

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER GRANTING THE PETITION FOR CREATION OF ELLIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 AND APPOINTING TEMPORARY DIRECTORS

A petition by Mac McCoy (hereafter "Petitioner") was presented to the Executive Director of the Texas Commission on Environmental Quality (hereafter "Commission") for approval of the creation of Ellis County Municipal Utility District No. 1 (hereafter "District") pursuant to Article XVI, Section 59 of the TEXAS CONSTITUTION and TEX. WATER CODE, Chapters 49 and 54.

Proper notice of the application was published in the *Midlothian Mirror*, newspaper regularly published or circulated in Ellis County where the district is proposed to be located, on March 22 and March 29, 2006, and posted in Ellis County on a bulletin board used for posting legal notices, on March 21, 2006. Accordingly, the notice requirements of 30 TEX. ADMIN. CODE § 293.12 (b) have been satisfied.

The Commission, after having considered the petition, application material, and Memorandum from the Executive Director's staff dated October 18, 2006 regarding the petition, a copy of which is attached as Exhibit "B", and hereby incorporated by reference, finds that the petition for creation should be approved.

The Commission hereby finds that the creation of the proposed District as set out in the application is feasible, practicable, necessary, would be a benefit to the land to be included in the proposed District, and furthers the public welfare

All statutory and regulatory requirements for creation of Ellis County Municipal Utility District No. 1 have been fulfilled in accordance with TEX. WATER CODE § 54.021 and 30 TEX. ADMIN. CODE §§ 293.11-293.13.

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

1. The petition for the creation of Ellis County Municipal Utility District No. 1 is hereby granted, with the boundary in accordance with a revised metes and bounds description received on September 25, 2006.
2. The District is created 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 all of the rights, powers, privileges, authority, and functions conferred and shall be subject to all duties imposed by the Texas Commission on Environmental Quality and the general laws of the State of Texas relating to municipal utility districts.
4. The District shall be composed of the area situated wholly within Ellis County, Texas, described by metes and bounds in Exhibit "A", attached hereto and incorporated herein for all purposes.
5. The persons listed in Recommendation No. 3 of the Memorandum are hereby named and appointed as temporary directors; each of whom is qualified, as required by 30 Tex. Admin. Code § 293.32(a), to serve as a temporary director of the proposed District since each: (1) is at least 18 years old; (2) is a resident of the State of Texas; and (3) either owns land subject to taxation within the proposed District, or is a qualified voter within the District; and each of whom 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.
6. This Order shall in no event be construed as an approval of any proposed agreement or of any particular item in any document provided in support of the petition for creation, nor as a commitment or requirement of the Commission in the future to approve or disapprove any particular item or agreement in future applications submitted by the District for Commission consideration.
7. This Order shall not constitute approval or recognition of the validity of any provision in the City of Ferris, Texas, Ordinance No. 482, effective January 20, 2004, nor any other ordinance/resolution incorporated therein by reference to the extent that such provision exceeds the authority granted to the City of Ferris by the laws of the State of Texas.
8. The Chief Clerk of the Commission shall forward a copy of this Order to 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 portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

For the Commission

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Texas Commission on Environmental Quality

Date: October 18, 2006

Thru: *RC* Robert Cummins, P.E., Leader, Districts Review Team

From: *RN* Districts Review Team

Subject: Docket No. 2006-0391-DIS. Petition by Mac McCoy for Creation of Ellis County Municipal Utility District No. 1; Pursuant to Texas Water Code Chapters 49 and 54. TCEQ Internal Control No. 02212006-D04 (TC) CN: 602987810 RN: 104892385

A. GENERAL INFORMATION

The petition within the application requests Texas Commission on Environmental Quality (the "Commission") approval for the creation of Ellis County Municipal Utility District No. 1 (the "District"). The petition was signed by Mac McCoy (the "Petitioner"). According to the petition, the Petitioner represents that there are no lienholders on the land in the proposed District.

The District is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

Location and Access

The proposed District is located approximately 1 mile west of downtown Ferris, Texas and is bordered by F.M. 664 to the north and F.M. 983 to the south. Application material indicates that the proposed District is located within the extraterritorial jurisdiction of the City of Ferris, Texas and within Ellis County.

Metes and Bounds Description

The proposed District contains one tract of land totaling 446.26 (448.17 less 1.91) acres. The revised metes and bounds description of the proposed District has been checked by the Commission's staff and has been found to form an acceptable closure.

City Consent

By Ordinance No. 482, effective January 20, 2004, the City of Ferris, Texas, gave its consent to the creation of the proposed District. See Special Consideration No. 2

Statements of Filing Petition

Evidence of filing the petition with the Ellis County Clerk's office and TCEQ's DFW Regional office has been provided.

Type of Project

The proposed District will be considered a "developer project" as defined by Commission rules. Therefore, developer cost participation, in accordance with Commission Rule, 30 TAC Section 293.47, will be required.

Certificates of Ownership

By affidavit dated October 9, 2006 the Ellis County Appraisal District has certified that the tax rolls indicate Mac McCoy is the owner of the property in the proposed District. The documents provided support that the Petitioner owns a majority in value of the land in the proposal District.

Temporary Director Affidavits

The Commission has received affidavits for Commission consideration of the appointment of temporary directors for the following:

Kenneth G. Lott	James H. Toomey	Richard J. Dickirson
Steve Carter (Metro Masonry Construction – employer)		
Robert C. Long (Big Sky construction – employer)		

Each of the above persons is qualified to serve as a temporary director of the proposed District since each: (1) is at least 18 years old; (2) is a resident of the State of Texas; and (3) either owns land subject to taxation within the proposed District or is a qualified voter within the District

Developer Qualifications

Application material indicates Mac McCoy will contract with Shelcan, LLC. to manage and direct development of the proposed District. Shelcan, LLC. has managed numerous single-family land development projects throughout the Dallas area and other communities in Texas.

Notice

Proper notice of the application was published on March 22 and 29, 2006, and posted in Ellis County on March 21, 2006.

B. SPECIAL CONSIDERATIONS

1. Revised District Acreage

A revised metes and bounds description which reduced the total acreage of the proposed District to 446.26 acres was received on September 25, 2006. Application material states that revised boundary is completely within the petitioned and noticed area; staff have reviewed maps provided and the assertion appears accurate.

2. Protest by the City of Ferris

By letter dated March 21, 2006, the City of Ferris recognized that even though it previously consented it now opposes the creation of the proposed District. The City of Ferris indicated that at least two City sponsored improvement districts will extend services to the proposed District area, and the City now has the ability to provide such services. The engineering report indicates that the proposed District will receive water supply from Rockett SUD and wastewater treatment from the City of Ferris. The water supply system within the proposed District will likely be connected to Rockett SUD. It seems unlikely that the City of Ferris would reach an agreement with the proposed District regarding wastewater treatment if they oppose the creation.

C. CONCLUSIONS

1. Based on Commission policy, compliance with Commission rules, and review of the engineering report and supporting documents, the proposed District is considered feasible, practicable, would be a benefit to the land within the proposed District, and would be necessary as a means to finance utilities and to provide utility service to future customers.
2. Based on a review of the preliminary engineering report, market study, the proposed District's water, wastewater, and drainage facilities, a combined projected tax rate of \$0.92, the proposed District obtaining a 6.5% bond coupon interest rate, and other supporting data, the proposed District is considered feasible under the feasibility limits prescribed by Commission Rule, 30 TAC 293.59.

D. RECOMMENDATIONS

1. Grant the petition for creation of Ellis County Municipal Utility District No. 1 with the boundary in accordance with a revised metes and bounds description received on September 25, 2006.
2. The order granting the petition should include the following statements:

"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 Commission in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for Commission consideration."

"This order shall not constitute approval or recognition of the validity of any provision in the City of Ferris creation consent Ordinance No. 482, effective January 20, 2004, and any other ordinance/resolution incorporated therein by reference to the extent that such provisions exceed the authority granted to the City of Ferris by the laws of the State of Texas."

3. Appoint the following persons to serve as temporary directors until permanent directors are elected and qualified:

Kenneth G. Lott

James H. Toomey

Richard J. Dickirson

Steve Carter (Metro Masonry Construction – employer)

Robert C. Long (Big Sky construction – employer)

E. FEASIBILITY OF PROJECT

Market Study

A market study, prepared by Residential Strategies, Inc., has been submitted in support of the creation of the proposed District. The market study indicates the proposed District will contain approximately 1,700 single-family homes with prices averaging from \$95,000 to \$225,000 on 60 to 75-foot lots and are expected to be absorbed at a rate of approximately 84 units per year.

Project Financing

The estimated total assessed valuation of the proposed District at completion is as follows:

	Units Planned	Average Unit Value	Total Value at Build-out
1,600	SF Homes	\$150,000	\$240,000,000
203.4	Multifamily	\$120,000	\$ 24,408,000
26.7 acres	Commercial	\$ 90,000	<u>\$ 2,403,000</u>
		Total Assessed Value:	\$266,811,000

Considering an estimated bond issue requirement of \$26,580,000 (assuming 70% financing), a coupon bond interest rate of 6.5%, and a 28-year bond life, the average annual debt service requirement would be approximately \$2,085,289. Assuming a 95% collection rate and an ultimate assessed valuation of \$266,811,000, a tax rate of approximately \$0.82 per \$100 assessed valuation would be necessary to meet the annual debt service requirements.

The total year 2004 overlapping tax rates on land within the proposed District are shown in the following table:

Taxing Jurisdiction	Tax per \$100 valuation
Ellis County	\$0.34999
Ferris ISD	\$1.77190
Proposed Ellis County MUD 1 ⁽¹⁾	<u>\$0.92000</u>
Total tax per \$100 valuation	\$3.04189

Notes:

(1) Includes \$0.82 estimated for debt service and \$0.10 for a maintenance tax.

Based on the proposed District tax rate and the year 2004 overlapping tax rate on land within the proposed District, the project is considered economically feasible.

Water and Wastewater Rates

According to information provided, the following single-family water and wastewater rates are anticipated:

Water:	Monthly Base Charge	\$23.65 (for ¾" service)
	1 - 10,000 gallons	\$ 3.25 per 1,000 gallons
Wastewater:	Monthly Base Charge	\$ 10.39
	1 - 10,000 gallons	\$ 4.36 per 1,000 gallons

Based on the above rates, the estimated monthly fee for 10,000 gallons of water and wastewater would be \$110.14.

Comparative Water District Tax Rates

An overlapping tax rate of \$3.04 for the proposed District is comparable to other districts in the area, but is somewhat higher than subdivisions within area cities that are not in a district. Based on the requirements of Commission Rule 293.59, this project is economically feasible.

F. PURPOSE

Land Use

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

Development	Acres	ESFCs
Single-Family Residential	324.3	1,600
Commercial/Multi-family	38.0	-0-
School	13.0	-0-
Parks	11.0	-0-
Floodplain/Open Space	<u>60.0</u>	<u>-0-</u>
Total	446.3	1,600

Availability of Comparable Service

The creation engineering report indicates that the proposed District is mostly within the certified service area of Rockett SUD and will receive water supply from Rockett SUD. A small portion, in the northern part, of the proposed District is not within the certified service area of any entity. The engineering report also indicates that wastewater treatment will be from the City of Ferris. All improvements will be designed in accordance with criteria established by the Texas Commission on Environmental Quality, Ellis County, Rockett SUD, and the City of Ferris.

Water Supply and Distribution Improvements

The proposed District will obtain water service from the Rockett SUD and pay impact fees to Rockett SUD. Rockett SUD purchases treated water and has a storage capacity of 11.43 million gallons. The proposed District demand is estimated to be 1.38 million gallons per day (MGD). An on-site booster pump station is expected, which is to include 320,000 gallons of ground storage tank capacity, high service pumps, and hydropneumatic storage tanks. The water distribution system for full development will consist of 70,878 LF of 8 to 16-inch water line. Flushing valves will be provided.

Wastewater Collection and Treatment Improvements

The proposed District intends on receiving wastewater treatment capacity from the City of Ferris in the Trinity River Authority's existing wastewater treatment plant. This plant has a capacity of 24 MGD, and in 2005 was reportedly treating an average of 13.7 MGD. The ultimate required capacity for the proposed District is approximately 560,000 gpd at average flow. The internal wastewater collection system for full development of the proposed District is to consist of approximately 62,312 LF of gravity lines ranging in size from 8 to 15-inch in diameter. Wastewater flows will then be conveyed through facilities to be shared with the City of Ferris, to include 1,900 LF of 18-inch gravity line to an offsite lift station and 4,100 LF of force main to the City of Ferris's existing system.

Drainage Improvements

The storm water runoff within the proposed District will be directed through curb inlets, and approximately 86,148 LF of reinforced concrete storm sewers ranging in size from 18 to 42 inches in diameter and various sizes of box culverts. Collected storm water will out-flow to drainage channels, which will ultimately drain into Long Branch Creek, which ultimately feeds into the Trinity River.

G. DESCRIPTION AND IMPACT ON NATURAL RESOURCES

The preliminary engineering report includes the following findings:

Topography

The area within the proposed District is relatively flat. The land elevations range from approximately 480 to 420 feet mean sea level.

Flood Plain

Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Number 48139C0105D, dated January 20, 1999, indicates that 60 acres are located within Zone A and Zone AE (the 100-year flood plain); however, no development is currently proposed within the flood plain.

Land Elevation

The fill and/or excavation associated with the development of the proposed District's systems will not cause any changes in land elevation other than what is normally associated with construction of utilities

and streets.

Subsidence

No groundwater wells are to be located within the proposed District.

Groundwater Levels

The proposed District does not anticipate using groundwater.

Groundwater Recharge

The proposed District will receive its water from Rockett SUD.

Natural Run-off and Drainage

The existing drainage is through overland flow into Long Branch Creek with ultimate discharge into the Trinity River. The proposed internal drainage system and drainage improvements will adequately drain the development property without adversely affecting adjacent landowners.

Water Quality

No adverse effect on the water quality of ground or surface water is anticipated as a result of this development.

H. SUMMARY OF COSTS

Construction Costs	Total Cost	District Cost
A. Developer Contribution Items		
1. Water Distribution	\$ 2,407,463	\$ 1,685,224
2. Wastewater Collection	2,439,666	1,707,766
3. Storm Drainage	10,647,704	7,453,393
4. Contingencies (14.8% of items 1-3)	<u>2,298,351</u>	<u>1,608,846</u>
Total Developer Contribution Items:	\$17,793,184	\$12,455,229
B. District Items		
1. Water Impact Fees (1,600 ESFCs x \$2,500 per ESFC)		\$ 4,000,000
2. Booster Pump Station/Elevation Tank		586,598
3. Offsite Water Distribution		440,257
4. Offsite Wastewater Collection		468,175
5. Contingencies (14.7% of items 2-4)		<u>219,431</u>
Total District Items:		<u>\$ 5,714,461</u>
TOTAL CONSTRUCTION COSTS (68.4% of BIR)		\$18,169,690
Non-Construction Costs		

A. Legal Fees (3.0%)	\$ 797,400
B. Fiscal Fees (2.0%)	531,600
C. Interest Costs	
1. Capitalized Interest (2 years @ 6.5%)	3,455,400
2. Developer Interest (2 years @ 6.5%)	2,362,060
D. Bond Discount (3.0%)	797,400
E. Bond Issuance Costs	150,000
F. Bond Application Report	100,000
G. Creation Costs	150,000
H. TCEQ Bond Issuance Fee (0.25%)	66,450
TOTAL NON-CONSTRUCTION COSTS (31.6% of BIR)	<u>\$ 8,410,310</u>
TOTAL BOND ISSUE REQUIREMENT	\$26,580,000

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

I. ADDITIONAL INFORMATION

The petitioner's professional representatives are as follows:

Attorney: Mr. Josh J. Kahn - Coats Rose Vale Ryman & Lee, PC
Engineer: Keith Hamilton, P.E. - Hamilton Consulting
Market Analyst: Residential Strategies, Inc.


Sandra Chavez
Districts Review Team

MAILING LIST

Ellis County Municipal Utility District No. 1
TCEQ Internal Control No. 02212006-D04

Mr. Josh J. Kahn
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City of Ferris
Attn: Patricia Bradley - City Secretary
100 Town Plaza
Ferris, Texas 75125

Ellis County
Attn: Cindy Polley - County Clerk
P.O. Box 258
Waxahachie, Texas 75168

North Central Texas Council of Governments
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Arlington, Texas 76012-1827

Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

Todd Galiga, Senior Attorney, Environmental Law Division, MC-173
Sandra Chavez, Technical Manager, Utilities and Districts Section, MC-152
Robert Cummins, Utilities & Districts Section, Water Supply Division, MC-152
Komal Patel, Utilities & Districts Section, Water Supply Division, MC-153
Blas Coy, Office of the Public Interest Counsel, MC-103

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

Requested Agenda Date: March 7, 2007

To: Texas Commission on Environmental Quality Date: February 15, 2007
Thru: Doug Holcomb, P.E., Manager, Utilities and Districts Section
From: Robert Cummins, P.E., Districts Review Team
Subject: Docket No. 2006-0391-DIS. Petition for the Creation of Ellis County Municipal Utility District No. 1; Pursuant to Texas Water Code, Sections 49 and 54, and 30 TAC Section 293.11.
TCEQ Internal Control No. 02212006-D04
CN: 602987810 RN: 104892385

DESCRIPTION OF APPLICATION

Petitioner: Mr. Mac McCoy
Request: Creation of Ellis County Municipal Utility District No. 1
Type: Creation
Authority: Texas Water Code, Sections 49 and 54.

STAFF RECOMMENDATIONS

Grant the request for the creation of Ellis County Municipal Utility District No. 1.

TECHNICAL INFORMATION

General: The petition within the application requests Texas Commission on Environmental Quality (the "Commission") approval for the creation of Ellis County Municipal Utility District No. 1 (the "District"). The petition was signed by Mac McCoy (the "Petitioner"). According to the petition, the Petitioner represents that there are no lienholders on the land in the proposed District.

The proposed District is located approximately 1 mile west of downtown Ferris, Texas and is bordered by F.M. 664 to the north and F.M. 983 to the south. Application material indicates that the proposed District is located within the extraterritorial jurisdiction of the City of Ferris, Texas.

The applicant is requesting approval to create Ellis County Municipal Utility District No. 1 under Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code.

ANTICIPATED RESPONSE

Contested.

CONTACT

Sandra R Chavez, Technical Manager, Districts Review Team – (512)239-6181
Christiaan Siano, Staff Attorney, Environmental Law Division – (512)239-6743
Josh J. Kahn, Attorney, Representing Petitioner – (713)653-7339

Prepared by: Sandra R Chavez
Districts Review Team

Date: February 15, 2007

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST**

Date of Request: February 15, 2007

Requested Agenda Date: March 7, 2007

Persons to Contact Regarding Changes to this Request: Rob Cummins x 6158/ Sandra R Chavez x 6181

CAPTION: Docket No. 2006-0391-DIS. Consideration of a petition from Mr. Mac McCoy (Petitioner), for Creation of Ellis County Municipal Utility District No. 1, Texas, pursuant to Texas Water Code Chapters 49 and 54. The Commission will also consider hearing requests and related responses and replies. (TCEQ Internal Control No. 02212006-D04; Rob Cummins, Christiaan Siano)

Chief Clerk Must send Notice of Application/Hearing: Yes

Type of Matter: Creation

County: Ellis

Uncontested: NO

Contested: YES

Prepared by: Sandra R Chavez

District Applications Team **Date:** February 15, 2007