

# Texas Commission on Environmental Quality

## TECHNICAL MEMORANDUM

To: Texas Commission on Environmental Quality Date: September 23, 2009

Thru: Doug Holcomb, P.E., Manager, Utilities & Districts  
Alex A. (Skip) Ferris, P.E., Leader, Districts Review Team

From: Districts Review Team

Subject: Docket No. 2009-0487-DIS. Petition for the Conversion of Memorial Hills Utility District of Harris County; Pursuant to Texas Water Code, Chapters 49 and 54.  
TCEQ Internal Control No. 12082008-D04  
CN:600623243 - RN:101453629

### DESCRIPTION OF APPLICATION

Applicant: Memorial Hills Utility District (District)  
Request: Conversion to a Municipal Utility District (MUD)  
Type: Conversion  
Authority: Texas Water Code Chapters 49 and 54

### STAFF RECOMMENDATIONS

Grant the request of Memorial Hills Utility District (MHUD) of Harris County for conversion to a Municipal Utility District.

### TECHNICAL INFORMATION

General: The application requests Commission approval for conversion of MHUD to a Municipal Utility District. According to the application, MHUD found that it is necessary and desirable to convert to a (MUD) because a MUD would be a benefit to the land and serve the best interest of the District.

### ANTICIPATED RESPONSE

### CONTACT

Greg Charles, Technical Manager, Districts Review Team – (512) 239-4638  
Herman Little, Attorney, representing petitioner – (713) 652-6512

Prepared by: Greg Charles  
Districts Review Team

Date: 9/23/09

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## AN ORDER AUTHORIZING THE CONVERSION OF MEMORIAL HILLS UTILITY DISTRICT INTO A MUNICIPAL UTILITY DISTRICT

DOCKET NO. 2009-0487-DIS

On November 4, 2009, the Texas Commission on Environmental Quality (Commission) met in regular session at its offices in Austin, Texas, with notice of the meeting issued in compliance with the Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 - 551.146 and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001 - 2001.902, to consider the application of Memorial Hills Utility District (District) for conversion into a municipal utility district (MUD) pursuant to TEX. WATER CODE §§ 54.030 - 54.036 and 30 TEX. ADMIN. CODE § 293.15.

The Commission has jurisdiction to consider this matter and the following Findings of Fact and Conclusions of Law are appropriate after examining the application and supporting documentation:

### FINDINGS OF FACT

1. On December 8, 2008, an application (including the District's Resolution) requesting the conversion of the District into a municipal utility district was filed with the Commission pursuant to TEX. WATER CODE, Chapter 54, and 30 TEX. ADMIN. CODE § 293.15.
2. The Resolution adopted by the governing body of the District on July 22, 2008, declares that in the judgment of the governing body, conversion of the District into a municipal utility district will serve the best interests of the District and will be of benefit to the land and property within its boundaries, and the governing body requests that the Commission hold a hearing on the question of the conversion of the District pursuant to TEX. WATER CODE § 54.031.
3. The Executive Director reviewed the application and found that conversion to a municipal utility district will serve the best interests of the District and will be a benefit to the land within the District's boundaries.
4. The District desires to convert to a MUD to provide street or security lighting, to enforce real property restrictions, and to request voter approval of bonds for street repairs and maintenance.
5. Proper notice of the application was given by publication on August 13, 2009, and August 20, 2009, in the Houston Chronicle newspaper regularly published and generally circulated in Harris County, Texas where the District is located, pursuant to TEX. WATER CODE ANN. § 54.032 and 30 TEX. ADMIN. CODE § 293.15.

6. The appropriate and necessary deposits and fees associated with the filing of the petition have been paid to the Commission.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider the application and is authorized to make and enter its Findings of Fact, Conclusions of Law, and Orders with respect to the request for conversion of the District into a municipal utility district.

2. The application of the District conforms in all respects to TEX. WATER CODE §§ 54.030 - 54.036 and 30 TEX. ADMIN. CODE § 293.15, is in proper and legal form, and the purposes thereof are lawful.

3. All statutory and regulatory requirements for conversion of the District into a municipal utility district have been fulfilled pursuant to TEX. WATER CODE ANN. §§ 54.030 - 54.036 and 30 TEX. ADMIN. CODE § 293.15.

NOW THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1.) The District's request for conversion of the District into the Memorial Hills Municipal Utility District is hereby granted.

2.) The converted district shall operate under the terms and conditions of Article XVI, Section 59 of the TEXAS CONSTITUTION and TEX. WATER CODE, Chapters 49 and 54.

3.) The District shall have and may exercise all the powers, authority, functions, duties, and privileges provided in TEX. WATER CODE, Chapter 54 in the same manner and to the same extent as if the district had been created under that chapter.

4.) The District shall file a copy of this Commission Order in the deed records of Harris County, Texas.

5.) The Chief Clerk of the Commission shall forward a copy of this Order to all affected persons.

6.) If any provision, sentence, clause or phrase of this Order is, for any reason, held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

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For the Commission

# Texas Commission on Environmental Quality

## TECHNICAL MEMORANDUM

To: Texas Commission on Environmental Quality Date: July 7, 2009  
Thru: *RN* Doug Holcomb, P.E., Manager, Utilities and Districts Section  
*RN* Alex A. (Skip) Ferris, P.E., Leader, Districts Review Team  
From: *RN* for Districts Review Team  
Subject: Docket No. 2009-0487-DIS. Memorial Hills Utility District of Harris County; Application for Conversion to a Municipal Utility District. Pursuant to Texas Water Code, Chapters 49 and 54.  
TCEQ Internal Control No. 12082008-D04 (TC)  
CN:600623243 - RN:101453629

### A. GENERAL INFORMATION

The July 22, 2008 resolution within the application requests Commission approval to convert the District from a water control and improvement district (WCID), operating under Chapters 49 and 51 of the Texas Water Code to a municipal utility district (MUD) operating under Chapters 49 and 54 of the Texas Water Code.

#### Location and Access

The District is located along FM 1960 approximately 2 miles east of IH 45 and 22 miles north of downtown Houston. Access to the District is via FM 1960 and Aldine-Westfield Road. The District is entirely within the extra-territorial jurisdiction of the City of Houston.

#### History

Memorial Hills Utility District was created by a special act of the 61<sup>st</sup> Texas Legislature on May 6, 1969 as a WCID with an area of 266.38 acres in Harris County. Subsequently, the District has annexed several tracts resulting in a current area of 418.99 acres.

Exhibit "B":

**B. ENGINEERING ANALYSIS**

Land Use – Status of Development

The land use for the proposed District is projected in the following table:

<u>Development</u>	<u>Acres</u>	<u>ESFCs<sup>(1)</sup></u>
Single/Multi-Family Residential/Commercial	158.885	950 <sup>(2)</sup>
Remaining developable acreage	172.337	0 <sup>(3)</sup>
Water plant site	1.120	0
Wastewater treatment plant site	5.130	0
Permanent floodplain	<u>81.522</u>	<u>0</u>
Total	418.994	950

Notes: (1) Equivalent single-family connections.

(2) Includes 294 single-family homes, 72 ESFCs for multi-family, and 584 ESFCs for commercial development.

(3) Projections were not provided for this acreage.

Water Supply

The District's water supply system consists of one water plant with 2 wells having a total capacity of 1,750 gallons per minute (gpm), pressure tanks with a total capacity of 20,000 gallons, ground storage tanks with a total capacity of 420,000 gallons, and booster pumps with a total capacity of 2,150 gpm.

Wastewater Treatment

The District's wastewater treatment is provided by a 0.500 million gallons per day plant. The District is proposing to issue bonds in the near future to include funds for a new wastewater treatment plant.

Storm Drainage

Storm water drainage from within the District will generally drain through underground lines in a northerly direction into Cypress Creek.

Floodplain

According to the information provided, the latest Federal Emergency Management Agency (FEMA) Federal Insurance Rate Map (FIRM) Panel No. 48201C0270L, revised June 18, 2007 indicates that 91.4 acres of land within the District are in the 100-year floodplain. The wastewater treatment plant (5.13 acres) and 4.7 acres of developed property are located in the floodplain.

**C. SUMMARY OF COST**

The District is planning on issuing bonds in the near future with preliminary costs shown as follows:

<u>Construction Costs</u>	<u>District's Share</u>
<b>A. Developer Contribution Items</b>	
None	
<b>B. District Items</b>	
1. Auxiliary Generator for Water Plant No. 1	\$ 450,000
2. Wastewater Treatment Plant	300,000
3. Wastewater Collection System Rehabilitation	3,500,000
4. Engineering (15% of Items 1-3)	<u>637,500</u>
Total District Contribution Items	<u>\$ 4,887,500</u>
<b>TOTAL CONSTRUCTION COSTS (81.5% of BIR)</b>	<b>\$ 4,887,500</b>
 <u>Non-Construction Costs</u>	
A. Legal Fees (2.7%)	\$ 161,000
B. Fiscal Agent Fees (1.8%)	110,000
C. Interest	
Capitalized Interest (18 months @ 6%)	540,000
D. Bond Discount (3%)	180,000
G. Bond Issuance Expenses	61,500
H. Bond Application Report Costs	45,000
I. TCEQ Bond Issuance Fee (0.25%)	<u>15,000</u>
<b>TOTAL NONCONSTRUCTION COSTS</b>	<b><u>\$ 1,112,500</u></b>
<b>TOTAL BOND ISSUE REQUIREMENT</b>	<b>\$ 6,000,000</b>

Eligibility of costs for District funding and 30% developer contribution requirements will be determined in accordance with Commission rules in effect at the time bond applications are reviewed.

**D. PROJECT FEASIBILITY**

Project Financing

According to a Harris County Appraisal District certificate, the District's June 1, 2008 estimated taxable assessed valuation (AV) is \$76,293,935. Projected value was not indicated for undeveloped land; however, the District's value is expected to increase once additional development occurs.

The District's financial advisor submitted a cash flow schedule considering the bond amount of \$6,000,000, an AV of \$70,504,196, capitalized interest of 12 months, a bond interest rate of 6.00%, a collection rate of 95%, and a projected tax rate of \$0.695 per \$100 assessed valuation. The Utilities and Districts Section's financial analyst has reviewed the financial information submitted and concluded that a \$0.64 tax rate would be necessary to meet debt service requirements for a \$6,000,000 bond issue with a coupon bond interest rate of

6.00%, a 26-year bond life, an average annual debt service requirement of approximately \$452,573, a 95% collection rate, and an assessed valuation of \$76,293,935.

The 2008 overlapping tax rates within the District are shown in the following table:

<u>Taxing Jurisdiction</u>	<u>Tax per \$100 valuation</u>
Harris County	\$ 0.61809
Port of Houston Authority	0.01773
Aldine ISD	1.29200
Lone Star College System	0.11440
Emergency Service District #7 (Fire)	0.06000
Emergency Service District #11 (EMS)	0.03000
Proposed Memorial Hills MUD	<u>0.64000</u>
Total tax per \$100 valuation	\$ 2.77222

Water and Wastewater Rates

According to information provided, the estimated monthly fee for 10,000 gallons of water and wastewater would be approximately \$18.75 for single-family, \$8.00 for multi-family, and \$15.00 for commercial. The District did not indicate a projected maintenance tax; therefore it is assumed that service rates will be adequate to meet project operating expenses.

Comparative Water District Tax Rates

A comparison of surrounding water district tax rates are presented as follows:

<u>District</u>	<u>Debt Service Tax</u>
Inverness Forest Improvement District	\$ 0.450
North Park Public Improvement District	0.460
Richey Road Municipal Utility District	0.250
Woodcreek Municipal Utility District	0.510
Timber Lane Utility District	0.720
Harris County Water Control & Improvement District No. 136	0.260
Harris County Municipal Utility District No. 43	0.595
Harris County Municipal Utility District No. 82	0.780

**E. SPECIAL CONSIDERATIONS**

1. Notification of City

The District is entirely within the extraterritorial jurisdiction of the City of Houston (City), except for certain areas of commercial development within the District, which are within the corporate limits of the City for limited purposes, pursuant to a Strategic Partnership Agreement by and between the District and the City. By letter dated November 11, 2008, the District filed a copy of the District's Resolution for Conversion to a municipal utility district with the City.

2. District Name

The District's application does not request a name change. Therefore, upon conversion the District's name will remain Memorial Hills Utility District.

3. Reasons for Conversion

Application material indicates that the District wants to convert to a MUD to provide additional services including street or security lighting, enforcement of real property restrictions, and issue bonds for street repairs or maintenance to prevent their condition from affecting drainage. The District did not indicate costs or a time to perform such functions. If bonds were needed for road maintenance, a proposition would be submitted to District voters.

**F. CONCLUSIONS**

1. Based on a review of the application and supporting documents, the conversion of the District to a MUD is considered feasible under the feasibility limits prescribed by 30 TAC Section 293.59.
2. The conversion to a MUD would be a benefit to the land and serve the best interest of the District.
3. The recommendations are made under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

**G. RECOMMENDATIONS**

1. Grant the District's request for conversion from a Water Control and Improvement District operating under Chapters 49 and 51 of the Texas Water Code to a Municipal Utility District operating under Chapters 49 and 54 of the Texas Water Code.
2. The name of the District after conversion will remain as Memorial Hills Utility District.

Texas Commission on Environmental Quality

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July 7, 2009

H. ADDITIONAL INFORMATION

The District's consultants are listed as follows:

Attorney: Herman Little – Smith Murdaugh Little & Bonham LLP

Engineer: Jeff Vogler, P.E. – Van De Wiele Engineering, Inc.



Greg Charles  
Districts Review Team

Attachment: Location Map

MEMORIAL HILLS UTILITY DISTRICT

Resolution for Conversion of District into a  
Municipal Utility District

The Board of Directors ("Board") of Memorial Hills Utility District ("District") met at the Memorial Hills Clubhouse, 2225 Briarcreek Blvd., Houston, Texas 77073 on July 22, 2008, with a quorum of directors present, as follows:

James S. Pomirko, President  
Peter O. Herbert, Vice President  
Patricia K. Collings, Secretary  
Oscar E. Davis, Director  
Wesley Wittenborn, Director

and the following absent:

None

when the following business was transacted:

The resolution set out below was introduced and considered by the Board. It was then moved, seconded and unanimously carried that the following resolution be adopted:

WHEREAS, the District is a water control and improvement district and a conservation and reclamation district created under Article XVI, Section 59 of the Texas Constitution and operating under Chapters 49 and 51, Texas Water Code, as amended; and

WHEREAS, all land within the District is located within Harris County, Texas;  
and

WHEREAS, the Board has considered a proposal for conversion of the District into a municipal utility district operating under Chapter 54, Texas Water Code, and has determined that it would serve the best interest of the District and would be a benefit to the land and property included in the District; and

WHEREAS, the Board desires that the Texas Commission on Environmental Quality schedule and hold a hearing on the conversion of the District to a municipal utility district.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of Memorial Hills Utility District as follows:

1. All facts and statements contained in the foregoing recitals are true and correct.

2. The Board finds and declares, pursuant to Section 54.030, Texas Water Code, as amended, that conversion of the District to a municipal utility district operating under Chapter 54, Texas Water Code, as amended, and Article XVI, Section 59 of the Texas Constitution, would serve the best interest of the District and would be a benefit to the land and property included in the District.

3. The Board requests, pursuant to Section 54.030, Texas Water Code, as amended, that the Texas Commission on Environmental Quality hold a hearing on the question of the conversion of the District to a municipal utility district operating under Chapter 54, Texas Water Code, as amended, and Article XVI, Section 59 of the Texas Constitution.

4. The Board finds and declares, pursuant to Section 54.032, Texas Water Code, as amended, that upon notification from the Texas Commission on Environmental Quality that a time, date, and place for a hearing on the question of the conversion of the District to a municipal utility district operating under Chapter 54, Texas Water Code, as amended, and Article XVI, Section 59 of the Texas Constitution, has been set, the Board shall properly post notice of the hearing pursuant to the requirements of Section 54.032, Texas Water Code, as amended.

5. The findings of the Board in this resolution are final and are not subject to appeal or review.

APPROVED AND ORDERED this 22nd day of July, 2008.

JAMES S. POMIRKO

\_\_\_\_\_  
President

ATTEST:

PATRICIA K. COLLINGS

\_\_\_\_\_  
Secretary

I, the undersigned secretary of the board of directors of Memorial Hills Utility District, hereby certify that the foregoing is a true and correct copy of the Resolution for Conversion of District into a Municipal Utility District operating under chapter 54, Texas Water Code, adopted by said board at its meeting of July 22<sup>nd</sup>, 2008, together with excerpts from the minutes of said board's meeting on that date showing the adoption of said resolution, as same appears of record in the official minutes of the board, on file in the District's office.

I further certify that said meeting was open to the public, and that notice thereof was posted in compliance with the provisions of Tex. Gov't. Code Ann. § 551.001 et seq.

Witness my hand and the official seal of said District, this July 22, 2008.

*Patricia K. Collins*  
Secretary



RECEIVED  
TCEQ WATER SUPPLY

SMITH, MURDAUGH, LITTLE & BONHAM, L.L.P.

W. JAMES MURDAUGH, JR.  
HERMAN I. LITTLE, JR.  
JAMES D. BONHAM  
SARA J. ANDERSON  
LORI G. AYLETT  
MELISSA P. KILPATRICK  
WM. SCOTT SMITH  
G. TAYLOR GOODALL, JR.

ATTORNEYS AT LAW  
1100 LOUISIANA STREET  
SUITE 400

HOUSTON, TEXAS 77002-5211

713/652-6500

TELECOPIER 713/652-6515

2009 MAY 11 PM 3:52

CYRIL J. SMITH  
(1957-1982)

May 8, 2009

Mr. Gregg Charles (MC-152)  
Districts Review Team  
Utilities and Districts Section  
Water Supply Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Memorial Hills Utility District  
Conversion Application  
TCEQ Internal Control No. 12082008-D04 (NOD1)  
CN: 60062343 RN: 101453629

Dear Mr. Charles:

This is to respond to your April 9, 2009 letter and your email dated April 14, 2009 requesting additional information about the referenced application.

As I mentioned in our telephone conversation following receipt of your April 9 letter, the board of directors' resolution forwarded with the application is sufficient to state the legal basis for the application. I understand, however, that you need additional information about the reasons to convert the district to a municipal utility district, and the following is presented to address your request:

Advantages to Conversion to a Municipal Utility District

In its Resolution for Conversion of District into a Municipal Utility District the board of directors made findings required in the Texas Water Code that conversion would serve the best interest of the District and would be a benefit to the land and property included in the District.

In reaching such findings, the board of directors considered the nature of the residential community within the District, which is quite small in comparison to the majority of development in the District, which consists of commercial development along FM 1960.

The Memorial Hills subdivision contains 276 single family residential lots and 116 townhouse and apartment units. There is a homeowners association in the single family residential community that owns and operates a clubhouse, swimming pool and playground. The District board of directors is well acquainted with the officers and business affairs of the homeowners association, and the monthly District board of directors meetings are held in the community clubhouse.

The District board of directors is aware of several provisions of Texas Water Code, Chapter 54, that grant authority to municipal utility districts that are not applicable to water control & improvement districts. It is the board's belief that having the ability to act within the authority of a municipal utility district would enable the District to provide greater benefits and services to the community. Such provisions include:

Section 54.236 - Street or Security Lighting;

Section 54.237 - Enforcement of Real Property Restrictions, and

Section 54.522 - Bonds for Street Repairs or Maintenance.

The District has no specific plans to install, operate or maintain street lights in the community, but having the legal authority to do so could be valuable to the District and the community in certain circumstances. Similarly, the District's having authority to enforce deed restrictions could enable the District to take actions that would be advantageous to the community, particularly the residential areas. The residential sections are the oldest areas of the District, (see discussion under Item 3 below) and enforcement of deed restrictions often becomes difficult in older subdivisions. The District would like to have the opportunity to enforce restrictions if the community could be benefited.

As to street repairs and maintenance, the District may wish to take action to prevent the condition of a street in the District from adversely affecting storm water and flood water or that would impede the District's ability to accomplish its purposes. It would be necessary for the District's voters to approve bonds for street repairs and maintenance before the District could undertake such tasks, but conditions could arise in which the District board of directors would want to present a proposition to the voters for approval of bonds in order to take such steps when necessary.

As long as the District remains a water control & improvement district, none of the foregoing authority and actions will be possible. The District board of directors strongly believes that having municipal utility district powers would allow the District to provide increased benefits to the land and property contained within the District that are not now possible, both for the benefit of the residents of the Memorial Hills and for the many commercial customers served by the District.

The following information is presented in response to your April 14, 2009 email:

1. Location description and map (8 ½ x 11 for notice publication) is enclosed.
2. Boundary description (metes and bounds for notice publication) is enclosed.
3. History of Memorial Hills Utility District

Mr. Greg Charles  
May 8, 2009  
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The District was created by special act of the 61<sup>st</sup> Texas Legislature on May 6, 1968 to include 266.3807 acres in Harris County, Texas. In August, 1969, the District added 34.773 acres of land, and on September 13, 1969, voters in the District authorized issuance of \$3,600,000 of bonds to finance water, sanitary sewer and drainage facilities and organizational and administrative costs associated with formation of the District and issuance of the bonds.

On December 22, 1969 the Commission approved the first bond issue of \$1,050,000 which financed initial utility construction in the Memorial Hills, Sections 1-5 single family residential subdivisions within the District.

The District subsequently added six other tracts of land totaling approximately 116.9 acres, most of which are sites for commercial development with frontage on Farm to Market Road 1960. Over the years, the District experienced extensive commercial development along FM 1960 and at the intersections of FM 1960 with Treschwig Road and Aldine-Westfield Road, all of which are major thoroughfares in north Harris County.

In 1974 the District issued a second bond issue of \$265,000 for water, sewer and drainage facilities, and in 1979 the District issued \$1,705,000 of bonds to finance a permanent wastewater treatment plant. In 1985 the District issued its remaining \$580,000 authorized bonds for construction of additional utilities to serve commercial areas of the District.

The District presently provides water and sewer service to approximately 276 single family residences, 116 townhouses and apartment units and 85 commercial connections in several shopping centers and freestanding buildings in the District.

The District's utility system includes one water plant with two wells, pressure tanks, ground storage tanks and booster pumps, and a 0.500 MGD wastewater treatment plant, plus water distribution and sanitary sewer collection lines.

On May 13, 2006, the District's voters approved \$12,000,000 of bonds for improvements to and expansions of the water supply and wastewater treatment and collection facilities:

The District is now preparing a bond application for Commission approval of \$6,000,000 of bonds to finance a new wastewater treatment plant, sanitary sewer collection system rehabilitation and an auxiliary generator for the water plant. The District expects to file the bond application in the third quarter of 2009.

4. Debt service requirement (given the bond amount and assessed valuation) is enclosed.
5. Cost summary of improvements is enclosed.
6. Tax rate (given proposed bond issue)

The debt service tax rate is expected to be \$0.695 per \$100 assessed valuation as indicated in the debt service schedule described in Item 4 above.

Mr. Greg Charles  
May 8, 2009  
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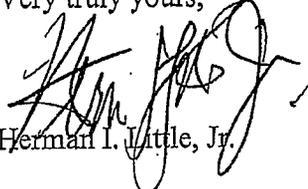
7. The provider of the District water and wastewater services

The District owns and operates a water supply system and a wastewater collection and treatment system with which service is provided to residences and commercial customers within the District. Please see the discussion above under Item 3. The District contracts with Southwest Water Company for operation and maintenance of the District's facilities.

We trust that the foregoing information adequately responds to your letter and email. The District requests that its application be recommended for approval, that a notice of hearing be issued and published and that the Commission conduct a hearing on the District's application at the earliest opportunity

Please call me if there are any questions or if we may provide any other information to assist in your review of the application.

Very truly yours,



Herman I. Little, Jr.

Encl.

cc: Board of Directors  
Jeffrey W. Vogler, P. E.