Before the District or any person acting for or on behalf of the District sells or offers to sell any Bonds of the District, the undersigned proponents will cause a duplicate of the Conditions to be approved, ratified, and executed by the governing body and officers of the District, and will deliver or cause to be delivered to the

office of the City Attorney at least one executed copy of the document by which such approval and ratification is evidenced.

(2) The District shall not issue any Bonds unless the purpose for which the proceeds of such Bonds may be used is limited to one or more of the following and no others:

- A. purchasing or constructing or otherwise acquiring;
 - (i) Water Works Facilities,
 - (ii) Wastewater Facilities,
 - (iii) Storm Water Drainage Facilities,
 - (iv) Fire Suppression Facilities,
 - (v) Park Land,
- B. purchasing or acquiring interests constructing or otherwise in real property, equipment, buildings, necessary or incidental Water Works Facilities, plants or to the Wastewater structures operation of Facilities, Storm Water Drainage Facilities or Fire Suppression Facilities.

(3) District shall not sell or issue any Bonds unless:

- A. the terms of such Bonds expressly provide that the District reserves and shall have the right to redeem the Bonds on any interest payment date subsequent to the 15th anniversary of the date of issuance, without premium;
- B. the Bonds are sold after the taking of public bids therefor;

- C, none of such Bonds, other than refunding Bonds, are sold for less than 95% of par;
- D. the net effective interest rate on Bonds so sold, taking into account any discount or premium as well as the interest rate borne by such Bonds, does not exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such Bonds is given and bids for the Bonds will be received not more than forty-five days after notice of sale of the Bonds is given;
- E. the resolution or order authorizing the issuance of the District's Bonds contains a provision that any pledge of the revenues from the operation of the District's utility facilities to the payment of debt service on the Bonds will terminate when and if the City takes over the assets of and assumes all of the obligations of the District;
- F. the terms of sale or issuance of the Bonds have been submitted to and approved, in writing, by the Building Official, provided, however, that if the Building Official fails to approve or disapprove the terms of the sale or issuance of any Bonds within 45 days after receipt by the City of a written application for approval, the sale or issuance of the Bonds shall be deemed to be approved and the conditions contained herein

with respect to the approval shall be deemed to have been complied with;

- G. if the proceeds of the Bonds or a portion of the proceeds of the Bonds are intended to finance Fire Suppression Facilities or Parks land, the District has submitted a detailed capital plan for such facilities to the City and in the case of Fire Suppression Facilities; the plan has been approved in writing by the City's Fire Chief, or in the case of Park Land, the plan has been approved in writing by the Director of the City's Department of Parks and Recreation; provided, however, that if the City's Fire Chief or the Director of the City's Department of Parks and Recreation, to whom a detailed capital plan has been submitted for approval, fails to approve or disapprove the terms of the plan within 45 days after receipt by the City of a written application for approval, the plan shall be deemed to be approved and the conditions contained herein with respect to the approval shall be deemed to have been complied with.

(c) APPROVAL OF PLANS AND SPECIFICATIONS

(1) Prior to the commencement of any construction within the District, the District or any affected landowners or developers shall submit to the Building Official complete and accurate copies of all plans and specifications for the construction of any Water Works Facilities, Wastewater Facilities, Storm Water Drainage Facilities, or Fire Suppression Facilities.

(2) The District shall not commence or permit the commencement of any construction within the District until such plans and specifications have been approved in writing by the Building Official.

(3) The District shall not install, cause to be installed, allow to be installed, or cause or allow the use of any water wells, water meters, fire hydrants, valves, pipes, water service lines, sewer service lines, wastewater lift stations or pump stations, wastewater treatment facilities or other physical utility facilities or appurtenance thereto unless such facilities comply in all particulars with the standard plans and specifications used and maintained by the City, at the time approval is requested, for specifying the design and construction of its own utility facilities.

(4) At least 20 days prior to the construction or installation of any water Works Facilities, Wastewater Facilities, Storm Water Drainage Facilities, or Fire Suppression Facilities which are or will be owned or operated by or on behalf of the District or which will be in any way connected to or operated with any of the District's utility facilities the District or its agent shall give written notice, by registered or certified mail, to the Building Official stating the date that such construction is to be commenced.

(5) The District shall permit the Building Official to make such reasonable on-site inspections as he deems necessary during the construction and installation of such facilities.

(6) All construction within the District, including construction undertaken by or on behalf of the District, must be in compliance with the City's Building Code and any

other applicable ordinances. The District shall not provide utility service to any structure within the City which has not been constructed in compliance with the City's Building Code.

(d) OPERATION OF CERTAIN DISTRICT FACILITIES

(1) In the event the District retains control and operations of District facilities, the District shall comply with the requirements of state and federal law governing the operation of Wastewater Facilities, Water Works Facilities and Storm Drainage Facilities.

(2) In the event the District retains control and operation of District facilities, the District shall allow, permit and assist the agents of the City to make reasonable periodic inspections of the District's Wastewater Facilities and the District shall deliver to the City's chief public health official at least one copy of any written report concerning the operation or maintenance of its Wastewater Facilities which is failed with any state or federal agency.

(e) ADDING OR EXCLUDING LAND

The District shall not annex, disannex or otherwise add or delete any land to or from the District unless it first receives approval from the City by motion, resolution or ordinance of the City's city council.

(f) SUBDIVISION AND PLATS

The District shall not provide any form of water, wastewater or storm water drainage service, directly or indirectly to any land within or without the District unless prior to the initiation of service to such land a subdivision plat or development plat has been filed with and finally approved by the City Planning Commission of the City of Houston and, in the case of a subdivision plat, the plat has been filed

in the real property records of the county in which the subdivided land is located.

(g) CONTRACTS

(1) All contracts, agreements or other undertakings for personal or professional services or supplies, entered into by the District, shall provide, that in the event the District is abolished by the City, the City shall have the unilateral right to terminate such contracts, agreements or other undertakings effective on or after the date of abolition.

(2) The District shall not enter into any contract, agreement or other undertaking which would or might obligate the District in an amount in excess of \$50,000, unless the contract is first approved by the Building Official, or unless the contract, agreement or undertaking is payable solely from the proceeds of Bonds approved by the City provided, however, that if the Building Official fails to approve or disapprove a contract, agreement or other undertaking, for which his approval is required, within 60 days after receipt by the City of a written application for approval, the contract, agreement or other undertaking shall be deemed to be approved and the District shall be authorized to enter into the contract, agreement or other undertaking.

(3) The District shall not enter into any contract which contains any provision, other than the one described in (1), above, which is or becomes effective upon the annexation or abolition of the District by the City.

(h) RECORDS AND INSPECTIONS

The District shall allow, permit and assist the agents of the City to make reasonable inspections of the books and records of the District and shall deliver to the City, each year, at

least one copy of any financial report or reports submitted to the State of Texas or any department or agency thereof.

(i) NOTICE TO PROPERTY OWNERS

The District shall provide written notice to property owners within the District on an annual basis, that property located within the District was developed subject to a Utility Allocation Agreement which conveyed certain rights and responsibilities upon the District and the City, and further shall advise the property owner that such agreement or agreements are available for inspection by the property owner at all reasonable times at a location specified by the District.

(j) AMENDMENTS

After creation of the District the Conditions applicable to the District may only be amended by an ordinance or ordinances of the City and no City officer or official is authorized or empowered to vary or waive the terms of the Conditions absent such amendment.

I, PATRICIA JEFFERSON-DANIEL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance 2023-1109 passed and adopted by the City Council of said City on the 13th day of December, 2023, as the same appears in the records in my office

WITNESS my hand and the Seal of said City this 18th day of December, 2023.



Patricia Jefferson-Daniel
City Secretary of the City of Houston

Exhibit 3

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 145.935 ACRES COMMONLY KNOWN AS 12000 BISSONNET STREET, HOUSTON, HARRIS COUNTY, TEXAS; SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AT THE REQUEST OF BISSONNET 136, LLC; CONTAINING OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality ("TCEQ") to create municipal setting designations; and

WHEREAS, on August 22, 2007, by Ordinance No. 2007-959, the City Council adopted Article XIII, of Chapter 47, Code of Ordinances, Houston, Texas, to provide a process for establishing municipal setting designation ordinances and amended that process on July 14, 2010, by Ordinance No. 2010-556; and

WHEREAS, Sections 47-765(c) and 47-767(a) of the Code of Ordinances, Houston, Texas, authorize municipal setting designation ordinances that prohibit the use of designated groundwater as potable water and thereby enable the TCEQ to certify a municipal setting designation for designated property; and

WHEREAS, on December 14, 2020, **Bissonnet 136, LLC** ("Applicant") applied to the Director of Houston Public Works, requesting that the City Council support a municipal setting designation ordinance for property that is located generally at 12000 Bissonnet Street (145.935 acres), Houston, Harris County, Texas 77099; and

WHEREAS, on August 11, 2021, the Director of Houston Public Works conducted a public meeting via Microsoft Teams, as required by Section 47-764 of the Code of Ordinances, and notified the community when the City Council public hearing would occur; and

WHEREAS, the Regulatory and Neighborhood Affairs Council Committee, designated by the Mayor, conducted a public hearing on October 12, 2021; and

WHEREAS, the City Council finds that:

(1) the application meets the eligibility criteria of Section 361.803 of the Texas Health and Safety Code;

(2) the municipal setting designation will not have an adverse effect on the current or future water resource needs or obligations of the City of Houston;

(3) there is a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half mile of designated property; and

(4) this Municipal Setting Designation Ordinance is necessary because the concentrations of contaminants of concern exceed human ingestion protective concentration levels, and the establishment of a municipal setting designation will allow the property to be brought back into productive use; and

WHEREAS, City Council finds that the Director of Houston Public Works on behalf of City Council, in accordance with the Charter of the City of Houston, state law, and the ordinances of the City of Houston, has given the required notices, the Regulatory and Neighborhood Affairs Council Committee has held the required public hearing regarding

this Municipal Setting Designation Ordinance and all procedural requirements have been satisfied; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That for purposes of this Municipal Setting Designation Ordinance, the "designated property" means the property as described in **Exhibit A**, attached to this Ordinance and incorporated by reference herein.

Section 2. That for purposes of this Municipal Setting Designation Ordinance, "designated groundwater" means groundwater beneath the designated property to a depth not to exceed 200 feet that is prohibited from use as potable water by this Ordinance.

Section 3. That use of the designated groundwater from beneath the designated property as potable water, as that term is defined in Section 47-761 of the Code of Ordinances, Houston, Texas, is prohibited.

Section 4. That the designated property must receive a certificate of completion or other analogous documentation issued by the TCEQ or the United States Environmental Protection Agency ("EPA") showing that any site investigations and response actions required pursuant to Section 361.808 of the Texas Health and Safety Code have been completed to the satisfaction of the TCEQ or EPA within the time period required by them.

Section 5. That the City Council supports the application to the TCEQ for a municipal setting designation on the designated property, with the following comment:

The TCEQ and the EPA, as agencies charged to protect human health and the environment, are requested to thoroughly review the conditions on the designated

property and issue a certificate of completion only when all contaminants of concern, through the applicable routes of exposure, have been addressed.

Section 6. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations and all ordinances, rules, and regulations of the City of Houston. The City Council's approval of a municipal setting designation ordinance in itself does not change any environmental assessment or cleanup requirements applicable to the designated property.

Section 7. That approval of this Municipal Setting Designation Ordinance shall not be construed to subject the City of Houston to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

Section 8. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Applicant shall provide the Director of Houston Public Works with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with the City's geographic information system and its integrated land management system, and shall provide an electronic file showing the location of the designated property and the designated groundwater to the Harris County Appraisal District in a format compatible with its system.

Section 9. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Director of Houston Public Works shall send a certified copy of this ordinance to the Applicant, the TCEQ, and the EPA.

Section 10. That the Applicant shall provide the Director of Houston Public Works with a copy of the municipal setting designation certificate issued by the TCEQ pursuant

to Section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

Section 11. That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of Houston Public Works shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Harris County.

Section 12. That if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 13. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on that date and shall take effect immediately upon its passage and approval by the mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 5th day of January, 2022
APPROVED this _____ day of _____, 2022.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JAN 1 1 2022.



City Secretary

(Prepared by Legal Department

(WC/jb 12/20/2021

(Requested by Carol Ellinger Haddock, P.E., Director, Houston Public Works)

(L.D. File No. 063-2100955-001)



Senior Assistant City Attorney

Meeting 1/05/2022

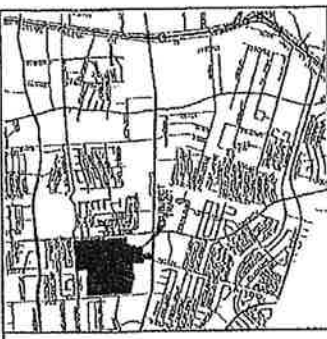
Aye	No	
✓		Mayor Turner
****	****	Council Members
✓		Peck
✓		Jackson
✓		Kamin
✓		Evans-Shabazz
✓		Martin
✓		Thomas
✓		Travis
✓		Cisneros
✓		Gallegos
✓		Pollard
✓		Castex-Tatum
✓		Knox
✓		Robinson
✓		Kubosh
✓		Plummer
✓		Alcorn
Caption	Adopted	

Captions Published in DAILY COURT REVIEW

Date: 1/11/2022

EXHIBIT "A"

Survey of Designated Property



COUNTY MAP U.T.S.

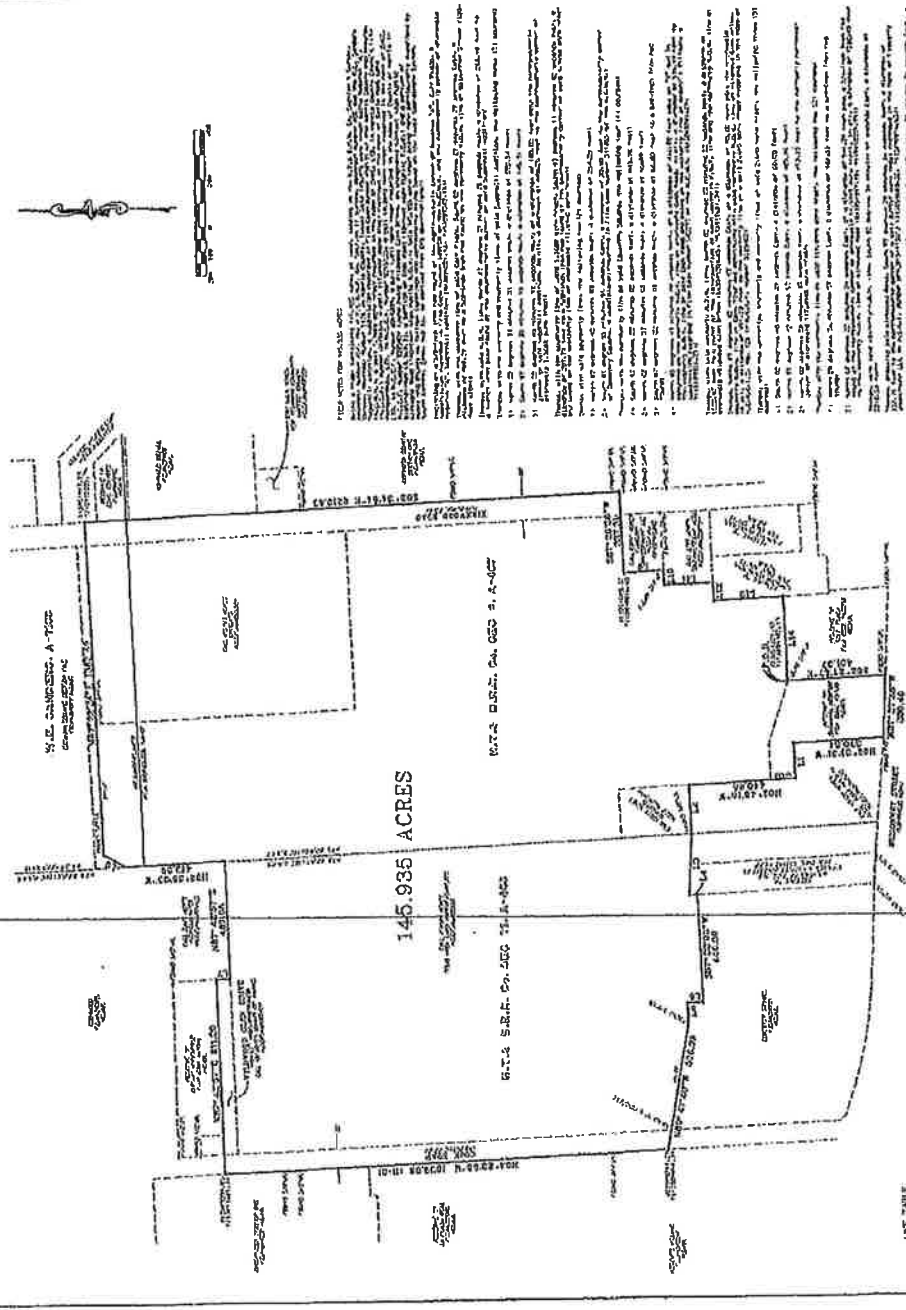
NOTES:
 1. THIS TRACT IS THE SAME AS THAT SHOWN ON THE MAP OF THE COUNTY OF HARRIS, TEXAS, IN THE SOUTHEAST CORNER OF THE COUNTY.
 2. THE TRACT IS THE SAME AS THAT SHOWN ON THE MAP OF THE COUNTY OF HARRIS, TEXAS, IN THE SOUTHEAST CORNER OF THE COUNTY.
 3. THE TRACT IS THE SAME AS THAT SHOWN ON THE MAP OF THE COUNTY OF HARRIS, TEXAS, IN THE SOUTHEAST CORNER OF THE COUNTY.



TRACT EXHIBIT
 145.935 ACRES

THIS TRACT IS THE SAME AS THAT SHOWN ON THE MAP OF THE COUNTY OF HARRIS, TEXAS, IN THE SOUTHEAST CORNER OF THE COUNTY.
 THE TRACT IS THE SAME AS THAT SHOWN ON THE MAP OF THE COUNTY OF HARRIS, TEXAS, IN THE SOUTHEAST CORNER OF THE COUNTY.
 THE TRACT IS THE SAME AS THAT SHOWN ON THE MAP OF THE COUNTY OF HARRIS, TEXAS, IN THE SOUTHEAST CORNER OF THE COUNTY.

RTA B.P. & SEC. 9 SURVEY, A-407
 RTA P. SANDERS SURVEY, A-408
 HARRIS COUNTY, TEXAS



LAST TABLE

SECTION	ACRES	BEARING	DISTANCE
1	10.000	N. 89° 00' 00" E.	100.000
2	10.000	N. 89° 00' 00" E.	100.000
3	10.000	N. 89° 00' 00" E.	100.000
4	10.000	N. 89° 00' 00" E.	100.000
5	10.000	N. 89° 00' 00" E.	100.000
6	10.000	N. 89° 00' 00" E.	100.000
7	10.000	N. 89° 00' 00" E.	100.000
8	10.000	N. 89° 00' 00" E.	100.000
9	10.000	N. 89° 00' 00" E.	100.000
10	10.000	N. 89° 00' 00" E.	100.000
11	10.000	N. 89° 00' 00" E.	100.000
12	10.000	N. 89° 00' 00" E.	100.000
13	10.000	N. 89° 00' 00" E.	100.000
14	10.000	N. 89° 00' 00" E.	100.000
15	10.000	N. 89° 00' 00" E.	100.000
16	10.000	N. 89° 00' 00" E.	100.000
17	10.000	N. 89° 00' 00" E.	100.000
18	10.000	N. 89° 00' 00" E.	100.000
19	10.000	N. 89° 00' 00" E.	100.000
20	10.000	N. 89° 00' 00" E.	100.000
21	10.000	N. 89° 00' 00" E.	100.000
22	10.000	N. 89° 00' 00" E.	100.000
23	10.000	N. 89° 00' 00" E.	100.000
24	10.000	N. 89° 00' 00" E.	100.000
25	10.000	N. 89° 00' 00" E.	100.000
26	10.000	N. 89° 00' 00" E.	100.000
27	10.000	N. 89° 00' 00" E.	100.000
28	10.000	N. 89° 00' 00" E.	100.000
29	10.000	N. 89° 00' 00" E.	100.000
30	10.000	N. 89° 00' 00" E.	100.000
31	10.000	N. 89° 00' 00" E.	100.000
32	10.000	N. 89° 00' 00" E.	100.000
33	10.000	N. 89° 00' 00" E.	100.000
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49	10.000	N. 89° 00' 00" E.	100.000
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53	10.000	N. 89° 00' 00" E.	100.000
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60	10.000	N. 89° 00' 00" E.	100.000
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75	10.000	N. 89° 00' 00" E.	100.000
76	10.000	N. 89° 00' 00" E.	100.000
77	10.000	N. 89° 00' 00" E.	100.000
78	10.000	N. 89° 00' 00" E.	100.000
79	10.000	N. 89° 00' 00" E.	100.000
80	10.000	N. 89° 00' 00" E.	100.000
81	10.000	N. 89° 00' 00" E.	100.000
82	10.000	N. 89° 00' 00" E.	100.000
83	10.000	N. 89° 00' 00" E.	100.000
84	10.000	N. 89° 00' 00" E.	100.000
85	10.000	N. 89° 00' 00" E.	100.000
86	10.000	N. 89° 00' 00" E.	100.000
87	10.000	N. 89° 00' 00" E.	100.000
88	10.000	N. 89° 00' 00" E.	100.000
89	10.000	N. 89° 00' 00" E.	100.000
90	10.000	N. 89° 00' 00" E.	100.000
91	10.000	N. 89° 00' 00" E.	100.000
92	10.000	N. 89° 00' 00" E.	100.000
93	10.000	N. 89° 00' 00" E.	100.000
94	10.000	N. 89° 00' 00" E.	100.000
95	10.000	N. 89° 00' 00" E.	100.000
96	10.000	N. 89° 00' 00" E.	100.000
97	10.000	N. 89° 00' 00" E.	100.000
98	10.000	N. 89° 00' 00" E.	100.000
99	10.000	N. 89° 00' 00" E.	100.000
100	10.000	N. 89° 00' 00" E.	100.000

145.935 ACRES

RTA B.P. & SEC. 9 SURVEY, A-407

RTA P. SANDERS SURVEY, A-408

County: Harris
Project: Bissonnet Street
Job No. 195547
MBS No. 20-445

FIELD NOTES FOR 145.935 ACRES

Being a tract containing 145.935 acres of land, located in the H.T. & B.R.R. Co. Section 9 Survey, Abstract Number 407, the H.T. & B.R.R. Co. Section 11 Survey, Abstract Number 406 and the W.E. Sanders Survey, Abstract Number 1138 in Harris County, Texas; Said 145.935 acre tract being Reserve "A", Sugarhill Addition, a subdivision recorded in Film Code Number 450135 of the Harris County Map Records (H.C.M.R.), a call 1.3688 acre tract recorded in the name of SHGC, LTD. in Harris County Clerk's File (H.C.C.F.) Number U419454, a call 117.8988 acre tract recorded in the name of Solid Rock Land Partnership, LTD. in H.C.C.F. Number U215133, a call 18.5993 acre tract recorded in the name of SHGC, LTD. in H.C.C.F. Number U065389, a call 1.011 acre tract recorded in the name of County of Harris in H.C.C.F. Number D305424 (same being Wildwood Glen Drive, an unimproved 60-foot wide Public Right-of-Way (R.O.W.)), a portion of Cook Road (80-foot wide Public R.O.W.) and a portion of Kirkwood Road (100-foot wide Public R.O.W.); Said 145.935 acre tract being more particularly described by metes and bounds as follows (bearings and coordinates being based on the Texas Coordinate System, South Central Zone, NAD 83, as derived from GPS observations):

Beginning at a 5/8-inch iron rod found at the northwesterly corner of Reserve "A", Golf Plaza, a subdivision recorded in Film Code Number 580258 of the H.C.M.R. and the northeasterly corner of aforesaid Reserve "A", Sugarhill Addition (X:3051221.13, Y:13809342.13);

Thence, with the westerly line of said Golf Plaza, South 02 degrees 27 minutes 27 seconds East, a distance of 401.37 feet to a 5/8-inch iron rod found on the northerly R.O.W. line of Bissonnet Street (100-foot wide);

Thence, with said R.O.W. line, North 87 degrees 27 minutes 28 seconds West, a distance of 260.40 feet to a 1-inch iron pipe found at the southwest corner of said Sugarhill Addition;

Thence, with the westerly and southerly lines of said Sugarhill Addition, the following three (3) courses:

- 1) North 02 degrees 31 minutes 31 seconds West, a distance of 370.34 feet;
- 2) South 87 degrees 39 minutes 15 seconds West, a distance of 145.91 feet;
- 3) North 02 degrees 48 minutes 18 seconds West, at a distance of 100.03 feet pass the northwesterly corner of said Sugarhill Addition, in all, a distance of 440.25 feet to the southeasterly corner of aforesaid 1.3688 acre tract;

Thence, with the southerly line of said 1.3688 acre tract, South 87 degrees 11 minutes 42 seconds West, a distance of 201.78 feet to a 5/8-inch iron rod found at the southwest corner of said 1.3688 acre tract and being on the southerly line of aforesaid 117.8988 acre tract;

Thence with said southerly line, the following two (2) courses:

- 1) North 87 degrees 43 minutes 03 seconds West, a distance of 254.29 feet;
- 2) South 01 degree 33 minutes 55 seconds East, a distance of 32.03 feet to the northeasterly corner of Coventry Square, a subdivision recorded in Film Code Number 311055 of the H.C.M.R.;

Thence, with the northerly line of said Coventry Square, the following four (4) courses:

- 1) South 87 degrees 22 minutes 03 seconds West, a distance of 446.00 feet;
- 2) North 02 degrees 37 minutes 57 seconds West, a distance of 65.00 feet;
- 3) South 87 degrees 22 minutes 03 seconds West, a distance of 80.00 feet to a 5/8-inch iron rod found;
- 4) North 80 degrees 47 minutes 40 seconds West, at a distance of 456.00 feet pass an "X" cut in concrete on the easterly R.O.W. line of aforesaid Cook Road, in all, a distance of 536.99 feet to the westerly R.O.W. line of said Cook road and being on the easterly line of Regent's Village, a subdivision recorded in Film Code Number 542277 of the H.C.M.R. (X:3049281.29, Y:13809851.33);

Thence, with said westerly R.O.W. line, North 02 degrees 23 minutes 52 seconds West, a distance of 1832.02 feet to a point at the intersection of said westerly R.O.W. line and the northerly R.O.W. line of aforesaid Wildwood Glen Drive (X:3049204.65, Y:13811681.74);

Thence, North 87 degrees 42 minutes 57 seconds East, at a distance of 80.00 feet pass the aforesaid easterly R.O.W. line of Cook Road and continuing with said northerly R.O.W. line of Wildwood Glen drive, in all, a distance of 811.20 feet to the westerly line of a call 2.645 acre tract recorded in the name of H.C.W.C.I.D. No. 123 in H.C.C.F. Number D305422;

Thence, with the westerly, southerly and easterly lines of said 2.645 acre tract, the following three (3) courses:

- 1) South 02 degrees 40 minutes 21 seconds East, a distance of 60.00 feet;
- 2) North 87 degrees 42 minutes 57 seconds East, a distance of 489.06 feet;
- 3) North 02 degrees 38 minutes 03 seconds West, a distance of 413.39 feet to the northerly north-west corner of aforesaid 117.8988 acre tract;

Thence, with the northerly line of said 117.8988 acre tract, the following two (2) courses:

- 1) North 28 degrees 36 minutes 57 seconds East, a distance of 102.35 feet to a 5/8-inch iron rod found;
- 2) North 87 degrees 22 minutes 24 seconds East, at a distance of 544.38 feet pass a 3/4-inch iron rod found at the northwesterly corner of aforesaid 18.5993 acre tract, in all, a distance of 1382.49 feet to the easterly R.O.W. line of Kirkwood Road (X:3051917.73, Y:13812239.79);

Thence, with said easterly R.O.W. line, South 02 degrees 34 minutes 54 seconds East, a distance of 2210.53 feet;

Thence, crossing said Kirkwood Road, South 87 degrees 28 minutes 36 seconds West, a distance of 337.31 feet to the northwesterly corner of a call 0.9157 acre tract recorded in the name of Flagship Investment LLC in H.C.C.F. Number RP-2019-113813 (X:3051680.32, Y:13810016.65);

Thence, with the westerly line of said 0.9157 acre tract, South 02 degrees 31 minutes 24 seconds East, a distance of 167.54 feet to a 3/4-inch iron rod found at the southwesterly corner of said 0.9157 acre tract and being on the northerly line of a call 1.377 acre tract recorded in the name of Southwestern Bell in H.C.C.F. Number C287739;

Thence, with the northerly and westerly line of said 1.377 acre tract, the following two (2) courses:

- 1) South 87 degrees 28 minutes 36 seconds West, a distance of 61.90 feet;
- 2) South 02 degrees 31 minutes 24 seconds East, a distance of 200.00 feet to the northerly line of Reserve "B", Kirkwood Commercial, a subdivision recorded in Film Code Number 679786 of the H.C.M.R.;

Thence, with the northerly and westerly line of said Reserve "B", the following two (2) courses:

- 1) South 87 degrees 54 minutes 08 seconds West, a distance of 76.59 feet;
- 2) South 02 degrees 38 minutes 34 seconds East, a distance of 286.03 feet to the northeasterly corner of aforesaid Golf Plaza;

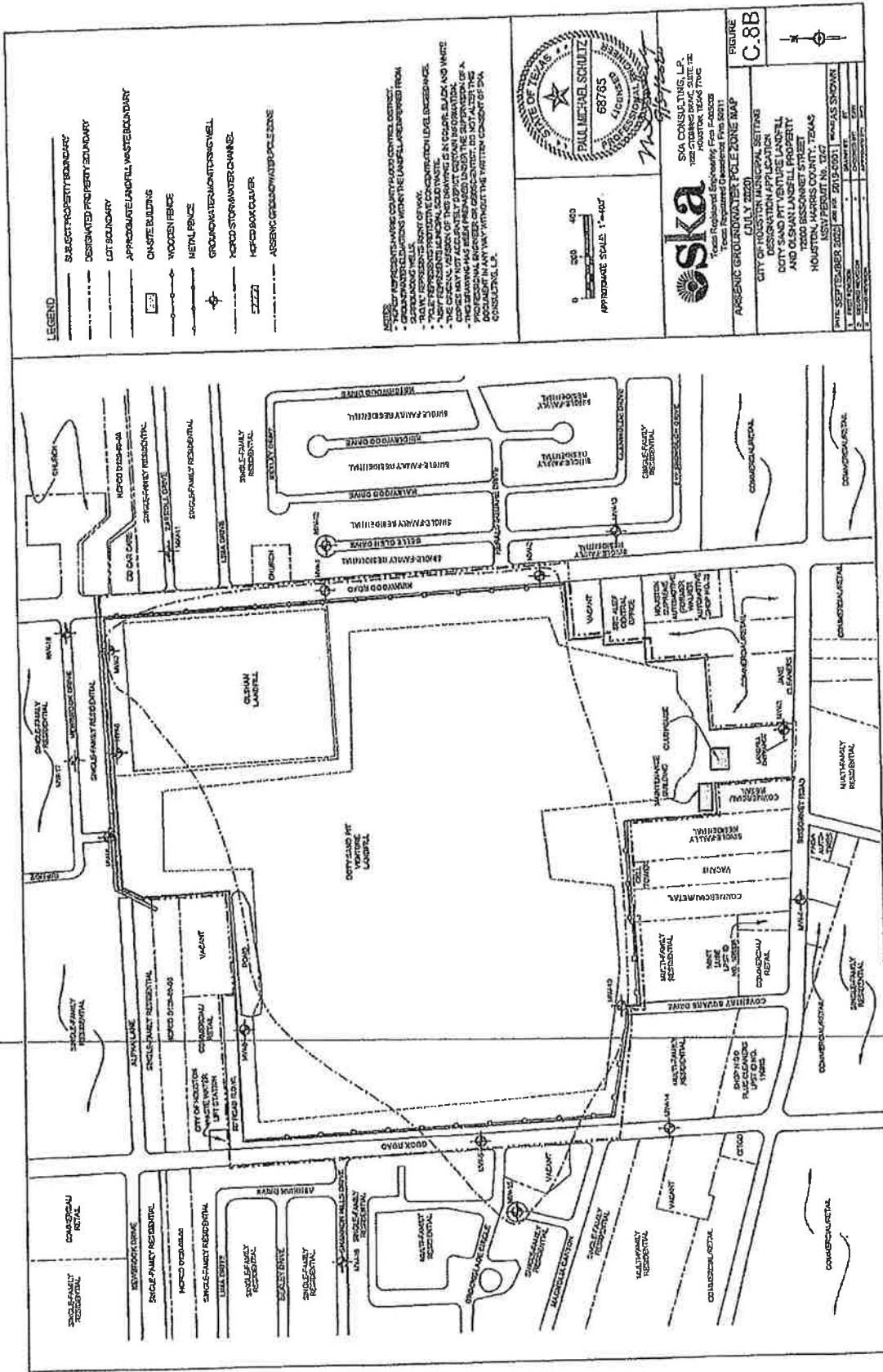
Thence, with said northerly line, South 87 degrees 22 minutes 16 seconds West, a distance of 350.55 feet to the Point of Beginning and containing 145.935 acres of land.

THIS DESCRIPTION WAS PREPARED IN CONNECTION WITH A TRACT EXHIBIT FILED IN JOB NUMBER 195547 AT GBI PARTNERS.

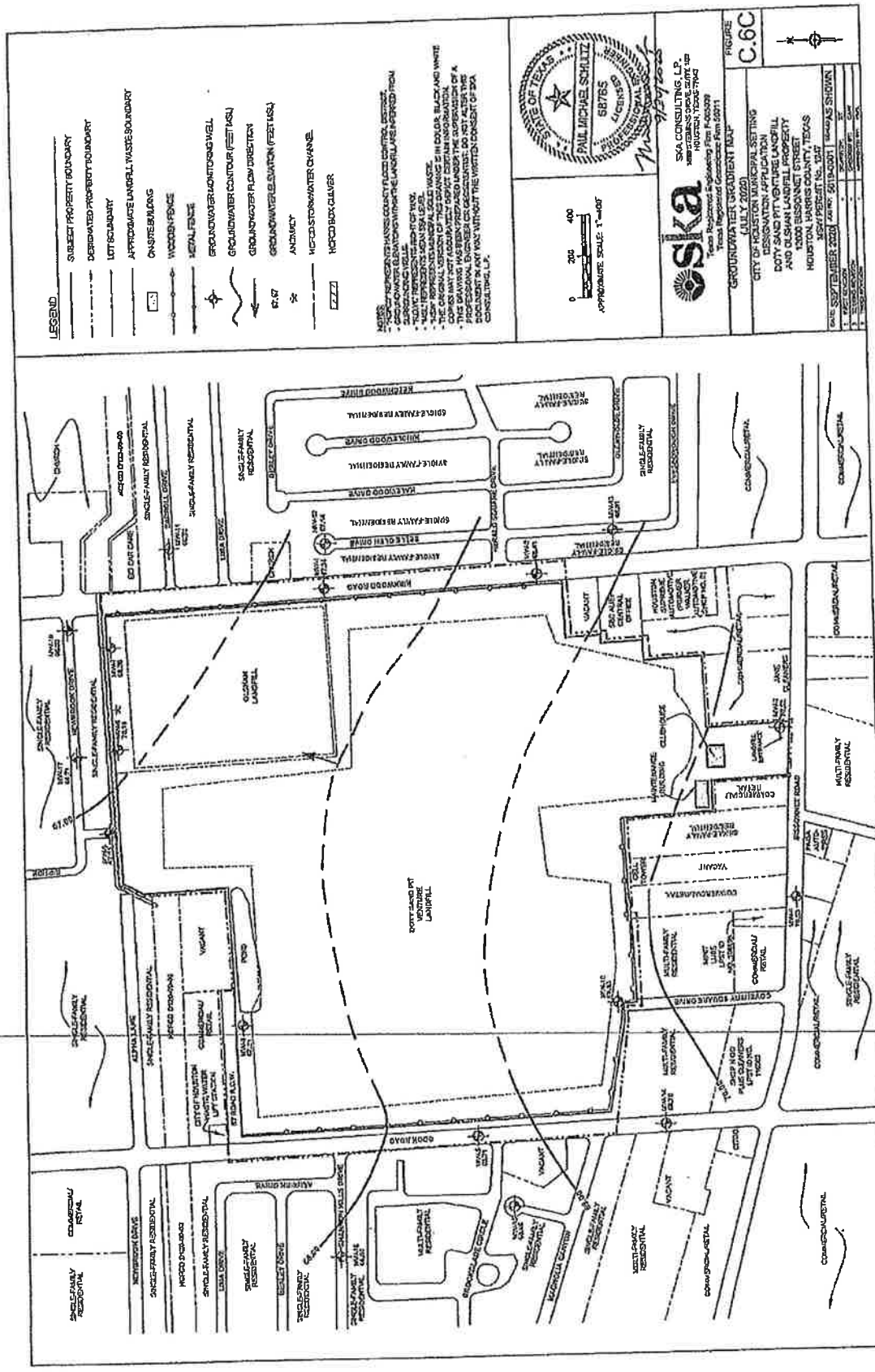
GBI PARTNERS
TBPELS Firm No. 10130300
Ph: 281.499.4539
September 11, 2020



Jon P. Bordovsky
9/11/2020



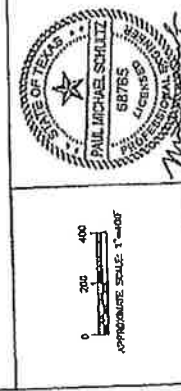
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LEGEND

- SUBJECT PROPERTY BOUNDARY
- DEGRADED PROPERTY BOUNDARY
- LOT BOUNDARY
- APPROXIMATE LANDFILL WASTE BOUNDARY
- ON-STREAM FENCE
- WOODEN FENCE
- METAL FENCE
- GROUNDWATER MONITORING WELL
- GROUNDWATER FLOW DIRECTION
- GROUNDWATER ELEVATION (FEET MSL)
- ANCHOR
- HOOD BOX/CLIVER

NOTES:
 1. THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION.
 2. THE DESIGNER HAS BEEN PREPARED UNDER THE SUPERVISION OF A PROFESSIONAL ENGINEER TO PREPARE THIS PLAN FOR THE CITY OF HOUSTON.
 3. THE DESIGNER HAS BEEN PREPARED UNDER THE SUPERVISION OF A PROFESSIONAL ENGINEER TO PREPARE THIS PLAN FOR THE CITY OF HOUSTON.
 4. THE DESIGNER HAS BEEN PREPARED UNDER THE SUPERVISION OF A PROFESSIONAL ENGINEER TO PREPARE THIS PLAN FOR THE CITY OF HOUSTON.




ska
 SKA CONSULTING, L.P.
 10000 WESTHOPE AVENUE, SUITE 100
 HOUSTON, TEXAS 77036
 TEL: 281.415.1000
 FAX: 281.415.1001
 WWW.SKACONSULTING.COM

FIGURE
C.6C

GROUNDWATER GRADIENT MAP
 (JULY 2020)
 CITY OF HOUSTON MUNICIPAL SETTING
 DESIGNATION: APPLICABLE
 DUTY-LAND PT. MOUNTAIN LANDFILL
 10000 EISSON STREET
 HOUSTON, HARRIS COUNTY, TEXAS
 NORTH ARROW: 10000 EISSON STREET
 NORTH ARROW: 10000 EISSON STREET
 NORTH ARROW: 10000 EISSON STREET

I, PAT J. DANIEL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance 2022-7 passed and adopted by the City Council of said City on the 5th day of January, 2022, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 15th day of February, 2022.



Pat J. Daniel
City Secretary

Exhibit 4

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 12, 2022

Mr. Mark Lester
Bissonnet 136, LLC
20 Park Road, Suite G
Burlingame, California 94010

Re: Municipal Setting Designation (MSD) Certificate for Bissonnet 136, LLC, Doty Sand Pit Venture Landfill, 700 N Bissonnet St, 200 Ft. E. Cook Rd., 500 Ft. S. Alpha Ln., and 700 Ft. W. Kirkwood, Houston, Harris County, TX; MSD No. 488; Customer No. CN606018687; Regulated Entity No. RN111510764

Dear Mr. Lester:

The Texas Commission on Environmental Quality (TCEQ) received the above referenced Municipal Setting Designation (MSD) application on May 12, 2022, and additional information supporting this MSD application on August 31, 2022. Based on our review, the application contains the required information as outlined in Texas Health and Safety Code (THSC) §361.804. Enclosed is the Municipal Setting Designation Certification for your site. If you have any questions, please do not hesitate to contact me at (512) 239-4940 or via e-mail (robert.anderson@tceq.texas.gov).

Sincerely,

A handwritten signature in blue ink that reads "Robert Anderson".

Robert Anderson, Project Manager
VCP-CA Section
Remediation Division

RA/jdm

Enclosure: MSD Certificate

cc: Mr. Mike Schultz, P.E., Principal Engineer, (email)
Mr. Robert Pederson, Municipal Solid Waste Permits Section, (email)
Ms. Alma Jefferson, Waste Section Manager, TCEQ Region 12 Office, Houston

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



MUNICIPAL SETTING DESIGNATION CERTIFICATE

As provided for in §361.807, Subchapter W, Texas Health and Safety Code (Solid Waste Disposal Act):

I, Beth Seaton, Deputy Director, Remediation Division, TCEQ, certify the Municipal Setting Designation (MSD) for MSD No. 488, in the City of Houston, for the tract of land described in Exhibit "A". The eligibility requirements of Texas Health and Safety Code §361.803 are satisfied as attested to by the affidavit in Exhibit "B", provided pursuant to Texas Health and Safety Code §361.804(b)(2)(D). This certificate shall continue in effect so long as the ordinance or restrictive covenant required by Texas Health and Safety Code §361.8065 remains in effect.

Any person addressing environmental impacts for a property located in the certified municipal setting designation shall complete any necessary investigation and response action requirements in accordance with Texas Health and Safety Code §361.808, in conjunction with the applicable Texas Commission on Environmental Quality environmental remediation regulation, as modified by Texas Health and Safety Code §361.808.

EXECUTED this the 12th day of October, 2022

A handwritten signature in cursive script that reads "Beth Seaton".

Beth Seaton, Deputy Director
Remediation Division
Texas Commission on Environmental Quality

County: Harris
Project: Bissonnet Street
Job No. 195547
MBS No. 20-445

FIELD NOTES FOR 145.935 ACRES

Being a tract containing 145.935 acres of land, located in the H.T.& B.R.R. Co. Section 9 Survey, Abstract Number 407, the H.T.& B.R.R. Co. Section 11 Survey, Abstract Number 406 and the W.E. Sanders Survey, Abstract Number 1138 in Harris County, Texas; Said 145.935 acre tract being Reserve "A", Sugarhill Addition, a subdivision recorded in Film Code Number 450135 of the Harris County Map Records (H.C.M.R.), a call 1.3688 acre tract recorded in the name of SHGC, LTD. in Harris County Clerk's File (H.C.C.F.) Number U419454, a call 117.8988 acre tract recorded in the name of Solid Rock Land Partnership, LTD. in H.C.C.F. Number U215133, a call 18.5993 acre tract recorded in the name of SHGC, LTD. in H.C.C.F. Number U065389, a call 1.011 acre tract recorded in the name of County of Harris in H.C.C.F. Number D305424 (same being Wildwood Glen Drive, an unimproved 60-foot wide Public Right-of-Way (R.O.W.)), a portion of Cook Road (80-foot wide Public R.O.W.) and a portion of Kirkwood Road (100-foot wide Public R.O.W.); Said 145.935 acre tract being more particularly described by metes and bounds as follows (bearings and coordinates being based on the Texas Coordinate System, South Central Zone, NAD 83, as derived from GPS observations):

Beginning at a 5/8-inch iron rod found at the northwesterly corner of Reserve "A", Golf Plaza, a subdivision recorded in Film Code Number 580258 of the H.C.M.R. and the northeasterly corner of aforesaid Reserve "A", Sugarhill Addition (X:3051221.13, Y:13809342.13);

Thence, with the westerly line of said Golf Plaza, South 02 degrees 27 minutes 27 seconds East, a distance of 401.37 feet to a 5/8-inch iron rod found on the northerly R.O.W. line of Bissonnet Street (100-foot wide);

Thence, with said R.O.W. line, North 87 degrees 27 minutes 28 seconds West, a distance of 260.40 feet to a 1-inch iron pipe found at the southwesterly corner of said Sugarhill Addition;

Thence, with the westerly and southerly lines of said Sugarhill Addition, the following three (3) courses:

- 1) North 02 degrees 31 minutes 31 seconds West, a distance of 370.34 feet;
- 2) South 87 degrees 39 minutes 15 seconds West, a distance of 145.91 feet;
- 3) North 02 degrees 48 minutes 18 seconds West, at a distance of 100.03 feet pass the northwesterly corner of said Sugarhill Addition, in all, a distance of 440.25 feet to the southeasterly corner of aforesaid 1.3688 acre tract;

Thence, with the southerly line of said 1.3688 acre tract, South 87 degrees 11 minutes 42 seconds West, a distance of 201.78 feet to a 5/8-inch iron rod found at the southwesterly corner of said 1.3688 acre tract and being on the southerly line of aforesaid 117.8988 acre tract;

Thence with said southerly line, the following two (2) courses:

- 1) North 87 degrees 43 minutes 03 seconds West, a distance of 254.29 feet;
- 2) South 01 degree 33 minutes 55 seconds East, a distance of 32.03 feet to the northeasterly corner of Coventry Square, a subdivision recorded in Film Code Number 311055 of the H.C.M.R.;

Thence, with the northerly line of said Coventry Square, the following four (4) courses:

- 1) South 87 degrees 22 minutes 03 seconds West, a distance of 446.00 feet;
- 2) North 02 degrees 37 minutes 57 seconds West, a distance of 65.00 feet;
- 3) South 87 degrees 22 minutes 03 seconds West, a distance of 80.00 feet to a 5/8-inch iron rod found;
- 4) North 80 degrees 47 minutes 40 seconds West, at a distance of 456.00 feet pass an "X" cut in concrete on the easterly R.O.W. line of aforesaid Cook Road, in all, a distance of 536.99 feet to the westerly R.O.W. line of said Cook road and being on the easterly line of Regent's Village, a subdivision recorded in Film Code Number 542277 of the H.C.M.R. (X:3049281.29, Y:13809851.33);

Thence, with said westerly R.O.W. line, North 02 degrees 23 minutes 52 seconds West, a distance of 1832.02 feet to a point at the intersection of said westerly R.O.W. line and the northerly R.O.W. line of aforesaid Wildwood Glen Drive (X:3049204.65, Y:13811681.74);

Thence, North 87 degrees 42 minutes 57 seconds East, at a distance of 80.00 feet pass the aforesaid easterly R.O.W. line of Cook Road and continuing with said northerly R.O.W. line of Wildwood Glen drive, in all, a distance of 811.20 feet to the westerly line of a call 2.645 acre tract recorded in the name of H.C.W.C.I.D. No. 123 in H.C.C.F. Number D305422;

Thence, with the westerly, southerly and easterly lines of said 2.645 acre tract, the following three (3) courses:

- 1) South 02 degrees 40 minutes 21 seconds East, a distance of 60.00 feet;
- 2) North 87 degrees 42 minutes 57 seconds East, a distance of 489.06 feet;
- 3) North 02 degrees 38 minutes 03 seconds West, a distance of 413.39 feet to the northerly northwest corner of aforesaid 117.8988 acre tract;

Thence, with the northerly line of said 117.8988 acre tract, the following two (2) courses:

- 1) North 28 degrees 36 minutes 57 seconds East, a distance of 102.35 feet to a 5/8-inch iron rod found;
- 2) North 87 degrees 22 minutes 24 seconds East, at a distance of 544.38 feet pass a 3/4-inch iron rod found at the northwesterly corner of aforesaid 18.5993 acre tract, in all, a distance of 1382.49 feet to the easterly R.O.W. line of Kirkwood Road (X:3051917.73, Y:13812239.79);

Thence, with said easterly R.O.W. line, South 02 degrees 34 minutes 54 seconds East, a distance of 2210.53 feet;

Thence, crossing said Kirkwood Road, South 87 degrees 28 minutes 36 seconds West, a distance of 337.31 feet to the northwesterly corner of a call 0.9157 acre tract recorded in the name of Flagship Investment LLC in H.C.C.F. Number RP-2019-113813 (X:3051680.32, Y:13810016.65);

Thence, with the westerly line of said 0.9157 acre tract, South 02 degrees 31 minutes 24 seconds East, a distance of 167.54 feet to a 3/4-inch iron rod found at the southwesterly corner of said 0.9157 acre tract and being on the northerly line of a call 1.377 acre tract recorded in the name of Southwestern Bell in H.C.C.F. Number C287739;

Thence, with the northerly and westerly line of said 1.377 acre tract, the following two (2) courses:

- 1) South 87 degrees 28 minutes 36 seconds West, a distance of 61.90 feet;
- 2) South 02 degrees 31 minutes 24 seconds East, a distance of 200.00 feet to the northerly line of Reserve "B", Kirkwood Commercial, a subdivision recorded in Film Code Number 679786 of the H.C.M.R.;

Thence, with the northerly and westerly line of said Reserve "B", the following two (2) courses:

- 1) South 87 degrees 54 minutes 08 seconds West, a distance of 76.59 feet;
- 2) South 02 degrees 38 minutes 34 seconds East, a distance of 286.03 feet to the northeasterly corner of aforesaid Golf Plaza;

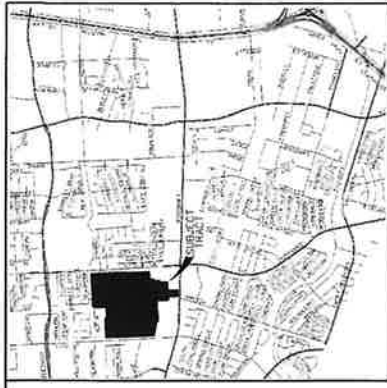
Thence, with said northerly line, South 87 degrees 22 minutes 16 seconds West, a distance of 350.55 feet the **Point of Beginning** and containing 145.935 acres of land.

THIS DESCRIPTION WAS PREPARED IN CONNECTION WITH A TRACT EXHIBIT FILED IN JOB NUMBER 195547 AT GBI PARTNERS.

GBI PARTNERS
TBPELS Firm No. 10130300
Ph: 281.499.4539
September 11, 2020

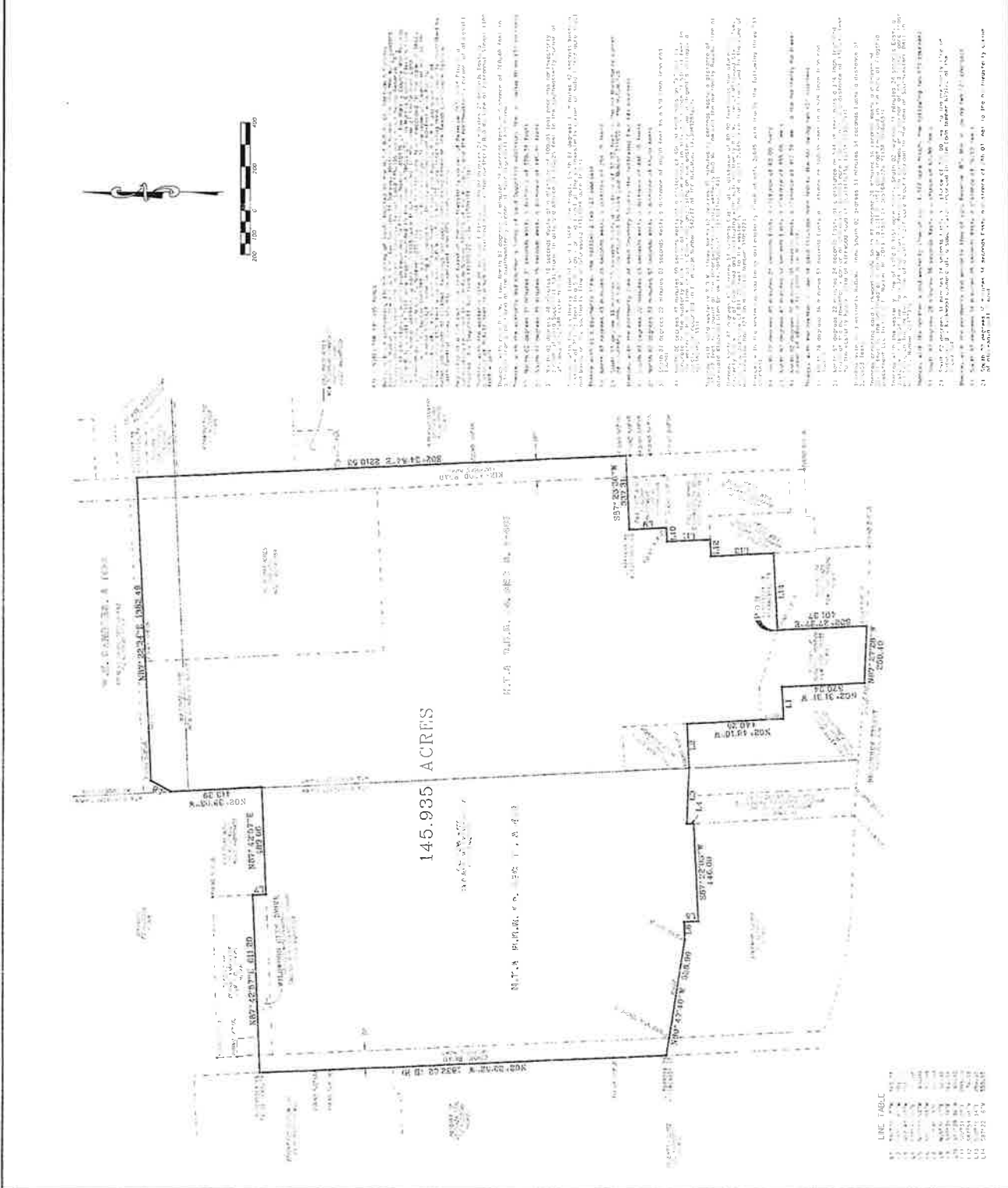


Jon P. Bordovsky
9/11/2020



VICINITY MAP N.T.S.

THIS TRACT IS NOT TO BE CONSIDERED AS A GUARANTEE OF TITLE OR A GUARANTEE OF THE ACCURACY OF THE SURVEY. THE SURVEY IS BASED ON THE BEST AVAILABLE INFORMATION AND THE SURVEYOR HAS NO KNOWLEDGE OF ANY OTHER FACTS OR CIRCUMSTANCES THAT MAY AFFECT THE SURVEY. THE SURVEYOR HAS NO LIABILITY FOR ANY LOSS OR DAMAGE TO ANY PERSON OR PROPERTY ARISING OUT OF THE SURVEY. THE SURVEYOR HAS NO LIABILITY FOR ANY LOSS OR DAMAGE TO ANY PERSON OR PROPERTY ARISING OUT OF THE SURVEY.



TRACT EXHIBIT
145.935 ACRES

THIS TRACT IS NOT TO BE CONSIDERED AS A GUARANTEE OF TITLE OR A GUARANTEE OF THE ACCURACY OF THE SURVEY. THE SURVEY IS BASED ON THE BEST AVAILABLE INFORMATION AND THE SURVEYOR HAS NO KNOWLEDGE OF ANY OTHER FACTS OR CIRCUMSTANCES THAT MAY AFFECT THE SURVEY. THE SURVEYOR HAS NO LIABILITY FOR ANY LOSS OR DAMAGE TO ANY PERSON OR PROPERTY ARISING OUT OF THE SURVEY. THE SURVEYOR HAS NO LIABILITY FOR ANY LOSS OR DAMAGE TO ANY PERSON OR PROPERTY ARISING OUT OF THE SURVEY.

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Web: www.gtbpartners.com

Exhibit B
Municipal Setting Designation
Affidavit of Eligibility

BEFORE ME, the undersigned authority, on this day personally appeared
Mark Lester _____, as an authorized representative of
Bissonnet 136, LLC _____, known to me to be the person
whose name is subscribed below who being by me first duly sworn, upon their oath,
stated as follows:

I am over the age of 18 and legally competent to make this affidavit. I have personal
knowledge of the facts stated herein.

I affirmatively state that (place an X in all applicable blanks)

- ☒ The MSD eligibility criteria of THSC Section 361.803 are satisfied.
- ☒ True and accurate copies of all documents demonstrating that the MSD eligibility
criteria provided by THSC 361.803 have been satisfied and are included with the
application.
- ☒ A true and accurate copy of a legal description of the proposed MSD property is
included with the application.
- ☒ Notice has been provided in accordance with THSC 361.805.
- ☒ A copy of an ordinance or restrictive covenant and any required resolutions are
provided in this application or will be provided before the executive director
certifies this application.

Mark Lester
Signature

Date: May 9, 2022

Mark Lester
Printed Name

representative
Title

STATE OF California
COUNTY OF San Mateo



SUBSCRIBED AND SWORN before me on this the 09 day of
May 2022, to which witness my hand and seal of office.

Mercedes D. Alvarez
Notary Public in and for the State of California

Exhibit 5

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

December 4, 2023

SERVED VIA EFILE TEXAS

**Natalie Scott, Kevin Bartz, and Randall Wilburn, for Applicant
Emily Rogers and Kimberly Kelley, for Protestants
Harrison Malley, for the ED
Jessica Anderson and Josiah Mercer, for OPIC**

**RE: Docket Number 582-23-11662.TCEQ; Texas Commission on
Environmental Quality No. 2022-0534-DIS; *Application of
Highland Lakes Midlothian I, LLC for the Creation of FM 875
Municipal Utility District of Ellis County***

Dear Parties:

Please find attached a Proposal for Decision in this case. Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION OF HIGHLAND LAKES MIDLOTHIAN I, LLC FOR THE CREATION OF FM 875 MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY

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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**APPLICATION OF HIGHLAND LAKES MIDLOTHIAN I, LLC FOR THE
CREATION OF FM 875 MUNICIPAL UTILITY DISTRICT OF ELLIS
COUNTY**

PROPOSAL FOR DECISION

I. INTRODUCTION

On July 23, 2021, Highland Lakes Midlothian I, LLC (Applicant) filed a petition, and on November 19, 2021, Applicant filed an amended petition (Petition), with the Texas Commission on Environmental Quality (TCEQ or Commission) for the creation of FM 875 Municipal Utility District of Ellis County (District).¹

¹ Applicant Exs. 5 and 8.

The proposed District is approximately 283.231 acres (the Property) located wholly within the extra-territorial jurisdiction (ETJ) of the City of Midlothian (Midlothian) in Ellis County, Texas (located on the south side of and adjacent to FM 875, approximately 4,200 feet west of McAlpin Road, and approximately 8,400 feet east of FM 663).²

The proposed District is contiguous to Applicant's simultaneously-filed petition for Highland Lakes Municipal Utility District No. 1 of Ellis County (HLMUD 1), which was recently granted by the Commission.³ Because the Petition in this matter was factually related to the petition for HLMUD 1, the parties in this matter participated in the hearings for both and argued similar positions in each: TCEQ's Executive Director (ED) recommends that the Petition be granted; the Office of Public Interest Counsel (OPIC) does not object to the Petition; and Midlothian and Ellis County (collectively, "Protestants") recommend denial of the Petition.

Based on the evidence presented and the applicable law, the Administrative Law Judge (ALJ) concludes Applicant met its burden of proving the District's creation meets all applicable requirements and should be granted.

² Applicant Exs. 5, 8, and 11.

³ Tex. Comm'n on Env'tl. Quality, *Application by Highland Lakes Midlothian I, LLC for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138; TCEQ Docket No. 2022-0532-DIS (Final Order Granting Petition) (Nov. 6, 2023).

II. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this case; therefore, those matters are addressed solely in the findings of fact and conclusions of law.

On September 28, 2022, the Commission determined that the Protestants were affected persons and referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.⁴ On March 30, 2023, the ALJ held a preliminary hearing in this matter, at which time Applicant offered the Administrative Record, Tabs A-C, which was admitted as Applicant Exhibits A-C, and the Applicant, ED, OPIC, and Protestants were named as parties.⁵

The hearing on the merits was held August 17, 2023,⁶ before ALJ Ross Henderson at SOAH, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Applicant was represented by attorneys Natalie Scott, Kevin Bartz, and Randall Wilburn. The Protestants were represented by attorneys Emily Rogers and Kimberly Kelley. The ED was represented by attorney Harrison Malley. OPIC was represented by attorneys Jessica Anderson and Josiah Mercer. The record closed after submission of written closing arguments on October 6, 2023. However, on November 6, 2023, a post-hearing conference was convened, and thereafter the ALJ reopened the record to take official notice of:

⁴ Applicant Ex. A (Interim Order).

⁵ SOAH Order Memorializing Preliminary Hearing And Establishing Prehearing Requirements (March 31, 2023).

⁶ The hearing was scheduled to convene August 16-17, 2023, but was continued to begin August 17 at the request of the parties.

(1) the Commission's November 6, 2023, final order on the petition of HLMUD 1; (2) the Commission's October 25, 2023, discussion on consideration of the petition of HLMUD 1; and (3) the June 29, 2023, Proposal for Decision in that matter.⁷

III. APPLICABLE LAW

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code, and the Commission's administrative rules found at 30 Texas Administrative Code chapter 293. The purposes of a MUD include providing water distribution, wastewater collection, and/or drainage facilities.⁸ For the Commission to grant a petition for a MUD, the petition must be sufficient; the proposed district must be feasible and practicable; the land and the property to be included in the district must be benefited by creation of the district; and there must be public necessity or need for the district.⁹

Generally, no land within the corporate limits of a city or within the extraterritorial jurisdiction of a city shall be included in a district unless the city grants its written consent. A request for consent must be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls and shall include a description of the land in metes and bounds or lot

⁷ See FN 3; *see also* SOAH Order Scheduling Post-Hearing Conference (this docket) (Nov. 9, 2023).

⁸ Tex. Water Code § 54.012.

⁹ Tex. Water Code §§ 54.014, .021; 30 Tex. Admin. Code § 293.11(a), (d).

and block number, state the general nature of the work proposed to be done, the necessity for the work, and the estimated cost of the project. If the city with jurisdiction fails to provide its consent within 90 days after receipt of the written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district. If the city and the requestors fail to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within 120 days after receipt of the petition, the requestors may petition the Commission for creation of the district.¹⁰

A petition requesting creation of a district shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district, and shall be filed with the Commission.¹¹ The petition shall:

- 1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;
- 2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and
- 3) include a name of the district which shall be generally descriptive of the locale of the district followed by the words Municipal Utility District, or if a district is located within one county, it may be designated

¹⁰ Tex. Water Code § 54.016(a)-(d); Tex. Loc. Gov't Code § 42.042(a), (f).

¹¹ Tex. Water Code § 54.014.

“_____ County Municipal Utility District No. _____.”
(Insert the name of the county and proper consecutive number.) The
proposed district shall not have the same name as any other district in
the same county.¹²

In addition to the requirements set out in Texas Water Code section 54.015, the petition must include the following: evidence that it was filed with the county clerk; a map, preliminary plan, and preliminary engineering report; a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district; and affidavits by those persons desiring appointments by the Commission as temporary directors.¹³

The Commission shall grant the petition if it conforms to the requirements of Texas Water Code section 54.015 and the project is feasible, practicable, necessary, and would be a benefit to the land to be included in the district.¹⁴ The Commission shall deny the petition if it does not conform to the requirements of Texas Water Code section 54.015, or if the project is not feasible, practicable, necessary, or a benefit to the land in the district.¹⁵ If the Commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the Commission shall exclude all land which is not benefited from the proposed district and shall redefine the proposed district’s boundaries accordingly.¹⁶

¹² Tex. Water Code § 54.015.

¹³ 30 Tex. Admin. Code § 293.11(d).

¹⁴ Tex. Water Code § 54.021(a).

¹⁵ Tex. Water Code § 54.021(d).

¹⁶ Tex. Water Code § 54.021(c).

In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

1. the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
2. the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
3. whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.¹⁷

Applicant may petition the Commission to acquire the power to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to the state, county, or municipality for operation and maintenance, a road or any improvement in aid of the road.¹⁸ If the petition includes a request for road powers, it must include:

¹⁷ Tex. Water Code § 54.021(b).

¹⁸ Tex. Water Code § 54.234(a).

- evidence that the municipality in whose corporate limits or extraterritorial jurisdiction that any part of the district is located has consented to the creation of the district with road powers or has consented to the district having road powers subsequent to creation, or that the provisions of Texas Water Code section 54.016 have been followed;
- a preliminary layout showing the proposed location for all road facilities to be constructed, acquired, or improved by the district;
- a cost analysis and detailed cost estimate of the proposed road facilities to be designed, acquired, constructed, operated, maintained, or improved by the district with a statement of the amount of bonds estimated to be necessary to finance the proposed design, acquisition, construction, operation, maintenance, and improvement; and
- a narrative statement that will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district.¹⁹

Applicant carries the burden of proof by a preponderance of the evidence.²⁰

IV. DISCUSSION

Applicant offered 26 exhibits,²¹ which were admitted, and presented the testimony of Shannon Livingston, Vice President of Applicant; Paul McCracken, P.E., who prepared the preliminary engineering report included with the application; and Ryan Nesmith, a municipal advisor for MUDs. The Protestants had 17 exhibits

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

²⁰ 30 Tex. Admin. Code § 80.17(a).

²¹ Applicant Exs. 1-26; *see* Tr. at iii-v.

admitted²² and presented the testimony of Chris Dick, Midlothian City Manager; Gary Hendricks, Professional Engineer (P.E.) and Registered Public Land Surveyor (R.P.L.S.), who provided municipal engineering and surveying services to District; and Tim Osting, P.E., Water Resources Engineer. The ED had four exhibits admitted²³ and presented the testimony of Justin Taack, Manager of the Districts Team for the Commission.

A. WHETHER APPLICANT COMPLIED WITH TEXAS LOCAL GOVERNMENT CODE SECTIONS 42.042 AND 42.0425, TEXAS WATER CODE SECTION 54.016, AND 30 TEXAS ADMINISTRATIVE CODE SECTION 293.11(a) AND (d) (REGARDING REQUIRED SUBMITTALS OF REQUESTS FOR CONSENT AND FOR SERVICE).

By virtue of the proposed District's location within Midlothian's ETJ, certain precursor requirements arose before Applicant could submit its Petition for district creation to the Commission. Namely, Applicant was first required to submit a request to Midlothian requesting consent to the creation of the District (signed by landowners within the proposed District representing a total value of more than 50% of the tax rolls in the District).²⁴ If Midlothian withheld its consent for 90 days, Applicant was next required to submit a request for water or sewer service to Midlothian.²⁵ Then, only if Midlothian and the Applicant failed to execute a

²² Protestants Exs. 1-17; *see* Tr. at vii-viii.

²³ ED Exs. JT-1 to JT-4; *see* Tr. at vi.

²⁴ Tex. Water Code § 54.016(a); 30 Tex. Admin. Code § 293.11(a)(2).

²⁵ Tex. Water Code § 54.016(b)-(c).

mutually agreeable contract providing for the water or sewer service within 120 days, could Applicant petition TCEQ for creation of the District.²⁶

1. Evidence and Arguments

It was un rebutted that, on September 9, 2020, the Property was majority-owned by Kimberly Dawn Gravens, Wayne Hill, and Elaine Hill, who collectively sent a petition (dated August 20, 2020) for consent to the creation of the proposed District to Midlothian.²⁷ Midlothian did not respond to the petition, so 90 days later, on December 8, 2020, the landowners requested Midlothian provide water and sewer services.²⁸ Midlothian never responded to the requests for services in writing; but, in conversations, Midlothian's representatives stated it wanted the proposed District annexed into Midlothian's corporate limits and developed with larger lots and less density and that Midlothian had no interest or ability in providing wastewater service to the Property.²⁹ It was un rebutted that Midlothian and the landowners did not enter into contracts for water and sewer services within 120 days. On April 29, 2021, Applicant acquired title to the Property in the proposed District, and thereafter, Applicant filed the Petition with the Commission. Applicant, the ED, and OPIC agree that this evidence shows Applicant met its burden with respect to submittal of a petitions for consent for creation of the District and its required requests for service.

²⁶ Tex. Water Code § 54.016(c)-(d); Tex. Loc. Gov't Code § 42.042(f); 30 Tex. Admin. Code § 293.11(d).

²⁷ Applicant Ex. 1.

²⁸ Applicant Ex. 3.

²⁹ Applicant Ex. 13 (Livingston Dir.) at 3.

Protestants acknowledge that Midlothian never responded to the petition for district creation and never entered into contracts for water or wastewater service with the landowners or Applicant.³⁰ Regarding water service, Midlothian states it could not provide water service to Applicant because the Property is located within Mountain Peak Special Utility District's (Mountain Peak SUD) water Certificate of Convenience and Necessity (CCN).³¹ However, Protestants contend that Applicant has failed to meet its burden regarding wastewater service because the request for wastewater service contained insufficient information from which Midlothian could evaluate it and because Applicant did not negotiate in good faith for the provision of service. Protestants assert that these purported failures by Applicant violated Texas Local Government Code section 42.0425, which prohibits the District from "unreasonably refus[ing] to enter into a contract for water or sanitary sewer services."

2. ALJ's Analysis

The ALJ concludes that Applicant has met its burden with respect to these requirements. The undisputed evidence demonstrates that the majority holders of land within the District submitted the required petitions for the creation of the District and the requests for water and sewer service to Midlothian. Midlothian admitted receiving both and responding to neither. If Midlothian needed additional information to assess feasibility for wastewater service, it failed to request it during the 120-day period. Applicant did not unreasonably refuse to enter into a contract

³⁰ Protestants' Reply Brief at 2.

³¹ Protestants Ex. 1 (Dick Dir.) at 5.

with Midlothian, because a contract was never offered or discussed. Further, if Midlothian's representatives' statement that Midlothian wanted the proposed District annexed into Midlothian's corporate limits and developed with larger lots and less density was a condition of service, this would violate Texas Local Government Code section 42.0425(a), which prohibits a municipality from conditioning its consent on such demands. Therefore, the preponderance of the evidence demonstrates that the statutory and rule requirements to submit a request for service in accordance with Texas Water Code section 54.016, Texas Local Government Code section 42.042, and 30 Texas Administrative Code section 293.11(a)(2) prior to petitioning the TCEQ for the creation of a MUD were met.

B. WHETHER THE PROJECT IS FEASIBLE, PRACTICABLE, AND NECESSARY AND WOULD BE A BENEFIT TO THE LAND INCLUDED IN THE PROPOSED DISTRICT (TEXAS WATER CODE SECTION 54.021(b))

1. Availability of comparable service from other systems (Texas Water Code section 54.021(b)(1), 30 Texas Administrative Code section 293.11(d)(5)(G))

In determining whether a project is feasible, practicable, necessary, and would be a benefit to the land included in the district, the Commission shall consider the availability of comparable service from other systems, including, but not limited to, water districts, municipalities, and regional authorities.³² A creation application shall contain an investigation and evaluation of the availability of comparable service from

³² Tex. Water Code § 54.021(b)(1).

other systems, including, but not limited to, water districts, municipalities, and regional authorities.³³

a) Evidence and Arguments

According to the District’s preliminary engineering report, the District’s land is within Mountain Peak SUD’s water CCN.³⁴ The District intends to receive water from Mountain Peak SUD.³⁵ The District is not located within the wastewater CCN of any entity.³⁶ As previously discussed, although the Property is within Midlothian’s ETJ, Midlothian did not respond to a request for water or wastewater service. The District plans to construct the water distribution system and dedicate it to the CCN holder, and will construct, own, operate, and maintain the wastewater collection and treatment systems (to be shared with recently created HLMUD 1),³⁷ the local storm drainage system, and local roads to serve the District.³⁸ The ED reviewed the preliminary engineering report and determined, “there are no other sources which have the facilities or capacity to serve the proposed District.”³⁹

³³ 30 Tex. Admin. Code § 293.11(d)(5)(G).

³⁴ Applicant Ex. 11 at 8-9.

³⁵ Applicant Ex. 11 at 8-9.

³⁶ Applicant Ex. 11 at 8-9.

³⁷ Tr. at 23 (Livingston Cross).

³⁸ Applicant Ex. 11 at 8-9.

³⁹ ED Exs. JT-1 at 6, JT-3 at 20.

Protestants admit that it is not feasible or practicable for Midlothian to provide comparable wastewater services to the District.⁴⁰ However, Protestants contend that the City of Waxahachie (Waxahachie) has comparable wastewater service available and allege that Applicant failed to investigate it as an alternative option to constructing a new wastewater plant. Although the District is not within the ETJ of Waxahachie, recently created HLMUD 1 is partially within it, and District intends to share wastewater service with HLMUD 1.⁴¹ Mr. Hendricks said that with some upgrades, Waxahachie has adequate capacity in the combination of its existing and proposed wastewater collection and treatment systems to provide service to the proposed District, and the service would be more cost effective.⁴²

Mr. McCracken, the engineer hired by Applicant to create the preliminary engineering report, testified that considering the distance to Waxahachie's system, they did not think it was a viable option.⁴³

OPIC addressed only Midlothian's capabilities and concludes that there is presently no comparable service available to the District.

b) ALJ's Analysis

The ALJ concludes that Applicant has met its burden on this issue. Applicant intends to obtain water service from the CCN holder, Mountain Peak SUD.

⁴⁰ Protestants Ex. 2 (Hendricks Dir.) at 11-12.

⁴¹ TCEQ Docket No. 2022-0532-DIS, Proposal for Decision, p. 10.

⁴² Protestants Ex. 2 (Hendricks Dir.) at 13-14.

⁴³ Tr. at 51.

Regarding wastewater service, the preponderance of the evidence established that there is no comparable service available. Waxahachie does not possess the current infrastructure to provide service without upgrades, and its facilities are a significant distance from the Property. Although Applicant was not required to petition Waxahachie for wastewater service in this matter (because the Property is not within Waxahachie's ETJ), Applicant made such a petition to Waxahachie in the simultaneously-filed, and recently approved, petition for creation of HLMUD 1—and Waxahachie did not respond to HLMUD 1's request.⁴⁴ Further, there is no evidence that Waxahachie could legally provide service to the Property (in Midlothian's ETJ) and Protestants provided no basis in law or precedent to require Applicant to investigate service from an entity with no jurisdiction or authority to provide service. In other words, because of the obvious technical and legal obstacles noted, and Waxahachie's non-response to HLMUD 1's request, it was reasonable for Applicant to assume service from Waxahachie to the District was unavailable.

2. Reasonableness of projected construction costs, tax rates, and water and sewer rates (Texas Water Code section 54.021(b)(2))

In determining whether the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the Commission shall consider the reasonableness of projected construction costs, tax rates, and water and sewer rates.⁴⁵

⁴⁴ TCEQ Docket No. 2022-0532-DIS, Final Order Granting Petition, FOFs 10, 13.

⁴⁵ Tex. Water Code § 54.021(b)(2).

a) Evidence and Arguments

Applicant asserts that the projected construction costs are reasonable; that the proposed water and sewer rates are reasonable and competitive with the rates charged by the cities; and that the contemplated District tax rate of \$0.75 per \$100 valuation falls within the reasonableness standards set by the TCEQ under its economic feasibility rules.⁴⁶

(i) Construction Costs

Applicant contracted with an outside engineering company to conduct a Preliminary Engineering Report (Report), which included estimated construction costs, and Applicant submitted the Report with its Petition.⁴⁷ The estimated costs are allocated between the District, HLMUD 1, and Midlothian (for certain portions of HLMUD 1 which are within the city limits of Midlothian).

Protestants contend that Applicant has not provided reasonable projected costs and a detailed rate analysis based on the actual plans for the proposed development, but rather has provided a rough estimate of what is needed to operate and maintain a MUD in general. Protestants argue that the projected water and wastewater construction costs are significantly undervalued and unreasonable for the projected capacity needs of the proposed District. Mr. Hendricks, on behalf of Protestants, testified that Applicant underestimates the costs by at least 50 percent for: the major water supply and distribution systems; the wastewater treatment

⁴⁶ See 30 Tex. Admin. Code § 293.59(k)(3).

⁴⁷ Applicant Ex. 11, Tables 2-7.

plant; and the cost of wastewater collection lines.⁴⁸ Protestants also say Applicant's estimate fails to include necessary appurtenances such as valves, fittings, and installation by boring and does not include any costs for the offsite water lines required to connect to Mountain Peak SUD's facilities, nor have costs been included for water distribution elements such as elevated storage tanks, ground storage tanks, and pump stations.⁴⁹ Therefore, Protestants assert the actual cost of the infrastructure is greater than that estimated by Applicant in its calculations.

Applicant responds these costs were reasonable at the time they were made in July 2021, however, rapid inflation of construction costs and offsetting rising home values have occurred since.⁵⁰ Mr. McCracken stated that water infrastructure will be phased-in through a \$6,000 per connection capital recovery fee and the Report does not include any of the costs for off-site facilities for water because, at the time of the Report, Mountain Peak SUD agreed to provide those improvements in exchange for 20 acres of land.⁵¹ Regarding the construction costs, Applicant notes that the District may seek up to an additional \$0.25 per \$100 valuation in taxes (up to the maximum allowable in 30 Texas Administrative Code section 293.59(k)) as a buffer to offset any additional costs that might accrue, and stated that the rapidly rising home values in the area will also offset any additional costs.⁵²

⁴⁸ Protestants Ex. 2 (Hendricks Dir.) at 15-24.

⁴⁹ Protestants Ex. 2 (Hendricks Dir.) at 17.

⁵⁰ Applicant Ex. 15 (McCracken Dir.) at 10.

⁵¹ Tr. at 56.

⁵² Tr. at 87

The ED's Staff reviewed the estimated costs and also found them to be reasonable.⁵³ OPIC concludes that the costs appear to be in line with other district creations in the area and that Applicant must pay all construction costs up front and may not seek reimbursements which exceed the statutory cap of \$1.00 per \$100 in valuation.

(ii) Tax Rates

On behalf of Applicant, Mr. Nesmith testified that the proposed project meets the requirements of Texas Water Code section 54.021 and that bonds can be issued by the proposed District in accordance with 30 Texas Administrative Code section 293.59. He explained that the projected tax rate is \$0.75 per \$100 valuation, which falls below the maximum \$1.00 per \$100 valuation allowable under 30 Texas Administrative Code section 293.59(k).⁵⁴ Mr. Nesmith testified that the District is economically feasible based on these tax rates.⁵⁵ Applicant submitted a market study (Study) that estimated the total assessed value of the District at build-out. The ED reviewed the Study in conjunction with the Report's cost estimates and concluded the rates were sufficient:

assuming a 98% collection rate and an ultimate AV of \$369,310,000, a projected ultimate tax rate of approximately \$0.70 (\$0.46 for utilities and \$0.24 for roads) per \$100 AV was indicated to be necessary to meet the annual debt service requirements for the proposed District. An additional \$0.05 per \$100 AV is projected to be levied for maintenance

⁵³ ED Exs. JT-1 to JT-4 (specifically, JT-1 at 6-7).

⁵⁴ Applicant Ex. 19 (Nesmith Dir.) at 4-5.

⁵⁵ Applicant Ex. 19 (Nesmith Dir.) at 6.

and operating expenses, for a combined proposed District tax rate of \$0.75.⁵⁶

(iii) Water and Sewer Rates

Regarding sewer rates, the Report details the sewer rates charged by nearby Midlothian and Waxahachie.⁵⁷ Mr. McCracken testified the rates will be set to be competitive with Midlothian and Waxahachie's rates and that the rates should be sufficient to fund the cost of operating the wastewater plant.⁵⁸ The water rates will be set by Mountain Peak SUD, and its rates were also included in the Report.⁵⁹ Applicant contends that the rates should be competitive with surrounding developments.⁶⁰

Protestants contend that the water rates proposed by Applicant are not reasonable because, as discussed above, they do not account for all of the infrastructure costs in the District's estimates.

b) ALJ's analysis

The ALJ finds Applicant met its burden to prove the reasonableness of projected construction costs, tax rates, and water and sewer rates.⁶¹ The ALJ notes

⁵⁶ ED Ex. JT-3 at 24.

⁵⁷ Applicant Ex. 11 at 13.

⁵⁸ Applicant Ex. 16 (McCracken Dir.) at 13.

⁵⁹ Applicant Ex. 11 at 13.

⁶⁰ Applicant Ex. 16 (McCracken Dir.) at 13.

⁶¹ Tex. Water Code § 54.021(b)(2).

that most of the costs at issue were adjudicated and approved in the recently decided petition for HLMUD 1.⁶² Nevertheless, the ALJ re-confirms that the Report, Applicant's expert testimony, and the ED's review all establish that the cost estimates were reasonable when submitted. The Commission has held that the reasonableness of costs should be adjudged at the time the costs were submitted.⁶³ Applicant provided un rebutted evidence that there has been significant cost inflation since the Petition was submitted; and the ALJ finds that this inflation, to some extent, accounts for the gap between Protestants' and Applicant's cost estimates. Applicant's estimates are more reliable for purposes of determining reasonableness of costs when submitted, because they were made closer in time to the submission of the Petition. Further, Applicant adequately addressed Protestant's arguments relating to the costs required for Mountain Peak SUD to provide water service, explaining that Mountain Peak SUD has agreed to cover the upfront costs of facilities and Applicant will phase in those costs by paying a \$6,000 capital recovery fee for each connection. Finally, Applicant also demonstrated there is a significant buffer created by rising home valuations and another \$.025 per \$100 valuation that Applicant has at its disposal to cover any costs.

The ALJ finds that the projected tax rates are reasonable and sufficient to fund those projected costs. The District's market valuations were not disputed. The projected tax rate is \$0.75 per \$100 valuation, which falls below the maximum \$1.00 per \$100 valuation allowable under 30 Texas Administrative Code section 293.59(k).

⁶² TCEQ Docket No. 2022-0532-DIS, Final Order Granting Petition, FOF 29.

⁶³ SOAH Docket No. 582-22-07138; TCEQ Docket No. 2022-0532-DIS (Commission discussion at open meeting) (Oct. 25, 2023).

The District is economically feasible, because the ED's review confirmed that the tax rates are sufficient to cover the estimated costs.

The preponderance of evidence also establishes that the proposed water and sewer rates are reasonable. Mr. McCracken testified that the District's wastewater rates will be set to be competitive with neighboring Waxahachie and Midlothian. He also testified that the water rates will be set by Mountain Peak SUD and therefore should be competitive with the surrounding developments. The ALJ is not persuaded by Protestants' arguments that the projected water rates are not reasonable because they do not include certain infrastructure costs. As discussed above, Applicant explained that those water infrastructure costs will be recovered in a means other than in the water rates.

3. Whether or not the proposed district and the systems and subsequent development within the proposed district will have an unreasonable effect on land elevation or subsidence (Texas Water Code section 54.021(b)(3)(A), (B))

a) Evidence and arguments

Applicant's Report addressed the issues of land elevations and subsidence. Regarding land elevations, the Report states the "fill and/or excavation associated with the development of the District's systems will not cause any changes in land elevation other than that normally associated with the construction of the underground utility systems, drainage facilities, and paving."⁶⁴ Regarding

⁶⁴ Applicant's Ex. 11 at 14.

subsidence, the Report states “no facilities are proposed that will cause or contribute to subsidence.”⁶⁵ Mr. McCracken elaborated that subsidence is common in the Houston area, but is not a concern for aquifers in the Dallas/Fort Worth area.⁶⁶ The ED reviewed and agreed with the Report’s conclusions on these issues.⁶⁷ No other party submitted evidence or briefed these issues.

b) ALJs Analysis

The ALJ concludes that Applicant has met its burden on these issues.

4. Whether or not the proposed district and the systems and subsequent development within the proposed district will have an unreasonable effect on groundwater level within the region and recharge capability of a groundwater source (Texas Water Code section 54.021(b)(3)(C), (D))

a) Evidence and Arguments

Applicant asserts that it has met its burden by proving, through expert testimony, that the District’s systems and subsequent development will not have an unreasonable effect on groundwater levels and recharge within the region. Regarding recharge, Mr. McCracken testified that no facilities are proposed that will adversely impact the recharge capability of a groundwater source in any unusual way. He said that open space, natural drainage corridors, and the predominantly single-family

⁶⁵ Applicant’s Ex. 11 at 14.

⁶⁶ Applicant Ex. 16 (McCracken Dir.) at 15.

⁶⁷ ED Ex. JT-1 at 6.

residential land use that are part of the MUD development plan leave significant pervious surfaces for groundwater to recharge. This testimony echoes the Report's conclusion that there are no proposed facilities that will contribute to adverse impacts on the recharge capability of any groundwater sources or to groundwater levels.⁶⁸ The ED reviewed and agreed with the Report's conclusions on these issues.

Protestants argue that Applicant failed to meet its burden on these issues. Specifically, they contend that Applicant's Report was insufficient because it was conclusory and failed to consider the actual impact Mountain Peak SUD's use of groundwater will have on groundwater levels in the region and Applicant provided no studies about how the proposed development will impact groundwater recharge. Applicant dismisses the ED's conclusion on these issues because they rely upon Applicant's alleged insufficient Report.

OPIC argues that Mountain Peak SUD will select its water source for serving customers in the region irrespective of the District's creation. OPIC agrees with Applicant and the ED, that Applicant carried its burden of showing that the proposed Districts and their subsequent development will not have an unreasonable effect on groundwater levels and recharge within the region.

⁶⁸ Applicant Ex. 11 at 14.

b) ALJ's Analysis

Concerning impact on groundwater level, the Commission recently affirmed that it will not consider the impacts of a district's potential use of groundwater as a source of water supply for this inquiry.⁶⁹

Applicant provided evidence on the percentage of open space and pervious cover at full buildout, which was not refuted. Applicant also offered uncontroverted evidence that there was nothing unusual about the development which would cause impacts to groundwater levels or recharge capability greater than any other such typical development. Further, the Commission confirmed in a recent related decision on creation of HLMUD 1 that, there is no written requirement or policy, as Protestants urge, for Applicant to conduct a study of groundwater recharge.⁷⁰

Therefore, the ALJ finds that Applicant met its burden to demonstrate that the proposed development will not have an unreasonable effect on the groundwater level in the region or the recharge capability of a groundwater source.

⁶⁹ SOAH Docket No. 582-22-07138; TCEQ Docket No. 2022-0532-DIS (Commission discussion at open meeting) (Oct. 25, 2023).

⁷⁰ *Id.*

5. Whether the proposed district and the systems and subsequent development within the proposed district will have an unreasonable effect on natural run-off rates and drainage (Texas Water Code section 54.021(b)(3)(E))

a) Evidence and Arguments

The Report states:

The storm water runoff within the District will be collected within the curb and gutters of the streets, an underground drainage system, and in natural tributaries. Storm water from the District generally flows to the east in an unnamed tributary of South Prong Creek. South Prong Creek flows through the Highland Lakes property, immediately east of the District's eastern boundary, eventually discharging to Lake Waxahachie, approximately 6 miles to the southeast of Highland Lakes . . . Storm Water Collection - The storm water collection system for the District will consist of a combination of street curb and gutters with inlets, and reinforced concrete pipes ranging from 18-inch diameter to 60-inch diameter, as well as single concrete box culverts for larger flows . . . Design Criteria - All storm drainage improvements will be designed in accordance with the applicable design criteria established by the City of Midlothian, generally utilizing the Rational Method and a 100-year storm event.⁷¹

Mr. McCracken testified that the District's "detention facilities conforming to generally accepted design practices will maintain post-development flows at or below pre-development conditions, and maintain velocities at or below non-erosive levels . . . [and] will not have any unusual effect on natural run-off rates and drainage."⁷²

⁷¹ Applicant Ex. 11 at 10-11.

⁷² Applicant Ex. 15 (McCracken Dir.) at 16.

For the ED, Mr. Taack explained that because “storm drainage is usually under the jurisdiction of local authorities, such as cities, counties or flood control districts, [the ED] . . . does not require review of the design plans or specifications for storm drainage systems.”⁷³ He elaborated, the ED “considers a reference to review and approval by local jurisdictions as an indication that the storm drainage will comply with any applicable requirements regarding storm runoff.”⁷⁴ Finally, he stated that the ED reviewed the Report and found that the representations therein were sufficient to support that the District will not have an unreasonable effect on drainage or runoff.⁷⁵

OPIC concluded that Applicant’s representation that its system will conform to Midlothian’s applicable design criteria provides sufficient assurance that the system will perform in a comparable fashion to other systems under the Midlothian’s jurisdiction and will not have an unreasonable effect on runoff rates and drainage.

Protestants contend Applicant did not meet its burden of proof to demonstrate that the proposed district and the systems and subsequent development within the district will not have an unreasonable effect on natural runoff rates and drainage.⁷⁶ They allege that the preliminary engineering report contains little substantive information—only conclusory statements that there will be adequate storm

⁷³ ED Ex. JT-1 at 11.

⁷⁴ ED Ex. JT-1 at 11.

⁷⁵ ED Ex. JT-1 at 11.

⁷⁶ See Protestants Ex. 2 (Hendricks Dir.) at 32-36.

drainage. They contend that the Report does not provide any information about the natural run-off rates before development to compare with the post-development rates; does not provide an evaluation of what the local regulations related to drainage will require; and does not contain any information about whether offsite drainage facilities are required or what the associated costs may be. Protestants also argue that the ED's analysis is conclusory, by stating that the system will be constructed in accordance with the applicable city's design criteria without reviewing whether the proposed drainage facilities, capacities, and proposed costs were sufficient or correct to meet those design standards.

Protestants assert that Applicant should have conducted a preliminary evaluation of downstream and offsite storm water conveyance capacity to determine whether downstream and offsite drainage improvements are required, whether offsite easements are necessary, and whether detention ponds are required to mitigate offsite storm water capacity, conveyance, land rights, and permit issues. They argue that simply stating that Applicant must comply with the cities' applicable design criteria for storm drainage improvements is not sufficient to meet Applicant's burden under the Texas Water Code.

b) ALJ's Analysis

The ALJ finds that the proposed District, and the systems and subsequent development within the proposed District, will not have an unreasonable effect on natural run-off rates and drainage. The Report provides a description of the natural drainage on the Property and states that if detention facilities are required by applicable design criteria, detention facilities will be implemented to maintain

post-development flows at pre-development conditions.⁷⁷ The Report states the proposed District's drainage system will include a curb and gutter system, underground drainage system, the natural tributaries, and if required, detention facilities.⁷⁸ It further states the stormwater drainage system will be designed in accordance with applicable design criteria established by Midlothian.⁷⁹ On this issue, the Commission defers to the local authorities' governance over stormwater drainage and has stated that an Applicant's representation that it will comply with local requirements is sufficient.⁸⁰

6. Whether or not the district, the systems, and subsequent development within the district will have an unreasonable effect on water quality (Texas Water Code section 54.021(b)(3)(F))

a) Evidence and Arguments

For this issue, the parties addressed wastewater and storm water separately.

(i) Wastewater Discharges

Applicant states that the District will not have unreasonable water quality impacts because it intends to construct, own, and operate a wastewater treatment facility permitted by the Commission.⁸¹ The ED agrees, stating an in-depth analysis

⁷⁷ Applicant Ex. 11 at 10-11.

⁷⁸ Applicant Ex. 11 at 10-11.

⁷⁹ Applicant Ex. 11 at 10-11.

⁸⁰ ED Ex. JT-1 at 9.

⁸¹ Applicant Ex. 11 at 14.

of water quality is not required in this proceeding because the Commission relies on the Texas Pollutant Discharge Elimination System Permit (TPDES) permit application to address water quality.⁸² OPIC also agrees, arguing that the District, as a permit holder, will be subject to the Commission's rules and regulations, as any other plant owner would.

Protestants argue that the Report should include detailed information about the treatment level that will be required because the receiving bodies barely meet state water quality standards.⁸³

(ii) Stormwater Quality

Regarding stormwater, Mr. McCracken stated the District's collection, conveyance, and detention facilities for storm water will be designed, constructed, operated and maintained in compliance with all federal, state and local requirements, including the requirements of Midlothian and Ellis County.⁸⁴ As discussed previously, the District plans to construct a storm water collection system to maintain natural runoff rates. Mr. McCracken explained that he does not anticipate impacts to water quality different from or beyond that of any similar project.⁸⁵

⁸² ED Ex. JT-1 at 9.

⁸³ Protestants Ex. 10 (Osting Dir.) at 18-19.

⁸⁴ Applicant Ex. 15 (McCracken Dir.) at 13.

⁸⁵ Applicant Ex. 15 (McCracken Dir.) at 16.

The ED's Technical Memorandum references the Report's proposed stormwater drainage collection system and adds that all "proposed improvements will be designed and constructed in accordance with Ellis County design criteria."⁸⁶ Mr. Taack testified that an evaluation of non-point source pollutants, such as nutrients, is not a required part of the review of a District petition.⁸⁷

Regarding the surface water run-off, OPIC finds that Applicant's representation that it will construct the development's drainage system to meet state water quality standards provides sufficient assurance that surface water run-off will not have an unreasonable effect on water quality.

Protestants assert that no stormwater quality controls are proposed or were evaluated for the District.⁸⁸ Mr. Osting testified that without stormwater quality controls, there will be an increase in concentrations of nitrate, phosphorus, sediment, and other constituents, as studies have shown that residential storm water runoff has elevated concentrations of these constituents, when compared to open space conditions.⁸⁹ Higher concentrations of nutrients such as nitrogen and phosphorus in storm water runoff will also promote the growth of nuisance vegetation and a reduction in dissolved oxygen in the receiving waters.⁹⁰ Thus, it is likely there will be increases in algae and vegetation growth, and lower dissolved

⁸⁶ ED Ex. JT-1 at 9.

⁸⁷ ED Ex. JT-1 at 9.

⁸⁸ Protestants Ex. 10 (Osting Dir.) at 9.

⁸⁹ Protestants Ex. 10 (Osting Dir.) at 11.

⁹⁰ Protestants Ex. 10 (Osting Dir.) at 13.

oxygen, which can negatively impact aquatic life in SCS 17 Reservoir, South Prong Creek, and Waxahachie Lake.⁹¹ Mr. Osting explained that this is particularly problematic because the receiving water bodies, including SCS 17 Reservoir, South Prong Creek, Waxahachie Lake, Waxahachie Creek, and Bardwell Lake, are barely meeting state water quality standards at present.⁹² Additionally, because one of the receiving water bodies, SCS 17 Reservoir, is small, the additional nutrients will not be quickly assimilated.⁹³ Protestants allege that Midlothian's stormwater controls do not apply in its ETJ, and if stormwater is not addressed here, these issues will not be addressed.

b) ALJ's Analysis

In determining whether a project is feasible, practicable, necessary, and would be a benefit to the land included in the district, the Commission shall consider whether the district and its system and subsequent development within the district will have an unreasonable effect on water quality.⁹⁴ TCEQ rules require the MUD application to include a preliminary engineering report containing an evaluation of the effect of the district and its systems and subsequent development within the district on water quality.⁹⁵ In the Commission's recent decision regarding the petition for the creation of HLMUD 1, identical issues were raised by Protestants and the Commission found that the applicant met its burden on this issue by showing

⁹¹ Protestants Ex. 10 (Osting Dir.) at 18-19.

⁹² Protestants Ex. 10 (Osting Dir.) at 17.

⁹³ Protestants Ex. 10 (Osting Dir.) at 18.

⁹⁴ Tex. Water Code § 54.021(b)(3)(F).

⁹⁵ 30 Tex. Admin. Code § 293.11(d)(5)(H)(vi).

that it would meet state and local water quality standards. Regarding the point source, the ALJ agrees with Applicant, the ED, and OPIC, that the Applicant's plan to discharge waste pursuant to a Commission-issued TPDES permit is sufficient to meet its burden. On the issue of stormwater runoff, the Commission elaborated that an Applicant meets its burden "where the record shows that Applicant intends to limit post-development flows at or below pre-development conditions and comply with all federal, state, and local requirements for its stormwater collection."⁹⁶ The ALJ finds that the Petition has complied with these requirements. Therefore, the ALJ finds that Applicant demonstrated the District will not have an unreasonable effect on water quality.

7. Whether or not the proposed district, its system, and subsequent development within the proposed district will have an unreasonable effect on total tax assessments on all land located within the proposed districts (Texas Water Code section 54.021(b)(3)(G))

a) Evidence and Arguments

Applicant notes that the Petition contemplates a District tax rate of \$0.75 per \$100 valuation, which falls within the limits of \$1.00 per \$100 valuation set by the TCEQ under its economic feasibility rules. Mr. Nesmith testified that, at that rate, the total overlapping tax rate on land within the District will be approximately \$2.58 per \$100 valuation, which is consistent with, and well below the top threshold for, comparable tax rates in the Dallas Metropolitan area.⁹⁷ Therefore, Applicant argues

⁹⁶ TCEQ Docket No. 2022-0532-DIS, Final Order Granting Petition, III. Explanation of Changes, 2; *see also* Commission discussion at open meeting, same docket (Oct. 25, 2023).

⁹⁷ Applicant Ex. 19 (Nesmith Dir.) at 15; 30 Tex. Admin. Code § 293.59(k)(3).

the financing of the District's facilities and operations will not have an unreasonable effect on the total tax assessments on all land in its boundaries.

Protestants argue Applicant has not met its burden to establish that the proposed District will not have an unreasonable effect on the total tax assessments on land within the proposed district because Applicant underestimated the costs of the proposed facilities. They argue the additional unaccounted costs will have a significant impact on the financial modeling and result in an effective tax rate substantially higher than the tax rate proposed by the Applicant (\$1.10 per \$100 valuation).⁹⁸

The ED reviewed the application and found that the estimated costs of improvements in the District appear sufficient to support a reasonable tax rate for debt service payments for the proposed bond indebtedness. Tax rates for each particular bond issue will be reviewed and justified on their own economic feasibility merits before the District issues any bonds.⁹⁹

OPIC takes the position that because the District's tax rate is constrained by TCEQ's \$1.00 tax rate cap, inaccuracies regarding Applicant's total costs of utilities, such as construction costs, do not render the overlapping tax rates calculated by Applicant inaccurate. Therefore, OPIC finds that Applicant has met its burden with

⁹⁸ Protestants Ex. 2 (Hendricks Dir.) at 27-28.

⁹⁹ ED Ex. JT-1 at 6-7.

respect to whether total tax assessments will have an unreasonable effect on all land located within the District.

b) ALJ's Analysis

The issue of costs and tax rates were addressed above. Regarding whether total tax assessments will have an unreasonable effect on all land located within the District, Applicant's un rebutted evidence showed that at \$0.75 per \$100 valuation, the aggregate tax rate is similar to that of other communities in the area.¹⁰⁰ Even if Applicant sought the maximum allowable rate of \$1.00 per \$100 valuation, the aggregate tax rate would still be within the range of nearby communities. Therefore, Applicant has met its burden on this issue.

C. WHETHER THE APPLICANT HAS PROVIDED A JUSTIFICATION FOR CREATION OF THE DISTRICT SUPPORTED BY EVIDENCE THAT THE PROJECT IS FEASIBLE, PRACTICABLE, NECESSARY, AND WILL BENEFIT THE LAND TO BE INCLUDED IN THE DISTRICT (TEXAS WATER CODE SECTION 54.021; 30 TEXAS ADMINISTRATIVE CODE SECTION 293.11(c)(5)(J))

1. Evidence and Arguments

Applicant submits that it has met its burden with regard to this issue and that the infrastructure proposed to be constructed and financed by the District is the typical infrastructure needed to serve a single-family development.¹⁰¹ Applicant further maintains that creation of the District will allow Applicant to utilize the

¹⁰⁰ Applicant Ex. 12 at 42.

¹⁰¹ Applicant Ex. 15 (McCracken Dir.) at 13-14.

lowest cost financing tool to deliver lots and homes at the lowest possible price to homeowners.¹⁰² Mr. Livingston testified that the District is necessary for it to be feasible and practicable to develop the Property with the facilities and services proposed because it will allow for long term, low interest rate, tax exempt bonds.¹⁰³

Protestants reiterate previously addressed arguments relating to costs, arguing again that the project is not feasible.

The ED asserts that there is a market need for the District as demonstrated by market studies and the Report submitted by Applicant with the Petition.¹⁰⁴ Mr. Taack stated that the District will provide a means for needed facilities for development to meet the market need at a tax rate within the Commission's feasibility tax rate limits.¹⁰⁵

OPIC takes no position on this issue.

2. ALJ's Analysis

The ALJ concludes that Applicant's Petition included sufficient information to meet its burden to show a justification of need for the District and that the creation of the District provides the necessary means to provide the required facilities for development to meet the market need. Therefore, Applicant has met its burden to

¹⁰² Applicant Ex. 13 (Livingston Dir.) at 10.

¹⁰³ Applicant Ex. 13 (Livingston Dir.) at 10.

¹⁰⁴ ED Ex. JT-1 at 5-6.

¹⁰⁵ ED Ex. JT-1 at 5-6.

prove that the District is feasible, practicable, necessary, and will benefit the land to be included in the District, and will further the public welfare.

D. WHETHER OR NOT THE DISTRICT CREATION PETITION WAS SIGNED BY A MAJORITY IN VALUE OF THE HOLDERS OF TITLE OF THE LAND WITHIN THE PROPOSED DISTRICT AS INDICATED BY THE COUNTY TAX ROLLS (TEXAS WATER CODE SECTION 54.014)

1. Evidence and Argument

Applicant asserts it has met its burden on this issue. Mr. Livingston testified that he is the Vice President of Highland Lakes Midlothian I, LLC.¹⁰⁶ The Applicant states the Petition, Special Warranty Deeds, and affidavits from the Ellis County Central Appraisal District's Chief Appraiser all further show that the Applicant held title to the Property when the Petition was submitted.¹⁰⁷ The ED states that the Ellis County Appraisal District has certified that the appraisal rolls indicate that the Applicant is the owner of the majority in value of the land in the proposed District.¹⁰⁸

Neither Protestants nor OPIC took a position on this issue.

2. ALJ's Analysis

Texas Water Code section 54.014 requires that the petition requesting creation of a MUD that is filed with the Commission be signed by a majority in value

¹⁰⁶ Applicant Ex. 13 (Livingston Dir.) at 2-3.

¹⁰⁷ Applicant Ex. 13 (Livingston Dir.) at 2.

¹⁰⁸ ED Ex. JT-3 at bates 0019.

of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. The preponderance of the un rebutted evidence demonstrates that Applicant is the holder of title to a majority in value of the land to be included within the proposed District.¹⁰⁹

E. WHETHER THE APPLICANT’S REQUEST FOR ROAD POWERS MEETS THE APPLICABLE REQUIREMENTS OF TEXAS WATER CODE SECTION 54.234, AND 30 TEXAS ADMINISTRATIVE CODE SECTIONS 293.11(d)(11) AND 293.202

The Petition requests the TCEQ grant the District the authority to provide roads, as allowed by Texas Water Code section 54.234.¹¹⁰ A district’s application for road powers must provide the following information described by 30 Texas Administrative Code section 293.202(a)(4), (7), (8), and (9):

- (4) evidence that the municipality in whose corporate limits or extraterritorial jurisdiction that any part of the district is located has consented to the creation of the district with road powers or has consented to the district having road powers subsequent to creation, or that the provisions of [Texas Water Code] §54.016, have been followed;
- (7) a preliminary layout showing the proposed location for all road facilities to be constructed, acquired, or improved by the district;

¹⁰⁹ No party disputed the qualifications of Gary Eckeberger, Michael Gleason, Jay Sterling Gravens, Robert Glenn Holland, and James B. Sammons, III, who requested to be temporary directors and (1) are each at least 18 years old; (2) are each a resident of the State of Texas; and (3) each either owns land subject to taxation within the proposed District or is a qualified voter within the proposed District. Additionally, the majority are residents of the county in which the proposed District is located, a county adjacent to the county in which the proposed District is located, or if the proposed District is located in a county that is in a metropolitan statistical area designated by the United States Office of Management and Budget or its successor agency, a county in the same metropolitan statistical area as the county in which the proposed District is located. *See* Tex. Water Code § 54.022.

¹¹⁰ Applicant Ex. 8.

- (8) a cost analysis and detailed cost estimate of the proposed road facilities to be designed, acquired, constructed, operated, maintained, or improved by the district with a statement of the amount of bonds estimated to be necessary to finance the proposed design, acquisition, construction, operation, maintenance, and improvement;
- (9) a narrative statement that will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district.

1. Evidence and Argument

Applicant asserts that the Report meets the requirements of the statute and rules, and states that they have provided a preliminary layout of the major thoroughfares.¹¹¹ In discussing the cost estimates to be financed by the District, Mr. McCracken testified that as of July 2021, when the preliminary engineering report was prepared, the costs were reasonable estimates.¹¹² Those costs include a preliminary estimate for both local and major roadways.¹¹³ Mr. McCracken testified that the layout of the District shows only the major roads, not the local roads; but, he said that, based on the density of the development, the cost of the local roads can be estimated without identifying where they are early in the process.¹¹⁴

Protestants argue that Applicant failed to comply with the requirements to establish road powers for the proposed District because Applicant did not provide a

¹¹¹ Applicant's Closing Brief at 25.

¹¹² Applicant Ex. 15 (McCracken Dir.) at 10.

¹¹³ Applicant Ex. 11, Table 2, at bates 0018.

¹¹⁴ Tr. at 90.

layout of the proposed location for all road facilities within the proposed District, as required by 30 Texas Administrative Code section 293.202(a)(7). Specifically, the Report does not show the location of all the roadways to be constructed within the District—only the major collectors.¹¹⁵ Because Applicant did not have information on all of the road facilities within the proposed District, Applicant could not provide a detailed cost analysis of road construction costs and analyze the impact of road costs on the proposed district. Midlothian has not consented to the creation of the District with road powers.¹¹⁶

After reviewing the preliminary layout of the roads, the ED determined that they appear to benefit the District and financing appears feasible.¹¹⁷ The ED concludes that the applicable requirements have been satisfied for granting road powers with the District creation.

OPIC did not take a position with respect to road powers.

2. ALJ's Analysis

Applicant's petition with a request for road powers must include evidence that either the cities consent to District's road powers or the provisions of Texas Water Code section 54.016 have been followed.¹¹⁸ As discussed above, the ALJ concludes that Applicant's Petition complies with Texas Water Code section 54.016; therefore,

¹¹⁵ Tr. at 67-68; Applicant Ex. 11.

¹¹⁶ Protestants' Closing Argument at 24.

¹¹⁷ ED Ex. JW-3 at 0025.

¹¹⁸ 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a)(4), (b).

the Applicant also meets the requirement of 30 Texas Administrative Code section 293.202(a)(4).

The evidence is undisputed that Applicant provided a preliminary layout of the major roads; detailed cost estimates, including an estimate for local roadways; and the projected road bond requirements, which established that the funding of the road improvements are financially and economically feasible.

Therefore, the ALJ concludes that Applicant's request for road powers within the Petition meets the requirements set forth in Texas Water Code section 54.234 and 30 Texas Administrative Code sections 293.11(d)(11) and .202(b).

F. ALLOCATION OF TRANSCRIPT COSTS

The Commission may assess reporting and transcription costs to one or more of the parties participating in a proceeding, and when doing so, must consider the following factors:

- the party who requested the transcript;
- the financial ability of the party to pay the costs;
- the extent to which the party participated in the hearing;
- the relative benefits of the various parties of having a transcript; . . . [and]
- any other factor which is relevant to a just and reasonable assessment of costs.¹¹⁹

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

Additionally, the Commission will not assess reporting or transcription costs against the ED or OPIC because they are statutory parties who are precluded by law from appealing the Commission's decision.¹²⁰

Applicant proposes that the transcript costs should be allocated equally among the parties. Protestants request that the transcript costs be assessed to Applicant, as the entity seeking to create the proposed districts and the entity that would benefit if the District is created. The ED and OPIC take no position on cost apportionment.

With respect to the factors in 30 Texas Administrative Code section 80.23(d)(1), the ALJ finds that no party requested the transcript, because it was required by SOAH. The Protestants are local governmental entities. Applicant is a company in the business of subdividing, selling, and developing land for profit. All parties fully participated in the hearing and benefitted from the transcript. Based on these factors, the ALJ recommends that the Commission assess the transcription costs as follows: 50 percent to Applicant and 50 percent to Protestants.

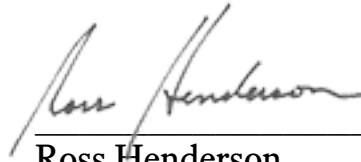
V. CONCLUSION

The ALJ concludes that Applicant met its burden of proving the Petition meets all applicable requirements. Therefore, the ALJ recommends that the

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

Commission approve Applicant's Petition for creation of FM 875 Municipal Utility District of Ellis County.

Signed December 4, 2023

A handwritten signature in cursive script, appearing to read "Ross Henderson", written in dark ink.

Ross Henderson
Presiding Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING PETITION FOR CREATION OF FM 875 MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY; TCEQ DOCKET NO. 2022-0534-DIS; SOAH DOCKET NO. 582-23-11662

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the petition for creation of FM 875 Municipal Utility District of Ellis County (District). A Proposal for Decision (PFD) was issued by Ross Henderson, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), and considered by the Commission.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On July 23, 2021, Highland Lakes Midlothian I, LLC (Applicant) filed a petition with the Commission, and on November 19, 2021, Applicant filed an amended petition (Petition), with the Commission, for the creation of FM 875 Municipal Utility District of Ellis County.
2. Applicant simultaneously filed a petition with TCEQ for Highland Lakes Municipal Utility District No. 1 of Ellis County (HLMUD 1), which was granted by the Commission on November 6, 2023.
3. The Petition was declared administratively complete on December 2, 2021.

4. On March 13 and March 20, 2022, notice of the Petition was published in the *Waxahachie Daily Light*, a newspaper regularly published or circulated in Ellis County, the county in which the district is proposed to be located.
5. On March 8, 2022, notice of the Petition was posted in the Ellis County Courthouse, the place where legal notices in Ellis County are posted.
6. TCEQ received timely hearing requests filed by the City of Midlothian (Midlothian) and Ellis County (collectively, “Protestants”). The Commissioners determined that the Protestants were affected persons and referred this matter to the SOAH for a contested case hearing.
7. On March 30, 2023, the SOAH ALJ held a preliminary hearing in this matter, at which time Applicant offered the jurisdictional exhibits and the Applicant, ED, OPIC, and Protestants were named as parties.
8. The hearing on the merits was held August 17, 2023, before ALJ Ross Henderson at SOAH, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Applicant was represented by attorneys Natalie Scott, Kevin Bartz, and Randall Wilburn. The Protestants were represented by attorneys Emily Rogers and Kimberly Kelley. The ED was represented by attorney Harrison Malley. OPIC was represented by attorneys Jessica Anderson and Josiah Mercer. The record closed after submission of written closing arguments on October 6, 2023. However, on November 6, 2023, a post hearing conference was convened, and thereafter the ALJ reopened the record to take official notice of: (1) the Commission’s November 6, 2023, final order on the petition of HLMUD 1; (2) the Commission’s October 25, 2023, discussion on consideration of the Petition; and (3) the June 29, 2023, Proposal for Decision in that matter.

Request for Service

9. The proposed District is approximately 283.231 acres (the Property) located wholly within the extra-territorial jurisdiction (ETJ) of Midlothian in Ellis County, Texas (located on the south side of and adjacent to FM 875, approximately 4,200 feet west of McAlpin Road, and approximately 8,400 feet east of FM 663).

10. On September 9, 2020, the Property was owned by Kimberly Dawn Gravens, Wayne Hill, and Elaine Hill, who sent a petition (dated August 20, 2020) for consent to the creation of the proposed District to Midlothian. The landowners did not receive a written response from Midlothian.
11. Ninety days later, on December 8, 2020, the landowners petitioned Midlothian to provide water and sewer services and did not receive a written response within 120 days.
12. In conversations, Midlothian's representatives stated it wanted the proposed District annexed into Midlothian's corporate limits and developed with larger lots and less density, and that Midlothian had no interest or ability in providing wastewater service to the Property.
13. Applicant's request complied with the requirement to submit a request for service where a proposed municipal utility district would be located within the ETJ of a city.
14. The 120-day period for reaching mutually agreeable contracts for service expired without agreements or contracts.
15. On April 29, 2021, Applicant acquired title to the Property in the proposed District.
16. Thereafter, Applicant filed the Petition with the Commission.

Availability of Comparable Service from Other Systems

17. The Property is located within Mountain Peak Special Utility District's (Mountain Peak SUD) water Certificate of Convenience and Necessity (CCN).
18. Applicant will obtain its water supply from Mountain Peak SUD.
19. The Property is not located within the wastewater CCN of any entity.
20. Midlothian does not have existing infrastructure to provide the District wastewater services, and no other wastewater system is available.

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

21. The projected tax rate is \$0.75 per \$100 valuation.
22. The developer will pay all upfront costs of capital improvements and can only be reimbursed to the extent available under the \$1 per \$100 valuation maximum tax rate set by TCEQ rules.
23. The proposed tax rate is reasonable compared to other taxing authorities in the area.
24. The proposed construction costs are reasonable.
25. The proposed water and sewer rates are reasonable.

Effect on Land Elevations and Subsidence Within the Region

26. The District, its systems, and subsequent development will not have an unreasonable effect on land elevations or subsidence within the region.

Effect on Groundwater Levels and Recharge Within the Region

27. The proposed development's resulting impervious cover from mostly single-family residential lots will not have any greater effect on groundwater levels or recharge capacity of groundwater in the region than any other typical single-family development.
28. The District, its systems, and its subsequent development will not have an unreasonable effect on groundwater levels within the region nor the recharge capability of any groundwater source.

Effect on Natural Run-off Rates and Drainage

29. The storm water runoff within the District will be collected with the curb and gutters of the streets, with an underground drainage system, and in the natural tributaries.

30. The District is located on a moderately sloping site. The majority of existing drainage is through overland flow to existing tributaries that drain to South Prong Creek and eventually outfall to Lake Waxahachie.
31. All storm drainage improvements will be designed in accordance with the applicable design criteria established by Midlothian, generally utilizing the Rational Method and a 100-year storm event.
32. If detention facilities are required by applicable design criteria, detention facilities will be implemented to maintain post-development flows at pre-development conditions.
33. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on natural run-off rates and drainage.

Effect on Water Quality

34. The District will own and operate a wastewater treatment plant pursuant to a permit issued by TCEQ, which entails its own permitting process.
35. The District's stormwater collection, conveyance, and detention facilities will be designed, constructed, operated, and maintained in compliance with all federal, state, and local requirements.
36. Sufficient evidence was presented to establish that the District, its systems, and its subsequent development will not have an unreasonable effect on water quality.

Effect on Total Tax Assessments on All Land Located Within the District

37. The petition for creation of the District contemplates a District tax rate of \$0.75 per \$100 valuation, which falls within the limits set by the TCEQ under its economic feasibility rules.
38. The District, its systems, and subsequent development within the proposed District will not have an unreasonable effect on total tax assessments on all land located within the District.

Feasible, Practicable, Necessary, and Will Benefit All of the Land to be Included in the District

39. The Applicant established that the District is feasible, practicable, necessary, and will benefit all of the land included in the District.

Petition Signature of a Majority in Value of the Landowners

40. Both the petition and amended petition for creation of the District that were filed with the Commission were filed by Applicant.
41. Applicant is the holder of title to a majority in value of the land to be included within the proposed District.

Request for Road Powers

42. The Petition requests the TCEQ grant the District the authority to provide roads.
43. Applicant provided a preliminary layout as to the major thoroughfares and a cost estimate of the proposed road facilities.
44. Applicant established that the funding of the road improvements is financially and economically feasible.

Allocation of Transcript Costs

45. No party requested the transcript because SOAH required a transcript.
46. All parties fully participated in the hearing and benefitted from the transcript.
47. Applicant consists of a company that owns, maintains, subdivides, and develops land.

Appointment of Temporary Directors

48. Applicant established that Gary Eckeberger, Michael Gleason, Jay Sterling Gravens, Robert Glenn Holland, and James B. Sammons, III requested to be temporary directors and (1) are each at least 18 years old; (2) are each a resident of the State of Texas; and (3) each either owns land

subject to taxation within the proposed District or is a qualified voter within the proposed District. Additionally, the majority are residents of the county in which the proposed District is located, a county adjacent to the county in which the proposed District is located, or if the proposed District is located in a county that is in a metropolitan statistical area designated by the United States Office of Management and Budget or its successor agency, a county in the same metropolitan statistical area as the county in which the proposed District is located.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Water Code ch. 49 and 54; Texas Constitution, article XVI, section 59.
2. SOAH has jurisdiction over all matters relating to the conduct of this hearing, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Applicant and TCEQ have satisfied all applicable public notice requirements. Tex. Water Code § 49.011; 30 Tex. Admin. Code § 293.12.
4. Applicant carries the burden of proof by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(a).
5. Applicant satisfied the requirements related to requests for service when a municipal utility district is proposed to be located within the extraterritorial jurisdiction of a city. Tex. Water Code § 54.016(a)-(d); Tex. Loc. Gov't Code § 42.042(a)-(f).
6. Applicant satisfied the requirements related to availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1) and 30 Tex. Admin. Code § 293.11(d)(5)(G).
7. The District and the systems and subsequent development will not have an unreasonable effect on: land elevation; subsidence; groundwater level within the region; recharge within the region; natural run-off rates and drainage; water quality; or total tax assessments on all land located within the districts. Tex. Water Code § 54.021(b)(3).

8. Applicant's request for road powers meets all applicable requirements. Tex. Water Code § 54.234; 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a), (b).
9. If the Commission finds that the petition conforms to the requirements of Texas Water Code section 54.015 and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the Commission shall find so by its order and grant the petition. Tex. Water Code § 54.021(a).
10. In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the Commission shall consider: the availability of comparable service from other systems; the reasonableness of projected construction costs, tax rates, and water and sewer rates; and whether the district and its system and subsequent development within the district will have an unreasonable effect on land elevation, subsidence, groundwater level within the region, recharge capability of a groundwater source, natural run-off rates and drainage, water quality, and total tax assessments on all land located within a district. Tex. Water Code § 54.021(b).
11. Sufficient evidence was presented to establish the projects are feasible, practicable, and necessary and would be a benefit to the land included in the District. Tex. Water Code § 54.021.
12. Gary Eckeberger, Michael Gleason, Jay Sterling Gravens, Robert Glenn Holland, and James B. Sammons, III qualify to be temporary directors under Texas Water Code section 54.022.
13. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).
14. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; the budgetary constraints of a state or federal administrative agency participating in the proceeding; and any other

factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).

15. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), an appropriate allocation of transcript costs is: 50 percent to Applicant and 50 percent to Protestants.
16. Applicant's Petition should be granted.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The Petition for Creation of FM 875 Municipal Utility District of Ellis County and the request to acquire road powers is granted, and the District is created under the terms and conditions of Article XVI, Section 59 of the Texas Constitution and Texas Water Code Chapters 49 and 54.
2. The District shall be composed of approximately 283.231 acres of land located in Ellis County, Texas and located entirely within the extraterritorial jurisdiction of Midlothian, contained in the metes and bounds description in Applicant's Exhibit 1, 5, and 8, and attached as Exhibit A.
3. The District shall have, and shall be subject to, all of the rights, duties, powers, privileges, authority, and functions conferred and imposed by the TCEQ and the general laws of the State of Texas relating to municipal utility districts, including road powers under Texas Water Code section 54.234, subject to the requirements of the TCEQ and the general laws of the State of Texas relating to the exercise of such powers.
4. Gary Eckeberger, Michael Gleason, Jay Sterling Gravens, Robert Glenn Holland, and James B. Sammons, III are named and appointed as temporary directors and shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oaths of office. All such bonds shall be approved by the Board of Directors of the District, and each bond and oath shall be filed with the District and retained in its records.
5. The transcript costs are allocated 50 percent to the Applicant and 50 percent to Protestants.

6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
7. The effective date of this Order is the date the Order is final as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.
8. The Commission's Chief Clerk shall forward a copy of this Order to all parties and all affected persons.
9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.
10. This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the petition for creation, nor as a commitment or requirement of the TCEQ in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for TCEQ consideration.

ISSUED:

**TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY**

Jon Niermann, Chairman for the Commission