



OFFICE OF THE  
HARRIS COUNTY ATTORNEY  
**CHRISTIAN D. MENEFEE**

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June 6, 2025

**Via Email: Laurie.Gharis@tceq.texas.gov**

**First Class Mail and CMRRR No.** 9214 8901 9137 2500 4581 58

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

Re: Harris County's Response in Support of Request for a Contested Case Hearing;  
Bissonnet 136, LLC; TCEQ Docket No. 2025-0542-DIS

Dear Mrs. Gharis,

Harris County, a local subdivision of the State of Texas, files this response in support of the request for a contested case hearing regarding Bissonnet 136, LLC's petition for the creation of Harris County Municipal Utility District No. 584 with the Texas Commission on Environmental Quality. Harris County respectfully requests that the Commission find that Harris County is an affected person and grant the request for a contested case hearing.

Respectfully submitted,

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**TCEQ DOCKET NO. 2025-0542-DIS**

<b>PETITION FOR THE CREATION OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>HARRIS COUNTY MUNICIPAL</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>UTILITY DISTRICT NO. 584</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
	<b>§</b>	

**REQUESTOR HARRIS COUNTY'S RESPONSE IN SUPPORT OF HEARING  
REQUEST**

**To the Members of the Texas Commission on Environmental Quality:**

Harris County, a local subdivision of the State of Texas, files this Response in support of its request for a contested case hearing regarding the Petition for Creation of Harris County Municipal Utility District No. 584 (Petition) submitted by Bissonnet 136, LLC. Harris County respectfully requests that the Commission find that Harris County is an affected person and grant the request for a contested case hearing.

**I. Summary**

The Harris County Attorney's Office requested a contested case hearing on behalf of Harris County in its public comment filed by on June 14, 2024. The County's request was based upon concerns about whether Municipal Utility District No. 584 (MUD 584) is feasible, practicable, and necessary and how the district and its system and subsequent development will impact drainage, water quality, and human health and the environment. For the reasons discussed herein, the Harris County Attorney's Office requests that the Commission find that Harris County is an affected person and grant its request for a contested case hearing.

**II. Background**

The proposed MUD will include approximately 137 acres within the Alief neighborhood of southwest Houston. MUD 584 will construct water, sewer, drainage, paving, park and

recreational facilities to serve the forthcoming mixed development.<sup>1</sup> This site includes the entirety of the Olshan and Doty Landfills. Doty Landfill remains in post-closure care, and that care has been inconsistent, causing methane and other vapor intrusion issues that have continued over the past several years. The combined land was acquired by Bissonnet 136, LLC in 2019.

The proposed District is located entirely within Harris County, Texas. On June 5, 2024, Harris County Commissioners Court authorized the Harris County Attorney's Office to oppose the Petition and take any and all steps necessary to protect the interests of the County.

### III. Applicable Law

#### MUD Creation

The creation of a municipal utility district (MUD) is governed by Chapters 49 and 54 of the Texas Water Code (TWC) and the Commission's administrative rules found in Title 30, Chapter 293 of the Texas Administrative Code (TAC). A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and

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<sup>1</sup> Petition to the TCEQ for Creation of the Harris County Municipal Utility District No. 584; Engineering Report for the Creation of Municipal Utility District No. 584.

(8) the preservation of natural resources of the state.<sup>2</sup>

In considering whether to grant or deny a petition, the Commission shall determine whether the petition includes the minimum required content, and whether the project is feasible, practicable, necessary, and would be a benefit to the land to be included in the district.<sup>3</sup> In making this determination, the Commission shall consider the following:

(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.<sup>4</sup>

If the Commission finds that the project is not feasible, practicable, necessary, and a benefit to the land in the district, the Commission shall deny the petition.<sup>5</sup>

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<sup>2</sup> Tex. Water Code § 54.012.

<sup>3</sup> Tex. Water Code §§ 54.015, 54.021(a).

<sup>4</sup> Tex. Water Code § 54.021(b).

<sup>5</sup> Tex. Water Code § 54.021(d).

### Affected Person Determination

The Commission shall hold a public hearing if requested by the Commission, Executive Director, or an “affected person.”<sup>6</sup> An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application, which is not common to members of the general public.<sup>7</sup>

The Commission is given flexibility to determine affected person status by considering any and all relevant factors, including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.<sup>8</sup>

#### IV. Harris County’s Hearing Request

### Harris County is an Affected Person

Harris County is a local government with the authority to inspect for compliance with state environmental statutes and TCEQ rules issued thereunder, investigate facilities within the county,

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<sup>6</sup> Tex. Water Code § 49.011(c).

<sup>7</sup> 30 Tex. Admin. Code § 55.256(a).

<sup>8</sup> 30 Tex. Admin. Code § 55.256(c).

and pursue enforcement.<sup>9</sup> Harris County Pollution Control (Pollution Control) has made several public comments expressing great concern for human health and the environment as it relates to the proposed district and subsequent development of the land encompassing the Doty and Olshan landfills. These comments were submitted on November 17, 2023, February 5, 2024, April 8, 2024 (two separate letters), and May 21, 2024 and were referenced in Harris County's original request for a contested case hearing. Harris County's concerns include specific issues with the Petition which are informed by its role as a local government entity and the unique insights, rights, and duties ascribed therein. These concerns are discussed below in detail. Further, Harris County substantially complied with the requirements to request the contested case hearing set forth in the Texas Administrative Code.<sup>10</sup>

A. Harris County's interests are protected by the law under which the application will be considered

As a local government entity and environmental authority, Harris County works closely with the TCEQ and fields a substantial portion of environmental complaints that come into the TCEQ Houston regional office. It is Pollution Control's duty to perform both routine and complaint-driven inspections and refer cases that require civil or criminal enforcement to the Harris County Attorney's Office or Harris County District Attorney's Office, respectively. As the proposed district is entirely within its jurisdiction, Harris County would have regulatory authority over the proposed district, its wastewater, stormwater, and drainage conveyances, and the environmental impact of the system and subsequent development within the district. As such, Harris County's interests are protected under the Texas Water Code, which also provides both the

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<sup>9</sup> Harris County has the same authority as the TCEQ to inspect, investigate, and pursue enforcement within in jurisdiction. *See* Tex. Water Code § 26.173; Tex. Health & Safety Code §§ 361.032, 382.111.

<sup>10</sup> 30 Tex. Admin Code § 55.251.

governing law and factors to be considered in the creation of the district. In addition to its authority to regulate and enforce compliance, Harris County has a duty to protect the environment, health, and welfare of its residents.

B. There is a reasonable relationship between Harris County's interests and the creation of MUD 584

Harris County's interests go beyond a reasonable relationship—they are directly related to the creation of the proposed district. In its hearing request, Harris County raised several concerns about the specific negative impacts of the proposed district. These include impacts on runoff rates, drainage, and water quality, as well as the adequacy of the Petition and its supporting documents. Further, Pollution Control's concerns are informed by the inconsistent and adverse history of the land which is not accounted for within the Petition. These concerns include: (1) inadequacy of the market study and financial statement which does not consider the financial requirements of post-closure care and adverse property conditions; (2) inadequacy of the estimated costs and financing which do not consider the additional costs related to preventing impacts to the landfill cap, leachate migration, water quality, and landfill gas; (3) inadequacy of the engineering report in considering and identifying the effects on runoff rates, drainage, and water quality, and; (4) whether the creation of MUD 584 is feasible, practicable, and necessary, and will benefit the land as required.

C. As a co-permittee of a Texas Pollutant Discharge Elimination System, Permit Harris County has an interest in ensuring that MUD 584 is prohibited from such discharges

As a member of the Storm Water Management Joint Task Force, Harris County has an additional specific interest in the proposed creation of MUD 584. As a member of this task force, Harris County is a co-permittee of the Texas Pollutant Discharge Elimination System (TPDES)



Permit which authorizes the discharge of stormwater from all portions of the Municipal Separate Storm Sewer System (MS4). This permit requires the co-permittees to prohibit non-stormwater discharges and the County has an interest in ensuring that the proposed district is prohibited from such discharges. Additionally, given the inconsistent history of the land within the proposed district, the discharges coming from within the district may contain chemicals of concern, directly impacting compliance with the MS4 Permit. As such, Harris County has a specific justiciable interest in the Petition, the creation of the district and any subsequent development that are unique from other interests.

The Proposed District is Not Feasible, Practicable, and Necessary, and Will Not Benefit the Land as Required.

A. The proposed district, its system, and subsequent development within the district will have an unreasonable effect on subsidence

Harris County is concerned with the unreasonable effect that a disturbance such as the creation of a MUD will have on subsidence of the land encompassed in the proposed district. Based on the applicable factors, a district that has an unreasonable effect on subsidence is not feasible, practicable, or necessary, and will not benefit the land as required.<sup>11</sup> All available datasets indicate that the specific site for the proposed district is experiencing subsidence at a higher rate than surrounding areas and has been experiencing subsidence over the past three decades, even where the surrounding area has experienced little to no subsidence. The subsidence at this site has remained significantly higher than the surrounding area without additional manipulation such as that proposed by the Petition. The addition of loads, construction within and on top of the ground,

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<sup>11</sup> Tex. Water Code § 54.021(b)(3)(B).

and compaction will accelerate the subsidence, which is known to damage infrastructure and increase flood risks. This site is already at risk due to its history and damaged infrastructure will also negatively impact stormwater, drainage, and water quality. This is not accounted for in the Petition or any of the supporting documents and thus, there is no proper plan in place to mitigate the unreasonable impact the proposed district will have. Further, subsidence does not fall under any other regulatory schemes and must be uniquely and specifically considered at this stage of development.

B. The proposed district, its system, and subsequent development within the district will have an unreasonable effect on run-off rates and drainage

The proposed district and the subsequent development will contribute to increased runoff at a faster rate into the local waters and potentially exacerbate the flooding issues that already plague Harris County. Pursuant to the factors for granting or refusing a petition, a project that will cause an unreasonable effect on natural run-off rates and drainage is not feasible, practicable, or necessary, and will not benefit the land.<sup>12</sup> The neighborhood in which the proposed district lies is particularly vulnerable to flooding because most of the area is low-lying. This area experiences flooding even during regular rain events and the localized flooding will be aggravated by changes in the drainage flow and increased runoff. In addition, and as discussed above, the increased rate of subsidence will also have negative impacts on the run-off rates and drainage. Taking into consideration the history of the land within the proposed district, there is also a legitimate concern that the excess run-off and drainage will contain chemicals of concern. This supports Harris County's concern that this district will have an unreasonable effect on water quality. Further, a

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<sup>12</sup> Tex. Water Code § 54.021(b)(3)(E).

district that causes an unreasonable effect on run-off, drainage, and water quality is not feasible, practicable, or necessary, and will not benefit the land.<sup>13</sup>

C. The proposed district does not adequately address the projected costs associated with this development

The Petition does not appropriately quantify and account for the additional costs that are associated with this development specifically due to the site's characterization and environmental history, thus the Petition has not reasonably projected the costs associated with this district and it is not feasible, practicable, or necessary, and will not benefit the land.<sup>14</sup> This MUD is atypical and filing the Petition without proper consideration of these factors is to the applicant's detriment. Though the applicant is not the permittee for the landfill and offers that it does not hold the responsibility of the permittee, any realistic cost projections must consider the capital improvement costs that are unique to this particular site –a former landfill in post-closure care. The additional costs include leachate management, gas collection, and possible environmental remediation as the proposed district causes disturbances to the landfill below. These are not costs of operation, but capital improvement costs that are an essential part of the creation of the proposed district and thus, an essential part of the Petition.

Harris County is Within its Own Statutory Authority in Challenging the Petition for Creation of MUD 584

As is illustrated in this response and Harris County's original comment requesting a contested case hearing, Harris County has statutory authority and regulatory rights, to challenge

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<sup>13</sup> Tex. Water Code § 54.021(b)(3)(E-F)

<sup>14</sup> Tex. Water Code § 54.021(b)(2).

the Petition for creation of MUD 584. Harris County's actions in opposing this petition are supported by the governing body of this county, the commissioners court. Harris County is an independent, local government authority and pursues interests related to its specific role within the county.

Harris County's review of this petition and any subsequent application is independent of the preliminary consent afforded by the City of Houston and as a separate and distinct legal entity, Harris County is not bound by any action taken by the City of Houston. While the City of Houston holds the right to consent to creation of the district, Harris County, as a separate legal entity, has its own independent authority to step in when the district, its systems, and subsequent development within the district will cause unreasonable environmental harms that fall under Harris County's jurisdiction or threaten our regulatory compliance. Further, Harris County's statutory authority works in tandem with the TCEQ's regulatory scheme to enforce local and state environmental laws, and its status as an affected person is recommended by both the Commission's Executive Director and the Commission's Office of Public Interest Counsel.

## V. Conclusion

Harris County has sufficiently established that it is an affected person with the right to a contested case hearing in regard to the petition for creation of MUD 584 and respectfully requests that the Commission find the same and refer the matter to the State Office of Administrative Hearings.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2025, the original of the Harris County's Response in Support of Hearing Request was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.

/s/ Adrianna Ivory  
Adrianna Ivory

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

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