

City of Wimberley

12111 Ranch Road 12, P.O. Box 2027, Wimberley, Texas, 78676

REGULAR CITY COUNCIL MEETING
WIMBERLEY CITY HALL-CITY COUNCIL CHAMBERS
12111 RANCH ROAD 12, WIMBERLEY, TEXAS
APRIL 2, 2009, 2009 6:30 P.M.

AGENDA

CALL TO ORDER: APRIL 2, 2009 @ 6:30 P.M.

CALL OF ROLL: CITY SECRETARY

INVOCATION

PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG

CITIZENS COMMUNICATIONS:

THE CITY COUNCIL WELCOMES COMMENTS FROM CITIZENS ON ISSUES AND ITEMS OF CONCERN, NOT ON THIS AGENDA. THOSE WISHING TO SPEAK MUST SIGN IN BEFORE THE MEETING BEGINS AND OBSERVE A THREE-MINUTE TIME LIMIT WHEN ADDRESSING COUNCIL. SPEAKERS WILL HAVE ONE OPPORTUNITY TO SPEAK DURING THE TIME PERIOD. SPEAKERS DESIRING TO SPEAK ON AN AGENDA ITEM WILL BE ALLOWED TO SPEAK WHEN THE AGENDA ITEM IS CALLED. INQUIRIES ABOUT MATTERS NOT LISTED ON THE AGENDA WILL EITHER BE DIRECTED TO STAFF OR PLACED ON A FUTURE AGENDA FOR COUNCIL CONSIDERATION.

1. CONSENT AGENDA

THE FOLLOWING ITEMS MAY BE ACTED UPON IN ONE MOTION. NO SEPARATE DISCUSSION OR ACTION IS NECESSARY UNLESS REQUESTED BY A COUNCIL MEMBER OR CITIZEN, IN WHICH EVENT THOSE ITEMS WILL BE PULLED FROM THE CONSENT AGENDA FOR SEPARATE CONSIDERATION.

- (A) APPROVAL OF MINUTES OF THE REGULAR CITY COUNCIL MEETING OF MARCH 19, 2009.
- (B) APPROVAL OF FEBRUARY 2009 FINANCIAL STATEMENTS FOR THE CITY OF WIMBERLEY.

2. PRESENTATIONS

PRESENTATION OF THE QUARTERLY STATUS REPORT FROM REPRESENTATIVES OF THE PEDERNALES ELECTRIC COOPERATIVE

3. **CITY ADMINISTRATOR REPORT**

- STATUS REPORT ON ACTIVITIES OF THE PEC TRIANGLE COMMITTEE
- STATUS REPORT ON CITY COMMITTEE REVIEW OF THE PROPOSED NON-POINT SOURCE POLLUTION ORDINANCE
- STATUS REPORT ON 2009 SPRING WALK CO-SPONSORED BY THE MAYOR'S FITNESS COUNCIL
- STATUS REPORT ON 2009 OPERATIONS PLAN FOR THE BLUE HOLE REGIONAL PARK
- STATUS REPORT ON EFFORTS UNDERWAY TO SECURE STATE AND FEDERAL FUNDING FOR THE DOWNTOWN WASTEWATER PROJECT
- STATUS REPORT ON ACTIVITIES OF THE WIMBERLEY MUNICIPAL COURT
- STATUS REPORT ON ACTIVITIES OF THE CITY MARSHAL

4. **PUBLIC HEARING AND POSSIBLE ACTION**

HOLD A PUBLIC HEARING AND CONSIDER APPROVAL OF AN ORDINANCE APPROVING AN APPLICATION FOR A CONDITIONAL USE PERMIT SUBMITTED BY GARY CALLON TO OPERATE A BED AND BREAKFAST LODGING FACILITY ON AN APPROXIMATELY 1.66 ACRE TRACT LOCATED AT 2410 FLITE ACRES ROAD, WIMBERLEY, HAYS COUNTY, TEXAS, ZONED SINGLE-FAMILY RESIDENTIAL 2 (R2), AND IMPOSING CERTAIN CONDITIONS; AND PROVIDING FOR FINDINGS OF FACT; AMENDMENT OF THE ZONING DISTRICT MAP; REPEALER; SEVERABILITY; EFFECTIVE DATE; PROPER NOTICE AND MEETING; AND PROVIDING FOR CERTAIN CONDITIONS. (*GARY CALLON, APPLICANT*)

5. **DISCUSSION AND POSSIBLE ACTION**

- (A) DISCUSS AND CONSIDER APPROVAL OF A PLAN FOR MOBILITY ENHANCEMENTS FOR THE WIMBERLEY SQUARE. (*TRANSPORTATION ADVISORY BOARD*)
- (B) DISCUSS AND CONSIDER ACTION RELATING TO THE POSSIBLE GRANTING OF ADDITIONAL AUTHORITY TO THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT UNDER CHAPTER 36 OF THE TEXAS WATER CODE. (*MAYOR TOM HALEY*)
- (C) DISCUSS AND CONSIDER APPROVAL OF A ROUTE FOR THE 2009 FOURTH OF JULY PARADE ROUTE. (*CITY ADMINISTRATOR*)

6. **CITY COUNCIL REPORTS**

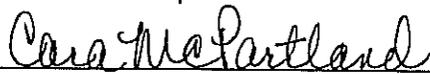
- ANNOUNCEMENTS
- FUTURE AGENDA ITEMS

ADJOURNMENT

THE CITY COUNCIL MAY RETIRE INTO EXECUTIVE SESSION AT ANY TIME BETWEEN THE MEETING'S OPENING AND ADJOURNMENT FOR THE PURPOSE OF DISCUSSING ANY MATTERS LISTED ON THE AGENDA AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE INCLUDING, BUT NOT LIMITED TO, HOMELAND SECURITY PURSUANT TO CHAPTER 418.183 OF THE TEXAS LOCAL GOVERNMENT CODE; CONSULTATION WITH LEGAL COUNSEL PURSUANT TO CHAPTER 551.071 OF THE TEXAS GOVERNMENT CODE; DISCUSSION ABOUT REAL ESTATE ACQUISITION PURSUANT TO CHAPTER 551.072 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF PERSONNEL MATTERS PURSUANT TO CHAPTER 551.074 OF THE TEXAS GOVERNMENT CODE; DELIBERATIONS ABOUT GIFTS AND DONATIONS PURSUANT TO CHAPTER 551.076 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF ECONOMIC DEVELOPMENT PURSUANT TO CHAPTER 551.087 OF THE TEXAS GOVERNMENT CODE; ACTION, IF ANY, WILL BE TAKEN IN OPEN SESSION.

CERTIFICATION

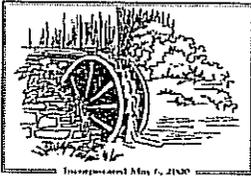
I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the Wimberley City Hall on March 30, 2009 at 5:00 p.m.



CARA MC PARTLAND, CITY SECRETARY

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact Don Ferguson, City Administrator, at (512) 847-0025 for information. Hearing-impaired or speech-disabled persons equipped with telecommunication devices for the deaf may call (512) 272-9116 or may utilize the stateside Relay Texas Program at 1-800-735-2988.

City Council Agenda Form



Date Submitted: March 29, 2009

Agenda Date Requested: April 2, 2009

Project/Proposal Title: APPROVAL OF MARCH 19,
2009 MINUTES OF REGULAR CITY COUNCIL
MEETING

Funds Required:

Funds Available:

Council Action Requested:

- Ordinance
- Resolution
- Motion
- Discussion

Project/Proposal Summary:

Attached are minutes for the March 19, 2009 Regular City Council Meeting for review and consideration.

City of Wimberley
City Hall, 12111 Ranch Road 12, Ste. 114
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
March 19, 2009 at 6:30 p.m.

City Council meeting called to order at 6:31 p.m. by Mayor Tom Haley.

Mayor Haley gave the Invocation and Councilmembers led the Pledge of Allegiance to the United States and Texas flags.

Councilmembers Present: Mayor Haley and Councilmembers Charles Roccaforte, Bob Flocke, Jeri Xiques, Steve Thurber, and Dick Larson.

Staff Present: City Administrator Don Ferguson and City Secretary Cara McPartland.

Presentations of Citizens:

- Citizen Communications

Kirk Holland, General Manager for the Barton Springs/Edwards Aquifer Conservation District, spoke in support of full Texas Water Code (TWC) Chapter 36 authority for Hays Trinity Groundwater Conservation District (HTGCD) and offered his district's services as a resource. He stated that groundwater conservation districts (GCDs) are the preferred method of groundwater management in Texas, charged with specific authorities that are particularly important during times of drought. He outlined authorities under TWC Chapter 36 relating to the importance of joint regional planning with respect to desired future conditions and regulatory response. Mr. Holland noted that GCDs are responsive to the local electorate and distributed his business card to Council.

Jim McMeans, representative of Citizens Alliance for Responsible Development (CARD), reported that approximately 400 signatures were received via email for a petition supporting full TWC Chapter 36 authority for HTGCD. He noted the importance of proper management of groundwater to Wimberley's water features. Without proper groundwater management, Mr. McMeans feared that the Wimberley area's attractiveness and quality of life will decline. He stressed the importance of this issue and urged Council to support providing HTGCD with the proper funding, authority, and necessary management tools.

HTGCD Wimberley representative, Jack Hollon, stated that HTGCD has operated with very limited funds/staffing and commended the support given by hard-working volunteers and Kirk Holland. Mr. Hollon characterized comments questioning the motives of HTGCD as false, insulting and divisive. He stated the importance of finding common ground on this important resource (groundwater), which should not be a politically divisive issue. Mr. Hollon highlighted the HTGCD's mission to understand groundwater as a resource and manage water levels/quality through tracking/testing and trends. He agreed with Mr. Holland's remarks that GCDs are best able

to manage groundwater and asked for Council's support of full TWC Chapter 36 authority for HTGCD.

Woodcreek Property Owners Association manager, Janelle Delaney, stated past/present water-related problems and described provider Aqua Texas as an out-of-control water profiteer that does not care about the community or its natural water resources. She stated that Aqua Texas (and parent company Aqua America) is the single largest water waster in the HTGCD and asked for Council's support of full TWC Chapter 36 authority for HTGCD.

Despite reservations people may have over regulations, Wimberley citizen, Martha Knies, felt that HTGCD needs full authority in order to protect one of our most basic needs, which is water. She asked for Council's support in helping to give the very capable members of HTGCD the tools to manage groundwater in the best way possible.

Wimberley Valley Watershed Association Executive Director David Baker noted the current drought conditions and associated challenges of managing water resources that do not follow jurisdictional lines. He stressed the importance of setting aside politics and giving HTGCD the needed tools to protect property values and the future of our creeks and rivers against threats from corporate interests such as Aqua Texas. Mr. Baker closed by urging Council to use its voice to support HTGCD in its goal of attaining full authority under TWC Chapter 36.

Wimberley resident, Susan Nenney, cited a news headline reporting Hays County as the tenth fastest-growing county nationally and stated the urgent need for a fully authorized groundwater district to manage that kind of growth. She noted Wimberley's position on the far eastern edge of a major desert area and felt that politics should be set aside in order to deal with future water needs and pressures placed on the aquifer. Ms. Nenney expressed her full support of TWC Chapter 36 authority for HTGCD, cautioned against relying on historical practices, and encouraged innovative thinking.

Charles O'Dell, spoke in support of full Chapter 36 authority for HTGCD, which he described as an organization of educated, honorable officials elected to preserve its portion of the Trinity Aquifer through equitable, fair and sustainable use. Along with his neighbors, Mr. O'Dell expressed support for HTGCD's efforts to have full authority under TWC Chapter 36 as intended by legislators.

Wimberley citizen, Bill Johnson, stated his understanding of the City's lack of life guards at Blue Hole and the City's liability limitations. He recalled a past agreement between the Austin Parks Department and the University of Texas (UT) swim coach allowing team members to use certain City of Austin parks free of charge, provided that the UT swimmers "keep their eyes open." As a way to improve safety at no expense, Mr. Johnson suggested to Mayor Haley, Council, and City Administrator Ferguson that the Wimberley High School Swim Team be given free admission to Blue Hole this season with the understanding that should any problems arise, swim team members will be available to provide assistance and first aid.

1. Consent Agenda

- A. Approval of minutes of the regular City Council meeting of March 5, 2009.
- B. Approval of minutes of the special City Council meeting of March 11, 2009.

Councilmember Thurber moved to approve Consent Agenda items as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

2. City Administrator Report

- Status report on City of Wimberley Sales and Use Tax collections

City Administrator Ferguson reported that January 2009 collections were down three percent (3%) from January 2008. He noted the impact of declining collections on surrounding cities and advised that expenditures are being considered very carefully.

- Status report on preparations for the May 9, 2009 City of Wimberley General Election

City Administrator Ferguson reported on the ballot as follows: Council Places One and Five are uncontested with respective candidates Charles Roccaforte and John White running unopposed. Three candidates remain in the election for Place Three: Bill Appleman, Mac McCullough, and Alice Wightman. Incumbent Councilmember Dick Larson and David Estey have withdrawn as candidates for Places Five and Three, respectively.

- Status report on City Council Hotel Occupancy Tax workshop

City Administrator Ferguson thanked Council Scott Joslove, and the public for attending the informative and productive workshop held on March 11, 2009.

- Status report on Ranch Road 12 roadway improvements on the Wimberley Square

City Administrator Ferguson reported that Transportation Advisory Board's subcommittee will be presenting a downtown mobility plan to Council at its next meeting. As discussed at a recent meeting among subcommittee members and downtown business merchants, it was agreed that Texas Department of Transportation (TxDOT) work to improve traffic conditions should preferably be done during January, which is typically a slower month for merchants. Discussion addressed specifics of work scheduled for Old Kyle Road and Ranch Road 12, including re-painting/stripping.

- Status report on efforts underway to secure state and federal funding for the Downtown Wastewater Project

City Administrator Ferguson reported on meetings scheduled with Hays County officials to wrap up the downtown inspection process, provided statistics on competition for available stimulus funds,

and noted that the City's submitted application meets "green" criteria for its proposed project. Discussion addressed specific phases of the project that may be funded should the City's application be approved.

- Status report on activities of the Wimberley Municipal Court

City Administrator Ferguson reported that the Court's docket has been light, but noted that activity is anticipated to pick up as traffic enforcement increases, particularly in the downtown area.

- Status report on activities of the City Marshal

City Administrator Ferguson reported that Marshal Robinson has returned from required training at Sam Houston State University with a very favorable report on the week-long seminar.

3. Presentations

Presentation of the Wimberley Parks Advisory Board Quarterly Activities Report.

Parks Advisory Board Chairman Thad Nance reported on updates of the Parks Master Plan and Blue Hole Regional Park fees/hours. He noted current subcommittee reviews underway assessing respondents to the City's Request for Qualifications (RFQ) for the design/construction of Blue Hole Regional Park improvements and proposed plans for the recently donated property at Ranch Road 12 and FM 2325. Chairman Nance reported on coordinated efforts of City staff and the Wimberley Chamber of Commerce on the proposed use of Blue Hole Regional Park for the Fourth of July Jubilee. Chairman Nance stated that continued monitoring of the Cypress Creek Nature Trail will watch for overgrowth and trash, and he commended the entire Parks Board for working well together. Discussion clarified Blue Hole's 2009 season hours of operation.

4. Resolutions

- A. Consider approval of a resolution of the City of Wimberley, Texas establishing a temporary policy on the initial zoning of real property within the city limits (*City Administrator*).

City Administrator Ferguson highlighted past discussion and action on this item and read Item Nos. 1 and 2 of the proposed resolution. Discussion addressed:

- Unintended consequences of zoning to the least intensive use
- Specific notification actions in the administrative process (via written correspondence and/or telephone contact) helping to counteract unintended consequences
- Possible amendment to resolution language changing references from "90-day(s)" to "45-day(s)"
- Addition of language requiring Council review/consideration of recommended changes to the City's current zoning regulations, and other applicable Code requirements, regarding

the entry corridors (RR 12, FM 3237, FM 2325) to the City *prior* to the zoning of referenced unzoned properties

Councilmember Thurber moved to approve the proposed resolution with the following modifications: Change time period references from 90-day(s) to 45-day(s) and require the implementation of Resolution Item No. 2 *prior* to proceeding with actions stated in Resolution Item No. 1. Councilmember Roccaforte seconded.

Mayor Haley called for a vote as follows: Councilmember Roccaforte, aye; Councilmember Flocke, aye; Councilmember Xiques, aye; Councilmember Thurber, aye; Councilmember Larson, aye. Motion carried on a vote of 5-0.

- B. Consider approval of a resolution of the City Council of the City of Wimberley, Texas relating to the future consideration of a Hotel Occupancy Tax in the City of Wimberley (*Place Five Councilmember Dick Larson*).

Lodging owner/manager Bill Appleman spoke of the divisiveness and misunderstanding surrounding possible implementation of a Hotel Occupancy Tax (HOT), past consideration/action, and results of a recent petition drive initiated by lodging owners. He thanked Councilmember Thurber and City Administrator Ferguson for the productive workshop session and presentation by Scott Joslove held on March 11, 2009. Mr. Appleman noted the importance of: lodging owners and other business owners working together; having a plan for administration/expenditure of revenues; and, support for the HOT by the lodging industry. In reference to his upcoming meeting scheduled with the Wimberley Merchants Association president, Mr. Appleman felt that this is a positive move forward for the community to work together in a way that is beneficial to all and thanked Council for its time.

City Administrator Ferguson read the proposed resolution aloud and Mayor Haley opened Council discussion. Discussion on the resolution addressed:

- Correction of the word "Ordinance" to "Resolution" (first page)
- Positive aspects/outcomes of the informative workshop held on March 11, 2009
- Changes to resolution language suggested by Councilmember Flocke relating to Mr. Joslove's title as a "State" expert
- Statements by Councilmember Flocke that this resolution is meaningless, unnecessary, and negative (resolution is for *not* taking action)
- Desire of Councilmember Larson to have the resolution read into the minutes as guidance for future Councils
- Need for the lodging industry and other types of businesses to come together in a productive manner in order to form a plan
- Differing opinions that the resolution fosters either divisiveness or cohesiveness among community groups/members

Councilmember Flocke requested the following changes (italicized):

First paragraph: “WHEREAS, Mr. Scott Joslove, *an* expert on the subject. . .” (Delete reference to *State’s* expert)

Second paragraph, last sentence (a): “. . . and if it *promotes tourism and the lodging industry;*” (rather than “and if it *will produce benefits to the lodging industry;*”)

Second paragraph (b): “. . . and expenditure of the tax revenue has the support *of the City’s lodging owners.*” (Delete reference to *majority* of lodging owners)

Third paragraph: “WHEREAS, these three basic criteria as recommended by *an* expert regarding municipal hotel occupancy tax have not yet been accomplished.” (Delete reference to *State’s* expert)

Councilmember Flocke moved to approve the resolution as amended in his aforementioned changes. Councilmember Thurber seconded. Mayor Haley called for a vote as follows: Councilmember Larson, nay; Councilmember Thurber, nay; Councilmember Xiques, nay; Councilmember Flocke, aye; Councilmember Roccaforte, nay. Motion failed on a vote of 1-4.

Councilmember Larson moved to approve the resolution as presented, except for the following correction: Change the term “Ordinance” to “Resolution” on Page 1. Councilmember Xiques seconded. Mayor Haley called for a vote as follows: Councilmember Larson, aye; Councilmember Thurber, nay; Councilmember Xiques, aye; Councilmember Flocke, aye; Councilmember Roccaforte, aye. Motion carried on a vote of 4-1.

5. Ordinances

- A. Consider approval of an ordinance granting Aqua Texas, Inc. a non-exclusive franchise to construct, operate and maintain a retail wastewater utility system within the rights-of-way of the City of Wimberley for a term of ten years with renewal provisions; prescribing certain rights, duties, terms and conditions; providing for a franchise fee based on the gross receipts related to said system; providing for form of acceptance and termination; containing miscellaneous provisions; severability; proper notice and meeting and providing an effective date (*City Administrator*).

City Administrator Ferguson explained major ordinance provisions and recommended approval. Discussion between Mayor Haley and Mr. Ferguson established that this proposed ordinance does not allow Aqua Texas to go out of its current Certificate of Convenience and Necessity (CCN) for operations.

Councilmember Xiques moved to approve the item as presented. Councilmember Roccaforte seconded. Motion carried on a vote of 4-0. Councilmember Larson abstained.

- B. Consider approval of an ordinance repealing Ordinance Nos. 2006-015 and 2007-009 of the City of Wimberley, Texas, establishing the Economic Development Commission in order to dissolve such Commission; and amending Title III (Administration), Chapter 33 (Boards and Commissions) of the Code of Ordinances of the City of Wimberley, Texas, in order to create Section 33.05 establishing an Economic Development Commission, its purpose, membership requirements and duties; providing for an effective date; proper notice and meeting, severability and repealer (*City Administrator*).

City Administrator Ferguson detailed this proposed ordinance establishing the Economic Development Commission as a seven-member standing advisory committee. Discussion addressed various options for membership requirements.

Councilmember Thurber moved to approve the item as presented, with the exception of the following changes to §33.05(H): amend language to reflect regular quarterly meetings and meetings to be scheduled at any other time the Commission deems necessary. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

6. Discussion and Possible Action

- A. Discuss and consider approval of a request to allow the usage of the Blue Hole Regional Park for a recognition event for the Wimberley High School Swim Team and the waiver of fees for such use (*City Administrator*).

City Administrator Ferguson outlined the event and recommended approval. Councilmember Roccaforte moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider authorizing the purchase of computer software for the City of Wimberley Municipal Court (*City Administrator*).

City Administrator Ferguson explained the need for this software and detailed costs and certain terms of the agreement. Discussion addressed technical support, responses issues, and initial/annual fees. Councilmember Thurber moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

7. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Flocke inquired about prior action relating to Texas Water Code Chapter 36 and discussion clarified that such action was in the form of a letter of support sent to State officials several years ago.

As future agenda items, Councilmember Thurber requested an update on the water quality ordinance, hike/bike trail, and progress on the "pocket park." City Administrator Ferguson acknowledged Councilmember Thurber's requests and advised that there is a committee meeting scheduled for March 31, 2009 to discuss the "pocket park."

Councilmember Flocke announced details of the Spring Walk to be held on March 21-22, 2009 sponsored by the New Braunfels Marsch-und Wandergruppe and the Wimberley Mayor's Fitness Council.

In response to Mayor Haley's inquiry about future agenda items relating to Texas Water Code Chapter 36 legislation, discussion established that staff will provide more detailed information to Council to help guide its decision regarding future action. There was brief discussion between City Administrator Ferguson and Councilmember Larson regarding presence of legal counsel at Council meetings.

Hearing no further announcements or future agenda items, Mayor Haley called the meeting adjourned.

Adjournment: Council meeting adjourned at 8:02 p.m.

Recorded by:

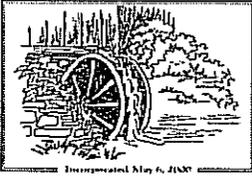
Cara McPartland

These minutes approved on the _____ of April, 2009.

APPROVED:

Tom Haley, Mayor

City Council Agenda Form



Date Submitted: March 29, 2009

Agenda Date Requested: April 2, 2009

Project/Proposal Title: APPROVAL OF FEBRUARY
2009 FINANCIAL STATEMENTS

Funds Required:

Funds Available:

Council Action Requested:

- Ordinance
- Resolution
- Motion
- Discussion

Project/Proposal Summary:

Attached are the February 2009 Financial Statements for review and consideration.

Council Package
Financial Statements Village of Wimberley
For the Period Ended 2/28/2009

- Balance Sheet - General Fund
- Revenue/Expenditure - General Fund
- Budget Vs Actual - General Fund
- Balance Sheet - Blue Hole
- Revenue/Expenditure - Blue Hole
- Budget Vs Actual - Blue Hole
- Balance Sheet - Municipal Court
- Revenue/Expenditure - Municipal Court
- Budget Vs Actual - Municipal Court
- Cypress Creek Nature Trail - Financial Statements

3-30-09 Faxed to: 512-847-0422 3498

City of Wimberley
General Fund
Balance Sheet - Modified Accrual Basis
February 28, 2009

Assets

Current Assets

101.10 Petty Cash-General	\$	150.00
103.10 Cash - Blanco National Bank - General		270,803.99
105.10 Cash - Blanco National Bank - CD		220,688.24
110.10 Texpool - General		362,714.39
114.10 Due From Blue Hole		2,071.90
116.10 Due From Municipal Court		614.90
120.10 Accounts Receivable		9,394.89
121.10 Sales Tax Receivable		<u>32,892.70</u>

Total Current Assets \$ 899,331.01

Total Assets \$ 899,331.01

Liabilities and Fund Balance

Current Liabilities

301.10 Withholding Tax Payable	\$	1,805.00
302.10 FICA Tax Payable		3,008.18
303.10 Accounts Payable		2,471.00
311.10 TMRS Payable		1,150.36
320.10 Accrued Salaries Payable		<u>5,749.52</u>

Total Current Liabilities \$ 14,184.06

Total Liabilities 14,184.06

Fund Balance

467.10 Fund Balance - Undesignated	437,582.18
469.10 Designated Fund Balance - Public Works	300,000.00
470.10 Designated Fund Balance - New City Hall	50,000.00
471.10 Designated Fund Balance - WW on Square	30,000.00
472.10 Designated Fund Balance - Future Grant Match	50,000.00
498.10 Net Excess (Deficit)	<u>17,564.77</u>

Total Fund Balance 885,146.95

Total Liabilities and Fund Balance \$ 899,331.01

City of Wimberley
General Fund
Statement of Revenue and Expenditures - Modified Accrual Basis
For the One Month and Five Months Ended
February 28, 2009

	Current Period		Year To Date	
	Amount	Percent	Amount	Percent
Revenues				
501.10 Sales & Use Tax	\$ 32,892.70	67.40	\$ 255,300.45	73.60
502.10 Mixed Beverage Tax	0.00	0.00	1,585.26	0.46
503.10 Interest Income - General	1,119.26	2.29	6,649.90	1.92
504.10 Miscellaneous Income	2,498.52	5.12	7,099.77	2.05
505.10 Building Permits	1,039.07	2.13	6,747.48	1.95
506.10 Building Inspections	1,180.00	2.42	9,480.00	2.73
508.10 Plan Reviews	195.00	0.40	4,907.50	1.41
511.10 Sign Permits	200.00	0.41	1,015.00	0.29
512.10 Subdivision	0.00	0.00	4,071.00	1.17
513.10 Zoning	0.00	0.00	1,505.00	0.43
516.10 Municipal Court Costs/Fines	329.00	0.67	1,348.90	0.39
521.10 Time Warner Cable	2,015.02	4.13	9,087.01	2.62
522.10 Pedemales Electric Cooperative, Inc.	0.00	0.00	21,571.56	6.22
523.10 Texas Disposal Systems	0.00	0.00	9,138.23	2.63
524.10 Verizon	6,767.50	13.87	6,767.50	1.95
525.10 Franchise Fees - Misc	564.62	1.16	587.52	0.17
	<u>48,800.89</u>	<u>100.00</u>	<u>346,862.06</u>	<u>100.00</u>
Total Revenues				
Expenditures				
Admin - Personnel				
601.10 City Administrator	7,307.70	14.97	41,295.23	11.91
602.10 City Secretary	2,846.16	5.83	15,538.49	4.48
603.10 Receptionist/Clerk	1,944.00	3.98	8,262.00	2.38
606.10 Payroll Taxes	640.91	1.31	4,930.66	1.42
607.10 TMRS - Admin	542.59	1.11	1,894.19	0.55
608.10 Health Care	0.00	0.00	3,610.00	1.04
	<u>13,281.36</u>	<u>27.22</u>	<u>75,530.57</u>	<u>21.78</u>
Total Admin - Personnel				
Admin - Operating				
609.10 Dues - TML & City Mgr Assoc	100.00	0.20	1,031.30	0.30
610.10 Public Notices	409.76	0.84	1,427.04	0.41
611.10 Printing	330.00	0.68	657.00	0.19
612.10 Telephone	495.84	1.02	2,457.97	0.71
613.10 Copies	45.24	0.09	400.65	0.12
614.10 Rent	0.00	0.00	20,920.00	6.03
615.10 Cleaning	400.00	0.82	2,100.00	0.61
616.10 Office Supplies	124.48	0.26	1,372.63	0.40

Restricted for Management's Use Only

City of Wimberley
General Fund
Statement of Revenue and Expenditures - Modified Accrual Basis
For the One Month and Five Months Ended
February 28, 2009

	Current Period		Year To Date	
	Amount	Percent	Amount	Percent
617.10 Utilities	\$ 551.81	1.13	\$ 2,911.79	0.84
818.10 Equipment Leases	281.03	0.58	2,328.82	0.67
619.10 Water Cooler	29.49	0.06	170.77	0.05
620.10 Postage	143.60	0.29	245.11	0.07
621.10 Insurance	449.00	0.92	12,604.07	3.63
622.10 Records Management	46.84	0.10	357.78	0.10
623.10 Office Technology	49.00	0.10	881.00	0.25
626.10 Security Expense	126.85	0.26	295.98	0.09
628.10 Technology Consultant	0.00	0.00	55.00	0.02
632.10 Capital Outlay - Other	51,993.50	106.54	52,493.50	15.13
636.10 Training - Travel	0.00	0.00	592.10	0.17
637.10 Contract Labor	3,706.10	7.59	3,706.10	1.07
638.10 Repairs & Maintenance	100.00	0.20	100.00	0.03
Total Admin - Operating	59,382.54	121.68	107,108.61	30.88
Legal				
641.10 Legal	2,355.56	4.83	18,711.44	5.39
Total Legal	2,355.56	4.83	18,711.44	5.39
Council - Boards Expenditures				
651.10 Association Dues	0.00	0.00	293.00	0.08
652.10 Training	15.00	0.03	300.00	0.09
655.10 Financial Management Services	2,000.00	4.10	5,000.00	1.44
658.10 Audit	0.00	0.00	9,750.00	2.81
661.10 Public Relations / Receptions	88.66	0.18	301.51	0.09
664.10 Fitness Council Expenses	4,551.48	9.33	4,551.48	1.31
Total Council - Boards Expenditures	6,655.14	13.64	20,195.99	5.82
Building Department Expenditures				
676.10 Contract Inspector	2,400.00	4.92	11,687.50	3.37
677.10 Site Plan Reviews	4,827.23	9.89	6,975.23	2.01
Total Building Department Expenditures	7,227.23	14.81	18,662.73	5.38
Public Works - Personnel				
702.10 Salaries-Code Enforcement & Permitting	2,163.20	4.43	11,856.00	3.42

Restricted for Management's Use Only

City of Wimberley
General Fund
Statement of Revenue and Expenditures - Modified Accrual Basis
For the One Month and Five Months Ended
February 28, 2009

	Current Period		Year To Date	
	Amount	Percent	Amount	Percent
704.10 Salaries-GIS/Permitting Clerk	\$ 2,480.00	5.08	\$ 13,592.00	3.92
708.10 Payroll Taxes	639.79	1.31	2,231.38	0.64
707.10 TMRS - Public Works	208.25	0.43	742.75	0.21
708.10 Health Benefits	0.00	0.00	1,800.00	0.52
Total Public Works - Personnel	5,491.24	11.25	30,222.13	8.71
Public Works - Operating				
714.10 Certificates	50.00	0.10	50.00	0.01
715.10 Supplies - Public Works	8.00	0.02	29.15	0.01
720.10 Fuel	50.81	0.10	294.91	0.09
722.10 Vehicle Maint. & Insurance	36.50	0.07	131.63	0.04
Total Public Works - Operating	145.31	0.30	505.69	0.15
Roads				
727.10 Road Maintenance	559.38	1.15	11,334.38	3.27
729.10 Road Engineering	0.00	0.00	9,173.00	2.64
731.10 Mowing / Tree Trimming	0.00	0.00	2,675.00	0.77
732.10 Signs/Barricades	138.40	0.28	288.40	0.08
733.10 Parking Lot Lease	0.00	0.00	500.00	0.14
736.10 Contract Labor	(3,706.10)	(7.59)	2,961.83	0.85
Total Roads	(3,008.32)	(6.16)	26,932.61	7.76
Water/Wastewater				
756.10 Public Restroom Wastewater	318.24	0.65	1,244.78	0.36
Total Water/Wastewater	318.24	0.65	1,244.78	0.36
Public Safety - Personnel				
801.10 Salaries - City Marshall	2,920.00	5.98	16,003.85	4.61
806.10 Payroll Taxes	223.38	0.46	1,224.30	0.35
807.10 TMRS City Contribution-PS	130.86	0.27	467.12	0.13
808.10 Health Care - Public Safety	0.00	0.00	1,025.00	0.30
Total Public Safety - Personnel	3,274.34	6.71	18,720.27	5.40

City of Wimberley
General Fund
Statement of Revenue and Expenditures - Modified Accrual Basis
For the One Month and Five Months Ended
February 28, 2009

	Current Period		Year To Date	
	Amount	Percent	Amount	Percent
Public Safety - Operating				
820.10 Municipal Court Judge	\$ 716.66	1.47	\$ 1,441.66	0.42
821.10 City Prosecutor	43.50	0.09	1,522.50	0.44
824.10 Animal Control	0.00	0.00	6,000.00	1.73
825.10 Fuel-Public Safety	138.98	0.28	481.86	0.14
826.10 Supplies - Public Safety	254.69	0.52	505.66	0.15
827.10 Vehicle Maintenance and Repair	7.00	0.01	7.00	0.00
830.10 Capital Outlay - Vehicle	0.00	0.00	608.95	0.18
832.10 Capital Outlay - Technology	0.00	0.00	241.02	0.07
	<u>1,160.83</u>	<u>2.38</u>	<u>10,808.65</u>	<u>3.12</u>
Total Public Safety - Operating				
	<u>1,160.83</u>	<u>2.38</u>	<u>10,808.65</u>	<u>3.12</u>
Parks - Operating				
859.10 Nature Trall Operations	140.81	0.29	653.82	0.19
	<u>140.81</u>	<u>0.29</u>	<u>653.82</u>	<u>0.19</u>
Total Parks - Operating				
	<u>140.81</u>	<u>0.29</u>	<u>653.82</u>	<u>0.19</u>
Total Expenditures	96,424.28	197.59	329,297.29	94.94
	<u>96,424.28</u>	<u>197.59</u>	<u>329,297.29</u>	<u>94.94</u>
NET EXCESS (DEFICIT)	\$ (47,623.59)	(97.59)	\$ 17,564.77	5.06
	<u>(47,623.59)</u>	<u>(97.59)</u>	<u>17,564.77</u>	<u>5.06</u>

VILLAGE OF WIMBERLEY
BUDGET VS ACTUAL - GENERAL FUND
For The Five Months Ended February 28, 2009

	CURRENT PERIOD	YTD ACTUAL	%	ANNUAL BUDGET	OVER (UNDER)	%	MTD %	
REVENUES								
501.1	Sales & Use Tax	\$ 32,892.70	255,300.45	73.60%	\$ 476,400.00	\$ (221,099.55)	-46.41%	-58.33%
502.1	Mixed Beverage Tax	-	1,585.26	0.46%	7,500.00	(5,914.74)	-78.86%	-58.33%
503.1	Interest Income	1,119.26	6,692.21	1.93%	18,000.00	(11,307.79)	-62.82%	-58.33%
504.1	Misc. Income	2,498.52	6,184.31	1.78%	5,000.00	1,184.31	0.00%	-58.33%
505.1	Building Permits	1,039.07	7,045.73	2.03%	22,000.00	(14,954.27)	-67.97%	-58.33%
506.1	Building Inspections	1,180.00	8,604.05	2.48%	29,000.00	(20,395.95)	-70.33%	-58.33%
509.1	Plan Reviews	195.00	4,907.50	1.41%	18,000.00	(13,092.50)	-72.74%	-58.33%
510.1	Beer & Wine Permits	-	-	0.00%	-	-	0.00%	-58.33%
511.1	Sign Permits	200.00	1,015.00	0.29%	7,000.00	(5,985.00)	-85.50%	-58.33%
512.1	Subdivision	-	4,071.00	1.17%	15,000.00	(10,929.00)	-72.86%	-58.33%
513.1	Zoning	-	1,505.00	0.43%	15,000.00	(13,495.00)	-89.97%	-58.33%
514.1	Copies/Maps/Misc.	-	-	0.00%	500.00	(500.00)	-100.00%	-58.33%
516.1	Municipal Court/Costs Fines	329.00	1,348.90	0.39%	43,600.00	(42,251.10)	-96.91%	-58.33%
525.1	Franchise Fees - Misc	9,347.14	48,602.65	14.01%	180,000.00	(131,397.35)	-73.00%	-58.33%
526.1	Health Fees	-	-	0.00%	15,000.00	(15,000.00)	-100.00%	-58.33%
	TOTAL REVENUES	48,800.69	346,862.06	100.00%	852,000.00	(505,137.94)	-59.29%	-58.33%
EXPENDITURES								
ADMINISTRATION EXPENDITURES								
<i>Personnel</i>								
601.1	City Administrator	7,307.70	41,295.23	12.54%	95,000.00	(53,704.77)	-56.53%	-58.33%
602.1	City Secretary	2,846.16	15,538.49	4.72%	37,000.00	(21,461.51)	-58.00%	-58.33%
603.1	Receptionist/Clerk	1,944.00	8,262.00	2.51%	29,204.00	(20,942.00)	-71.71%	-58.33%
604.1	Fire Marshal (Contract Labor)	-	-	0.00%	4,000.00	(4,000.00)	-100.00%	-58.33%
605.1	Intern	-	-	0.00%	-	-	0.00%	-58.33%
606.1	Payroll Taxes	640.91	4,930.66	1.50%	13,341.00	(8,410.34)	-63.04%	-58.33%
607.1	TMRS	542.59	1,894.19	0.58%	8,593.00	(6,698.81)	-77.96%	-58.33%
608.1	Health Benefits	-	3,610.00	1.10%	13,500.00	(9,890.00)	-73.26%	-58.33%
	<i>Total Personnel</i>	13,281.36	75,530.57	22.94%	200,638.00	(125,107.43)	-62.35%	-58.33%
<i>Operating</i>								
609.1	Dues (TML & City Mgr Assoc.)	100.00	1,031.30	0.31%	4,000.00	(2,968.70)	-74.22%	-58.33%
610.1	Public Notices	409.76	1,427.04	0.43%	4,500.00	(3,072.96)	-68.29%	-58.33%
611.1	Printing	330.00	657.00	0.20%	500.00	157.00	31.40%	-58.33%
612.1	Telephone	495.84	2,457.97	0.75%	5,700.00	(3,242.03)	-56.88%	-58.33%
613.1	Copies	45.24	400.65	0.12%	750.00	(349.35)	-46.58%	-58.33%
614.1	Rent	-	20,920.00	6.35%	55,000.00	(34,080.00)	-61.96%	-58.33%

Restricted for Management's Use Only

VILLAGE OF WIMBERLEY
 BUDGET VS ACTUAL - GENERAL FUND
 For The Five Months Ended February 28, 2009

	CURRENT PERIOD	YTD ACTUAL	%	ANNUAL BUDGET	OVER (UNDER)	%	MTD %	
615.1	Cleaning	400.00	2,100.00	0.64%	5,200.00	(3,100.00)	-59.62%	-58.33%
616.1	Office Supplies	124.48	1,372.63	0.42%	5,000.00	(3,627.37)	-72.55%	-58.33%
617.1	Utilities	551.81	2,911.79	0.88%	5,500.00	(2,588.21)	-47.06%	-58.33%
618.1	Equipment Leases	281.03	2,328.82	0.71%	4,200.00	(1,871.18)	-44.55%	-58.33%
619.1	Water Cooler	29.49	170.77	0.05%	540.00	(369.23)	-68.38%	-58.33%
620.1	Postage	143.60	245.11	0.07%	5,000.00	(4,754.89)	-95.10%	-58.33%
621.1	Insurance	449.00	12,604.07	3.83%	15,000.00	(2,395.93)	-15.97%	-58.33%
622.1	Records Management	46.84	357.78	0.11%	7,500.00	(7,142.22)	-95.23%	-58.33%
623.1	Office Technology	49.00	881.00	0.27%	650.00	231.00	35.54%	-58.33%
626.1	Security Expense	126.85	295.98	0.09%	800.00	(504.02)	-63.00%	-58.33%
628.1	Technology Consultant	-	55.00	0.02%	535.00	(480.00)	-89.72%	-58.33%
629.1	Pay Comparability Adjustment	-	-	0.00%	1,000.00	(1,000.00)	-100.00%	-58.33%
630.1	Capital Outlay - Furnishings	-	-	0.00%	400.00	(400.00)	-100.00%	-58.33%
631.1	Capital Outlay - Technology	-	-	0.00%	6,300.00	(6,300.00)	-100.00%	-58.33%
632.1	Capital Outlay - Other	51,993.50	52,493.50	15.94%	-	52,493.50	0.00%	-58.33%
635.1	Mileage	-	-	0.00%	750.00	(750.00)	-100.00%	-58.33%
636.1	Training-Travel	-	592.10	0.18%	2,000.00	(1,407.90)	-70.40%	-58.33%
637.1	Contract Labor	3,706.10	3,706.10	1.13%	-	3,706.10	0.00%	-58.33%
638.1	Repairs & Maintenance	100.00	100.00	0.03%	-	100.00	0.00%	-58.33%
639.1	Signs/Zoning	-	-	0.00%	-	-	0.00%	-58.33%
	<i>Total Operating</i>	<u>59,382.54</u>	<u>107,108.61</u>	<u>32.53%</u>	<u>130,825.00</u>	<u>(23,716.39)</u>	<u>-18.13%</u>	<u>-58.33%</u>
	TOTAL ADMINISTRATION EXPENDITURES	<u>72,663.90</u>	<u>182,639.18</u>	<u>55.46%</u>	<u>331,463.00</u>	<u>(148,823.82)</u>	<u>-44.90%</u>	<u>-58.33%</u>
	LEGAL DEPARTMENT EXPENDITURES							
641.1	Legal	2,355.56	18,711.44	5.68%	55,000.00	(36,288.56)	-65.98%	-58.33%
649.1	Operating Transfer-Out	-	-	0.00%	-	-	0.00%	-58.33%
	TOTAL LEGAL	<u>2,355.56</u>	<u>18,711.44</u>	<u>5.68%</u>	<u>55,000.00</u>	<u>(36,288.56)</u>	<u>-65.98%</u>	<u>-58.33%</u>
	COUNCIL - BOARD EXPENDITURES							
651.1	Association Dues	-	293.00	0.09%	1,000.00	(707.00)	-70.70%	-58.33%
652.1	Training	15.00	300.00	0.09%	1,500.00	(1,200.00)	-80.00%	-58.33%
653.1	Town Hall Meetings	-	-	0.00%	-	-	0.00%	-58.33%
654.1	Election	-	-	0.00%	2,500.00	(2,500.00)	-100.00%	-58.33%
655.1	Financial Management Services	2,000.00	5,000.00	1.52%	12,000.00	(7,000.00)	-58.33%	-58.33%
656.1	Audit	-	9,750.00	2.96%	10,000.00	(250.00)	-2.50%	-58.33%
657.1	Public Satisfaction Survey	-	-	0.00%	-	-	0.00%	-58.33%
658.1	Planning	-	-	0.00%	-	-	0.00%	-58.33%

Restricted for Management's Use Only

VILLAGE OF WIMBERLEY
BUDGET VS ACTUAL - GENERAL FUND
For The Five Months Ended February 28, 2009

	CURRENT PERIOD	YTD ACTUAL	%	ANNUAL BUDGET	OVER (UNDER)	%	MTD %
659.1	Recording Secretary	-	0.00%	-	-	0.00%	-58.33%
660.1	Economic Development	-	0.00%	-	-	0.00%	-58.33%
661.1	Public Relations/Receptions	88.66	0.09%	3,000.00	(2,698.49)	-89.95%	-58.33%
662.1	Public Information	-	0.00%	2,500.00	(2,500.00)	0.00%	-58.33%
663.1	Visitor Center Support	-	0.00%	-	-	0.00%	-58.33%
664.1	Fitness Council Expenditures	4,551.48	1.38%	-	4,551.48	0.00%	-58.33%
	TOTAL COUNCIL -BOARD EXPENDITURES	6,655.14	6.13%	32,500.00	(12,304.01)	-37.86%	-58.33%
	BUILDING DEPARTMENT EXPENDITURES						
676.1	Contract Inspector	2,400.00	3.55%	22,000.00	(10,312.50)	-46.88%	-58.33%
677.1	Site Plan Reviews	4,827.23	2.12%	18,000.00	(11,024.77)	-61.25%	-58.33%
678.1	Building Code Books	-	0.00%	-	-	0.00%	-58.33%
	TOTAL BUILDING DEPARTMENT EXPENDITURES	7,227.23	5.67%	40,000.00	(21,337.27)	-53.34%	-58.33%
	PUBLIC WORKS/CODE ENFORCEMENT EXPENDITURES						
	<i>Public Works</i>						
	<i>Personnel</i>						
701.1	Salaries-Planning Director	-	0.00%	-	-	0.00%	-58.33%
702.1	Salaries-Code Enforcement & Permi	2,163.20	3.60%	28,121.00	(16,265.00)	-57.84%	-58.33%
703.1	Salaries-Asst. to Planning Director	-	0.00%	-	-	0.00%	-58.33%
704.1	Salaries-GIS/Permitting Clerk	2,480.00	4.13%	32,240.00	(18,648.00)	0.00%	-58.33%
706.1	Payroll Taxes	639.79	0.68%	4,922.00	(2,690.62)	0.00%	-58.33%
707.1	TMRS - Public Works	208.25	0.23%	-	742.75	0.00%	-58.33%
708.1	Health Benefits	-	0.55%	9,000.00	(7,200.00)	-80.00%	-58.33%
	Total Personnel	5,491.24	9.18%	74,283.00	(44,060.87)	-59.31%	-58.33%
	<i>Operating</i>						
712.1	Mileage	-	0.00%	250.00	(250.00)	-100.00%	-58.33%
713.1	Training	-	0.00%	1,000.00	(1,000.00)	-100.00%	-58.33%
714.1	Certificates	50.00	0.28%	-	50.00	0.00%	-58.33%
715.1	Supplies - Public Works	8.00	0.17%	-	29.15	0.00%	-58.33%
720.1	Fuel	50.81	0.09%	2,000.00	(1,705.09)	0.00%	-58.33%
721.1	Tools	-	0.00%	750.00	(750.00)	-100.00%	-58.33%
722.1	Vehicle Maintenance & Insurance	36.50	0.04%	1,000.00	(868.37)	0.00%	-58.33%
	Total Operating	145.31	0.15%	5,000.00	(4,494.31)	0.00%	-58.33%

Restricted for Management's Use Only

VILLAGE OF WIMBERLEY
 BUDGET VS ACTUAL - GENERAL FUND
 For The Five Months Ended February 28, 2009

	CURRENT PERIOD	YTD ACTUAL	%	ANNUAL BUDGET	OVER (UNDER)	%	MTD %
<i>Total Public Works</i>	<u>5,636.55</u>	<u>30,727.82</u>	<u>9.33%</u>	<u>79,283.00</u>	<u>(48,555.18)</u>	<u>-59.31%</u>	<u>-58.33%</u>
<i>Roads</i>							
727.1 Road Maintenance	559.38	11,334.38	3.44%	75,000.00	(63,665.62)	-84.89%	-58.33%
Transfer to Road Maintenance Rese	-	-	0.00%	20,000.00	(20,000.00)	-100.00%	-58.33%
728.1 Capital Outlay Roads	-	-	0.00%	40,000.00	(40,000.00)	-100.00%	-58.33%
729.1 Road Engineering	-	9,173.00	2.79%	7,000.00	2,173.00	31.04%	-58.33%
730.1 Road Insurance	-	-	0.00%	-	-	0.00%	-58.33%
731.1 Mowing/Tree Trimming	-	2,675.00	0.81%	12,500.00	(9,825.00)	-78.60%	-58.33%
732.1 Signs/Barricades	138.40	288.40	0.09%	5,000.00	(4,711.60)	-94.23%	-58.33%
733.1 Parking Lot Lease	-	500.00	0.15%	1,200.00	(700.00)	-58.33%	-58.33%
734.1 Master Planning Traffic Studies	-	-	0.00%	-	-	0.00%	-58.33%
735.1 Survey Services	-	-	0.00%	-	-	0.00%	-58.33%
736.1 Contract Labor	(3,706.10)	2,961.83	0.90%	5,000.00	(2,038.17)	-40.76%	-58.33%
737.1 Ranch Road 12 Mitigation	-	-	0.00%	-	-	0.00%	-58.33%
<i>Total Roads</i>	<u>(3,008.32)</u>	<u>26,932.61</u>	<u>8.18%</u>	<u>165,700.00</u>	<u>(138,767.39)</u>	<u>-83.75%</u>	<u>-58.33%</u>
<i>Water/Wastewater</i>							
752.1 Water Quality Testing	-	-	0.00%	5,000.00	(5,000.00)	-100.00%	-58.33%
753.1 Wastewater System Start-up	-	-	0.00%	-	-	0.00%	-58.33%
754.1 Map Services	-	-	0.00%	-	-	0.00%	-58.33%
755.1 Water/Wastewater Purchases	-	-	0.00%	-	-	0.00%	-58.33%
756.1 Public Restroom Wastewater	318.24	1,244.78	0.38%	7,500.00	(6,255.22)	-83.40%	-58.33%
<i>Total Water/Wastewater</i>	<u>318.24</u>	<u>1,244.78</u>	<u>0.38%</u>	<u>12,500.00</u>	<u>(11,255.22)</u>	<u>-90.04%</u>	<u>-58.33%</u>
TOTAL PUBLIC WORKS/CODE ENFORCEMENT EXPENDITURES	<u>2,946.47</u>	<u>58,905.21</u>	<u>17.89%</u>	<u>257,483.00</u>	<u>(198,577.79)</u>	<u>-77.12%</u>	<u>-58.33%</u>
PUBLIC SAFETY/COURTS EXPENDITURES							
<i>Personnel</i>							
801.1 Salaries - City Marshall	2,920.00	16,003.85	4.86%	37,960.00	(21,956.15)	-57.84%	-58.33%
806.1 Payroll Taxes	223.38	1,224.30	0.37%	3,094.00	(1,869.70)	0.00%	-58.33%
807.1 TMRS City Contribution	130.96	467.12	0.14%	-	467.12	0.00%	-58.33%
808.1 Health Benefits	-	1,025.00	0.31%	4,500.00	(3,475.00)	-77.22%	-58.33%
<i>Total Personnel</i>	<u>3,274.34</u>	<u>18,720.27</u>	<u>5.68%</u>	<u>45,554.00</u>	<u>(26,833.73)</u>	<u>-58.91%</u>	<u>-58.33%</u>
<i>Operating</i>							
820.1 Municipal Court Judge	716.66	1,441.66	0.44%	10,000.00	(8,558.34)	-85.58%	-58.33%
821.1 City Prosecutor	43.50	1,522.50	0.46%	10,000.00	(8,477.50)	-84.78%	-58.33%

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03/30/2009 MON 10:22 FAX 512 556 6304 LORI I GRAHAM CPA PC

010/034

VILLAGE OF WIMBERLEY
 BUDGET VS ACTUAL - GENERAL FUND
 For The Five Months Ended February 28, 2009

	CURRENT PERIOD	YTD ACTUAL	%	ANNUAL BUDGET	OVER (UNDER)	%	MTD %
822.1	-	-	0.00%	1,000.00	(1,000.00)	-100.00%	-58.33%
823.1	-	-	0.00%	4,500.00	(4,500.00)	-100.00%	-58.33%
824.1	-	6,000.00	1.82%	6,000.00	-	0.00%	-58.33%
825.1	138.98	481.86	0.15%	6,000.00	(5,518.14)	-91.97%	-58.33%
826.1	254.69	505.66	0.15%	-	505.66	0.00%	-58.33%
827.1	7.00	7.00	0.00%	-	7.00	0.00%	-58.33%
830.1	-	608.95	0.18%	-	608.95	0.00%	-58.33%
831.1	-	-	0.00%	12,500.00	(12,500.00)	-100.00%	-58.33%
832.1	-	241.02	0.07%	12,500.00	(12,258.98)	-98.07%	-58.33%
837.1	-	-	0.00%	12,500.00	(12,500.00)	-100.00%	-58.33%
Total Operating	1,160.83	10,808.65	3.28%	75,000.00	(64,191.35)	-85.59%	-58.33%
TOTAL PUBLIC SAFETY/COURTS EXPENDITURES	4,435.17	29,528.92	8.97%	120,554.00	(91,025.08)	-75.51%	-58.33%
PARKS & RECREATION EXPENDITURES							
<i>Personnel</i>							
851.1	-	-	0.00%	-	-	0.00%	-58.33%
852.1	-	-	0.00%	-	-	0.00%	-58.33%
853.1	-	-	0.00%	-	-	0.00%	-58.33%
Total Personnel	-	-	0.00%	-	-	0.00%	-58.33%
<i>Operating</i>							
854.1	-	-	0.00%	-	-	0.00%	-58.33%
855.1	-	-	0.00%	-	-	0.00%	-58.33%
856.1	-	-	0.00%	-	-	0.00%	-58.33%
857.1	-	-	0.00%	-	-	0.00%	-58.33%
859.1	140.81	653.82	0.20%	15,000.00	(14,346.18)	-95.64%	-58.33%
Total Operating	140.81	653.82	0.20%	15,000.00	(14,346.18)	-95.64%	-58.33%
TOTAL PARKS & RECREATION EXPENDITURES	140.81	653.82	0.20%	15,000.00	(14,346.18)	-95.64%	-58.33%
TOTAL EXPENDITURES	96,424.28	329,297.29	1.00%	852,000.00	(522,702.71)	-61.35%	-58.33%
Net Excess (Deficit)	\$ (47,623.59)	\$ 17,564.77	0.00%	\$ -	\$ 17,564.77	-2.06%	-58.33%

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Client: Village of Wimberley
 Bank: Blanco National Bank - General Fund #103
 Month: February Year: 2009

<u>Deposits In Transit</u>		<u>Reconciliation to Bank</u>	
_____	_____	Bank Balance from Statement	<u>287,674.71</u>
_____	_____	Deposit in Transit	_____
_____	_____	Total	<u>287,674.71</u>
_____	_____		

Check #	Amount	Check #	Amount	Check #	Amount
5040	92.50	6115	324.45		
5739	100.00	6116	28.38		
6077	660.47				
6083	20.00				
6086	2,691.64				
6087	1,144.31				
6097	126.85				
6098	49.00				
6099	171.39				
6100	420.00				
6101	36.50				
6102	45.60				
6103	525.00				
6104	21.49				
6105	4,166.76				
6106	632.30				
6107	400.00				
6108	63.40				
6109	369.98				
6110	117.98				
6111	15.00				
6112	21.24				
6113	75.00				
6114	4,551.48				

Total Outstanding Checks 16,870.72
 Reconciled Bank Balance 270,803.99

<u>Reconciliation to Books</u>			
Qbooks Payroll	(7,711.88)	Previous Book Balance	276,196.75
Independence Title Co.	(51,993.50)	Deposits	93,928.74
_____	_____	Disbursements	39,616.12
_____	_____	Total Adjustments	(59,705.38)
_____	_____	Present Book Balance	<u>270,803.99</u>

City of Wimberley
Blue Hole Parkland
Balance Sheet - Modified Accrual Basis
February 28, 2009

Assets

Current Assets

106.40 Cash - Blanco National Bank - BH Development	\$	500,000.00
108.40 Cash - Blanco National Bank - Blue Hole		65,998.40
110.40 Texpool - Blue Hole		<u>163,376.88</u>

Total Current Assets \$ 729,375.28

Total Assets \$ 729,375.28

Liabilities and Fund Balance

Current Liabilities

304.40 Due To General	\$	2,021.65
305.40 Due to Municipal Court - Blue Hole		<u>737.00</u>

Total Current Liabilities \$ 2,758.65

Total Liabilities 2,758.65

Fund Balance

467.40 Fund Balance - Blue Hole	83,227.58
473.40 Designated Fund Balance Blue Hole - Soccer Fields	146,701.58
498.40 Net Excess (Deficit)	<u>496,687.47</u>

Total Fund Balance 726,616.63

Total Liabilities and Fund Balance \$ 729,375.28

City of Wimberley
Blue Hole Parkland
Statement of Revenue and Expenditures - Modified Accrual Basis
For the One Month and Five Months Ended
February 28, 2009

	Current Period		Year To Date	
	Amount	Percent	Amount	Percent
Revenues				
503.40 Interest Income - Blue Hole Parkland	\$ 83.82	0.02	\$ 937.84	0.19
520.40 Grant Funds - Blue Hole	500,000.00	99.98	500,000.00	99.83
542.40 Rental Fees	0.00	0.00	(100.00)	(0.02)
	<u>500,083.82</u>	<u>100.00</u>	<u>500,837.84</u>	<u>100.00</u>
Total Revenues				
Expenditures				
Parks - Operating				
861.40 Contract Labor/Wages	0.00	0.00	77.50	0.02
862.40 Utilities	148.04	0.03	465.27	0.09
863.40 Mowing	0.00	0.00	350.00	0.07
864.40 Operating Supplies	(28.60)	(0.01)	114.60	0.02
865.40 Contract Services	0.00	0.00	2,000.00	0.40
866.40 Rental	0.00	0.00	353.00	0.07
868.40 Public Restroom Facilities	340.00	0.07	790.00	0.16
	<u>459.44</u>	<u>0.09</u>	<u>4,150.37</u>	<u>0.83</u>
Total Parks - Operating				
Total Expenditures	<u>459.44</u>	<u>0.09</u>	<u>4,150.37</u>	<u>0.83</u>
NET EXCESS (DEFICIT)	<u>\$ 499,624.38</u>	<u>99.91</u>	<u>\$ 496,687.47</u>	<u>99.17</u>

VILLAGE OF WIMBERLEY
 BUDGET VS ACTUAL - BLUE HOLE SPECIAL REVENUE FUND
 For The Five Months Ended February 28, 2009

	CURRENT PERIOD	YTD ACTUAL	%	ANNUAL BUDGET	OVER (UNDER)	%	MTD %
REVENUES							
508.4 Interest Income	\$ 83.82	\$ 937.84	0.19%	\$ 8,000.00	\$ (7,062.16)	-88.28%	-58.33%
518.4 Designated Funds		-	0.00%	7,000.00	(7,000.00)	-100.00%	-58.33%
520.4 Grant Funds	500,000.00	500,000.00	0.00%	-	500,000.00	0.00%	-58.33%
541.4 Gate Fees	-	-	0.00%	25,000.00	(25,000.00)	-100.00%	-58.33%
542.4 Rental Fees	-	(100.00)	0.00%	2,000.00	(2,100.00)	-105.00%	-58.33%
TOTAL REVENUES	500,083.82	500,837.84	0.19%	42,000.00	458,837.84	1092.47%	-58.33%
EXPENDITURES							
861.4 Contract Labor/Wages	-	77.50	1.87%	12,500.00	(12,422.50)	-99.38%	-58.33%
862.4 Utilities	148.04	465.27	0.00%	1,000.00	(534.73)	-53.47%	-58.33%
863.4 Mowing	-	350.00	8.43%	750.00	(400.00)	-53.33%	-58.33%
864.4 Operating Supplies	(28.60)	114.60	0.00%	1,500.00	(1,385.40)	-92.36%	-58.33%
865.4 Contract Services	-	2,000.00	0.00%	5,000.00	(3,000.00)	-60.00%	-58.33%
866.4 Rental	-	353.00	0.00%	1,500.00	(1,147.00)	-76.47%	-58.33%
867.4 Materials	-	-	0.00%	750.00	(750.00)	-100.00%	-58.33%
868.4 Public Restroom Facilities	340.00	790.00	19.03%	1,000.00	(210.00)	-21.00%	-58.33%
869.4 Capital Outlay - Facilities	-	-	0.00%	18,000.00	(18,000.00)	-100.00%	-58.33%
TOTAL BLUE HOLE PARKLAND EXPENDITURES	459.44	4,150.37	29.33%	42,000.00	(37,849.63)	-90.12%	-58.33%
Net Excess (Deficit)	\$ 499,624.38	\$ 496,687.47	-29.15%	\$ -	\$ (496,687.47)	1182.59%	-66.67%

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City of Wimberley
Municipal Court
Balance Sheet - Modified Accrual Basis
February 28, 2009

Assets

Current Assets	
109.50 Cash - Blanco National Bank -Municipal Court	\$ 1,501.00
114.50 Due From Blue Hole	<u>737.00</u>
Total Current Assets	\$ <u>2,238.00</u>
Total Assets	\$ <u><u>2,238.00</u></u>

Liabilities and Fund Balance

Current Liabilities	
304.50 Due to General - Municipal Court	\$ 614.90
350.50 Municipal Court Cost Payable	<u>1,258.10</u>
Total Current Liabilities	\$ <u>1,873.00</u>
Total Liabilities	<u>1,873.00</u>
Fund Balance	
498.50 Net Excess (Deficit)	<u>365.00</u>
Total Fund Balance	<u>365.00</u>
Total Liabilities and Fund Balance	\$ <u><u>2,238.00</u></u>

City of Wimberley
Municipal Court
Statement of Revenue and Expenditures - Modified Accrual Basis
For the One Month and Five Months Ended
February 28, 2009

	Current Period		Year To Date	
	Amount	Percent	Amount	Percent
Revenues				
550.50 Court Technology Fees	\$ 32.00	23.97	\$ 120.00	32.88
551.50 Building Security Fees	24.00	17.98	90.00	24.66
552.50 Child Safety Fees	75.00	56.18	150.00	41.10
553.50 Judicial Efficiency Fees	<u>2.50</u>	<u>1.87</u>	<u>5.00</u>	<u>1.37</u>
Total Revenues	<u>133.50</u>	<u>100.00</u>	<u>365.00</u>	<u>100.00</u>
Total Expenditures	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
NET EXCESS (DEFICIT)	<u>\$ 133.50</u>	<u>100.00</u>	<u>\$ 365.00</u>	<u>100.00</u>

**City of Wimberley
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CD - Cash disbursements

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2/4/09	304.50	Due to General - Municipal Court	367.00	1004	due to general
2/4/09	304.40	Due To General	2,000.00	2242	due to general
2/11/09	868.40	Public Restroom Facilities	340.00	2243	leinneweber plumbing
2/11/09	862.40	Utilities	54.02	2244	wimberley water supply
2/27/09	862.40	Utilities	40.00	2245	pec
2/27/09	862.40	Utilities	54.02	2246	wimberley water corp
2/4/09	301.10	Withholding Tax Payable	2,685.00	6059	Blanco National Bank
2/4/09	302.10	FICA Tax Payable	4,512.20	6059	Blanco National Bank
			7,197.20	6059	Reference Total
2/4/09	607.10	TMRS - Admin	542.59	6060	TMRS
2/4/09	707.10	TMRS - Public Works	208.25	6060	TMRS-PW
2/4/09	807.10	TMRS City Contribution-PS	130.96	6060	TMRS -PS
2/4/09	311.10	TMRS Payable	1,474.56	6060	TMRS
			2,356.36	6060	Reference Total
2/12/09	620.10	Postage	21.12	6063	Blanco National Bank - cash
2/12/09	616.10	Office Supplies	6.47	6063	Blanco National Bank - cash
2/12/09	714.10	Certificates	30.00	6063	Blanco National Bank - cash
2/12/09	727.10	Road Maintenance	20.00	6063	Blanco National Bank - cash
2/12/09	827.10	Vehicle Maintenance and Repair	7.00	6063	Blanco National Bank - cash
2/12/09	715.10	Supplies - Public Works	8.00	6063	Blanco National Bank - cash
2/12/09	864.40	Operating Supplies	21.65	6063	Blanco National Bank - cash
2/12/09	622.10	Records Management	32.00	6063	Blanco National Bank - cash
			146.24	6063	Reference Total
2/12/09	661.10	Public Relations / Receptions	25.62	6064	Ace Hardware
2/12/09	661.10	Public Relations / Receptions	3.04	6064	Ace Hardware
2/12/09	727.10	Road Maintenance	14.38	6064	Ace Hardware
			43.04	6064	Reference Total
2/12/09	676.10	Contract Inspector	1,980.00	6065	ATS Engineers, Inspectors and Surveyors
2/12/09	641.10	Legal	2,355.56	6066	Bickerstaff, Heath, Pollan & Caroom, LLP
2/12/09	821.10	City Prosecutor	43.50	6066	Bickerstaff, Heath, Pollan & Caroom, LLP
			2,399.06	6066	Reference Total
2/12/09	826.10	Supplies - Public Safety	25.00	6067	Bill Robinson

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CD - Cash disbursements

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2/12/09	620.10	Postage	76.88	6068	Federal Express
2/12/09	619.10	Water Cooler	8.00	6069	Hill Country Springs
2/12/09	610.10	Public Notices	409.76	6070	Holly Media Group
2/12/09	618.10	Equipment Leases	281.03	6071	Kyocera Mita America, Inc.
2/12/09	826.10	Supplies - Public Safety	30.96	6072	LCRA
2/12/09	756.10	Public Restroom Wastewater	265.00	6073	Leinneweber Plumbing Co., Inc.
2/12/09	655.10	Financial Management Services	2,000.00	6074	Lori Graham CPA
2/12/09	611.10	Printing	330.00	6075	Mary Owens Fine Art Design Studio
2/12/09	820.10	Municipal Court Judge	716.66	6076	Mounger & Campbell, LLP
2/12/09	677.10	Site Plan Reviews	660.47	6077	Neptune-Wilkinson Associates, Inc.
2/12/09	638.10	Repairs & Maintenance	100.00	6078	Pioneer Town, Inc.
2/12/09	609.10	Dues - TML & City Mgr Assoc	100.00	6079	Texas Comptroller of Public Accountants
2/12/09	825.10	Fuel-Public Safety	71.81	6080	Texas Fleet Fuel
2/12/09	613.10	Copies	24.00	6081	The Copy Center
2/12/09	621.10	Insurance	449.00	6082	TML Intergovernmental Risk Pool
2/12/09	714.10	Certificates	20.00	6083	William Bowers
2/12/09	859.10	Nature Trail Operations	31.94	6084	Wimberley Water Supply Corp
2/12/09	661.10	Public Relations / Receptions	60.00	6085	Don P. Ferguson
2/27/09	626.10	Security Expense	126.85	6097	ADT Security Services, Inc.
2/27/09	623.10	Office Technology	49.00	6098	Anvil Communications Inc.
2/27/09	612.10	Telephone	171.39	6099	A T & T
2/27/09	676.10	Contract Inspector	420.00	6100	ATS Engineers, Inspectors and Surveyors
2/27/09	722.10	Vehicle Maint. & Insurance	36.50	6101	Bob Lawson's Lube and Auto
2/27/09	620.10	Postage	45.60	6102	Federal Express
2/27/09	727.10	Road Maintenance	525.00	6103	Garrett Allen
2/27/09	619.10	Water Cooler	21.49	6104	Hill Country Springs
2/27/09	677.10	Site Plan Reviews	4,166.76	6105	Neptune-Wilkinson Associates, Inc.
2/27/09	859.10	Nature Trail Operations	80.49	6106	Pedernales Electric
2/27/09	617.10	Utilities	551.81	6106	Pedernales Electric
			632.30	6106	Reference Total
2/27/09	615.10	Cleaning	400.00	6107	Pow-Wow Services
2/27/09	732.10	Signs/Barricades	63.40	6108	Safelane Traffic Supply
2/27/09	616.10	Office Supplies	118.01	6109	Sam's Club
2/27/09	826.10	Supplies - Public Safety	198.73	6109	Sam's Club
2/27/09	756.10	Public Restroom Wastewater	53.24	6109	Sam's Club
			369.98	6109	Reference Total
2/27/09	825.10	Fuel-Public Safety	34.59	6110	Texas Fleet Fuel

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<u>Date</u>	<u>Acct</u>	<u>Acct Desc</u>	<u>Amount</u>	<u>Ref</u>	<u>Description</u>
2/27/09	720.10	Fuel	50.81	6110	Texas Fleet Fuel
2/27/09	825.10	Fuel-Public Safety	32.58	6110	Texas Fleet Fuel
			117.98	6110	Reference Total
2/27/09	652.10	Training	15.00	6111	Texas Municipal Clerks Certification Pro
2/27/09	613.10	Copies	21.24	6112	The Copy Center
2/27/09	732.10	Signs/Barricades	75.00	6113	Hartmann Enterprises, Inc.
2/27/09	664.10	Fitness Council Expenses	4,551.48	6114	TKO Enterprises
2/27/09	612.10	Telephone	324.45	6115	Verizon
2/27/09	859.10	Nature Trail Operations	28.38	6116	Wimberley Water Supply Corp
2/28/09	103.10	Cash - Blanco National Bank - General	-31,944.21	disb	disbursements
2/27/09	108.40	Cash - Blanco National Bank - Blue Hole	-2,488.04	disb	disb
2/4/09	109.50	Cash - Blanco National Bank - Municipal Court	-367.00	disb	disb
			-34,799.25	disb	Reference Total
		Total for 73 Items	0.00		

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2/28/09	106.40	Cash - Blanco National Bank - BH Development	500,000.00	1	deposit
2/28/09	520.40	Grant Funds - Blue Hole	-500,000.00	1	grant funds
			0.00	1	Reference Total
2/28/09	109.50	Cash - Blanco National Bank - Municipal Court	1,241.00	2	deposit
2/28/09	550.50	Court Technology Fees	-32.00	2	court tech fees
2/28/09	551.50	Building Security Fees	-24.00	2	bldg sec fees
2/28/09	552.50	Child Safety Fees	-75.00	2	child safety fees
2/28/09	553.50	Judicial Efficiency Fees	-2.50	2	jud. eff fees
2/28/09	350.50	Municipal Court Cost Payable	-492.60	2	payable to state
2/28/09	304.50	Due to General - Municipal Court	-614.90	2	due to general
			0.00	2	Reference Total
2/28/09	103.10	Cash - Blanco National Bank - General	93,928.74	3	deposit
2/28/09	504.10	Miscellaneous Income	-2,498.52	3	misc
2/28/09	505.10	Building Permits	-1,039.07	3	bldg permits
2/28/09	506.10	Building Inspections	-1,180.00	3	inspections
2/28/09	509.10	Plan Reviews	-195.00	3	plan reviews
2/28/09	511.10	Sign Permits	-200.00	3	sign permits
2/28/09	521.10	Time Warner Cable	-2,015.02	3	franchise fees
2/28/09	524.10	Verizon	-6,767.50	3	verizon
2/28/09	525.10	Franchise Fees - Misc	-564.62	3	franchise fees
2/28/09	121.10	Sales Tax Receivable	-74,295.86	3	sales tax receivable
2/28/09	112.10	Due From Cypress Creek	-3,394.17	3	due from cc
2/28/09	114.10	Due From Blue Hole	-2,000.00	3	due from blue hole
2/28/09	116.10	Due From Municipal Court	-367.00	3	due from mc
2/28/09	120.10	Accounts Receivable	588.02	3	a/r
			0.00	3	Reference Total
2/28/09	516.10	Municipal Court Costs/Fines	-329.00	4	due from mc
2/28/09	116.10	Due From Municipal Court	329.00	4	due from mc
			0.00	4	Reference Total
2/28/09	637.10	Contract Labor	3,706.10	5	reclass Sedona (Monica)
2/28/09	736.10	Contract Labor	-3,706.10	5	reclass Sedona (Monica)
			0.00	5	Reference Total

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<u>Date</u>	<u>Acct</u>	<u>Acct Desc</u>	<u>Amount</u>	<u>Ref</u>	<u>Description</u>
2/28/09	304.40	Due To General	50.25	6	due to general
2/28/09	864.40	Operating Supplies	-50.25	6	reclass miscoding
			0.00	6	Reference Total
2/28/09	121.10	Sales Tax Receivable	32,892.70	7	sales tax receivable
2/28/09	501.10	Sales & Use Tax	-32,892.70	7	sales & use tax
			0.00	7	Reference Total
2/28/09	622.10	Records Management	14.84	8	q b s/c
2/28/09	103.10	Cash - Blanco National Bank - General	-14.84	8	cash
			0.00	8	Reference Total
2/28/09	706.10	Payroll Taxes	639.79	9	p/r taxes - pw
2/28/09	806.10	Payroll Taxes	223.38	9	p/r taxes - ps
2/28/09	606.10	Payroll Taxes	-863.17	9	p/r taxes - admin
			0.00	9	Reference Total
2/28/09	105.10	Cash - Blanco National Bank - CD	933.21	10	deposit - cd
2/28/09	503.10	Interest Income - General	-933.21	10	interest cd
			0.00	10	Reference Total
2/28/09	110.10	Texpool - General	186.05	11	texpool - general
2/28/09	503.10	Interest Income - General	-186.05	11	texpool - general
			0.00	11	Reference Total
2/28/09	110.40	Texpool - Blue Hole	83.82	12	deposit texpool bh
2/28/09	503.40	Interest Income - Blue Hole Parkland	-83.82	12	interest bh
			0.00	12	Reference Total
2/28/09	864.40	Operating Supplies	21.65	13	bh petty cash expense
2/28/09	304.40	Due To General	-21.65	13	bh petty cash expense
			0.00	13	Reference Total
2/28/09	632.10	Capital Outlay - Other	51,993.50	14	capital outlay-.92 acres parking lot
2/28/09	103.10	Cash - Blanco National Bank - General	-51,993.50	14	capital outlay-.92 acres parking lot
			0.00	14	Reference Total

**City of Wimberley
JOURNAL REPORT**

February 28, 2009

JE -

Client No: 347

Page 6

<u>Date</u>	<u>Acct</u>	<u>Acct Desc</u>	<u>Amount</u>	<u>Ref</u>	<u>Description</u>
		Total for 46 Items	0.00		

City of Wimberley
JOURNAL REPORT

February 28, 2009

PYA - Generated payroll accrual

Client No: 347

Page 7

<u>Date</u>	<u>Acct</u>	<u>Acct Desc</u>	<u>Amount</u>	<u>Ref</u>	<u>Description</u>
2/28/09	606.10	Payroll Taxes	1,218.99	CKS	Employer's FICA
2/28/09	302.10	FICA Tax Payable	-1,218.99	CKS	Employer's FICA
2/28/09	606.10	Payroll Taxes	285.09	CKS	Employer's Medicare
2/28/09	302.10	FICA Tax Payable	-285.09	CKS	Employer's Medicare
			0.00	CKS	Reference Total
		Total for 4 Items	0.00		

City of Wimberley
JOURNAL REPORT

February 28, 2009

PYR - Generated payroll transaction

Client No: 347

Page 8

<u>Date</u>	<u>Acct</u>	<u>Acct Desc</u>	<u>Amount</u>	<u>Ref</u>	<u>Description</u>
2/28/09	601.10	City Administrator	7,307.70	CKS	SALARY
2/28/09	301.10	Withholding Tax Payable	-1,805.00	CKS	Federal Withholding
2/28/09	302.10	FICA Tax Payable	-1,504.07	CKS	Fica + Medicare Withholding
2/28/09	311.10	TMRS Payable	-983.04	CKS	TMRS Contribution
2/28/09	103.10	Cash - Blanco National Bank - General	-15,368.95	CKS	Net Payroll Checks
2/28/09	602.10	City Secretary	2,846.16	CKS	SALARY
2/28/09	704.10	Salaries-GIS/Permitting Clerk	2,480.00	CKS	SALARY
2/28/09	801.10	Salaries - City Marshall	2,920.00	CKS	SALARY
2/28/09	603.10	Receptionist/Clerk	1,944.00	CKS	SALARY
2/28/09	702.10	Salaries-Code Enforcement & Permitting	2,163.20	CKS	SALARY
			0.00	CKS	Reference Total
		Total for 10 Items	0.00		

Village of Wimberley - Cypress Creek Nature Trail
Balance Sheet - Modified Accrual Basis
February 28, 2009

Assets

Total Assets _____
\$ 0.00

Liabilities and Fund Balance

Total Liabilities _____
\$ 0.00

Fund Balance

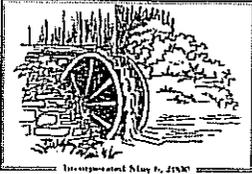
Total Fund Balance _____
0.00

Total Liabilities and Fund Balance _____
\$ 0.00

Village of Wimberley - Cypress Creek Nature Trail
Statement of Revenues and Expenditures - Modified Accual Basis
 For the One Month and Five Months Ended
 February 28, 2009

	Current Period		Year To Date	
	Amount	Percent	Amount	Percent
Revenues				
	<hr/>	<hr/>	<hr/>	<hr/>
Total Revenues	\$ 0.00	0.00	\$ 0.00	0.00
	<hr/>	<hr/>	<hr/>	<hr/>
Expenses				
	<hr/>	<hr/>	<hr/>	<hr/>
Total Expenses	0.00	0.00	0.00	0.00
	<hr/>	<hr/>	<hr/>	<hr/>
Net Excess (Deficit)	\$ 0.00	0.00	\$ 0.00	0.00
	<hr/>	<hr/>	<hr/>	<hr/>

City Council Agenda Form



Date Submitted: March 29, 2009

Agenda Date Requested: April 2, 2009

Project/Proposal Title: PRESENTATION OF PEC
QUARTERLY REPORT

Funds Required:

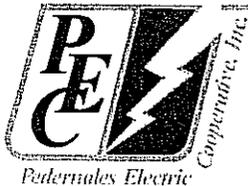
Funds Available:

Council Action Requested:

- Ordinance
- Resolution
- Motion
- Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow representatives of the Pedernales Electric Cooperative (PEC) to brief City Council on the recent activities of the PEC.



P.O. Box 1 Johnson City, Texas 78636-0001
(830) 868-7155 • 1-888-554-4732
www.pec.coop

March 19, 2009

The Honorable Tom Haley
Village of Wimberley
P. O. Box 2027
Wimberley, Texas 78676

Dear Mayor Haley:

Pedernales Electric requests that time be reserved on the Wimberley city council agenda for the meeting scheduled April 2, 2009, at 6.30 p.m. Cele DeLeon will be attending to provide the council with an update on the Cooperative's activities in your area as well as answer any questions you may have.

If there is a change in the date or time of the above scheduled meeting, please notify Cheryl Forté at (830) 868-5046 or toll free at 1-888-554-4732, Extension 5046.

Sincerely,

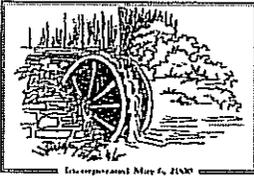


Jeanell Davis
Assistant General Manager

JD:caf

cc: Archie Lopez
Mr. Don Ferguson

City Council Agenda Form



Date Submitted: March 30, 2009

Agenda Date Requested: April 2, 2009

Project/Proposal Title: CITY ADMINISTRATOR'S REPORT

Funds Required:

Funds Available:

Council Action Requested:

Ordinance

Resolution

Motion

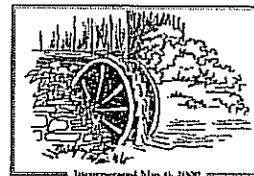
Discussion

Project/Proposal Summary:

The City Administrator will present a report on the following items:

- Status report on activities of the PEC Triangle Committee
- Status report on City committee reviews of proposed non-point source pollution ordinance
- Status report on 2009 Spring Walk co-sponsored by Mayor's Fitness Council
- Status report on 2009 Operations Plan for the Blue Hole Regional Park
- Status report on efforts underway to secure state and federal funding for the Downtown Wastewater Project
- Status report on activities of the Wimberley Municipal Court
- Status report on activities of the City Marshal

Report for Conditional Use Permit CUP-09-002



Summary:

A Request for a Conditional Use Permit (CUP) to allow the operation of a Bed and Breakfast at 2410 Flite Acres Rd

Applicant Information:

Applicant: Gary Callon
242 Blanco Dr
Wimberley, TX 78676

Property Owner: Gary Callon

Subject Property:

Legal Description: Flite Acres Lots 45 and 46
Location: 2410 Flite Acres Rd
Existing Use of Property: Residential
Existing Zoning: R2
Proposed Use of Property: Bed and Breakfast
Proposed Zoning: N/A
Planning Area: A
Overlay District: Protected Waterway

Surroundings:

Frontage On: Flite Acres Rd

Area Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of Property	RA	Residential
S of Property	Unzoned	Agricultural
E of Property	R2	B&B
W of Property	R2	B&B

Legal Notice

200' Letters 3/6/09
Published 3/11/09
Sign Placement 3/6/09
Responses none

Comments:

The applicant has requested a Conditional Use Permit (CUP) to allow the operation of a Bed and Breakfast at 2410 Flite Acres Rd. The subject property is located in close proximity to five other permitted or grandfathered Bed and Breakfast operations and is compatible with other existing properties in the area. The subject property is currently zoned Single Family Residential 2 (R2). Bed and Breakfast lodgings, located only in the residential building, are permitted as a Conditional Use in this zoning district.

The proposed Bed and Breakfast is on 1.66 acres and will have a maximum occupancy of 4 and provide 3 off-street parking places. The proposed Bed and Breakfast will be owner managed and the applicant has agreed to provide neighbors with his contact information.

Due to the location of the property on the Blanco River guests will have access to the water in the area directly bounding the bed and breakfast facility. Guests may not use the River/Creek in front of other properties or enter upon any property which is not part of the bed and breakfast facility for any reason.

On March 26, 2009, the Planning and Zoning Commission held a public hearing on the CUP request. Afterwards, the Commission voted unanimously to recommend approval of the request.

City staff concurs with the Commission's recommendation.

§ 155.037 SINGLE-FAMILY RESIDENTIAL 2; R-2.

(A) *General purpose and description.* The R-2 district is intended to provide for development of primarily detached, single-family residences on lots of not less than 20,000 square feet.

(B) *Permitted uses.*

(1) One residence, including:

(a) Single-family detached dwellings; or

(b) Mobile or manufactured homes installed on permanent foundations.

(2) Accessory buildings and uses, customarily incidental to the above uses and located on the same lot therewith, but not involving the conduct of a retail business except as provided herein:

(a) The term accessory use shall include customary home occupations as herein defined;

(b) Accessory buildings, including a private garage, shall not occupy more than 50% of the minimum required rear yard. When the accessory building is directly attached to the main building, it shall be considered an integral part of the main building. See § 155.076 for additional accessory use requirements;

(c) A detached private garage used in conjunction with the main building;

(d) Private open space or other private recreational amenities as part of a residential subdivision and not for commercial purposes; and

(e) One accessory dwelling unit.

(3) Swimming pool (private);

(4) Utilities (public); and

(5) Religious assembly.

(C) *Conditional uses.*

(1) Bed and breakfast lodging located only in the residential building;

(2) Home day care;

(3) Home commercial crafts or hobbies;

(4) Telecommunications towers, commercial antennas, and broadcast towers, subject to all applicable city regulations;

(5) Two-family residential (duplex); and

(6) One secondary single-family residential building built onsite.

(D) *Development regulations.*

(1) Lot size: minimum 20,000 square feet but less than 2 acres.

(2) Maximum building height (as defined in § 155.005):

(a) Primary residential building: not more than 2 stories and not more than 28 feet with flat roof (see definition) or 35 feet with pitched roof;

(b) Secondary residential building: not more than 2 stories and not more than 28 feet with flat roof (see definition) or 35 feet with pitched roof;

(c) Accessory buildings: not more than 18 feet and not more than 1 story; and

(d) Decks: not more than 12 feet including a railing only or 18 feet including a roof.

(3) For minimum setback, no construction, including buildings, parking areas, and driveways, except entry driveways, and no placement or display of commercial material and equipment shall be allowed in the setbacks. The minimum setbacks shall be the larger of the dimensions in §

155.078(A), Table A, or the following:

(a) Dominant street: 40 feet;

- (b) Secondary street: 15 feet;
- (c) Interior side yard: 10 feet; and
- (d) Rear yard: 20 feet.
- (4) Minimum floor area:
 - (a) Primary residential building: 600 square feet.
 - (5) Maximum impervious cover: 35%. Impervious cover shall be calculated as a percentage of the net site area and shall be the lesser of the percentage specified above in this district description or the percentage for the average lot slope in § 155.078(M), Table C.
- (6) The parking and trash collection ordinances will apply.
- (E) *Special requirements.*
 - (1) Recreational vehicles, travel trailers, or motor homes may not be used for on-site dwelling purposes.
 - (2) Open storage is prohibited, except for materials for the resident's personal use or consumption such as firewood, gardening materials, and the like.
 - (3) Single-family homes with side entry garages where lot frontage is only to 1 street (not a corner lot) shall have a minimum of 25 feet from the door face of the garage or carport to the side property line for maneuvering.
- (F) *Other regulations.* As established in §§ 155.075 *et seq.*, development standards.
(Ord. 2001-010, § 16, passed 4-1-2001; Am. Ord. 2003-006, passed 7-3-2003) Penalty, see § 155.999

§ 155.105 CONDITIONAL USE PERMITS.

(A) *Conditional uses.*

- (1) The purpose of the CUP, conditional use permit, process is to allow certain uses which are not specified, permitted uses within a zoning district. To be considered for a CUP, the requested use must be listed under "conditional uses" within the specific zoning district. Possible conditional uses, if any, are listed in each zoning district.
- (2) The City Council by an affirmative vote may, after public hearing and proper notice to all parties affected, and after recommendations from the Planning and Zoning Commission that the uses are in general conformance with the intent of the Comprehensive Plan and with general objectives of the city, and containing such requirements and safeguards as are necessary to protect adjoining property, authorize certain uses by a CUP. As a zoning action, issuance of a CUP shall only apply to real property (such as shall not be attached to any person, business entity, or the like), shall not be transferred from one property to another (such as shall not move if a business operation relocates), and shall not expire without proper zoning action to rescind the CUP (such as change the zoning to remove the CUP, with appropriate public notification, public hearing, and the like).
- (3) A zoning application for a CUP shall be accompanied by a metes and bounds description and a survey or scale drawing showing the property for which the CUP is being requested, and by a development plan (see § 155.077) drawn to scale and showing the general arrangement of the project, together with essential requirements such as off-street parking facilities; size, height, construction materials, and locations of buildings and the uses to be permitted; location and construction of signs; means of ingress and egress to public streets; the type of visual screening such as walls, plantings, and fences; and the relationship of the intended use to all existing properties and land uses in all directions to a minimum distance of 200 feet. The city shall make available application forms specifying drawing requirements. The Director or his or her designee, the Planning and Zoning Commission, or the City Council may require additional information or drawings (such as building floor plans), operating data, and expert evaluation or testimony concerning the location, function, and characteristics of any building or use proposed. The development plan shall be reviewed and approved along with the CUP zoning application, and in accordance with § 155.077 of this code.

(B) *Conditional use permit regulations.*

- (1) In recommending that a conditional use permit for the premises under consideration be granted, the city shall determine that the uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration, and shall make recommendations as to requirements for the paving of streets, alleys, and sidewalks, means of ingress and egress to public streets, provisions for drainage, adequate off-street parking, screening, and open space, heights of structures, and compatibility of buildings. In approving a requested CUP, the Planning and Zoning Commission and the City Council may consider any or all of the following:
 - (a) The use is harmonious and compatible with surrounding existing uses or proposed uses, and does not more adversely affect an adjoining site than would a permitted use;
 - (b) The architecture, facade, and signage designs of the use are traditional hill country

designs and are harmonious with those of adjacent uses. In the case of chain establishments, they shall not include or simulate the signature designs of those establishments beyond the absolute minimum necessary to identify the establishment;

(c) The use requested by the applicant is set forth as a conditional use in the base district;

(d) The nature of the use is reasonable;

(e) The conditional use does not adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;

(f) The conditional use does not adversely affect an adjacent property by its resulting traffic through the location, or its lighting, or its type of sign; and

(g) Any additional conditions specified, if any, ensure that the intent and purposes of the base district are being upheld.

(2) In granting a conditional use permit, the Planning and Zoning Commission and the City Council may impose conditions which shall be complied with by the owner or grantee before a certificate of occupancy may be issued by the Building Official, or his or her designee, for use of the building on that property pursuant to the conditional use permit and the conditions precedent to the granting of the certificate of occupancy. Any special conditions shall be set forth in writing by the City Council prior to issuance of the certificate of occupancy, and shall be incorporated into the amending ordinance establishing the CUP.

(3) No conditional use permit shall be granted unless the applicant, owner, and grantee of the conditional use permit shall be willing to accept and agree to be bound by and comply with the written requirements or conditions of the conditional use permit, as incorporated into the amending ordinance establishing the CUP, and as reviewed by the Planning and Zoning Commission and approved by the City Council.

(4) A building permit or certificate of occupancy shall be applied for and secured within 1 year from the time of granting the conditional use permit; provided, however, that the City Council may authorize 1 extension of 1 additional year. After the 1-year period (and the 1-year extension, if it has been granted by the City Council) has elapsed, the Planning and Zoning Commission and the City Council may review the development plan for continued validity and compliance. If the development plan is determined to be invalid or no longer viable, then the applicant and property owner(s) must submit a new or revised development plan for approval prior to any construction or to application for a building permit for the area designated for the conditional use permit. The new development plan must be resubmitted for review and approval in accordance with § 155.077 of this code. If building construction or use of a CUP has not commenced within a reasonable amount of time after 1 year, then the City Council, at its option, may initiate proceedings to rescind the CUP for lack of use. No development right, if any, shall vest in a CUP that has expired or is no longer valid.

(5) No building, premises, or land used under a conditional use permit may be enlarged, modified, structurally altered, or otherwise significantly changed unless an amended conditional use permit is granted for that enlargement, modification, structural alteration, or change. Minor changes or alterations may be approved by the Director or his or her designee.

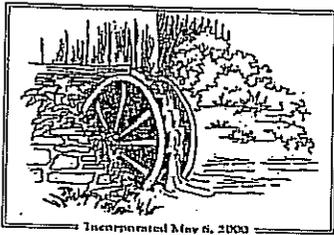
(6) The Board of Adjustment shall not have jurisdiction to hear, review, reverse, or modify any decision, determination, or ruling with respect to the specific land use designated by any conditional use permit.

(7) In residential districts, the Planning and Zoning Commission and the City Council shall have the right to waive the requirements of this section in whole or in part if they find that the proposed use conforms to the criteria of § 155.109(A)(2) and that conforming to the requirements of this section places an undue burden upon the applicant.

(8) When the City Council authorizes granting of a conditional use permit, the Zoning District Map shall be amended according to its legend to indicate that the affected area has conditional and limited uses, and the amendment is to indicate the appropriate zoning district for the approved use and prefixed by a CUP designation.

(C) *Bed and breakfast lodging.* The review for CUP approval of a bed and breakfast lodging facility shall consider the impact of tenant activity on the surrounding residential properties, the neighborhood and environment, and other factors as the Commission deems appropriate. It shall include but not be limited to consideration of the following:

- (1) Permitted uses in the applicable zoning district;
- (2) The proposed occupancy and the size of the property, and whether a smaller occupancy level is appropriate;
- (3) Setbacks and proximity to other dwellings;
- (4) Rental regulations (such as no large parties, no extra guests) imposed by the owner and the degree of owner involvement in property management (such as owner in residence or not in residence);
- (5) Occupant access to waterways and other environmentally sensitive areas;
- (6) Vehicle access and on-site parking and the number of parking spaces available;
- (7) Compliance with all state, county, and city ordinances, laws, rules, and regulations, including the Building Code and Fire Code; and
- (8) Adequacy of wastewater treatment systems.



Village of Wimberley

CONDITIONAL USE PERMIT APPLICATION

No. CUP-59 - 002

FOR OFFICIAL USE ONLY

Application Date: 2/23/09 Tentative P&Z Hearing: 3/26 Tentative Council Hearing: 4/2

FEES: \$400.00 DATE PAID: 2/23/09 CHECK NO. 1040 REC'D BY Monica

PROJECT SITE ADDRESS: 2410 FLITE ACRES RD Wimberley, TX. 78676

OWNER/APPLICANT GAMY CALTON PHONE (512) 657-8253

FAX() _____ EMAIL: G.CALTON@AUSTIN.RR.COM

Mailing Address: 242 BLANCO DR CITY: WIMBERLEY STATE: TX ZIP: 78676

APPLICANT UNDERSTANDS that the purpose of the Conditional Use Permit (CUP) process is to allow certain uses which are not specific permitted uses within a zoning district. To be considered for a CUP, the requested use must be listed under "Conditional Uses" within the applicable zoning district.

ZONING: _____ CONDITIONAL USE REQUESTED: (e.g. Bed & Breakfast Lodging)

BEA + BREAKFAST

Planning Area A Zoning R-2 Total Acreage or Sq. Ft. 1.66 AC

Subdivision: FLITE ACRES Lot 45+ Block 4/6

Appraisal District Tax ID#: R 27638

Deed Records Hays County: Volume 3470 Page 557

Is property located in an overlay district? (X) Yes () No - If Yes,

Type: PROTECTIVE WATER

Is property located in flood plain? () Yes (X) No

Utilities:

Electric Provider: PEC

Water Provider or Private Well: WIMBERLEY WATER

Wastewater Service Provider or Hays County Septic Permit No: NONE

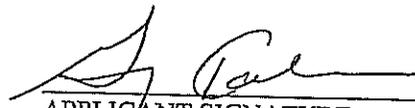
MY REQUEST IS BASED ON THE FOLLOWING:

- The use is harmonious and compatible with surrounding existing uses or proposed uses, and does not adversely affect an adjoining site than would a permitted use;
- The use requested by the applicant is set forth as a conditional use in the base district;
- The nature of the use is reasonable;
- The conditional use does not adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;
- The conditional use does not adversely affect an adjacent property by its resulting traffic through the location, or its lighting, or its type of sign; and
- That any additional conditions specified, if any, ensure that the intent and purposes of the base district are being upheld.

ADDITIONAL REQUIREMENTS/DOCUMENTATION

- Metes and bounds description and a survey (i.e., drawing) exhibit showing the property for which the CUP is being requested.
- Site Plan drawn to scale and showing the general arrangement of the project, together with essential requirements such as off-street parking facilities; size height, construction materials, and locations of buildings and the uses to be permitted; location and construction of signs; means of ingress and egress to public streets; the type of visual screening such as walls, plantings and fences; and the relationship of the intended use to all existing properties and land uses in all directions to a minimum distance of two hundred feet (200').
- List of Special Conditions that Applicant agrees apply to property.
- List of all property owners, with mailing addresses located within two hundred feet (200') of any point of the subject property.
- Payment of Application fee \$400.00
- Applicant agrees to attend public hearings before the P&Z Commission as well as the City Council concerning this application; or waives his/her right to appear, understanding that if questions are raised that cannot be answered, the matter may be continued, or denied.
- Applicant has checked the subdivision plat notes, deed restrictions, restrictive covenants and/or zoning actions to ensure that there are no restrictions on the subject property and applicant understands that the Village zoning action does not relieve any obligation of these restrictions.
- Applicant agrees to provide additional documentation as needed by the Village.
- Applicant understands that Village review of this Application is dependent upon the accuracy of the information provided and that any inaccurate or inadequate information provided may delay the review of the Application. Applicant, by his/her signature below, certifies that to the best of his/her knowledge said information is complete and correct.
- Applicant hereby authorizes the Village representatives to visit and inspect the subject property.

Date 2-23-09



APPLICANT SIGNATURE

WHEN APPLICABLE:

Date _____

AGENT SIGNATURE

**2410 Flite Acres Road
Wimberley, Texas 78676**

(512) 917-2782 or (512) 657-8253

Welcome to our home. We hope you enjoy your stay.

As you know all places have their dos and don'ts. Below you will find ours.

NO SMOKING

NO PETS

CHECK-IN 3:00 P.M.

CHECK- OUT 11:00 A.M.

Please respect our home, property and the neighbors. We have 200 feet of river for your enjoyment and is basically defined by the boundaries of the house and the garage guesthouse, better know as "The Bunkhouse". Any other use of the riverbank on either side should be avoided, as this is all private property and you will be trespassing.

We ask that you respect the neighbors and other guest on the river by not having any loud music, trash or leaving unnecessary outside lighting on after normal hours. We want you to enjoy the sound of the river, moonlight nights and nature at its most beautiful.

We do not allow large parties.

Please also respect our septic system and properly dispose of any thing other than toilet tissue into a trash receptacle.

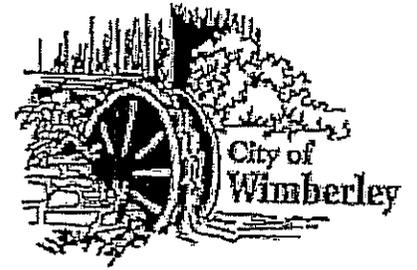
Your host Gary and Susan live down the road and will be happy to check in with you to extend a welcome and see if you need anything to make your stay more enjoyable.

Your hosts have provided a picnic blanket and river towels by the back door. Please do not take bath towels to the river. Please no glass bottles or glass of any kind at the river. We have provided plastic glasses and wine glasses to be used at the river.

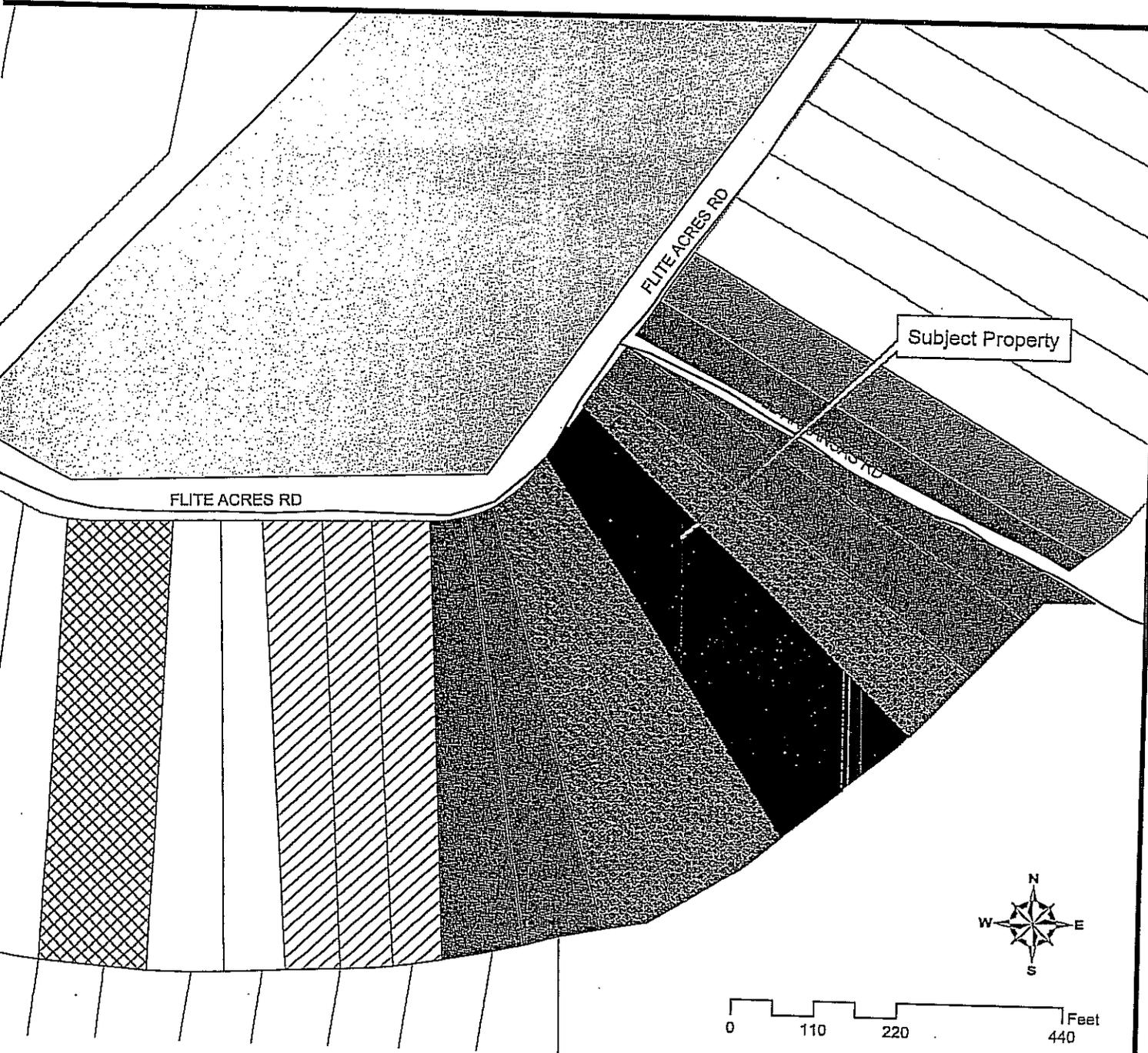
Please do not rearrange furniture or use any items outdoors that belong indoors. There is a large garbage receptacle on the side of the garage. We have also provided a recycling bin in the house, as well as a recycling bin outside.

Please enjoy Wimberley, the house and the river and leave it as beautiful as you found it.

Zoning Map for CUP-09-002



P.O. Box 2027 • Wimberley, Texas 78676

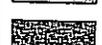


Land Uses

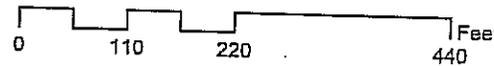
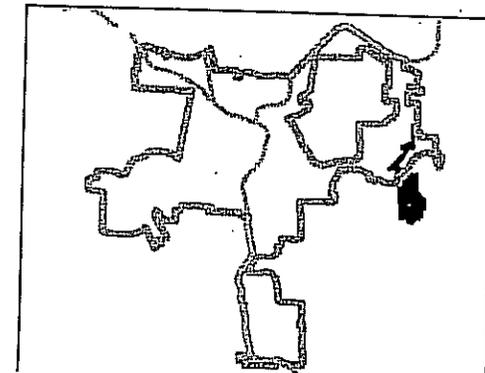
Proximate B&Bs

-  CUP
-  Grandfathered Use

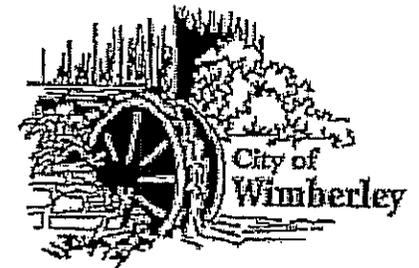
Zoning Districts within 200FT

-  Subject Property
-  Rural Acreage
-  Single Family Residential 1
-  Single Family Residential 2

Location Map



Notified Properties for CU-09-002



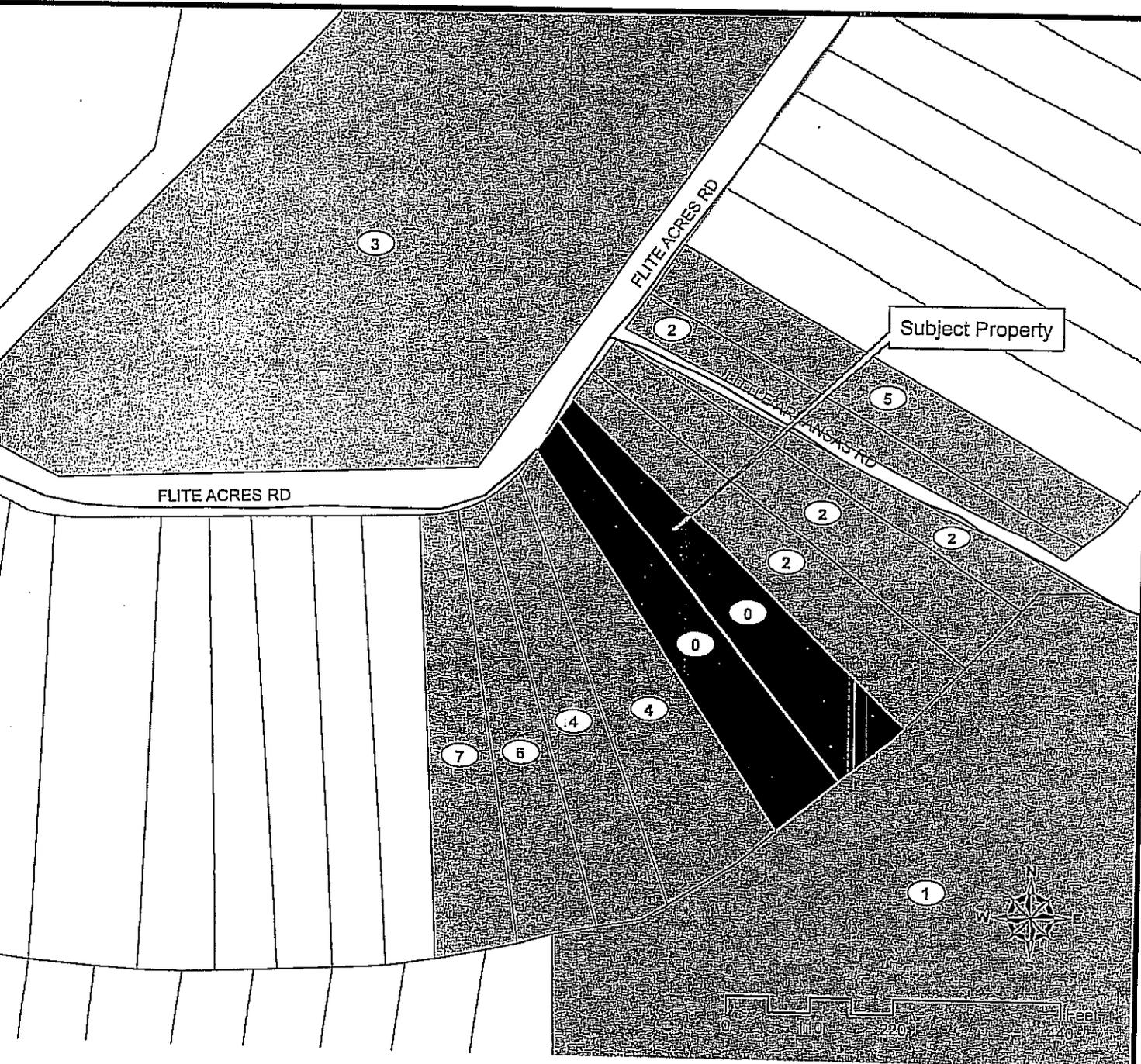
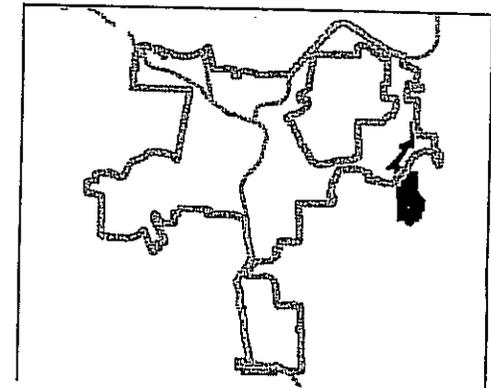
P.O. Box 2027 • Wimberley, Texas 78676

Notified Properties

ID, OwnerName

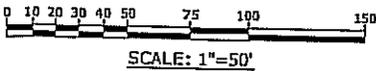
-  0, SUBJECT PROPERTY
-  1, TEXAS PORCH HOUSE INC
-  2, ROLLING CAROLINE L F
-  3, BREITENBACH EDWARD & ERIN
-  4, CAIN, FRANK
-  5, TINDAL RICHARD & D'ANNA
-  6, JENKINS MICHAEL D &
-  7, GRIMES THOMAS J & JOYCE M

Location Map



LOTS 45 & 46 FLITE ACRES
 A SUBDIVISION IN HAYS COUNTY, TEXAS
 VOLUME 137, PAGE 430-432, HAYS COUNTY DEED RECORDS

← ← ← **BLANCO RIVER** ← ← ←



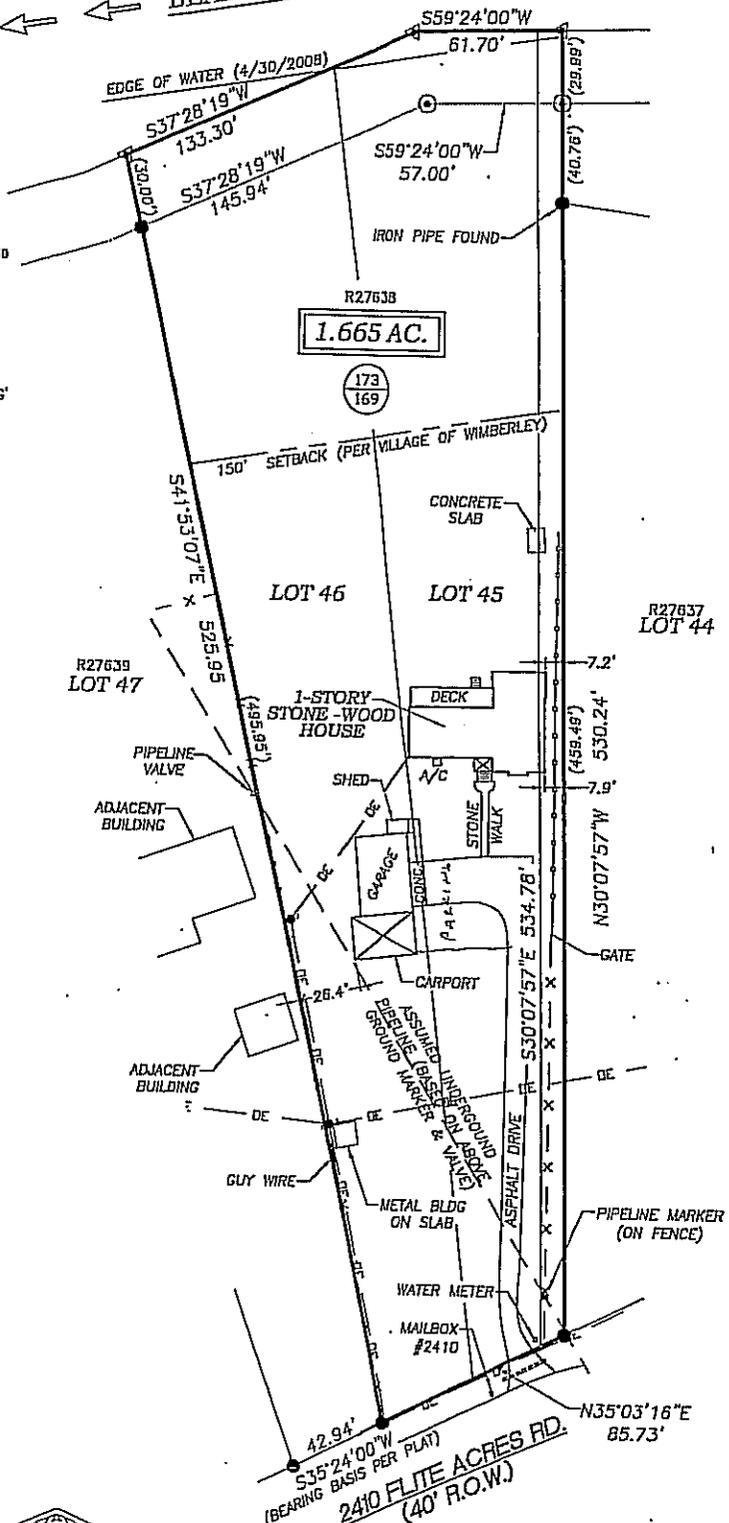
- LEGEND**
- — 1/2" IRON ROD FOUND—UNLESS NOTED
 - ⊙ — 1/2" IRON ROD SET—DRIFTWOOD SURVEYING
 - ▲ — CALCULATED POINT
 - ⊙ — SERVICE OR UTILITY POLES
 - — — — — OVERHEAD UTILITIES
 - - - - - EASEMENT
 - — — — — WOOD FENCE
 - x - x - x - WIRE FENCE
 - - - - - SETBACK
 - VOL. PG.** HAYS COUNTY OFFICIAL PUBLIC RECORDS
 - Rxxxxx** HAYS COUNTY PROPERTY IDENTIFICATION NUMBER

- NOTES**
- THIS SURVEY REFERENCES TITLE COMMITMENT No. 0807021—WM, DATED 8/8/2008, PROVIDED BY INDEPENDENCE TITLE COMPANY.
 - RESTRICTIVE COVENANTS APPLY PER VOL. 137, PG. 430, & VOL. 141, PG. 445, H.C.D.R.
 - A PORTION OF THE SUBJECT TRACT APPEARS TO BE IN THE 100 YEAR FLOODPLAIN ACCORDING TO F.I.R.M. PANEL #48209C 0360 F, DATED 9/2/2005. FLOOD AREAS/ELEVATIONS CAN ONLY BE VERIFIED BY ELEVATION CERTIFICATE.
 - A BLANKET UTILITY EASEMENT EXISTS FOR PEDERNALES ELECTRIC COOPERATIVE, INC. PER VOL. 138, PGS. 121-122, H.C.D.R.
 - A RIGHT OF WAY EASEMENT EXISTS FOR TEXAS NEW MEXICO PIPELINE CO. AS RECORDED IN VOL. 169, PG. 277, H.C.D.R.
 - A RIGHT OF WAY EASEMENT EXISTS FOR TELEPHONE OR PIPELINE AS RECORDED IN VOL. 141, PG. 445, H.C.D.R.
 - THIS PROPERTY LIES WITHIN THE CORPORATE LIMITS OF THE VILLAGE OF WIMBERLEY AND IS SUBJECT TO ITS ORDINANCES.
 - 150' SETBACK FROM CURRENT RIVERBANK PER VILLAGE OF WIMBERLEY PROTECTED WATERWAY OVERLAY DISTRICT ORDINANCE No. 2001-010, SECTION 50.

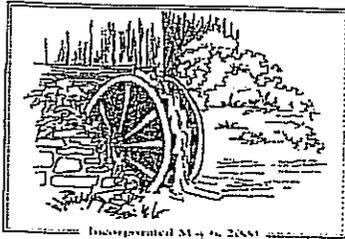
SURVEYOR'S CERTIFICATION

This survey is certified to Independence Title Company and buyers: Gary R. Callon and Susan Callon. I hereby certify to the aforesaid parties, as of the date set forth below that a careful survey was made on the ground, under my supervision, of the tract of land described herein, and that said survey substantially complies with the current Texas Society of Professional Surveyors Standards & Specifications for a Category 10, Condition II Land Survey, and that said property has abutting access to and from a public roadway.

Rudolf J. Pata
 DATE: _____ RUDOLF J. PATA, JR. TX. RPLS #5388



Driftwood Surveying Professional Land Surveyors - Surveying the Hill Country		DATE: 4/30/08 FIELD CREW: RC/SR DRAWN: DGB CHECKED: RJP PROJ. NO.: HCO8008 CML NAME/TITLE:
P.O. Box 379 Wimberley, TX 78856 PH: (512) 847-7222 FAX (512) 847-7372	REVISIONS: DATE:	Page 1 of 1
LOTS 45 & 46, FLITE ACRES A SUBDIVISION IN HAYS COUNTY, TEXAS VOLUME 137, PAGES 430-432, H.C.D.R.		
CLIENT: CALLON		© 2008 ALL RIGHTS RESERVED



City of Wimberley

12111 Ranch Road 12 (P.O. Box 2027), Wimberley, Texas 78676

Phone: 512-847-0025 Fax: 512-847-0422

Email: village@anvilcom.com Web: www.vil.Wimberley.tx.us

Tom Haley, Mayor - Bob Flocke, Mayor Pro-tem

Council Members - Charles Roccaforte, Jeri Xiques, Terrie Bursiel, Dick Lamon
Don Ferguson, City Administrator

March 3, 2009

NOTICE OF PUBLIC HEARING

Re: **File No. CUP-09-002**

2410 Flite Acres Road, Wimberley, Texas

A Request for a Conditional Use Permit (CUP) to allow the operation of a Bed and Breakfast at this location.

Dear Property Owner:

You are receiving this letter because you own property within 200 feet of the above-referenced location.

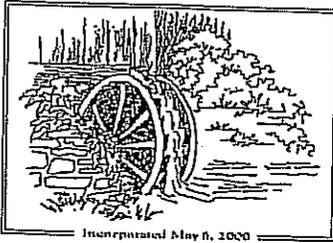
Gary Callon has requested a Conditional Use Permit in order to operate a Bed and Breakfast on the subject property. The current zoning for this property is (R2) Single Family Residential 2.

The City of Wimberley Planning & Zoning Commission will consider this request during a public hearing on **Thursday, March 26, 2009, at 6:30 p.m.** in the Wimberley City Hall, 12111 Ranch Road 12. Upon a recommendation from the Commission, City Council will hold a Public Hearing to consider the same request on **Thursday, April 2, 2009, at 6:30 p.m.**

Because the granting of this request may affect your property, you are encouraged to participate in the zoning process. The public will be given an opportunity to speak during the hearing. If you wish to comment but are unable to attend, written comments may be submitted to the City Administrator prior to the meeting.

Additional information regarding the proposed Conditional Use Permit is available for public review at City Hall during normal business hours. Should you have questions, please contact the City Administrator at 512-847-0025.

CITY OF WIMBERLEY



City of Wimberley

12111 Ranch Road 12, P.O. Box 2027, Wimberley, Texas, 78676

Phone: (512) 847-0025 - Fax: (512) 847-0422

E-mail: Wimberley@anvilcom.com - Web: www.vil.wimberley.tx.us

NOTICE BY SIGN POSTING

Zoning No: CUP-09-002

Owner Gary Callon

Date: 3/7/09

To: Code Enforcement/Public Works

Please place a Proposed Zoning Sign on the following property

Project Site Address 2410 Plite Acres

which is located Plite Acres

Bill Bowers
Asst. Public Works

Note: The above-referenced sign was placed on the subject property on

3/7, 2009

Bill Bowers
Signature



THE CLASSIFIED

Wednesday, March 11, 2009

Email your ads to: classifieds@wimberley.com

★ LEGAL & PUBLIC NOTICES

NOTICE OF PUBLIC HEARING

(Conditional Use Permit)

Notice is hereby given that the Planning Zoning Commission of the City of Wimberley will hold a public hearing at the Wimberley City Hall on Thursday, March 26, 2009, at 6:30 p.m. to consider the following CUP 05-000-000-001 application for a Conditional Use Permit CUP to allow the operation of a bed and breakfast at 2400 Hill Acres Road. Upon recommendation of the Planning & Zoning Commission, the City Council will also hold a public hearing on Thursday, April 2, 2009, at 6:00 p.m. at City Hall. Comments on this request from a member of the public may be presented in person or by mail (PO Box 2027) at City Hall prior to the hearing. The public will be granted an opportunity to speak at the hearing. Additional information concerning the proposed action is available for review at the Wimberley City Hall, 2331 Ranch Road, 125 Wimberley, Texas 77883 (817) 257-4201.

PUBLIC NOTICE

Oldwell Hays County Emergency Services District No.

resolution and order calling for a general election for the selection of two emergency services commissioners for Caldwell Hays County Emergency Services District No. 1 pursuant to Chapter 475, Health and Safety Code. The election will be on or around May 19, 2009. (03558/1/2)

★ AUTOS

COLLEGE STUDENT looking for a good low mileage used car. Call Bob at 512-379-8088. (03558/1/2)

FOR SALE 2000 HONDA Odyssey by Great Deals. Luggage rack, towing package. MSRP \$61,500. Call 512-788-7610. (03558/1/2)

GOOD OLD BOYS AUTO RECYCLING cash for your cars and more recycling. Call 512-333-7407 or 512-353-7778. (03558/1/2)

ATTENTION! RoadRunner Recycling is now buying all types of scrap metal. We buy junk vehicles any condition. We are wrecker for cash paid. Locations: 6680 N. Hwy 28, San Marcos, TX 512-650-5110; 512-996-1382. (03558/1/2)

BURGER BARN SERVING BREAKFAST SUN-THURS 7:00AM TILL 10:30 AM

★ CHILD CARE

WIMBERLEY UNITED METHODIST CHURCH Mother's Day Out program is now accepting enrollment for the summer. The program will run from June 1st through August 31st on Monday-Friday from 9am-3pm with an option for early drop off and late pick up extending the day from 7am until 6pm. Children ages 2 months to 5 years welcome for more information please call 847-7924 or email mdo@wimberleyumc.org. (03558/1/2)

★ COMMERCIAL FOR LEASE

EXECUTIVE SUITE Office space available March 15. Copier/Internet/ receptionist/ use of Conference Room available with office or as virtual office. In St. As Wimberley. Professional Office 950 sq ft \$2,395/mo. 1847 3361 (03558/1/2)

OFFICE SPACE AVAILABLE Wimberley, OH. 10,000 sq ft. Call 512-793-6800. (03558/1/2)

ONE MONTH FREE space as good as a unit a few feet flexible square footages to choose from at Wimberley's newest retail center at THE GARDEN on the square at the bridge call 512-693-6626 or for more details 1029/1/59/21

ONE 2000 SQ. FT. office/warehouse 1000 sq ft month
TWO 1000 SQ. FT. office/warehouse 3500 sq ft reach
THREE 800 SQ. FT. office/retail 1800 sq ft retail Plaza Del Sol Wimberley, Call day (817) 279-6966 or (817) 279-2341

PRESTIGIOUS OFFICE SPACE AVAILABLE IN HOMESTEAD OFFICE PARK THIS CENTRALLY LOCATED LANDMARK LOCATION IN DRIPPING SPRINGS IS JUST WHERE YOU NEED TO BE!
894-0039 OR 415-6251



EXECUTIVE/OFFICE SPACE

SPACE Best location in Downtown Wimberley 13210 Hwy 221. WiFi, printer, cooler, phone connections, full kitchen, paid use of conference room, work space, ballroom, kitchen, piano, Malibu, Alfa Williams, baby. Call 512-222-6681. (03558/1/2)

WAREHOUSES/ CONTRACTORS SHOP/ LIGHTS MANUFACTURING 5000 sq ft 1000 sq ft from 125 insulated. What about DSE & other available. Call Nancy at Millbrook School. (817) 279-1610. (03558/1/2)

OFFICE SPACE SPECIAL 2000 sq ft available at Hill Road. Call lease, as is and rental agents. Maribel at Mike @ Wimberley Land Company. (512) 347-2229. (03558/1/2)

★ GARAGE SALES

HOUSE MOVING SALE Saturday, March 14, 8am-12pm. 1200 following trail, Dripping Springs, 569-2222. Furniture, screen, weight bench, weights, black, white, the headboard, stereo, clothes, etc.

SATURDAY 8am-12pm. Large inventory of 650 new natural rubber floor mats, game equipment, track pants, women's and girls clothing and more. Call 681 Brookhollow Dr. Woodcreek, TX. (03558/1/2)

YARD SALE Clothes, dishes, etc. 230 Cedar Hollow Wimberley, TX. Saturday & Sunday. (817) 279-1610.

BIG STATE SALE Great lawn & garden items, all kinds of kitchen, house, etc. 1111 Hill & S. Hwy 28, 8am-5pm. 1207 High Mesa Dr. Cedar Creek, Texas. 817-2295.

5 FAMILY Building supplies, power tools, show, school, furniture, records, stone, old records, gazebos, etc. Saturday, Sun. 5000 Bell Springs, Hwy 28, Dripping Springs, (03558/1/2)

ORDINANCE NO. 2009-_____

AN ORDINANCE APPROVING AN APPLICATION FOR A CONDITIONAL USE PERMIT SUBMITTED BY GARY CALLON TO OPERATE A BED AND BREAKFAST LODGING FACILITY ON AN APPROXIMATELY 1.66 ACRE TRACT LOCATED AT 2410 FLITE ACRES ROAD, WIMBERLEY, TEXAS, ZONED SINGLE-FAMILY RESIDENTIAL 2 (R2), AND IMPOSING CERTAIN CONDITIONS; AND PROVIDING FOR FINDINGS OF FACT; AMENDMENT OF THE ZONING DISTRICT MAP; REPEALER; SEVERABILITY; EFFECTIVE DATE; PROPER NOTICE AND MEETING; AND PROVIDING FOR CERTAIN CONDITIONS.

WHEREAS, an application for a Conditional Use Permit has been filed by Gary Callon (“Applicant”) requesting authorization to operate a bed and breakfast lodging facility on real property described as Lots 45 and 46, Flite Acres Subdivision, consisting of approximately 1.66 acres, zoned Single-Family Residential 2 (R2); and

WHEREAS, a bed and breakfast lodging facility is an authorized use in areas zoned Single-Family Residential 2 (R2) upon the granting of a Conditional Use Permit; and

WHEREAS, after conducting a public hearing on the matter, the Planning and Zoning Commission recommended approval of the CUP application; and

WHEREAS, Applicant has submitted a Conditional Use Permit Application, site plan, and list of conditions on the use of the property for the bed and breakfast purposes, attached hereto as Exhibits “A” and “B”, respectively, and incorporated herein, and other necessary information, and has complied with the requirements of the Wimberley Zoning Ordinance; and

WHEREAS, the Planning and Zoning Commission and City Council have conducted Public Hearings on the Application for a Conditional Use Permit wherein public comment was received and considered on the Application; and

WHEREAS, the City Council finds that the use of the subject property as a bed and breakfast lodging facility, subject to the conditions imposed by this Ordinance, is an appropriate use for the property and is a compatible use with the surrounding properties and neighborhoods.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS:

ARTICLE I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

ARTICLE II. APPROVAL - TERMS AND CONDITIONS

The CITY COUNCIL HEREBY GRANTS the Application for a Conditional Use Permit submitted by Gary Callon (“Applicant”) for use as a bed and breakfast lodging facility on real property described as Lots 45 and 46, Flite Acres Subdivision, consisting of approximately 1.66 acres, zoned Single-Family Residential 2 (R2), Wimberley, Hays County, Texas, subject to the following terms and conditions:

1. Applicant shall not commence development until it has secured all permits and approvals as required by the Wimberley zoning regulations, ordinances or any permits required by regional, State and Federal agencies.
2. This Ordinance only authorizes the additional use of the one-story main house structure located on Lot 45 of the subject property as a bed and breakfast lodging facility in accordance with the site plan attached hereto as Exhibit “A”, and subject to the conditions described in Exhibit “B”, attached and incorporated by reference, as well as all applicable regulations in effect at the time of the submission of the building permit application. No other structures located on the subject property may be used for a bed and breakfast lodging facility. No other use of the property is authorized by this Conditional Use Permit.
3. No commercial signage shall be permitted on the subject property. No more than one (1) sign shall be permitted to provide the property street address and not identify the business. Any signage material, color and dimension shall be compatible with the “Hill Country” theme.
4. Maximum occupancy of the bed and breakfast facility shall be four (4), and three (3) off-street parking places shall be provided.
5. Owner shall provide up to date contact information to the neighbors immediately adjacent to the subject property as well as across the street.

ARTICLE III. ZONING DISTRICT MAP

The official Zoning District Map shall be revised to reflect the Conditional Use Permit established by this Ordinance.

ARTICLE IV. REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

ARTICLE V. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or otherwise

unenforceable by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

ARTICLE VI. EFFECTIVE DATE

This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

ARTICLE VII. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, and the Standard Zoning Enabling Act, Chapter 211 of the Texas Local Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED by the Wimberley City Council on the ___ day of _____, 2009 by a vote of ___ (Ayes) and ___ (Nays).

WIMBERLEY, TEXAS

By: _____
Tom Haley, Mayor

ATTEST:

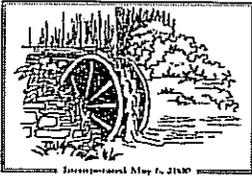
Cara McPartland, City Secretary

(SEAL)

APPROVED AS TO FORM:

Carolyn J. Crosby, Assistant City Attorney

City Council Agenda Form



Date Submitted: March 30, 2009

Agenda Date Requested: April 2, 2009

Project/Proposal Title: CONSIDER APPROVAL OF PROPOSED MOBILITY ENHANCEMENT PLAN FOR THE WIMBERLEY SQUARE

Funds Required:

Funds Available:

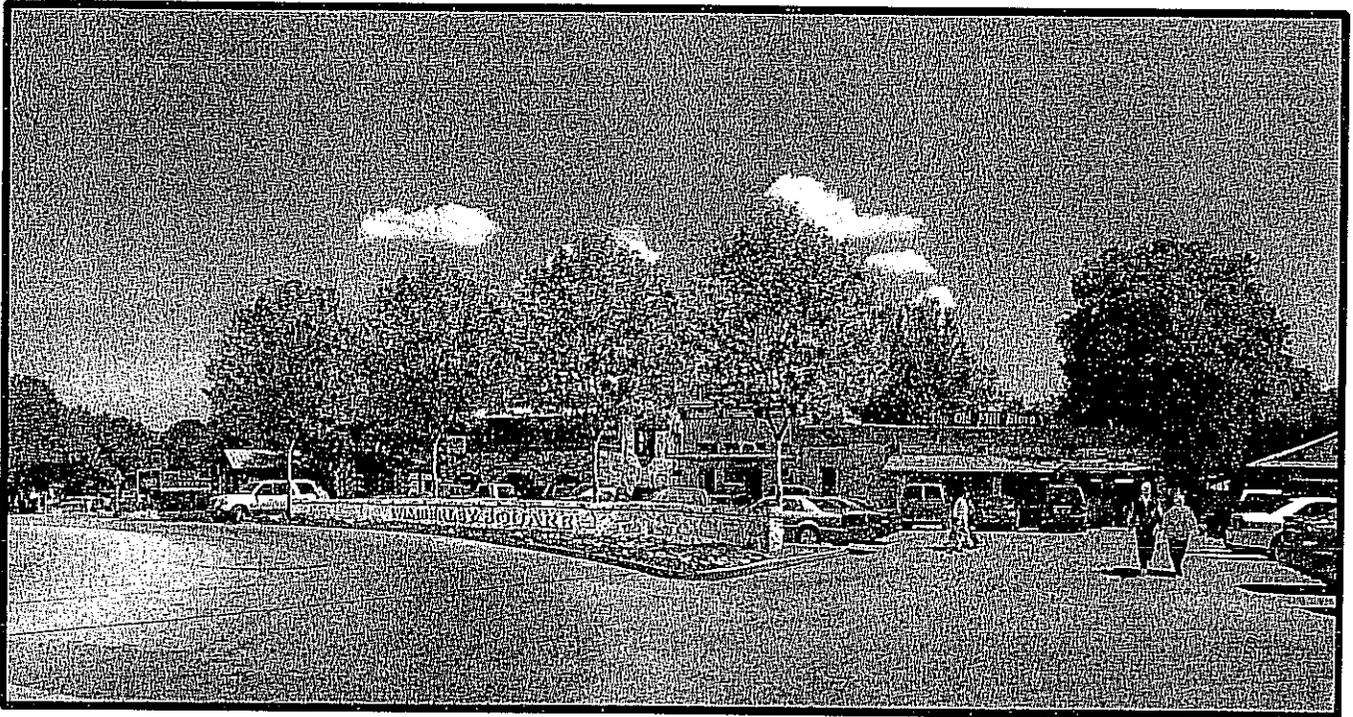
Council Action Requested:

- Ordinance
- Resolution
- Motion
- Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City Council to discuss and consider approval of the *Mobility Enhancement Plan for the Wimberley Square* developed and recommended by the City's Transportation Advisory Board. The proposed plan includes development of a sidewalk system along with numerous parking, signage and lighting enhancements. If adopted, the plan will be utilized to seek grant funding for the proposed improvements.

Attached is a copy of the plan for City Council review and consideration. Members of the Transportation Advisory Board will be present at the meeting to brief Council on the plan.



A Plan for
Mobility Enhancements
in the
WIMBERLEY SQUARE

The City of Wimberley
Transportation Advisory Board
Square Improvement Subcommittee

March 11, 2009

DRAFT

A Mobility Enhancement Plan for the Wimberley Square

INTRODUCTION

BACKGROUND

For many years, the citizens of Wimberley have expressed concerns about the difficulty that pedestrians encounter when walking in and around the Wimberley Square area. Sidewalks are almost nonexistent, and walkers are faced with uneven curbs, bar ditches, awkward steps and the need to share the pavement with autos. Many people feel that this detracts from the enjoyment of our unique and charming Square.

Parents with children in strollers find it almost impossible to navigate safely, and because none of our pathways meet handicapped code requirements, people with disabilities are essentially denied access to our shops and galleries.

Because pedestrian mobility falls under the broad definition of “transportation”, the Wimberley Transportation Advisory Board is charged with addressing this issue. In the summer of 2007, it formed the Square Improvement Subcommittee to take the lead in drafting a Mobility Enhancement Plan for eventual presentation to the Wimberley City Council.

On August 22, 2007, TAB met with the Council to determine the scope and direction that the subcommittee should take. It was decided that this first increment would be limited to the basic Wimberley Square area---from the Lumberyard to the Garden Gate, and from the Cypress Creek Bridge to the Cedar Chest.

THE CHARGE

At the workshop with Council, the Subcommittee was charged with proposing improvements in the Square while preserving its charm and character. Everyone agreed that any upgrades, no matter how essential, must be planned so that the Square continues to reflect the history and uniqueness of Wimberley.

THE GOALS

The Council designated seven categories to be addressed in the Subcommittees' planning:

- MOBILITY
- SAFETY
- PARKING
- LANDSCAPING
- LIGHTING
- TRUCK & EMS ACCESS
- SIGNAGE

THE PROCESS

Because the Square area is of major concern to the merchants, it was decided that the Subcommittee membership should not be limited to TAB members, and that representative merchants should also be included. The Subcommittee members are:

Jane Andrews, Merchant
Bruce Calkins, Merchant
Jenelle Flocke, Merchant and Chair of the Chamber of Commerce Board of Directors
Janet Galloway, Merchant
Rob Pitzer, Merchant and Chair of the Merchants Association
Bert Ray, Chair of the Subcommittee
Corwin Vansant, Chair of the Transportation Advisory Board
Sally Curtis, Merchant Former Member

From fall 2007 to summer 2008, the Subcommittee met frequently to review ideas and develop concepts for presentation at citizen workshops. These were organized in a PowerPoint presentation and the first workshop was scheduled. Approximately 100 letters of invitation were sent out by the City and advertisements were placed in the Wimberley View. The meeting was held at the Wimberley Cafe on June 30, 2008. Over 50 people attended and many ideas and suggestions were recorded.

After this first meeting, the Subcommittee and the City Administrator addressed the citizens' ideas, questions and complaints that were noted, and revised the preliminary Plan to reflect their input. Because the County Bond Election was scheduled in the fall and included propositions that would impact the Square, the next workshop was delayed until spring, and was held on March 2, 2009 in conjunction with a Merchants Association meeting. The response was very positive, and the consensus was that the Plan should go to the City Council for adoption.

The proposed Plan was presented to the Transportation Advisory Board on March 11, 2009. After a review and discussion, the Board voted to recommend to the City Council that the Plan be adopted and implemented.

COORDINATION

Because the Wimberley Square has evolved over the years in a relatively uncoordinated way, improvements present unique planning challenges. And because the businesses on the Square are essential to the City, disruptions must be kept to a minimum. There are several upcoming programs which must be acknowledged in implementing this Plan, and which, if properly coordinated, could be turned to an advantage in achieving its goals:

- The TxDOT / County / City project for improvements to RR 12 through the Square.
- The anticipated new sewer system to serve downtown Wimberley.
- The City of Wimberley signage and wayfinding program to guide visitors and shoppers.

MOBILITY AND SAFETY

THE GOAL

Locate comfortable, safe, handicapped-friendly sidewalks that do not significantly encroach or displace existing drives and parking spaces.

This Plan delineates a path that avoids impacting the existing parking, utilizes existing porches where possible, and acknowledges existing walks and crosswalks (see Drawing 1).

LEGAL ISSUES

To achieve the goals of this Plan, there are several legal processes that must be undertaken:

- Most of the streets around the Square have prescriptive easements, but have never been formally transferred to the City. The City needs to complete the legal processes necessary for their acquisition.
- In order to preserve the existing (and very necessary) parking around the Square, several segments of the proposed sidewalks will have to be on private property. This will require that the City negotiate easements with the property owners (see Drawing 2).
- In some cases, the only practical way to achieve a continuous sidewalk path around the Square without encroaching on existing parking will be to include existing shop porches. Because of the ground slope on the north side of the Square, several porches have one or two steps. In order to meet the handicapped code, the City will have to find a way to implement the conversion of these steps into short ramps. This should be a nominal cost.

SAFETY

Because drainage issues will prevent the installation of streets with curbs and gutters, most of the proposed new sidewalks will be at or near the elevation of the adjacent paving. This means that aggressive parkers could drive on or park on the sidewalks. To prevent this and to protect pedestrians on the walks, the Plan proposes the installation of sturdy wood planter boxes next to the pavement to block vehicles. These would be versions of the traditional Wimberley planter-barrels used for years in the Square (see Drawing 3).

PARKING

THE GOAL

Maximize the number of parking spaces.

LEGAL ISSUES

In many locations around the Square, what appears to be public parking is actually partially or totally on private property (see Drawing 5). Even though these spaces are essential to the businesses in the Square, the City has no legal authority to control their layout, use or maintenance. In order to maximize the number and configuration of available parking spaces, the City must acquire the legal authority to plan all public parking.

PLANNING ISSUES

Because most parking areas have severely faded or nonexistent striping, drivers park in a haphazard or random pattern, which is very inefficient. This Plan shows all parking areas laid out to acknowledge the area's specific dimensions, while adhering to the appropriate codes for spacing and angles.

LANDSCAPING

THE GOAL

Increase the amount of planting in the Square area---more flowers and more green---and plant trees wherever possible to provide much-needed shade.

LANDSCAPING OPPORTUNITIES

There are a number of areas where planting could be installed without encroaching on parking or pedestrian spaces. With creative planning, maintenance and operational costs can be minimized:

- Where autos park at an angle, the triangular dead space in front of each car can accommodate a seat-height planter (see Drawing 4).
- The TxDOT improvements to Ranch Road 12 in the Square offer an outstanding opportunity to create an attractive approach to the Square. Plants can be installed in the traffic islands and alongside the roadway. A low stone wall with “Wimberley Square” can be located just inside the TxDOT right-of-way, along with more planting and trees (see Drawing 6 and the cover sketch).
- Wherever possible, amenities such as benches, fountains, attractive trash receptacles and bike racks should be installed.
- Although the anticipated new downtown sewer system is not yet designed, it will have two undisputed characteristics: it will be required to produce the very highest quality effluent, and it will require extensive trenching to access all the downtown customers. Use of the effluent to water the planting will be very safe and eco-friendly, and the small piping necessary to return the effluent to the Square can be located in the same trenches at very little additional cost.

LIGHTING

THE GOAL

Provide safe, glare-free lighting in the parking and pedestrian areas of the Square.

LIGHTING OPPORTUNITIES

Over time, as the number of visitors to the Square increases, the occasions for evening functions and activities will increase, and businesses will find it advantageous to stay open late. Currently it is hazardous to try to walk in many areas of the Square after dark, but this Plan suggests several ways to provide appropriate lighting:

- During their construction, the planters described in Landscaping and Mobility & Safety can be wired from below the ground and provide low, soft lighting for the sidewalks.

- For areas where the planter lighting is not appropriate, small low-brightness streetlights can be installed. One possibility would be fixtures with poles and heads of wood, similar to those used in some National Parks. Because of legal issues and power accessibility, it will probably not be possible to install lighting fixtures on the actual shop structures.
- It has been suggested that it might be possible to secure a grant from PEC or other energy interest to install a central photo cell and battery system on the roof of an appropriate building to power the Square lighting. In conjunction with the effluent watering system outlined above, this approach would make the Square very eco-friendly.

TRUCK AND EMS ACCESS

THE GOAL

Find convenient, practical locations where large-truck deliveries to Square businesses can park without blocking traffic or parking spaces. Verify that no improvements block emergency vehicles or create inaccessible locations.

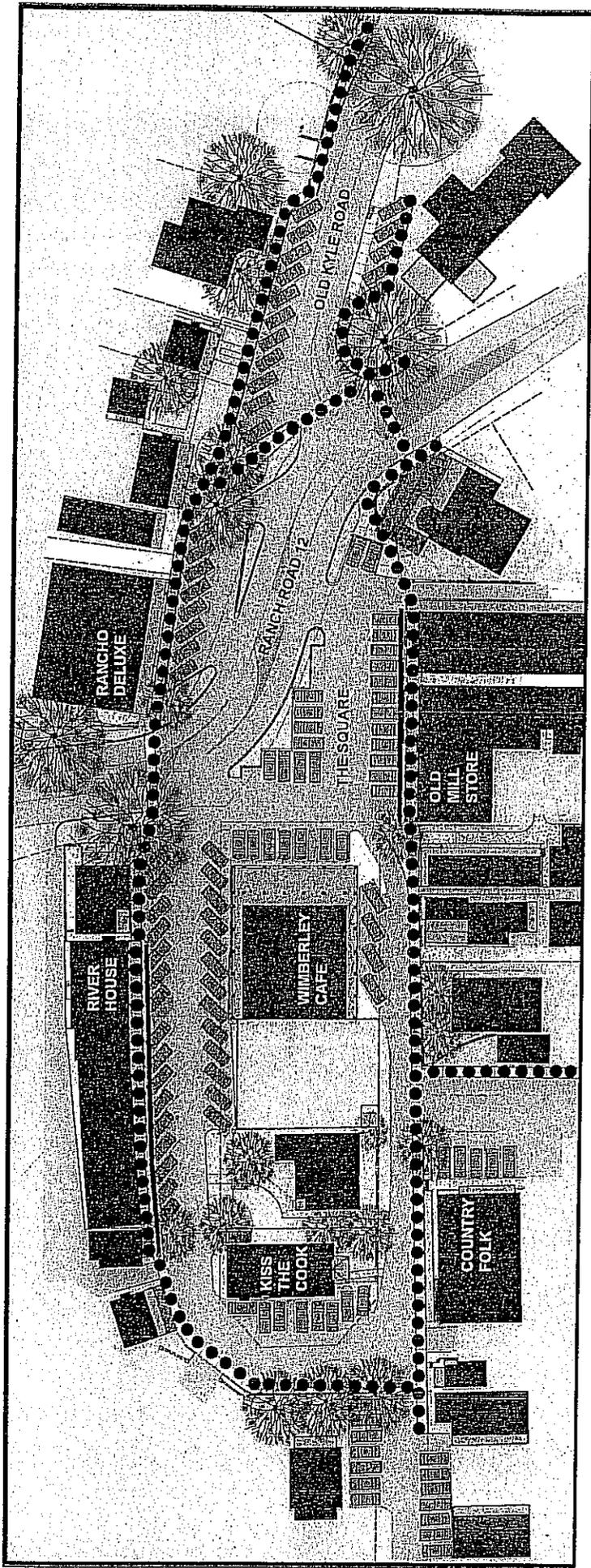
BACKGROUND

The City Administrator and the Subcommittee Chair met with Delivery Managers from Sysco and Ben E. Keith, both large companies serving Square businesses. Their large semi-trailers have very little flexibility or maneuverability, but several locations appeared worthy of further consideration (see Drawing 7).

In some cases, significant construction would be required, future streets would need to be opened, or easements be obtained. Visitor parking enforcement would be essential since one illegally parked vehicle can block the truck from parking or exiting.

SIGNAGE

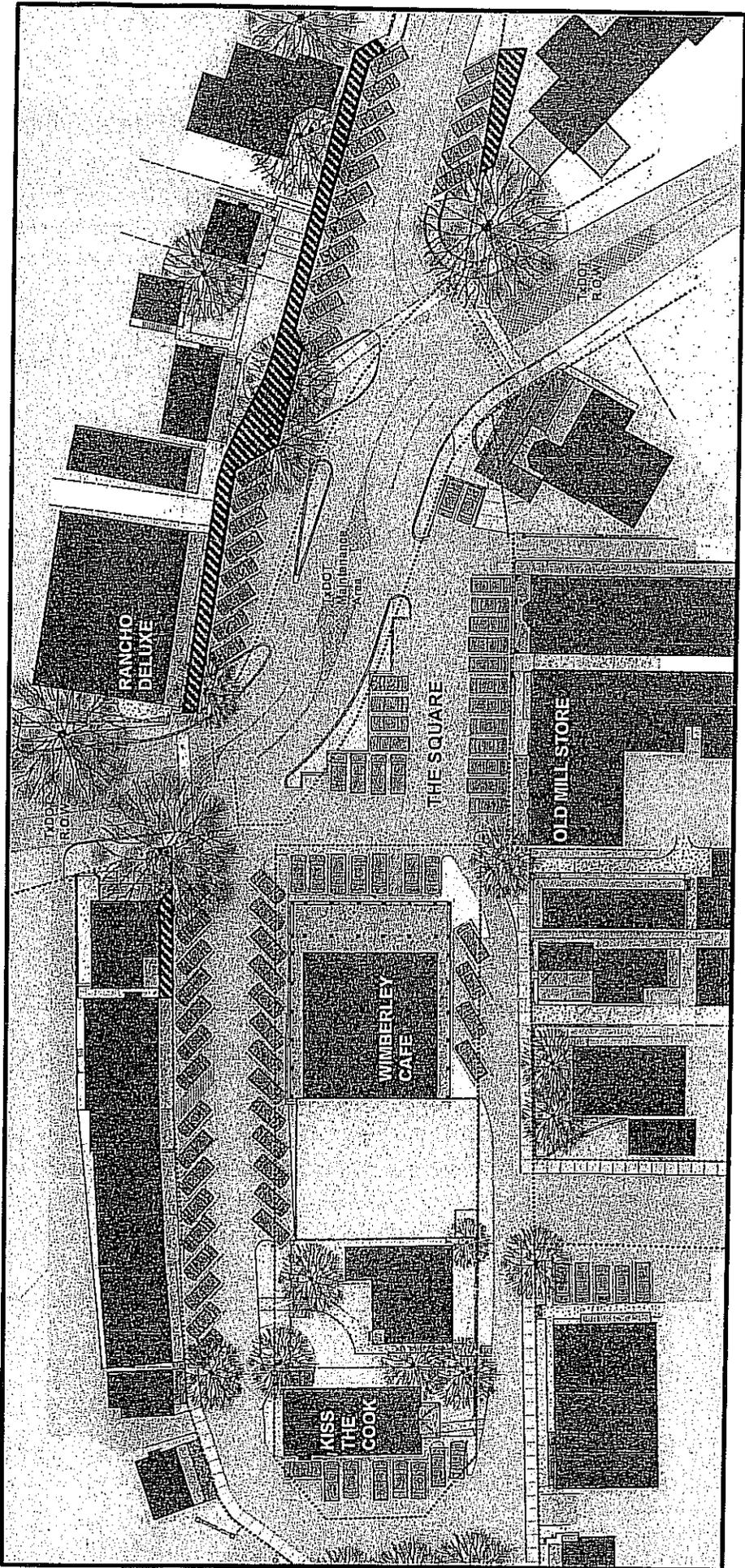
The Subcommittee concluded that signage is a City-wide issue. It encourages the City to address the merchants' identity needs while still preserving the character of the Square.



**A WALKING PATH AROUND THE SQUARE INCORPORATING
NEW SIDEWALKS AND EXISTING PORCHES**

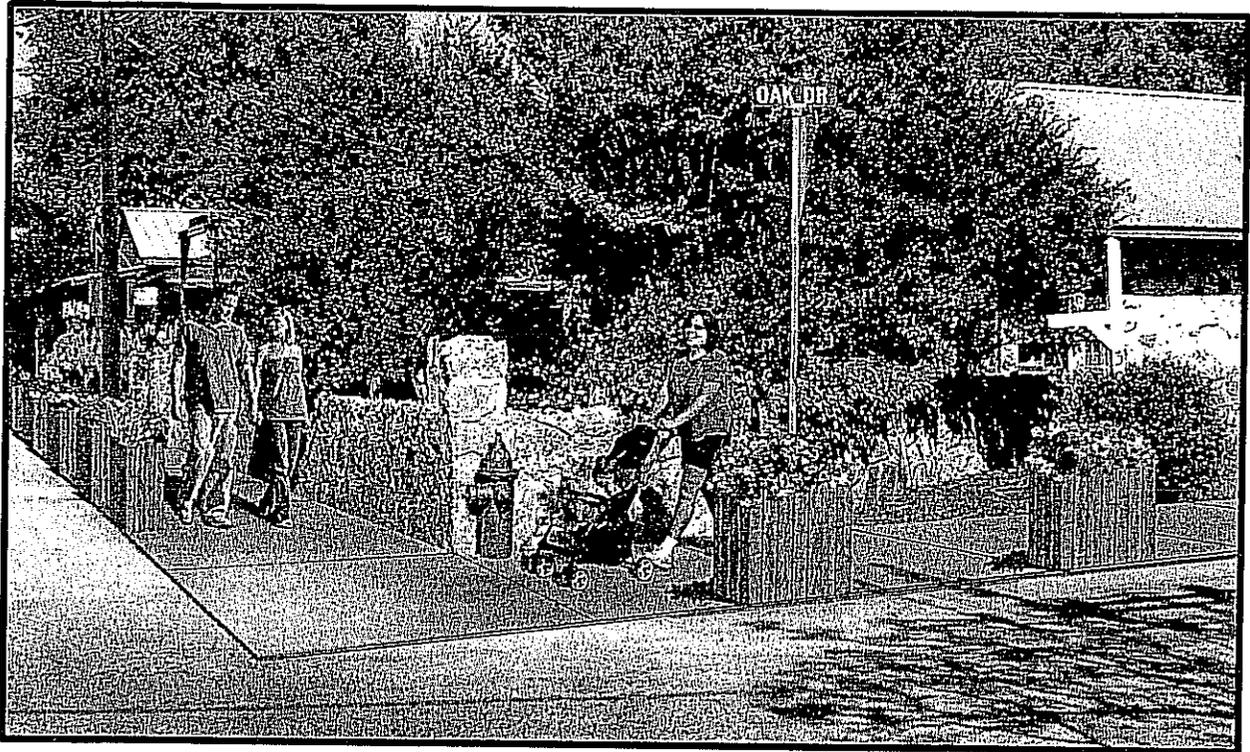
- new sidewalks
- existing porches

DRAWING 1

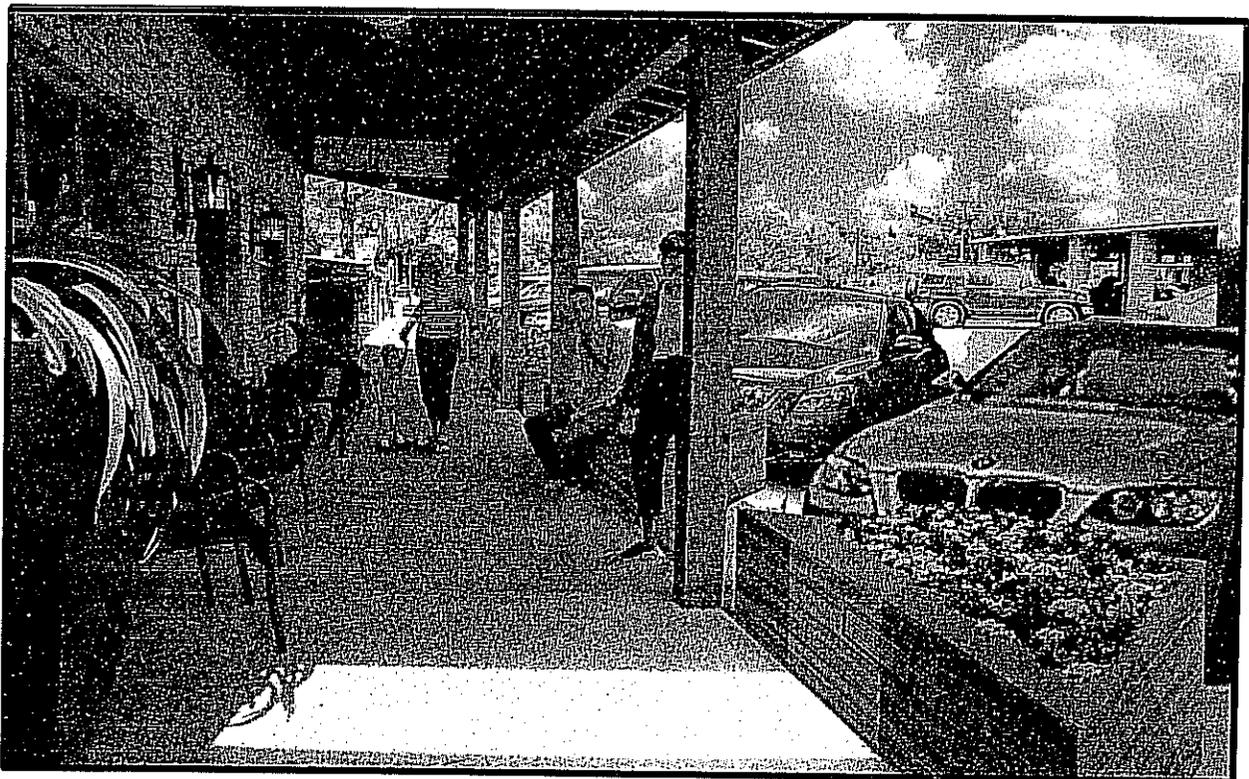


LOCATIONS WHERE EASEMENTS WILL BE REQUIRED FOR NEW SIDEWALKS

DRAWING 2

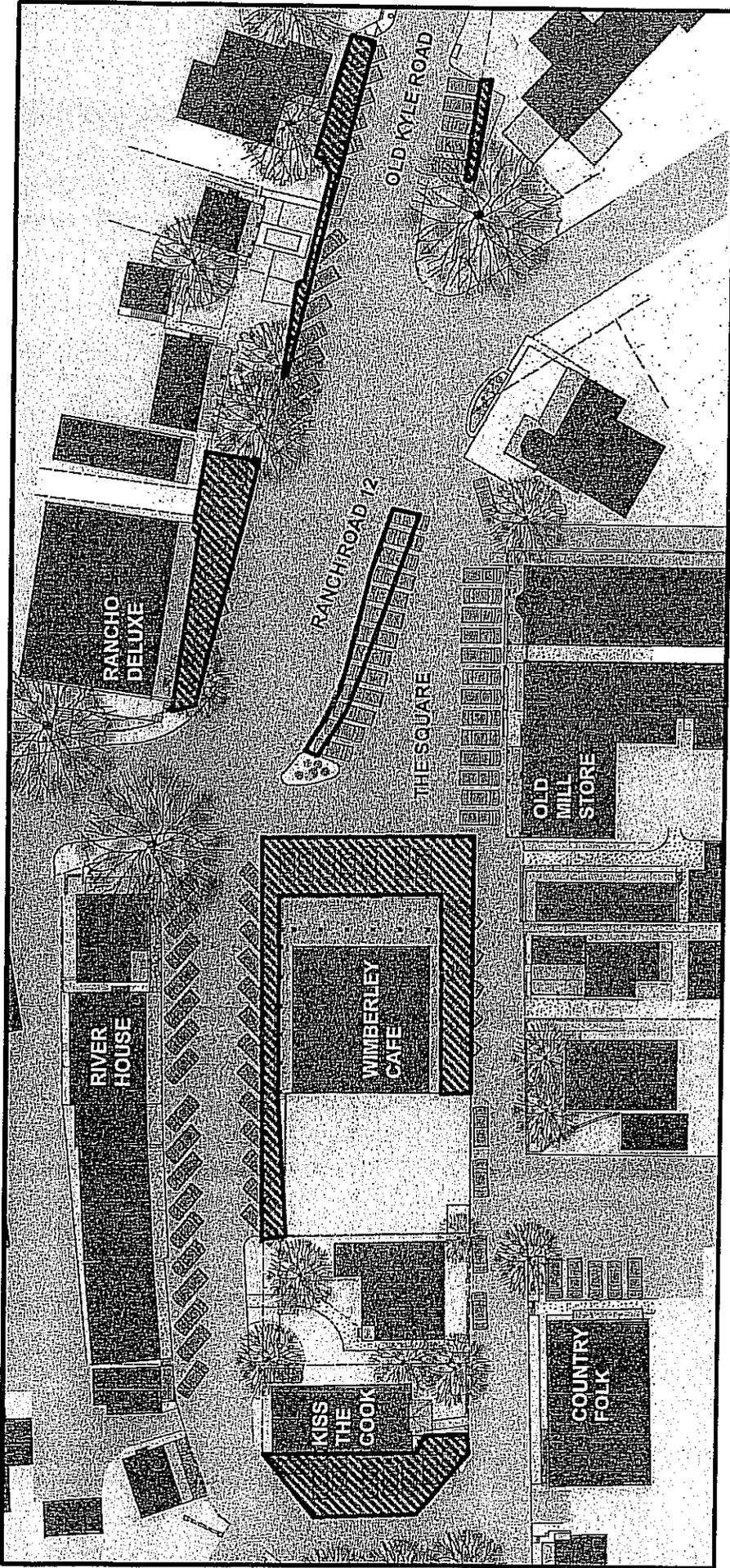


PLANTERS TO SEPARATE AUTOS AND PEDESTRIANS



PLANTERS TO UTILIZE WASTED SPACE IN FRONT OF PARKED AUTOS

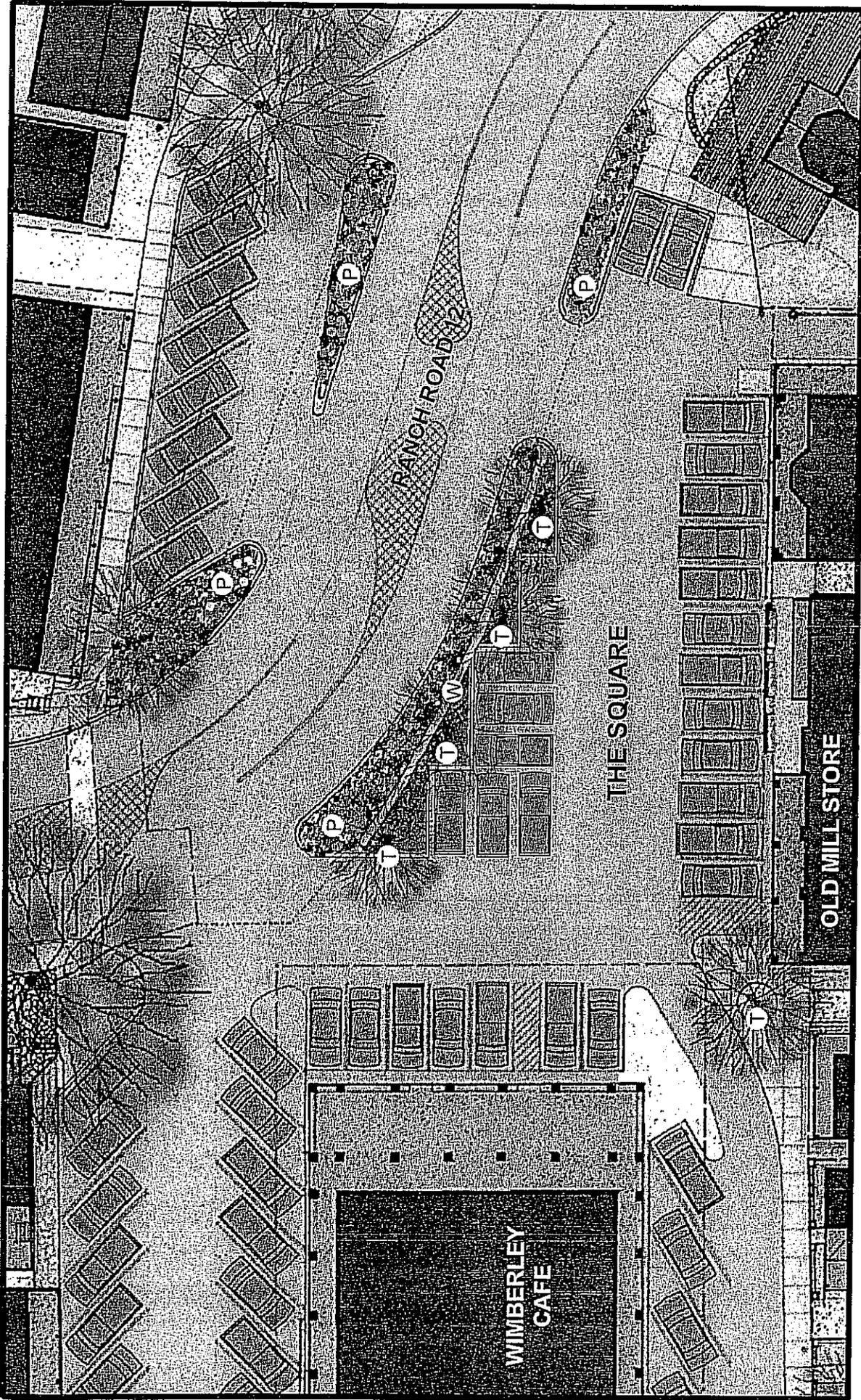
DRAWINGS 3 & 4



**AREAS WHERE CURRENT PUBLIC PARKING
IS ON PRIVATE OR TxDOT PROPERTY**

-  private property
-  TxDOT right-of-way

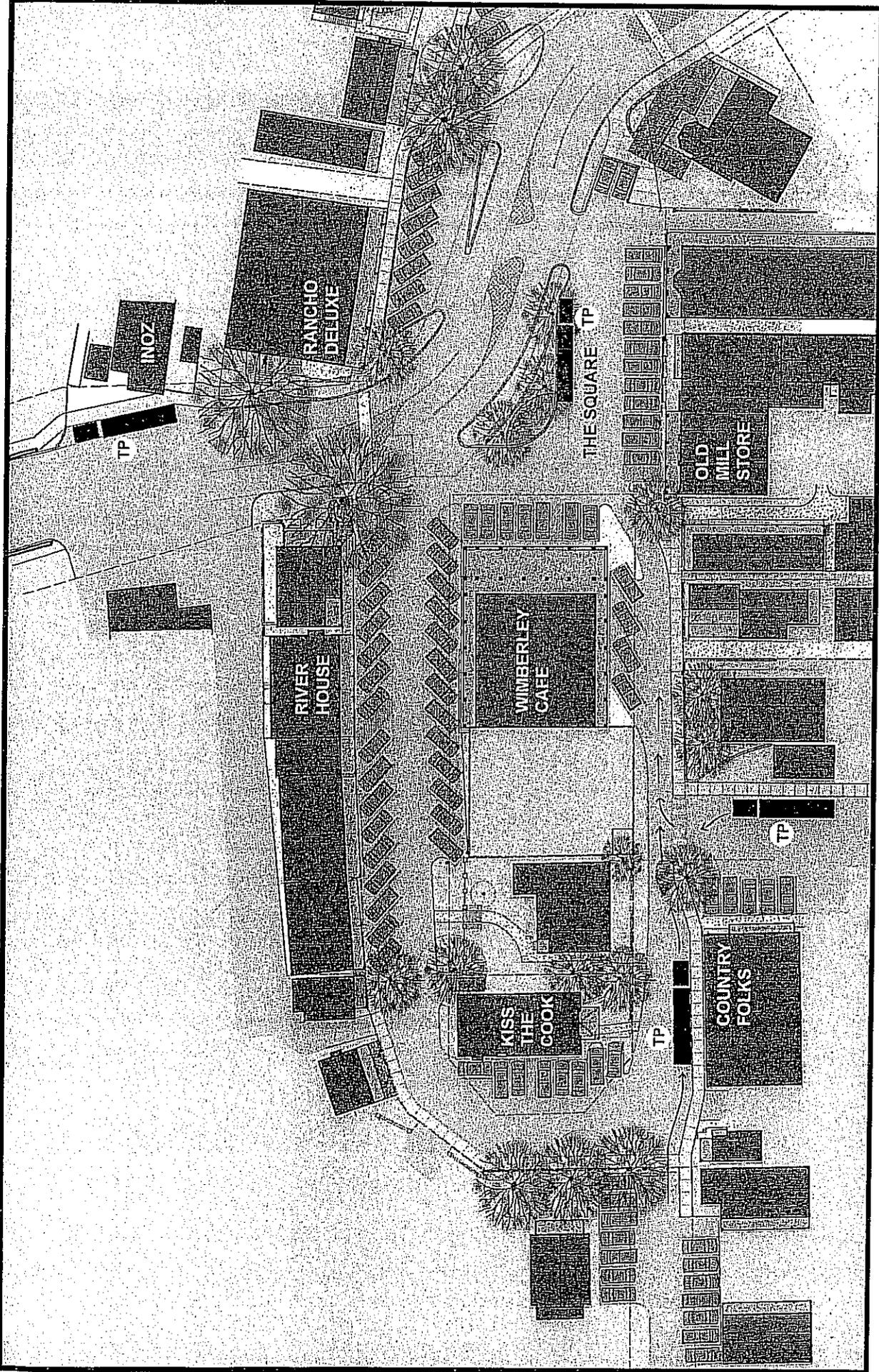
DRAWING 5



WIMBERLEY SQUARE PARKING AND LANDSCAPING AFTER TxDOT IMPROVEMENTS TO RR12

T = new tree P = new planting W = new low stone wall

DRAWING 6

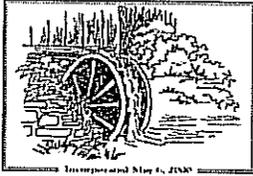


POSSIBLE LOCATIONS FOR LARGE DELIVERY TRUCK PARKING

TP = parking locations

DRAWING 7

City Council Agenda Form



Date Submitted: March 29, 2009

Agenda Date Requested: April 2, 2009

Project/Proposal Title: CONSIDER ACTION
RELATING TO GRANTING ADDITIONAL AUTHORITY
TO HAYS TRINITY GROUNDWATER CONSERVATION
DISTRICT

Funds Required:

Funds Available:

Council Action Requested:

- Ordinance
- Resolution
- Motion
- Discussion

Project/Proposal Summary:

The Hays Trinity Groundwater Conservation District (HTGCD) works to conserve, preserve, recharge, and prevent the waste of groundwater within western Hays County. The District contends its current enabling State legislation places a number of limits on the District's authority that hinder its ability to achieve the purposes of the District. In addition, the District states its funding is inadequate to support necessary research and administrative functions for the District.

To address the above mentioned concerns, the District is seeking State legislation that would update the enabling act for the District and provide the District with the full authority of Chapter 36 of the Texas Water Code (See attached). Full Chapter 36 authority, according to the District, would allow the District to manage an aquifer experiencing over drafting while augmenting the District's funding options.

The District and its supporters have requested support for such legislation from local government entities. In March of this year, the Hays County Commissioners Court adopted a resolution supporting additional authority and funding capabilities for the District but not full authority under Chapter 36. Attached are copies of the original resolution presented to the Commissioners Court for consideration and the resolution that was eventually approved by Court.

On March 19, 2009, the District and its supporters called on City Council to support full Chapter 36 authority for the District. This item was placed on the April 2, 2009, agenda to allow City Council to discuss the issue and provide staff with direction regarding the possible preparation of a City Council resolution on the issue for consideration at a future meeting.

Senate Bill 2 (Enrolled Version)**(Lines 98-7 to 104-7)****PART 3. HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT****SECTION 3.0301. RATIFICATION OF CREATION.**

The creation by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, of the Hays Trinity Groundwater Conservation District in Hays County is ratified as required by Section 15(a) of that Act, subject to approval at a confirmation election under Section 3.0309 of this part.

SECTION 3.0302. DEFINITION.

In this part, "district" means the Hays Trinity Groundwater Conservation District.

SECTION 3.0303. BOUNDARIES.

- The boundaries of the district are coextensive with the boundaries of Hays County, Texas, excluding any area in Hays County that is, on the effective date of this Act, within another groundwater conservation district with authority to require a permit to drill or alter a well for the withdrawal of groundwater. Not later than the 30th day after the date of the first meeting of the board of directors of the district, and before a confirmation election is held, the board shall prepare and file a description of district boundaries with the Hays County clerk and the Texas Natural Resource Conservation Commission.

SECTION 3.0304. GENERAL POWERS.

- (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law that is in conflict or inconsistent with this part, including any provision of Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999.
- (b) Notwithstanding Subsection (a) of this section, the following provisions prevail over a conflicting or inconsistent provision of this part:
 - (1) Sections 36.1071-36.108, Water Code;
 - (2) Sections 36.159-36.161, Water Code; and
 - (3) Subchapter I, Chapter 36, Water Code.
- (c) The district may not enter property to inspect an exempt well without the property owner's permission.
- (d) The Hays County Commissioners Court by resolution may require an election to affirm or reverse a decision of the board of directors of the district not later than six months after the date of the decision.
- (e) The district may not adopt standards for the construction of a residential well that are more stringent than state standards for a residential well.

SECTION 3.0305. EXEMPT WELLS.

- (a) The following wells are exempt from the requirements of Chapter 36, Water Code, and may not be regulated, permitted, or metered by the district:
 - (1) a well used for domestic use by a single private residential household and producing less than 25,000 gallons per day; and
 - (2) a well used for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, or poultry operations.
- (b) The district may not require a permit to construct a well described by Subsection (a)(2) of this section.
- (c) A well used for dewatering and monitoring in the production of coal or lignite is exempt from permit requirements, regulations, and fees imposed by the district.

SECTION 3.0306. FISCAL RESPONSIBILITIES.

- (a) The district annually shall prepare a budget showing proposed expenditures and disbursements and estimated receipts and collections for the next fiscal year and shall hold a public hearing on the proposed budget. The district must publish notice of the hearing at least once in a newspaper of general circulation in the county not later than the 10th day before the date of the hearing. A taxpayer of the district is entitled to appear at the hearing to be heard regarding any item in the proposed budget.
- (b) At the written request of the Hays County Commissioners Court, the county auditor shall audit the performance of the district. The court may request a general audit of the performance of the district or may request an audit of only one or more district matters.

SECTION 3.0307. BOARD OF DIRECTORS.

- (a) The district is governed by a board of five directors.

- o (b) Temporary directors serve until initial directors are elected under Section 3.0309 of this part.
- o (c) Initial directors serve until permanent directors are elected under Section 3.0310 of this part.
- o (d) Permanent directors serve staggered two-year terms.
- o (e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.
- o (f) A director serves until the director's successor has qualified.
- o (g) If there is a vacancy on the board, the Hays County Commissioners Court shall appoint a director to serve the remainder of the term.
- o (h) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings at the rate in effect for employees of Hays County.

SECTION 3.0308. METHOD OF ELECTING DIRECTORS: SINGLE-MEMBER DISTRICTS.

- o (a) The temporary directors shall draw five numbered, single-member districts for electing directors.
- o (b) For the conduct of an election under Section 3.0309 or Section 3.0310 of this part, the board shall provide for one director to be elected from each of the single-member districts. A director elected from a single-member district represents the residents of that single-member district.
- o (c) To be qualified to be a candidate for or to serve as director, a person must be a registered voter in the single-member district that the person represents or seeks to represent.
- o (d) The initial or permanent directors may revise the districts as necessary or appropriate. The board of directors shall revise each single-member district after each federal decennial census to reflect population changes. At the first election after the single-member districts are revised, a new director shall be elected from each district. The directors shall draw lots to determine which two directors serve one-year terms and which three directors serve two-year terms.

SECTION 3.0309. CONFIRMATION AND INITIAL DIRECTORS ELECTION.

- o (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.
- o (b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director's position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under Section 3.0308 of this part may file for an initial director's position.
- o (c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.
- o (d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

SECTION 3.0310. ELECTION OF DIRECTORS.

- o (a) On the first Saturday in May or the first Tuesday after the first Monday in November of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve two-year terms and two directors to serve one-year terms.
- o (b) On the first Saturday in May or the first Tuesday after the first Monday in November, as applicable, of each subsequent second year following the election held under Subsection (a) of this section, the appropriate number of directors shall be elected.

SECTION 3.0311. OTHER ELECTIONS.

An election held by the district, other than an election under Section 3.0309 or 3.0310 of this part, must be scheduled to coincide with a general election in May or November.

SECTION 3.0312. FUNDING AUTHORITY.

- o (a) Except as provided by Sections 3.0305(b) and (c) of this part, the district may require a permit for the construction of a new well completed after the effective date of this Act and may charge and collect a construction permit fee not to exceed \$300.
- o (b) The district may levy and collect a water utility service connection fee not to exceed \$300 for each new water service connection made after the effective date of this Act. This subsection does not apply to a water utility that has surface water as its sole source of water.
- o (c) Notwithstanding Section 3.0304(a) of this part or Subchapter G, Chapter 36, Water Code, the district may not impose a tax or assess or collect any fees except as authorized by Subsection (a) or (b) of this section.

SECTION 3.0313. EXPIRATION DATE.

If the creation of the district is not confirmed at a confirmation election held under Section 3.0309 of this part before September 1, 2003, this part expires on that date.

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE E. GROUNDWATER MANAGEMENT

CHAPTER 36. GROUNDWATER CONSERVATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. DEFINITIONS. In this chapter:

(1) "District" means any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the commission.

(4) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

(5) "Groundwater" means water percolating below the surface of the earth.

(6) "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

(7) "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

(8) "Waste" means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water

produced is not used for a beneficial purpose;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(E) wilfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;

(F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205.

(9) "Use for a beneficial purpose" means use for:

(A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;

(B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or

(C) any other purpose that is useful and beneficial to the user.

(10) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

(11) "Board" means the board of directors of a district.

(12) "Director" means a member of a board.

(13) "Management area" means an area designated and delineated by the Texas Water Development Board under Chapter 35 as an area suitable for management of groundwater resources.

(14) "Priority groundwater management area" means an area designated and delineated by the commission under Chapter 35 as an area experiencing or expected to experience critical groundwater problems.

(15) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 67.

(16) "Loan fund" means the groundwater district loan assistance fund created under

Section 36.371.

(17) Repealed by Acts 2005, 79th Leg., Ch. 970, Sec. 18, eff. September 1, 2005.

(18) "Public water supply well" means, for purposes of a district governed by this chapter, a well that produces the majority of its water for use by a public water system.

(19) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(E) wildlife management; and

(F) raising or keeping equine animals.

(20) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(21) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

(22) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(23) "River basin" means a river or coastal basin designated as a river basin by the board under Section 16.051. The term does not include waters of the bays or arms originating in the Gulf of Mexico.

(24) "Total aquifer storage" means the total calculated volume of groundwater that an aquifer is capable of producing.

(25) "Managed available groundwater" means the amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer as determined under Section 36.108.

(26) "Recharge" means the amount of water that infiltrates to the water table of an aquifer.

(27) "Inflows" means the amount of water that flows into an aquifer from another formation.

(28) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.

(29) "Evidence of historic or existing use" means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by district rule that regulates groundwater based on historic use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.20, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.29, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 34, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(147), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 970, Sec. 18, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1116, Sec. 1, eff. September 1, 2005.

Sec. 36.0015. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.21, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.30, eff. Sept. 1, 2001.

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code

shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.31, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1116, Sec. 2, eff. September 1, 2005.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 36.011. METHOD OF CREATING DISTRICT. (a) A groundwater conservation district may be created under and subject to the authority, conditions, and restrictions of Section 59, Article XVI, Texas Constitution.

(b) The commission has exclusive jurisdiction over the creation of districts.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.32, eff. Sept. 1, 2001.

Sec. 36.012. COMPOSITION OF DISTRICT. (a) A district may include all or part of one or more counties, cities, districts, or other political subdivisions.

(b) A district may not include territory located in more than one county except on a majority vote of the voters residing within the territory in each county sought to be included in the district at an election called for that purpose.

(c) The boundaries of a district must be coterminous with or inside the boundaries of a management area or a priority groundwater management area.

(d) A district may consist of separate bodies of land separated by land not included in the district.

(e) A majority of the voters in a segregated area must approve the creation of the district before that area may be included in the district.

(f) This section does not apply to districts created under Section 36.0151.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.33, eff. Sept. 1, 2001.

Sec. 36.013. PETITION TO CREATE DISTRICT. (a) A petition requesting creation of a district must be filed with the commission for review and certification under Section 36.015.

(b) The petition filed pursuant to this section must be signed by:

(1) a majority of the landowners within the proposed district, as indicated by the county tax rolls; or

(2) if there are more than 50 landowners in the proposed district, at least 50 of those landowners.

(c) The petition must include:

(1) the name of the proposed district;

(2) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;

(3) the purpose or purposes of the district;

(4) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated costs of those projects according to the persons filing the projects if the projects are to be funded by the sale of bonds or notes;

(5) the names of at least five individuals qualified to serve as temporary directors; and

(6) financial information, including the projected maintenance tax or production fee rate and a proposed budget of revenues and expenses for the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.34, eff. Sept. 1, 2001.

Sec. 36.014. NOTICE AND PUBLIC MEETING ON DISTRICT CREATION. (a) If a petition is filed under Section 36.013, the commission shall give notice of the application and shall conduct a public meeting in a central location within the area of the proposed district on the application not later than the 60th day after the date the commission issues notice. The notice must contain the date, time, and location of the public meeting and must be published in one or more newspapers of general circulation in the area of the proposed district.

(b) If the petition contains a request to create a management area in all or part of the proposed district, the notice must also be given in accordance with the requirements in Section 35.006 for the designation of management areas.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.35, eff. Sept. 1, 2001.

Sec. 36.015. COMMISSION CERTIFICATION AND ORDER. (a) Not later than the 90th day after the date the commission holds a public meeting on a petition under Section 36.014, the commission shall certify the petition if the petition is administratively complete. A petition is administratively complete if it complies with the requirements of Sections 36.013(b) and (c).

(b) The commission may not certify a petition if the commission finds that the proposed district cannot be adequately funded to carry out its purposes based on the financial information provided in the petition under Section 36.013(c)(6) or that the boundaries of the proposed district do not provide for the effective management of the groundwater resources. The commission shall give preference to boundary lines that are coterminous with those of a groundwater management area but may also consider boundaries along existing political subdivision boundaries if such boundaries would facilitate district creation and confirmation.

(c) If a petition proposes the creation of a district in an area, in whole or in part, that has not been designated as a management area, the commission shall provide notice to the Texas Water Development Board. On the receipt of notice from the commission, the Texas Water Development Board shall initiate the process of designating a management area for the area of the proposed district not included in a management area. The commission may not certify the petition until the Texas Water Development Board has adopted a rule whereby the boundaries of the proposed district are coterminous with or inside the boundaries of a management area.

(d) If the commission does not certify the petition, the commission shall provide to the petitioners, in writing, the reasons for not certifying the petition. The petitioners may resubmit the petition, without paying an additional fee, if the petition is resubmitted within 90 days after the date the commission sends the notice required by this subsection.

(e) If the commission certifies the petition as administratively complete, the commission shall issue an order, notify the petitioners, and appoint temporary directors as provided by Section 36.016.

(f) Refusal by the commission to certify a petition to create a district does not invalidate or affect the designation of any management area.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.36, eff. Sept. 1, 2001.

Sec. 36.0151. CREATION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. (a) If the commission is required to create a district under Section 35.012(b), it shall, without an evidentiary hearing, issue an order creating the district and shall provide in its order that temporary directors be appointed under Section 36.016 and that an election be called by the temporary directors to authorize the district to assess taxes and to elect permanent directors.

(b) The commission shall notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order creating the district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.37, eff. Sept. 1, 2001.

Sec. 36.016. APPOINTMENT OF TEMPORARY DIRECTORS. (a) If the commission certifies a petition to create a district under Section 36.015, the commission shall appoint the temporary directors named in the petition. If the commission dissolves a district's board under Section 36.303, it shall appoint five temporary directors.

(b) If the commission creates a district under Section 36.0151, the county commissioners court or courts of the county or counties that contain the area of the district shall, within 90 days after receiving notification by the commission under Section 36.0151(b), appoint five temporary directors, or more if the district contains the territory of more than five counties, for the district's board using the method provided by Section 36.0161. A county commissioners court shall not make any appointments after the expiration of the 90-day period. If fewer than five temporary directors have been appointed at the expiration of the period, the commission shall appoint additional directors so that the board has at least five members.

(c) Temporary directors appointed under this section shall serve until the initial directors are elected and have qualified for office or until the voters fail to approve the creation of the district.

(d) If an appointee of the commission or of a county commissioners court fails to qualify or if a vacancy occurs in the office of temporary director, the commission or the county commissioners court, as appropriate, shall appoint an individual to fill the vacancy.

(e) As soon as all temporary directors have qualified, the directors shall meet, take the oath of office, and elect a chairman and vice chairman from among their membership. The chairman shall preside at all meetings of the board and, in the chairman's absence, the vice chairman shall preside.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.38, eff. Sept. 1, 2001.

Sec. 36.0161. METHOD FOR APPOINTING TEMPORARY DIRECTORS FOR DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA. (a) If a district in a priority groundwater management area is:

(1) contained within one county, the county commissioners court of that county shall appoint five temporary directors for the district;

(2) contained within two counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointments of the three remaining directors to be apportioned as provided by Subsection (b);

(3) contained within three counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointments of the two remaining directors to be apportioned as provided by Subsection (b);

(4) contained within four counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointment of the remaining director to be apportioned as provided by Subsection (b); or

(5) contained within five or more counties, the county commissioners court of each county shall appoint one temporary director.

(b)(1) In this subsection, "estimated groundwater use" means the estimate of groundwater use in acre-feet developed by the commission under Subsection (c) for the area of a county that is within the district.

(2) The apportionment of appointments under Subsection (a) shall be made by the commission so as to reflect, as closely as possible, the proportion each county's estimated groundwater use bears to the sum of the estimated groundwater use for the district as determined under Subsection (c). The commission shall by rule determine the method it will use to implement this subdivision.

(c) If a district for which temporary directors are to be appointed is contained within two, three, or four counties, the commission shall develop an estimate of annual groundwater use in acre-feet for each county area within the district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.26, eff. Sept. 1, 1997.

Sec. 36.017. CONFIRMATION AND DIRECTORS' ELECTION FOR DISTRICT IN A MANAGEMENT AREA. (a) For a district created under Section 36.015, not later than the 120th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to approve the creation of the district and to elect permanent directors.

(b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.

(c) The temporary directors shall publish notice of the election at least one time in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the _____ Groundwater Conservation District." If the district levies a maintenance tax for payment of its expenses, then an additional proposition shall be included with the following language: "The levy of a maintenance tax at a rate not to exceed _____ cents for each \$100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

(e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns and declare the result. The board shall file a copy of the election result with the commission.

(f) If a majority of the votes cast at the election favor the creation of the district, the temporary board shall declare the district created and shall enter the result in its minutes.

(g) If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the result in its minutes. The temporary board shall continue operations in accordance with Subsection (h).

(h) If the majority of the votes cast at the election are against the creation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.

(i) If a majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set production fees to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.39, eff. Sept. 1, 2001.

Sec. 36.0171. TAX AUTHORITY AND DIRECTORS' ELECTION FOR DISTRICT IN A PRIORITY GROUNDWATER MANAGEMENT AREA. (a) For a district created under Section 36.0151, not later than the 120th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to authorize the district to assess taxes and to elect permanent directors.

(b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.

(c) The temporary directors shall publish notice of the election at least once in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The levy of a maintenance tax by the _____ Groundwater Conservation District at a rate not to exceed _____ cents for each \$100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

(e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns, declare the result, and turn over the operations of the district to the elected permanent directors. The board shall file a copy of the election result with the commission.

(f) If a majority of the votes cast at the election favor the levy of a maintenance tax, the

temporary board shall declare the levy approved and shall enter the result in its minutes.

(g) If a majority of the votes cast at the election are against the levy of a maintenance tax, the temporary board shall declare the levy defeated and shall enter the result in its minutes.

(h) If the majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set permit fees to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 2.40, eff. Sept. 1, 2001.

Sec. 36.018. INCLUSION OF MUNICIPALITY. (a) If part of the territory to be included in a district is located in a municipality, a separate voting district may not be established in the municipality for the purpose of determining whether the municipality as a separate area is to be included in the district.

(b) If for any other reason the territory in a municipality is established as a separate voting district, the failure by the voters in the municipal territory to confirm the creation of the district or the annexation of territory to a district does not prevent the territory in the municipality from being included in the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1995.

Sec. 36.019. CONFIRMATION ELECTION IN DISTRICT INCLUDING LAND IN MORE THAN ONE COUNTY. (a) A district, the major portion of which is located in one county, may not be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is approved by a majority of the voters of the other county voting in an election called for that purpose.

(b) This section does not apply to districts created under Section 36.0151.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.41, eff. Sept. 1, 2001.

Sec. 36.020. BOND AND TAX PROPOSAL. (a) At an election to create a district, the temporary directors may include a proposition for the issuance of bonds or notes, the levy of taxes to retire all or part of the bonds or notes, and the levy of a maintenance tax. The maintenance tax rate may not exceed 50 cents on each \$100 of assessed valuation.

(b) The board shall include in any bond and tax proposition the maximum amount of bonds or notes to be issued and their maximum maturity date.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.021. NOTIFICATION OF COUNTY CLERK. Within 30 days following the creation of a district or any amendment to the boundaries of a district, the board of directors shall file with the county clerk of each county in which all or part of the district is located a certified copy of the description of the boundaries of the district. Each county clerk shall record the certified copy of the boundaries in the property records of that county.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER C. ADMINISTRATION

Sec. 36.051. BOARD OF DIRECTORS. (a) The governing body of a district is the board of directors, which shall consist of not fewer than five and not more than 11 directors elected for four-year terms. The number of directors may be changed as determined by the board when territory is annexed by the district.

(b) A member of a governing body of another political subdivision is ineligible for appointment or election as a director. A director is disqualified and vacates the office of director if the director is appointed or elected as a member of the governing body of another political subdivision. This subsection does not apply to any district with a population less than 50,000.

(c) Vacancies in the office of director shall be filled by appointment of the board. If the vacant office is not scheduled for election for longer than two years at the time of the appointment, the board shall order an election for the unexpired term to be held as part of the next regularly scheduled director's election. The appointed director's term shall end on qualification of the director elected at that election.

(d) In a district with a population of less than 50,000, the common law doctrine of incompatibility does not disqualify:

(1) a member of the governing body or officer of another political subdivision other than a municipality or county from serving as a director of the district; or

(2) a director of the district from serving as a member of the governing body or officer of another political subdivision other than a municipality or county.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 78, Sec. 1, eff. May 19, 2003.

Sec. 36.052. OTHER LAWS NOT APPLICABLE. (a) Other laws governing the

administration or operations of districts created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, shall not apply to any district governed by this chapter. This chapter prevails over any other law in conflict or inconsistent with this chapter, except any special law governing a specific district shall prevail over this chapter.

(b) Notwithstanding Subsection (a), the following provisions prevail over a conflicting or inconsistent provision of a special law that governs a specific district:

- (1) Sections 36.107-36.108;
- (2) Sections 36.159-36.161; and
- (3) Subchapter I.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.27, eff. Sept. 1, 1997.

Sec. 36.053. QUORUM. A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.054. OFFICERS. (a) After a district is created and the directors have qualified, the board shall meet, elect a president, vice president, secretary, and any other officers or assistant officers as the board may deem necessary and begin the discharge of its duties.

(b) After each directors' election, the board shall meet and elect officers.

(c) The president is the chief executive officer of the district, presides at all meetings of the board, and shall execute all documents on behalf of the district. The vice president shall act as president in case of the absence or disability of the president. The secretary is responsible for seeing that all records and books of the district are properly kept and shall attest the president's signature on all documents.

(d) The board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the district, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the district.

(e) After any election or appointment of a director, a district shall notify the executive director within 30 days after the date of the election or appointment of the name and mailing address of the director chosen and the date that director's term of office expires. The executive director shall provide forms to the district for such purpose.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.055. SWORN STATEMENT, BOND, AND OATH OF OFFICE. (a) As soon as practicable after a director is elected or appointed, that director shall make the sworn statement prescribed by the constitution for public office.

(b) As soon as practicable after a director has made the sworn statement, and before beginning to perform the duties of office, that director shall take the oath of office prescribed by the constitution for public officers.

(c) Before beginning to perform the duties of office, each director shall execute a bond for \$10,000 payable to the district and conditioned on the faithful performance of that director's duties. All bonds of the directors shall be approved by the board and paid for by the district.

(d) The sworn statement shall be filed as prescribed by the constitution. The bond and oath shall be filed with the district and retained in its records. A duplicate original of the oath shall also be filed with the secretary of state within 10 days after its execution and need not be filed before the new director begins to perform the duties of office.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 249, Sec. 1, eff. Aug. 30, 1999.

Sec. 36.056. GENERAL MANAGER. (a) The board may employ or contract with a person to perform such services as general manager for the district as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the district subject only to orders of the board.

(b) The board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the business and operation of the district and to determine the compensation to be paid all employees other than the general manager.

(c) Except in a district that is composed of the territory of more than one county, a director may be employed as general manager of the district. The compensation of a general manager who also serves as a director shall be established by the other directors.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.057. MANAGEMENT OF DISTRICT. (a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial

advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff.

(b) The board shall set the compensation and terms for consultants.

(c) In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, the district shall follow the procedures provided in the Professional Services Procurement Act, Subchapter A, Chapter 2254, Government Code.

(d) The board shall require an officer, employee, or consultant who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, in an amount determined by the board to be sufficient to safeguard the district. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the district. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.

(e) The board may pay the premium on surety bonds required of officials, employees, or consultants of the district out of any available funds of the district, including proceeds from the sale of bonds.

(f) The board may adopt bylaws to govern the affairs of the district to perform its purposes. The board may, by resolution, authorize its general manager or other employee to execute documents on behalf of the district.

(g) The board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district to perform its purposes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.058. CONFLICTS OF INTEREST. A director of a district is subject to the provisions of Chapter 171, Local Government Code, relating to the regulation of conflicts of officers of local governments.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.059. GENERAL ELECTIONS. (a) All elections shall be generally conducted in accordance with the Election Code except as otherwise provided for by this chapter. Write-in candidacies for any district office shall be governed by Subchapter C, Chapter 146, Election Code.

(b) The directors of the district shall be elected according to the precinct method as defined by Chapter 12, page 1105, Special Laws, Acts of the 46th Legislature, Regular Session, 1939. To be qualified to be elected as a director, a person must be a registered voter in the precinct that the person represents. If any part of a municipal corporation is a part of one precinct, then no part of the municipal corporation shall be included in another precinct, except that a municipal corporation having a population of more than 200,000 may be divided between two or more precincts. In a multicounty district, not more than two of the five precincts may include the same municipal corporation or part of

the same municipal corporation.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.060. FEES OF OFFICE; REIMBURSEMENT. (a) A director is entitled to receive fees of office of not more than \$150 a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$9,000 a year.

(b) Each director is also entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

(c) In order to receive fees of office and to receive reimbursement for expenses, each director shall file with the district a verified statement showing the number of days actually spent in the service of the district and a general description of the duties performed for each day of service.

(d) Section 36.052(a) notwithstanding, Subsection (a) prevails over any other law in conflict with or inconsistent with that subsection, including a special law governing a specific district unless the special law prohibits the directors of that district from receiving a fee of office. If the application of this section results in an increase in the fees of office for any district, that district's fees of office shall not increase unless the district's board by resolution authorizes payment of the higher fees.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.42, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 905, Sec. 1, eff. June 20, 2003.

Sec. 36.061. POLICIES. (a) Subject to the law governing the district, the board shall adopt the following in writing:

(1) a code of ethics for district directors, officers, employees, and persons who are engaged in handling investments for the district;

(2) a policy relating to travel expenditures;

(3) a policy relating to district investments that ensures that:

(A) purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and

(B) periodic review is made of district investments to evaluate investment performance and security;

(4) policies and procedures for selection, monitoring, or review and evaluation of professional services;

(5) policies that ensure a better use of management information, including:

(A) budgets for use in planning and controlling cost;

(B) an audit or finance committee of the board; and

(C) uniform reporting requirements that use "Audits of State and Local Governmental Units" as a guide on audit working papers and that uses "Governmental Accounting and Financial Reporting Standards."

(b) The state auditor may audit the records of any district if the state auditor determines that the audit is necessary.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 51, eff. Sept. 1, 2003.

Sec. 36.062. OFFICES AND MEETING PLACES. (a) The board shall designate from time to time and maintain one or more regular offices for conducting the business of the district and maintaining the records of the district. Such offices may be located either inside or outside the district's boundaries as determined in the discretion of the board.

(b) The board shall designate one or more places inside or outside the district for conducting the meetings of the board.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.063. NOTICE OF MEETINGS. Notice of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.064. MEETINGS. (a) The board shall hold regular meetings at least quarterly. It may hold meetings at other times as required for the business of the district.

(b) Meetings shall be conducted and notice of meetings shall be posted in accordance with the Open Meetings Act, Chapter 551, Government Code. A meeting of a committee of the board, or a committee composed of representatives of more than one board, where less than a quorum of any one board is present is not subject to the provisions of the Open Meetings Act, Chapter 551, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.065. RECORDS. (a) The board shall keep a complete account of all its meetings and proceedings and shall preserve its minutes, contracts, records, notices, accounts, receipts, and other records in a safe place.

(b) The records of each district are the property of the district and are subject to Chapter 552, Government Code.

(c) The preservation, storage, destruction, or other disposition of the records of each district is subject to the requirements of Chapter 201, Local Government Code, and rules adopted thereunder.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.066. SUITS. (a) A district may sue and be sued in the courts of this state in the name of the district by and through its board. All courts shall take judicial notice of the creation of the district and of its boundaries.

(b) Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

(c) The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon a district may be served.

(d) Except as provided in Subsection (e), no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district;

(2) any bonds or other obligations issued by a district; or

(3) the validity or the authorization of a contract with the United States by a district.

(e) The matters listed in Subsection (d) may be judicially inquired into at any time and determined in any suit brought by the State of Texas through the attorney general. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this code or by the Texas Constitution. It is specifically provided, however, that no such proceeding shall affect the validity of or security for any bonds or other obligations theretofore issued by a district if such bonds or other obligations have been approved by the attorney general.

(f) A district shall not be required to give bond for appeal, injunction, or costs in any suit to which it is a party and shall not be required to deposit more than the amount of any award in any eminent domain proceeding.

(g) If the district prevails in any suit other than a suit in which it voluntarily intervenes, the district may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.43, eff. Sept. 1, 2001.

Sec. 36.067. CONTRACTS. (a) A district shall contract, and be contracted with, in the name of the district.

(b) A district may purchase property from any other governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.

(c) A district may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 436, Sec. 8, eff. May 28, 2001.

Sec. 36.068. EMPLOYEE BENEFITS. (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.

(b) The board may establish a public retirement system in accordance with the provisions of Chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

(c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees and may adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

(d) The board may establish a sick leave pool for employees of the district in the same manner as that authorized for the creation of a sick leave pool for state employees by Subchapter A, Chapter 661, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 36.101. RULEMAKING POWER. (a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. During the rulemaking process the board shall consider all groundwater uses and needs and shall develop rules which are fair and impartial and that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program. Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.

(b) Except as provided by Section 36.1011, after notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board.

(c) The board shall compile its rules and make them available for use and inspection at the district's principal office.

(d) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public at the district office;

(2) provide notice to the county clerk of each county in the district;

(3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;

(4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (i); and

(5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the district has a website, post an electronic copy on a generally accessible Internet site.

(e) The notice provided under Subsection (d) must include:

(1) the time, date, and location of the rulemaking hearing;

(2) a brief explanation of the subject of the rulemaking hearing; and

(3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

(f) The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.

(g) A district may require each person who participates in a rulemaking hearing to submit a

hearing registration form stating:

- (1) the person's name;
- (2) the person's address; and
- (3) whom the person represents, if the person is not at the hearing in the person's individual capacity.

(h) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

(i) A person may submit to the district a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.

(j) A district may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the district about contemplated rules.

(k) Failure to provide notice under Subsection (d)(4) does not invalidate an action taken by the district at a rulemaking hearing.

(l) Subsections (b)-(k) do not apply to the Edwards Aquifer Authority.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.44, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1116, Sec. 3, eff. September 1, 2005.

Sec. 36.1011. EMERGENCY RULES. (a) A board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

(1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its finding under Subdivision (1).

(b) Except as provided by Subsection (c), a rule adopted under this section may not be effective

for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

(e) This section does not apply to the Edwards Aquifer Authority.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 4, eff. September 1, 2005.

Sec. 36.102. ENFORCEMENT OF RULES. (a) A district may enforce this chapter and its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) The board by rule may set reasonable civil penalties for breach of any rule of the district not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation.

(c) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(d) If the district prevails in any suit to enforce its rules, the district may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 548, Sec. 2, eff. June 11, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 2.45, eff. Sept. 1, 2001.

Sec. 36.103. IMPROVEMENTS AND FACILITIES. (a) A district may build, acquire, or obtain by any lawful means any property necessary for the district to carry out its purpose and the provisions of this chapter.

(b) A district may:

(1) acquire land to erect dams or to drain lakes, draws, and depressions;

(2) construct dams;

(3) drain lakes, depressions, draws, and creeks;

(4) install pumps and other equipment necessary to recharge a groundwater reservoir or

its subdivision; and

(5) provide necessary facilities for water conservation purposes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 560, Sec. 1, eff. Sept. 1, 2003.

Sec. 36.104. PURCHASE, SALE, TRANSPORTATION, AND DISTRIBUTION OF WATER. A district may purchase, sell, transport, and distribute surface water or groundwater.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 560, Sec. 2, eff. Sept. 1, 2003.

Sec. 36.105. EMINENT DOMAIN. (a) A district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in property if that property interest is:

- (1) within the boundaries of the district; and
- (2) necessary for conservation purposes, including recharge and reuse.

(b) The power of eminent domain authorized in this section may not be used for the condemnation of land for the purpose of:

- (1) acquiring rights to groundwater, surface water or water rights; or
- (2) production, sale, or distribution of groundwater or surface water.

(c) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit a bond as provided by Section 21.021(a), Property Code.

(d) In a condemnation proceeding brought by a district, the district is not required to pay in advance or give bond or other security for costs in the trial court, to give bond for the issuance of a temporary restraining order or a temporary injunction, or to give bond for costs or supersedeas on an appeal or writ of error.

(e) In exercising the power of eminent domain, if the district requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission or distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities after deducting the net salvage value derived from the old facility.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 560, Sec. 3, eff. Sept. 1, 2003.

Sec. 36.106. SURVEYS. A district may make surveys of the groundwater reservoir or subdivision and surveys of the facilities in order to determine the quantity of water available for production and use and to determine the improvements, development, and recharging needed by a reservoir or its subdivision.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 560, Sec. 4, eff. Sept. 1, 2003.

Sec. 36.107. RESEARCH. A district may carry out any research projects deemed necessary by the board.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.28, eff. Sept. 1, 1997.

Sec. 36.1071. MANAGEMENT PLAN. (a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions;
- (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and
- (8) addressing in a quantitative manner the desired future conditions of the groundwater resources.

(b) A district management plan, or any amendments to a district management plan, shall be developed by the district using the district's best available data and forwarded to the regional water planning group for use in their planning process.

(c) The commission and the Texas Water Development Board shall provide technical assistance to a district in the development of the management plan required under Subsection (a) which may include, if requested by the district, a preliminary review and comment on the plan prior to final approval by the board. If such review and comment by the commission is requested, the commission shall provide comment not later than 30 days from the date the request is received.

(d) The commission shall provide technical assistance to a district during its initial operational phase. If requested by a district, the Texas Water Development Board shall train the district on basic data collection methodology and provide technical assistance to districts.

(e) In the management plan described under Subsection (a), the district shall:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) managed available groundwater in the district based on the desired future condition established under Section 36.108;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

(f) The district shall adopt rules necessary to implement the management plan. Prior to the development of the management plan and its approval under Section 36.1072, the district may not adopt rules other than rules pertaining to the registration and interim permitting of new and existing wells and rules governing spacing and procedure before the district's board; however, the district may not adopt any rules limiting the production of wells, except rules requiring that groundwater produced from a well be put to a nonwasteful, beneficial use. The district may accept applications for permits under Section 36.113, provided the district does not act on any such application until the district's management plan is

approved as provided in Section 36.1072.

(g) The district shall adopt amendments to the management plan as necessary. Amendments to the management plan shall be adopted after notice and hearing and shall otherwise comply with the requirements of this section.

(h) In developing its management plan, the district shall use the groundwater availability modeling information provided by the executive administrator together with any available site-specific information that has been provided by the district to the executive administrator for review and comment before being used in the plan.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Redesignated from 36.107(b) and (c) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.28, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.46, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 5, eff. September 1, 2005.

Sec. 36.1072. TEXAS WATER DEVELOPMENT BOARD REVIEW AND APPROVAL OF MANAGEMENT PLAN. (a) A district shall, not later than three years after the creation of the district or, if the district required confirmation, after the election confirming the district's creation, submit the management plan required under Section 36.1071 to the executive administrator for review and approval.

(b) Within 60 days of receipt of a management plan adopted under Section 36.1071, readopted under Subsection (e) or (g) of this section, or amended under Section 36.1073, the executive administrator shall approve a management plan if the plan is administratively complete. A management plan is administratively complete when it contains the information required to be submitted under Section 36.1071(a) and (e). The executive administrator may determine whether conditions justify waiver of the requirements under Section 36.1071(e)(4).

(c) Once the executive administrator has approved a management plan:

(1) the executive administrator may not revoke but may require revisions to the approved groundwater conservation district management plan as provided by Subsection (g); and

(2) the executive administrator may request additional information from the district if the information is necessary to clarify, modify, or supplement previously submitted material, but a request for additional information does not render the management plan unapproved.

(d) A management plan takes effect on approval by the executive administrator or, if appealed, on approval by the Texas Water Development Board.

(e) The district may review the plan annually and must review and readopt the plan with or without revisions at least once every five years. The district shall provide the readopted plan to the executive administrator not later than the 60th day after the date on which the plan was

readopted. Approval of the preceding management plan remains in effect until:

- (1) the district fails to timely readopt a management plan;
- (2) the district fails to timely submit the district's readopted management plan to the executive administrator; or
- (3) the executive administrator determines that the readopted management plan does not meet the requirements for approval, and the district has exhausted all appeals to the Texas Water Development Board or appropriate court.

(f) If the executive administrator does not approve the management plan, the executive administrator shall provide to the district, in writing, the reasons for the action. Not later than the 180th day after the date a district receives notice that its management plan has not been approved, the district may submit a revised management plan for review and approval. The executive administrator's decision may be appealed to the Texas Water Development Board. If the Texas Water Development Board decides not to approve the management plan on appeal, the district may request that the conflict be mediated. The district and the board may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the parties do not resolve the conflict through mediation, the decision of the Texas Water Development Board not to approve the management plan may be appealed to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo. The commission shall not take enforcement action against a district under Subchapter I until the later of the expiration of the 180-day period, the date the Texas Water Development Board has taken final action withholding approval of a revised management plan, the date the mediation is completed, or the date a final judgment upholding the board's decision is entered by a district court. An enforcement action may not be taken against a district by the commission or the state auditor under Subchapter I because the district's management plan and the approved regional water plan are in conflict while the parties are attempting to resolve the conflict before the development board, in mediation, or in court. Rules of the district continue in full force and effect until all appeals under this subsection have been exhausted and the final judgment is adverse to the district.

(g) In this subsection, "development board" means the Texas Water Development Board. A person with a legally defined interest in groundwater in a district or the regional water planning group may file a petition with the development board stating that a conflict requiring resolution may exist between the district's approved management plan developed under Section 36.1071 and the state water plan. If a conflict exists, the development board shall provide technical assistance to and facilitate coordination between the involved person or regional water planning group and the district to resolve the conflict. Not later than the 45th day after the date the person or the regional water planning group files a petition with the development board, if the conflict has not been resolved, the district and the involved person or regional planning group may mediate the conflict. The district and the involved person or regional planning group may seek the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediation services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the district and the involved person or regional planning group cannot resolve the conflict through mediation, the development board shall resolve the conflict not later than the

60th day after the date the mediation is completed. The development board action under this provision may be consolidated, at the option of the board, with related action under Section 16.053 (p). If the development board determines that resolution of the conflict requires a revision of the approved groundwater conservation district management plan, the development board shall provide information to the district. The district shall prepare any revisions to the plan based on the information provided by the development board and shall hold, after notice, at least one public hearing at some central location within the district. The district shall consider all public and development board comments, prepare, revise, and adopt its plan, and submit the revised plan to the development board for approval. On the request of the district or the regional water planning group, the development board shall include discussion of the conflict and its resolution in the state water plan that the development board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e). If the groundwater conservation district disagrees with the decision of the development board under this subsection, the district may appeal the decision to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.28, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.47, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 6, eff. September 1, 2005.

Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN. Any amendment to the management plan shall be submitted to the executive administrator within 60 days following adoption of the amendment by the district's board. The executive administrator shall review and approve any amendment which substantially affects the management plan in accordance with the procedures established under Section 36.1072.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.28, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 7, eff. September 1, 2005.

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In this section, "development board" means the Texas Water Development Board.

(b) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion and approval of the plan as required by Section 36.1072, each district shall forward a copy of the new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management plans then in force in the management area.

(c) The presiding officer, or the presiding officer's designee, of each district located in whole or in part in the management area shall meet at least annually to conduct joint planning with the other districts in the management area and to review the management plans and accomplishments for the management area. In reviewing the management plans, the districts shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and

(4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall establish desired future conditions for the relevant aquifers within the management area. In establishing the desired future conditions of the aquifers under this section, the districts shall consider uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another. The districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-1) The desired future conditions established under Subsection (d) must be adopted by a two-thirds vote of the district representatives present at a meeting:

(1) at which at least two-thirds of the districts located in whole or in part in the management area have a voting representative in attendance; and

(2) for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, Government Code.

(d-2) Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

(e) A joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act.

(f) A district or person with a legally defined interest in the groundwater within the

management area may file a petition with the commission requesting an inquiry if a district or districts refused to join in the planning process or the process failed to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that:

(1) a district in the groundwater management area has failed to adopt rules;

(2) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the groundwater management area established during the joint planning process;

(3) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(4) the groundwater in the groundwater management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(g) Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

(1) dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (h).

(h) If the petition is not dismissed under Subsection (g), the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the groundwater management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

(i) Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

(j) In its report, the review panel shall include:

(1) a summary of all evidence taken in any hearing on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and

(3) any other information the panel considers appropriate.

(k) The review panel shall submit its report to the commission. The commission may take action under Section 36.3011.

(l) A person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area.

(m) The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.

(n) The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the groundwater management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.

(o) The districts shall submit the conditions established under this section to the executive administrator. The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the managed available groundwater in the management area based upon the desired future condition of the groundwater resources established under this section.

(p) Districts located within the same groundwater management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.29, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 519, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 2.48, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 8, eff. September 1, 2005.

Sec. 36.109. COLLECTION OF INFORMATION. A district may collect any information the board deems necessary, including information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater reservoir. At the request of the executive

administrator, the district shall provide any data collected by the district in a format acceptable to the executive administrator.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 9, eff. September 1, 2005.

Sec. 36.110. PUBLICATION OF PLANS AND INFORMATION. A district may publish its plans and the information it develops, bring them to the attention of the users of groundwater in the district, and encourage the users to adopt and use them.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.111. RECORDS AND REPORTS. (a) The district may require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of groundwater.

(b) In implementing Subsection (a), a district may adopt rules that require an owner or operator of a water well that is required to be registered with or permitted by the district, except for the owner or operator of a well that is exempt from permit requirements under Section 36.117(b)(1), to report groundwater withdrawals using reasonable and appropriate reporting methods and frequency.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 523, Sec. 1, eff. September 1, 2007.

Sec. 36.112. DRILLERS' LOGS. A district shall require that accurate drillers' logs be kept of water wells and that copies of drillers' logs and electric logs be filed with the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) Except as provided by Section 36.117, a district shall require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may require that a change

in the withdrawal or use of groundwater during the term of a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change.

(a-1) A district may not require a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.

(b) A district shall require that an application for a permit or a permit amendment be in writing and sworn to.

(c) A district may require that the following be included in the permit or permit amendment application:

(1) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at which water will be withdrawn;

(6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission; and

(7) a drought contingency plan.

(d) Before granting or denying a permit or permit amendment, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;

(6) the applicant has agreed to avoid waste and achieve water conservation; and

(7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(e) The district may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations:

(1) apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;

(2) bear a reasonable relationship to the existing district management plan; and

(3) are reasonably necessary to protect existing use.

(f) Permits and permit amendments may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

(h) In issuing a permit for an existing or historic use, a district may not discriminate between land that is irrigated for production and land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program.

(i) A permitting decision by a district is void if:

(1) the district makes its decision in violation of Subsection (h); and

(2) the district would have reached a different decision if the district had treated land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program the same as land irrigated for production.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.30, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.49, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 10, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1116, Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 2.21, eff. September 1, 2007.

Sec. 36.1131. ELEMENTS OF PERMIT. (a) A permit issued by the district to the applicant

under Section 36.113 shall state the terms and provisions prescribed by the district.

(b) The permit may include:

- (1) the name and address of the person to whom the permit is issued;
- (2) the location of the well;
- (3) the date the permit is to expire if no well is drilled;
- (4) a statement of the purpose for which the well is to be used;
- (5) a requirement that the water withdrawn under the permit be put to beneficial use at all times;
- (6) the location of the use of the water from the well;
- (7) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission;
- (8) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;
- (9) any conservation-oriented methods of drilling and operating prescribed by the district;
- (10) a drought contingency plan prescribed by the district; and
- (11) other terms and conditions as provided by Section 36.113.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.31, eff. Sept. 1, 1997.

Sec. 36.1132. PERMITS BASED ON MANAGED AVAILABLE GROUNDWATER. A district, to the extent possible, shall issue permits up to the point that the total volume of groundwater permitted equals the managed available groundwater, if administratively complete permit applications are submitted to the district.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 11, eff. September 1, 2005.

Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING. (a) The district by rule shall determine each activity regulated by the district for which a permit or permit amendment is required.

(b) For each activity for which the district determines a permit or permit amendment is required under Subsection (a), the district by rule shall determine whether a hearing on the permit or

permit amendment application is required.

(c) For all applications for which a hearing is not required under Subsection (b), the board shall act on the application at a meeting, as defined by Section 551.001, Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

(d) The district shall promptly consider and act on each administratively complete application for a permit or permit amendment as provided by Subsection (c) or Subchapter M.

(e) If, within 60 days after the date an administratively complete application is submitted, the application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as appropriate.

(f) For applications requiring a hearing, the initial hearing shall be held within 35 days after the setting of the date, and the district shall act on the application within 60 days after the date the final hearing on the application is concluded.

(g) The district may by rule set a time when an application will expire if the information requested in the application is not provided to the district.

(h) An administratively complete application requires information set forth in accordance with Sections 36.113 and 36.1131.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 319, Sec. 1, eff. May 24, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 10, eff. September 1, 2005.

Sec. 36.115. DRILLING OR ALTERING WELL WITHOUT PERMIT. (a) No person, firm, or corporation may drill a well without first obtaining a permit from the district.

(b) No person, firm, or corporation may alter the size of a well or well pump such that it would bring that well under the jurisdiction of the district without first obtaining a permit from the district.

(c) No person, firm, or corporation may operate a well without first obtaining a permit from the district.

(d) A violation occurs on the first day the drilling, alteration, or operation begins and continues each day thereafter until the appropriate permits are approved.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.116. REGULATION OF SPACING AND PRODUCTION. (a) In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, a district by rule may regulate:

(1) the spacing of water wells by:

(A) requiring all water wells to be spaced a certain distance from property lines or adjoining wells;

(B) requiring wells with a certain production capacity, pump size, or other characteristic related to the construction or operation of and production from a well to be spaced a certain distance from property lines or adjoining wells; or

(C) imposing spacing requirements adopted by the board; and

(2) the production of groundwater by:

(A) setting production limits on wells;

(B) limiting the amount of water produced based on acreage or tract size;

(C) limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;

(D) limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre;

(E) managed depletion; or

(F) any combination of the methods listed above in Paragraphs (A) through (E).

(b) In promulgating any rules limiting groundwater production, the district may preserve historic or existing use before the effective date of the rules to the maximum extent practicable consistent with the district's comprehensive management plan under Section 36.1071 and as provided by Section 36.113.

(c) In regulating the production of groundwater based on tract size or acreage, a district may consider the service needs or service area of a retail water utility. For the purposes of this subsection, "retail water utility" shall have the meaning provided at Section 13.002.

(d) For better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, the district may adopt different rules for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the district; or

(2) each geographic area overlying an aquifer or subdivision of an aquifer located in

whole or in part within the boundaries of the district.

(e) In regulating the production of groundwater under Subsection (a)(2), a district:

(1) shall select a method that is appropriate based on the hydrogeological conditions of the aquifer or aquifers in the district; and

(2) may limit the amount of water produced based on contiguous surface acreage.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1164, Sec. 1, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 2.50, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1242, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 18.006, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 12, eff. September 1, 2005.

Sec. 36.117. EXEMPTIONS; EXCEPTION; LIMITATIONS. (a) A district may exempt wells from the requirement of obtaining a drilling permit, an operating permit, or any other permit required by this chapter or the district's rules.

(b) A district may not require any permit issued by the district for:

(1) a well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or

(3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.

(c) A district may not restrict the production of any well that is exempt from permitting under Subsection (b)(1).

(d) Notwithstanding Subsection (b), a district may require a well to be permitted by the district and to comply with all district rules if:

(1) the withdrawals from a well in the Hill Country Priority Groundwater Management Area and exempted under Subsection (b)(1) are no longer used solely for domestic use or to provide

water for livestock or poultry;

(2) the purpose of a well exempted under Subsection (b)(2) is no longer solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(3) the withdrawals from a well exempted under Subsection (b)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

(e) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

- (1) the total amount of water withdrawn during the month;
- (2) the quantity of water necessary for mining activities; and
- (3) the quantity of water withdrawn for other purposes.

(f) Notwithstanding Subsection (d), a district may not require a well exempted under Subsection (b)(3) to comply with the spacing requirements of the district.

(g) A district may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the district.

(h) A water well exempted under Subsection (a) or (b) shall:

- (1) be registered in accordance with rules promulgated by the district; and
- (2) be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(i) The driller of a well exempted under Subsection (a) or (b) shall file the drilling log with the district.

(j) A well to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code, is not exempted under Subsection (b).

(k) Groundwater withdrawn from a well exempt from permitting or regulation under this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 and 36.205.

(l) This chapter applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This chapter does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.32, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 239, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.51, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 2.22, eff. September 1, 2007.

Sec. 36.118. OPEN OR UNCOVERED WELLS. (a) A district may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.

(b) As used in this section, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required by this chapter.

(c) If the owner or lessee fails or refuses to close or cap the well in compliance with this chapter in accordance with district rules, any person, firm, or corporation employed by the district may go on the land and close or cap the well safely and securely.

(d) Reasonable expenses incurred by the district in closing or capping a well constitute a lien on the land on which the well is located.

(e) The lien arises and attaches upon recordation in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:

- (1) the existence of the well;
- (2) the legal description of the property on which the well is located;
- (3) the approximate location of the well on the property;
- (4) the failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;
- (5) the closing of the well by the district, or by an authorized agent, representative, or employee of the district; and
- (6) the expense incurred by the district in closing the well.

(f) Nothing in this section affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.119. ILLEGAL DRILLING AND OPERATION OF WELL; CITIZEN SUIT. (a) Drilling or operating a well or wells without a required permit or producing groundwater in violation of a district rule adopted under Section 36.116(a)(2) is declared to be illegal, wasteful per se, and a nuisance.

(b) Except as provided by this section, a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which a well or wells are drilled or operated without a required permit or permits or from which groundwater is produced in violation of a district rule adopted under Section 36.116(a)(2), or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the well or wells, may sue the owner of the well or wells in a court of competent jurisdiction to restrain or enjoin the illegal drilling, operation, or both. The suit may be brought with or without the joinder of the district.

(c) Except as provided by this section, the aggrieved party may also sue the owner of the well or wells for damages for injuries suffered by reason of the illegal operation or production and for other relief to which the party may be entitled. In a suit for damages against the owner of the well or wells, the existence of a well or wells drilled without a required permit or the operation of a well or wells in violation of a district rule adopted under Section 36.116(a)(2) is prima facie evidence of illegal drainage.

(d) The suit may be brought in the county where the illegal well is located or in the county where all or part of the affected land is located.

(e) The remedies provided by this section are cumulative of other remedies available to the individual or the district.

(f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court.

(g) Before filing a suit under Subsection (b) or (c), an aggrieved party must file a written complaint with the district having jurisdiction over the well or wells drilled or operated without a required permit or in violation of a district rule. The district shall investigate the complaint and, after notice and hearing and not later than the 90th day after the date the written complaint was received by the district, the district shall determine, based on the evidence presented at the hearing, whether a district rule has been violated. The aggrieved party may only file a suit under this section on or after the 91st day after the date the written complaint was received by the district.

(h) Notwithstanding Subsection (g), an aggrieved party under Subsection (b) may sue a well owner or well driller in a court of competent jurisdiction to restrain or enjoin the drilling or completion of an illegal well after filing the written complaint with the district under Subsection (g) and without the need to wait for a hearing on the matter.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1321, Sec. 1, eff. June 15, 2007.

Sec. 36.120. INFORMATION. On request of the executive director or the executive administrator, the district shall make available information that it acquires concerning the groundwater resources within its jurisdiction. The district shall also provide information to the commission and Texas Water Development Board concerning its plans and activities in conserving and protecting groundwater resources. On request of a district, the executive director and the executive administrator shall provide information they acquire concerning the groundwater resources within the district's jurisdiction.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.121. LIMITATION ON RULEMAKING POWER OF DISTRICTS OVER WELLS IN CERTAIN COUNTIES. Except as provided by Section 36.117, a district that is created under this chapter on or after September 1, 1991, shall exempt from regulation under this chapter a well and any water produced or to be produced by a well that is located in a county that has a population of 14,000 or less if the water is to be used solely to supply a municipality that has a population of 121,000 or less and the rights to the water produced from the well are owned by a political subdivision that is not a municipality, or by a municipality that has a population of 100,000 or less, and that purchased, owned, or held rights to the water before the date on which the district was created, regardless of the date the well is drilled or the water is produced. The district may not prohibit the political subdivision or municipality from transporting produced water inside or outside the district's boundaries.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 11.04, eff. Sept. 1, 2001.

Sec. 36.122. TRANSFER OF GROUNDWATER OUT OF DISTRICT. (a) If an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries, the district may also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment.

(b) A district may promulgate rules requiring a person to obtain a permit or an amendment to a permit under Section 36.113 from the district for the transfer of groundwater out of the district to:

(1) increase, on or after March 2, 1997, the amount of groundwater to be transferred under a continuing arrangement in effect before that date; or

(2) transfer groundwater out of the district on or after March 2, 1997, under a new arrangement.

(c) Except as provided in Section 36.113(e), the district may not impose more restrictive permit conditions on transporters than the district imposes on existing in-district users.

(d) The district may impose a reasonable fee for processing an application under this section. The fee may not exceed fees that the district imposes for processing other applications under Section

36.113. An application filed to comply with this section shall be considered and processed under the same procedures as other applications for permits under Section 36.113 and shall be combined with applications filed to obtain a permit for in-district water use under Section 36.113 from the same applicant.

(e) The district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

(1) a fee negotiated between the district and the transporter;

(2) a rate not to exceed the equivalent of the district's tax rate per hundred dollars of valuation for each thousand gallons of water transferred out of the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation; or

(3) for a fee-based district, a 50 percent export surcharge, in addition to the district's production fee, for water transferred out of the district.

(f) In reviewing a proposed transfer of groundwater out of the district, the district shall consider:

(1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;

(2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and

(3) the approved regional water plan and certified district management plan.

(g) The district may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the district but may limit a permit issued under this section if conditions in Subsection (f) warrant the limitation, subject to Subsection (c).

(h) In addition to conditions provided by Section 36.1131, the permit shall specify:

(1) the amount of water that may be transferred out of the district; and

(2) the period for which the water may be transferred.

(i) The period specified by Subsection (h)(2) shall be:

(1) at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or

(2) at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.

(j) A term under Subsection (i)(1) shall automatically be extended to the terms agreed to under Subsection (i)(2) if construction of a conveyance system is begun before the expiration of the initial term.

(k) Notwithstanding the period specified in Subsections (i) and (j) during which water may be transferred under a permit, a district may periodically review the amount of water that may be transferred under the permit and may limit the amount if additional factors considered in Subsection (f) warrant the limitation, subject to Subsection (c). The review described by this subsection may take place not more frequently than the period provided for the review or renewal of regular permits issued by the district. In its determination of whether to renew a permit issued under this section, the district shall consider relevant and current data for the conservation of groundwater resources and shall consider the permit in the same manner it would consider any other permit in the district.

(l) A district is prohibited from using revenues obtained under Subsection (e) to prohibit the transfer of groundwater outside of a district. A district is not prohibited from using revenues obtained under Subsection (e) for paying expenses related to enforcement of this chapter or district rules.

(m) A district may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.

(n) This section applies only to a transfer of water that is permitted after September 1, 1997.

(o) A district shall adopt rules as necessary to implement this section but may not adopt rules expressly prohibiting the export of groundwater.

(p) Subsection (e) does not apply to a district that is collecting an export fee or surcharge on March 1, 2001.

(q) In applying this section, a district must be fair, impartial, and nondiscriminatory.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.33, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.52, eff. Sept. 1, 2001.

Sec. 36.123. RIGHT TO ENTER LAND. (a) The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.

(b) District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Added by Acts 1999, 76th Leg., ch. 1354, Sec. 3, eff. Sept. 1, 1999.

Sec. 36.124. DISTRICT ACT OR PROCEEDING PRESUMED VALID. (a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

Added by Acts 2001, 77th Leg., ch. 389, Sec. 1, eff. May 28, 2001.

SUBCHAPTER E. DISTRICT FINANCES

Sec. 36.151. EXPENDITURES. (a) A district's money may be disbursed only by check, draft, order, or other instrument.

(b) Disbursements shall be signed by at least two directors, except the board may by resolution allow certain employees of the district, or a combination of employees and directors, to sign disbursements on behalf of the board.

(c) The board may by resolution allow disbursements to be transferred by federal reserve wire system to accounts in the name of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.152. FISCAL YEAR. (a) The district shall be operated on the basis of a fiscal year established by the board.

(b) The fiscal year may not be changed during a period in which revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.153. ANNUAL AUDIT. (a) Annually and subject to Subsection (c), the board shall have an audit made of the financial condition of the district.

(b) The annual audit and other district records must be open to inspection during regular business hours at the principal office of the district.

(c) The district is exempt from the requirement under Subsection (a) if it had:

(1) not more than \$500 in receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(2) not more than \$500 in disbursements of funds during the calendar year;

(3) no bonds or other liabilities with terms of more than one year outstanding during the calendar year; and

(4) no cash or investments amounting to more than \$5,000 at any time during the calendar year.

(d) A financially dormant district may elect to submit to the executive director a financial dormancy affidavit instead of complying with the audit requirements of Section 49.191.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 52, eff. Sept. 1, 2003.

Sec. 36.154. ANNUAL BUDGET. (a) The board shall prepare and approve an annual budget.

(b) The budget shall contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposal budget; and

(7) the estimated tax rate or fee revenues that will be required.

(c) The annual budget may be amended on the board's approval.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.155. DEPOSITORY. (a) The board shall name one or more banks to serve as depository for the district funds.

(b) District funds, other than those transmitted to a bank for payment of bonds issued by the district, shall be deposited as received with the depository bank and shall remain on deposit. This subsection does not limit the power of the board to place a portion of the district's funds on time deposit or to purchase certificates of deposit.

(c) To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds by the Public Funds Collateral Act, Chapter 2257, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.156. INVESTMENTS. (a) Funds of the district may be invested and reinvested in accordance with the provisions of the Public Funds Investment Act, Chapter 2256, Government Code.

(b) The board, by resolution, may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for investments on such terms as the board considers advisable.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.1561. INVESTMENT OFFICER. (a) Notwithstanding Section 2256.005(f), Government Code, the board may contract with a person to act as investment officer of the district.

(b) The investment officer of a district shall:

(1) not later than the first anniversary of the date the officer takes office or assumes the officer's duties, attend a training session of at least six hours of instruction relating to investment responsibilities under Chapter 2256, Government Code; and

(2) attend at least four hours of additional investment training within each two-year period after the first year.

(c) Training under this section must be from an independent source approved by:

(1) the board; or

(2) a designated investment committee advising the investment officer.

(d) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with Chapter 2256, Government Code.

(e) During January of each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the districts for which the person provided required training under this section during the previous calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

Added by Acts 2001, 77th Leg., ch. 69, Sec. 1, eff. May 14, 2001.

Sec. 36.157. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) A district may pay all costs and expenses necessarily incurred in the creation and organization of a district, including legal fees and other incidental expenses, and may reimburse any person for money advanced for these purposes.

(b) Payments may be made from money obtained from the sale of bonds first issued by the district or out of maintenance taxes or other revenues of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.158. GRANTS. A district may make or accept grants, gratuities, advances, or loans in any form to or from any source approved by the board, including any governmental entity, and may enter into contracts, agreements, and covenants in connection with grants, gratuities, advances, or loans that the board considers appropriate.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.159. GROUNDWATER DISTRICT MANAGEMENT PLAN FUNDS. The Texas Water Development Board may allocate funds from the water assistance fund to a district to conduct initial data collections under this chapter, to develop and implement a long-term management plan under Section 36.1071, and to participate in regional water plans.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.34, eff. Sept. 1, 1997.

Sec. 36.160. FUNDS. The Texas Water Development Board, the commission, the Parks and Wildlife Department, the Texas Agricultural Extension Service, and institutions of higher education may allocate funds to carry out the objectives of this chapter and Chapter 35, which include but are not limited to:

(1) conducting initial and subsequent studies and surveys under Sections 36.106, 36.107, and 36.109;

(2) providing appropriate education in affected areas identified in Section 35.007 relating to the problems and issues concerning water management that may arise;

(3) processing priority groundwater management area evaluations under this chapter and Chapter 35;

(4) providing technical and administrative assistance to newly created districts under this chapter and Chapter 35;

(5) covering the costs of newspaper notices required under Sections 35.009 and 36.014 and failed elections in accordance with Sections 35.014(c), 36.017(h), and 36.019; and

(6) providing for assistance from the Parks and Wildlife Department to the Texas Water Development Board or a district for the purpose of assessing fish and wildlife resource habitat needs as they may apply to overall management plan goals and objectives of the district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.34, eff. Sept. 1, 1997.

Sec. 36.161. ELIGIBILITY FOR FUNDING. (a) The Texas Water Development Board may provide funds under Sections 36.159 and 36.160, Chapters 15, 16, and 17, and Subchapter L of this chapter to a district if the Texas Water Development Board determines that such funding will allow the district to comply or continue to comply with provisions of this chapter.

(b) The Texas Water Development Board may, after notice and hearing, discontinue funding described in Subsection (a) if the Texas Water Development Board finds that the district is not using the funds to comply with the provisions of this chapter.

(c) The Texas Water Development Board, when considering a discontinuance under Subsection (b), shall give written notice of the hearing to the district at least 20 days before the date set for the hearing. The hearing shall be conducted in accordance with Chapter 2001, Government Code, or the rules of the respective agency. General notice of the hearing shall be given in accordance with the rules of the agency.

(d) The Texas Water Development Board may delegate to the State Office of Administrative Hearings the responsibility to conduct a hearing under this section.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.34, eff. Sept. 1, 1997.

SUBCHAPTER F. BONDS AND NOTES

Sec. 36.171. ISSUANCE OF BONDS AND NOTES. (a) The board may issue and sell bonds and notes in the name of the district for any lawful purpose of the district. A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to refunding bonds.

(b) A district may submit to the commission a written application for investigation of feasibility. An engineer's report describing the project, including the data, profiles, maps, plans, and specifications prepared in connection with the report, must be submitted with the application.

(c) The executive director shall examine the application and the report and shall inspect the project area. The district shall, on request, supply the executive director with additional data and information necessary for an investigation of the application, the engineer's report, and the project.

(d) The executive director shall prepare a written report on the project and include suggestions, if any, for changes or improvements in the project. The executive director shall retain a copy of the report and send a copy of the report to both the commission and the district.

(e) The commission shall consider the application, the engineer's report, the executive director's report, and any other evidence allowed by commission rule to be considered in determining the feasibility of the project.

(f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as appropriate, the issuance of the bonds. The commission shall retain a copy of the order and send a copy of the order to the district.

(g) Notwithstanding any provision of this code to the contrary, the commission may approve the issuance of bonds of a district without the submission of plans and specifications of the improvements to be financed with the bonds. The commission may condition the approval on any terms or conditions considered appropriate by the commission.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.172. MANNER OF REPAYMENT OF BONDS AND NOTES. The board may provide for the payment of principal of and interest on the bonds and notes in any one of the following manners:

- (1) from the levy and collection of ad valorem taxes on taxable property within the district;
- (2) from fees;
- (3) by pledging all or any part of the designated revenues from the ownership or operation of the district's works, improvements, and facilities and from the sale, transportation, and distribution of water; or
- (4) from any combination of these sources.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.173. ADDITIONAL SECURITY FOR BONDS AND NOTES. (a) The bonds and notes may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds and notes.

(b) The trust indenture, regardless of the existence of the deed trust or mortgage lien on the properties, may contain provisions established by the board for the security of the bonds and notes and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed trust or mortgage lien shall be absolute owner of the properties and rights purchased and may maintain and operate them.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.174. FORM OF BONDS OR NOTES. (a) A district may issue its bonds or notes in various series or issues.

(b) Bonds or notes may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate permitted by the constitution and laws of this state.

(c) A district's bonds, notes, and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity, at the option of the district, or

may contain a mandatory redemption provision.

(d) A district's bonds and notes may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.175. PROVISIONS OF BONDS AND NOTES. (a) In the orders or resolutions authorizing the issuance of bonds or notes, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds. The board may make additional covenants with respect to bonds or notes, pledged revenues, and the operation and maintenance of those works, improvements, and facilities, of which the revenue is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds or notes may also prohibit the further issuance of bonds, notes, or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds or notes to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds or notes being issued.

(c) The orders or resolutions of the board issuing bonds or notes may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceeding or instruments necessary and convenient in the issuance of bonds or notes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.176. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds or notes, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds or notes being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general as in the case of other bonds or notes and shall be registered by the comptroller on the surrender and cancellation of the bonds or notes being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds or notes being

refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds or notes being refunded. If refunding bonds are issued before cancellation of the other bonds or notes, an amount sufficient to pay the principal of and interest on the bonds or notes being refunded to their maturity dates, or to their option dates if the bonds or notes have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds or notes being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds or notes being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.177. BONDS AND NOTES AS INVESTMENTS. District bonds and notes are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and

(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.178. BONDS AND NOTES AS SECURITY FOR DEPOSITS. District bonds and notes are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds or notes are lawful and sufficient security for deposits

to the extent of their value when accompanied by all unmatured coupons.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.179. TAX STATUS OF BONDS AND NOTES. Since a district governed by this chapter is a public entity performing an essential public function, bonds and notes issued by the district, any transaction relating to the bonds and notes, and profits made in the sale of the bonds and notes, are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.180. ELECTION. (a) Bonds or notes secured in whole or in part by taxes may not be issued by the district until authorized by a majority vote of the qualified voters of the district at an election called for that purpose.

(b) The board may order an election, and the order calling the election shall state the nature and the date of the election, the hours during which the polls will be open, the location of the polling places, the amount of bonds or notes to be authorized, and the maximum maturity of the bonds or notes.

(c) At an election to authorize bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)." At any election to authorize bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

(d) The board shall canvass the returns and declare the results of the election. If a majority of the votes cast at the election favor the issuance of the bonds or notes, the bonds or notes may be issued by the board, but if a majority of the votes cast at the election do not favor issuance of the bonds or notes, the bonds or notes may not be issued.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.181. APPROVAL BY ATTORNEY GENERAL; REGISTRATION BY COMPTROLLER. (a) Bonds and notes issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds or notes have been authorized in accordance with law, the attorney general shall approve them, and they shall be registered by the comptroller.

(c) After the approval and registration of bonds or notes, the bonds or notes are incontestable in any court or other forum, for any reason, and are valid and binding obligations in accordance with their terms for all purposes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER G. DISTRICT REVENUES

Sec. 36.201. LEVY OF TAXES. (a) The board may annually levy taxes to pay the bonds issued by the district that are payable in whole or in part by taxes.

(b) The board may annually levy taxes to pay the maintenance and operating expenses of the district at a rate not to exceed 50 cents on each \$100 of assessed valuation.

(c) The board may not levy a tax to pay the maintenance and operating expenses of the district under this section until the tax is approved by a majority of the electors voting at an election in the district held for that purpose. The district may:

(1) hold an election for approval of the tax at the same time and in conjunction with an election to authorize bonds, following the procedures applicable to a bond election; or

(2) hold a separate election for approval of the tax in accordance with Subsection (d).

(d) An order calling a separate election for approval of a tax under this section must be issued at least 15 days before the date of the election, and the election notice must be published at least twice in a newspaper of general circulation in the district. The first publication of the notice must be at least 14 days before the date of the election.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.202. BOARD AUTHORITY. (a) The board may levy taxes for the entire year in which the district is created.

(b) If territory is added to or annexed by the district, the board may levy taxes in the new territory for the entire year in which the territory is added or annexed.

(c) The board shall levy taxes on all property in the district subject to district taxation.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.203. TAX RATE. In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.204. TAX APPRAISAL, ASSESSMENT AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.205. AUTHORITY TO SET FEES. (a) A district may set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged.

(b) A district shall set and collect fees for all services provided outside the boundaries of the district. The fees may not unreasonably exceed the cost to the district of providing the services outside the district.

(c) A district may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may assess the fees in lieu of, or in conjunction with, any taxes otherwise levied by the district. A district may use revenues generated by the fees for any lawful purpose. Production fees shall not exceed:

(1) \$1 per acre-foot payable annually for water used for agricultural use; or

(2) \$10 per acre-foot payable annually for water used for any other purpose.

(d) The Lone Star Groundwater Conservation District and the Guadalupe County Groundwater Conservation District may not charge production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose. This subsection shall take precedence over all prior enactments.

(e) Subsection (c) does not apply to the following districts:

(1) the Edwards Aquifer Authority;

(2) the Fort Bend Subsidence District;

(3) the Harris-Galveston Coastal Subsidence District;

(4) the Barton Springs-Edwards Aquifer Conservation District; or

(5) any district that collects a property tax and that was created before September 1, 1999, unless otherwise authorized by special law.

(f) A district, including a district described under Subsection (d), may assess a production fee under Subsection (c) for any water produced under an exemption under Section 36.117 if that water is subsequently sold to another person.

(g) A district may assess a transportation fee under Section 36.122.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.53, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1405, Sec. 1, eff. September 1, 2007.

Sec. 36.206. DISTRICT FEES. (a) A temporary board may set user fees to pay for the creation and initial operation of a district, until such time as the district creation has been confirmed and a permanent board has been elected by a majority vote of the qualified voters voting in the district in an election called for those purposes.

(b) The rate of fees set for agricultural uses shall be no more than 20 percent of the rate applied to municipal uses.

(c) District fees may not be used to purchase groundwater rights unless the purchased rights are acquired for conservation purposes and are permanently held in trust not to be produced.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.35, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.54, eff. Sept. 1, 2001.

Sec. 36.207. USE OF PERMIT FEES AUTHORIZED BY SPECIAL LAW. A district may use funds obtained from permit fees collected pursuant to the special law governing the district for any purpose consistent with the district's certified water management plan including, without limitation, making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.35, eff. Sept. 1, 1997.

SUBCHAPTER H. JUDICIAL REVIEW

Sec. 36.251. SUIT AGAINST DISTRICT. A person, firm, corporation, or association of persons affected by and dissatisfied with any provision or with any rule or order made by a district is entitled to file a suit against the district or its directors to challenge the validity of the law, rule, or order. The suit shall be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located. The suit may only be filed after all administrative appeals to the district are final.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.252. SUIT TO BE EXPEDITED. A suit brought under this subchapter shall be advanced for trial and determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.253. TRIAL OF SUIT. The burden of proof is on the petitioner, and the challenged law, rule, order, or act shall be deemed prima facie valid. The review on appeal is governed by the substantial evidence rule as defined by Section 2001.174, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.254. SUBCHAPTER CUMULATIVE. The provisions of this subchapter do not affect other legal or equitable remedies that may be available.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER I. PERFORMANCE REVIEW AND DISSOLUTION

Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN. If a board fails to submit a management plan or to receive certification of its management plan under Section 36.1072 or fails to submit or receive certification of an amendment to the management plan under Section 36.1073, the commission shall take appropriate action under Section 36.303.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.3011. FAILURE OF DISTRICT TO CONDUCT JOINT PLANNING. Not later than the 45th day after receiving the review panel's report under Section 36.108, the executive director or the commission shall take action to implement any or all of the panel's recommendations. The commission may take any action against a district it considers necessary in accordance with Section 36.303 if the commission finds that:

(1) a district has failed to submit its plan to the executive administrator;

(2) a district has failed to adopt rules;

(3) the rules adopted by the district are not designed to achieve the desired future condition of the groundwater resources in the groundwater management area; or

(4) the groundwater in the management area is not adequately protected by the rules adopted by the district, or the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 2.55, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 13, eff. September 1, 2005.

Sec. 36.302. LEGISLATIVE AUDIT REVIEW; DETERMINATION OF WHETHER DISTRICT IS OPERATIONAL. (a) A district is subject to review by the state auditor under the direction of the legislative audit committee pursuant to Chapter 321, Government Code.

(b) The commission, the Texas Water Development Board, and the Parks and Wildlife Department shall provide technical assistance to the state auditor's office for a review performed under Subsection (a).

(c) In a review performed under Subsection (a), the state auditor shall make a determination of whether a district is actively engaged in achieving the objectives of the district's management plan based on an analysis of the district's activities.

(d) The state auditor may perform the review under Subsection (a) following the first anniversary of the initial approval of the plan under Section 36.1072 and at least as often as once every seven years after that date, subject to a risk assessment and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

(e) The state auditor shall report findings of the review to the legislative audit committee and to the commission.

(f) If it is determined under Subsection (c) that the district is not operational, the commission shall take appropriate action under Section 36.303.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 53, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 14, eff. September 1, 2005.

Sec. 36.303. ACTION BY COMMISSION. (a) If Section 36.108, 36.301, or 36.302(f) applies, the commission, after notice and hearing in accordance with Chapter 2001, Government Code, shall take action the commission considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with Sections 36.305 and 36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the groundwater conservation district; or

(4) dissolving the district in accordance with Sections 36.304, 36.305, and 36.308.

(b) In addition to actions identified under Subsection (a), the commission may recommend to the legislature, based upon the report required by Section 35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.56, eff. Sept. 1, 2001.

Sec. 36.3035. APPOINTMENT OF A RECEIVER. (a) If the attorney general brings a suit for the appointment of a receiver for a district, a district court shall appoint a receiver if an appointment is necessary to protect the assets of the district.

(b) The receiver shall execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.

(c) After appointment and execution of bond, the receiver shall take possession of the assets of the district specified by the court.

(d) Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the district and shall strictly observe the final order involved.

(e) On a showing of good cause by the district, the court may dissolve the receivership and

order the assets and control of the business returned to the district.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 2.57, eff. Sept. 1, 2001.

Sec. 36.304. DISSOLUTION OF DISTRICT. (a) The commission may dissolve a district that has no outstanding bonded indebtedness.

(b) A district composed of territory entirely within one county may be dissolved even if the district has outstanding indebtedness that matures after the year in which the district is dissolved, whereupon the commissioners court shall levy and collect taxes on all taxable property in the district in an amount sufficient to pay the principal of and interest on the indebtedness when due. The taxes shall be levied and collected in the same manner as county taxes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.301 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 970, Sec. 15, eff. September 1, 2005.

Sec. 36.305. NOTICE OF HEARING FOR DISSOLUTION OF BOARD OR DISTRICT. (a) The commission shall give notice of the hearing for dissolution of a district or of a board which briefly describes the reasons for the proceeding.

(b) The notice shall be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.

(c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the executive director.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.302 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.306. INVESTIGATION. The executive director shall investigate the facts and circumstances of any violations of any rule or order of the commission or any provisions of this chapter and shall prepare and file a written report with the commission and district and include any actions the executive director believes the commission should take under Section 36.303.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec.

36.303 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.307. ORDER OF DISSOLUTION OF BOARD. If the commission enters an order to dissolve the board, the commission shall notify the county commissioners court of each county which contains territory in the district and the commission shall provide that temporary directors be appointed under Section 36.016 to serve until an election for a new board can be held under Section 36.017, provided, however, that district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.308. CERTIFIED COPY OF ORDER. The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.305 by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.309. APPEALS. Appeals from any commission order shall be filed and heard in the district court of any of the counties in which the land is located.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Renumbered from Water Code Sec. 36.306 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

Sec. 36.310. ASSETS ESCHEAT. Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single-county district. If it is a multicounty district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 20.10, eff. Sept. 1, 1997. Renumbered from Water Code Sec. 36.307 and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.36, eff. Sept. 1, 1997.

SUBCHAPTER J. ADDING TERRITORY TO DISTRICT

Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER. The owner of land contiguous to a district may file with the board a notarized petition requesting that the owner's land be included in the district. The petition must describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.322. ASSUMPTION OF BONDS. If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxation that have been voted but are unissued, the petitioner shall assume its share of the outstanding bonds, notes, or other obligations and any voted but unissued tax bonds of the district, and the property shall be assessed an ad valorem tax at the same rate as that set for the existing district to pay for outstanding bonds and for the maintenance and operation of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.323. HEARING AND DETERMINATION OF PETITION. (a) The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the petitioner and to the existing district.

(b) If the district has bonds payable in whole or in part from taxation that are voted but unissued at the time of the annexation, the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.324. RECORDING PETITION. A petition that is granted which adds land to the district shall be recorded in the office of the county clerk of the county or counties in which the land is located and the county or counties in which the existing district's principal office is located.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION. (a) Landowners of a defined area of territory not already in a district may file with any district a petition requesting inclusion in that district.

(b) The petition must be signed by:

- (1) a majority of the landowners in the territory;
- (2) at least 50 landowners if the number of landowners is more than 50; or

(3) the commissioners court of the county in which the area is located if the area is identified as a priority groundwater management area or includes the entire county. The petition must describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.37, eff. Sept. 1, 1997.

Sec. 36.326. HEARING ON PETITION. The board by order shall set the time and place of separate hearings on the petition to include the territory in the district. At least one hearing shall be held in the existing district and one hearing shall be held in the territory to be added.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.327. RESOLUTION TO ADD TERRITORY. If the board finds after the hearing on the petition that the addition of the land would benefit the district and the territory to be added, it may add the territory to the district by resolution. The board does not have to include all the territory described in the petition if it finds that a modification or change is necessary or desirable.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.328. ELECTION TO RATIFY ANNEXATION OF LAND. (a) Annexation of the territory is not final until ratified by a majority vote of the voters in the territory to be added. An election in the existing district accepting the addition of land is not required.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of (briefly describe additional area) in the _____ District." If the district levies a property tax for payment of its maintenance and operating expenses, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each \$100 of assessed valuation for payment of maintenance and operating expenses of the district."

(c) The amount of the tax included in the proposition shall be the maximum amount that the district is authorized to levy. If the district has outstanding or authorized bonded indebtedness, the proposition shall include language providing for the assumption by the additional area of a proportional share of the bonded indebtedness of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.329. NOTICE AND PROCEDURE OF ELECTION. The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters are governed by the Election Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.330. LIABILITY OF ADDED TERRITORY. The added territory shall bear its pro rata share of indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.331. ANNEXATION OF NONCONTIGUOUS TERRITORY. Land not contiguous to the existing boundaries of a district may not be added to or annexed to a district unless the land is located either within the same management area, priority groundwater management area, or a groundwater subdivision designated by the commission or its predecessors.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.38, eff. Sept. 1, 1997.

SUBCHAPTER K. CONSOLIDATION OF DISTRICTS

Sec. 36.351. CONSOLIDATION OF DISTRICTS. (a) Two or more districts may consolidate into one district. To initiate a consolidation, the board of a district shall adopt a resolution proposing a consolidation and deliver a copy of the resolution to the board of each district with which consolidation is proposed.

(b) Adjacent districts may consolidate portions of either district if one district relinquishes land within that district to the jurisdiction of the other district.

(c) A consolidation under this subchapter occurs if the board of each involved district adopts a resolution containing the terms and conditions of the consolidation.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg.,

ch. 1025, Sec. 1, eff. June 18, 1999.

Sec. 36.352. TERMS AND CONDITIONS OF CONSOLIDATION. (a) The terms and conditions for consolidation shall include:

- (1) adoption of a name for the district;
- (2) the number and apportionment of directors to serve on the board;
- (3) the effective date of the consolidation;
- (4) an agreement on finances for the consolidated district, including disposition of funds, property, and other assets of each district;
- (5) transfer of all permits issued in the area that is the subject of the consolidation to the consolidated district; and
- (6) an agreement on governing the districts during the transition period, including selection of officers.

(b) The terms and conditions for consolidation may include:

- (1) assumption by each district of the other district's bonds, notes, voted but unissued bonds, or other obligations;
- (2) an agreement to levy taxes to pay for bonds;
- (3) any other terms of conditions agreed upon by the board of each district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.353. NOTICE AND HEARING ON CONSOLIDATION. (a) Each board shall publish notice and hold a public hearing within that district on the terms and conditions for consolidation of the districts.

(b) After the hearing, the board may, by resolution, approve the terms and conditions for consolidation and enter an order consolidating the districts.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.354. ELECTIONS TO APPROVE CONSOLIDATION. (a) An election to ratify the consolidation is required in each district that initiates consolidation. An election is not required in a

district that does not initiate consolidation.

(b) The board of each district that is required by Subsection (a) to conduct an election shall order an election in the district only after the board of each district to be consolidated has agreed on the terms and conditions of consolidation. The directors of each district conducting an election shall order the election to be held on the same day in each district. The election shall be held and notice given in the manner provided by the Election Code.

(c) The ballots for the election shall be printed to provide for voting for or against the proposition: "The consolidation of (names of the districts to be consolidated) in the _____ District." If the district levies a property tax for payment of its bonded indebtedness, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each \$100 of assessed valuation for payment of bonds." If the district levies a property tax for payment of its maintenance and operating expenses, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each \$100 of assessed valuation for payment of maintenance and operating expenses of the district."

(d) A district may be consolidated only if a majority of the electors in each district required by Subsection (a) to conduct an election vote in favor of the consolidation. If more than two districts are consolidating, failure of any one district to ratify the consolidation shall not prevent the consolidation of the other districts.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1025, Sec. 2, eff. June 18, 1999.

Sec. 36.355. GOVERNING CONSOLIDATED DISTRICTS. (a) After two or more districts are consolidated, they become one district and are governed as one district.

(b) During the transition period, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) If the consolidated district elects directors, directors for the consolidated district shall be elected in the same manner and for the same term as directors elected at a confirmation election. The directors' election shall be set for the next regular election.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.356. DEBTS OF ORIGINAL DISTRICTS. (a) After two or more districts are consolidated, the consolidated district shall protect the debts of the original districts and shall assure that the debts are not impaired. If the consolidated district has taxing authority, the debts may be paid by taxes levied on the land in the original districts as if they had not consolidated or from contributions from the consolidated district on terms stated in the consolidation agreement.

(b) If the consolidated district has taxing authority and assumes the bonds, notes, and other

obligations of the original districts, taxes may be levied uniformly on all taxable property within the consolidated district to pay the debts.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.357. ASSESSMENT AND COLLECTION OF TAXES. If the consolidated district has taxing authority, the district shall assess and collect taxes on property on all property in the district for maintenance and operation of the district.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.358. VOTED BUT UNISSUED BONDS. If either district has voted but unissued bonds payable in whole or in part from taxation assumed by the consolidated district, the consolidated district may issue the voted but unissued bonds in the name of the consolidated district and levy a uniform tax on all taxable property in the consolidated district to pay for the bonds.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 36.359. FILING OF ORDER WITH COUNTY CLERK AND EXECUTIVE DIRECTOR. A consolidation order issued by the board shall be kept in the records of the consolidated district, recorded in the office of the county clerk in each of the counties in the consolidated district, and filed with the executive director.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER L. GROUNDWATER DISTRICT LOAN ASSISTANCE FUND

Sec. 36.3705. DEFINITION. In this subchapter, "applicant" means a newly confirmed district applying for a loan from the loan fund.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 16, eff. September 1, 2005.

Sec. 36.371. GROUNDWATER DISTRICT LOAN ASSISTANCE FUND. (a) The groundwater district loan assistance fund is created, to be funded by direct appropriation and by the

Texas Water Development Board from the water assistance fund.

(b) Repayments of loans shall be deposited in the water assistance fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

Sec. 36.372. FINANCIAL ASSISTANCE. (a) The loan fund may be used by the Texas Water Development Board to provide loans to newly confirmed districts and legislatively created districts that do not require a confirmation election to pay for their creation and initial operations.

(b) The Texas Water Development Board shall establish rules for the use and administration of the loan fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

Sec. 36.373. APPLICATION FOR ASSISTANCE. (a) In an application to the Texas Water Development Board for financial assistance from the loan fund, the applicant shall include:

- (1) the name of the district and its board members;
- (2) a citation of the law under which the district operates and was created;
- (3) a description of the initial operations;
- (4) the total start-up cost of the initial operations;
- (5) the amount of state financial assistance requested;
- (6) the plan for repaying the total cost of the loan; and

(7) any other information the Texas Water Development Board may require to perform its duties and protect the public interest.

(b) The Texas Water Development Board may not accept an application for a loan from the loan fund unless it is submitted in affidavit form by the applicant's board. The Texas Water Development Board shall prescribe the affidavit form in its rules.

(c) The rules implementing this section shall not restrict or prohibit the Texas Water Development Board from requiring additional factual material from an applicant.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

Sec. 36.374. APPROVAL OF APPLICATION. The Texas Water Development Board, by resolution, may approve an application if it finds that:

(1) granting financial assistance to the applicant will serve the public interest; and

(2) the revenue pledged by the applicant from district taxes and fees and other sources will be sufficient to meet all the obligations assumed by the applicant.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.39, eff. Sept. 1, 1997.

SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;

NOTICE AND HEARING PROCESS

Sec. 36.401. DEFINITION. In this subchapter, "applicant" means a person who is applying for a permit or a permit amendment.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.402. APPLICABILITY. Except as provided by Section 36.416, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.403. SCHEDULING OF HEARING. (a) The general manager or board may schedule a hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.

(b) The general manager or board may schedule more than one application for consideration at a hearing.

(c) A hearing must be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.

(d) A hearing may be held in conjunction with a regularly scheduled board meeting.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.404. NOTICE. (a) If the general manager or board schedules a hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this section.

(b) The notice must include:

- (1) the name of the applicant;
- (2) the address or approximate location of the well or proposed well;
- (3) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
- (4) the time, date, and location of the hearing; and
- (5) any other information the general manager or board considers relevant and appropriate.

(c) Not later than the 10th day before the date of a hearing, the general manager or board shall:

- (1) post notice in a place readily accessible to the public at the district office;
- (2) provide notice to the county clerk of each county in the district; and
- (3) provide notice by:
 - (A) regular mail to the applicant;
 - (B) regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and
 - (C) regular mail to any other person entitled to receive notice under the rules of the district.

(d) A person may request notice from the district of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.

(e) Failure to provide notice under Subsection (c)(3)(B) does not invalidate an action taken by the district at the hearing.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.405. HEARING REGISTRATION. The district may require each person who participates in a hearing to submit a hearing registration form stating:

- (1) the person's name;
- (2) the person's address; and
- (3) whom the person represents, if the person is not there in the person's individual capacity.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be conducted by:

- (1) a quorum of the board; or
- (2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing.

(b) Except as provided by Subsection (c), the board president or the hearings examiner shall serve as the presiding officer at the hearing.

(c) If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.

(d) The presiding officer may:

- (1) convene the hearing at the time and place specified in the notice;
- (2) set any necessary additional hearing dates;
- (3) designate the parties regarding a contested application;
- (4) establish the order for presentation of evidence;
- (5) administer oaths to all persons presenting testimony;
- (6) examine persons presenting testimony;
- (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
- (8) prescribe reasonable time limits for testimony and the presentation of evidence; and
- (9) exercise the procedural rules adopted under Section 36.415.

(e) Except as provided by a rule adopted under Section 36.415, a district may allow any person, including the general manager or a district employee, to provide comments at a hearing on an uncontested application.

(f) The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

(g) If the board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.

(h) The district by rule adopted under Section 36.417 may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before board action under Section 36.411 that:

- (1) refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
 - (2) determines how the costs of the procedure shall be apportioned among the parties;
- and
- (3) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.407. EVIDENCE. (a) The presiding officer shall admit evidence that is relevant to an issue at the hearing.

(b) The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.408. RECORDING. (a) Except as provided by Subsection (b), the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have

the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

(b) If a hearing is uncontested, the presiding officer may substitute minutes or the report required under Section 36.410 for a method of recording the hearing provided by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.409. CONTINUANCE. The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 36.404. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.410. REPORT. (a) Except as provided by Subsection (e), the presiding officer shall submit a report to the board not later than the 30th day after the date a hearing is concluded.

(b) The report must include:

- (1) a summary of the subject matter of the hearing;
- (2) a summary of the evidence or public comments received; and
- (3) the presiding officer's recommendations for board action on the subject matter of the hearing.

(c) The presiding officer or general manager shall provide a copy of the report to:

- (1) the applicant; and
- (2) each person who provided comments or each designated party.

(d) A person who receives a copy of the report under Subsection (c) may submit to the board written exceptions to the report.

(e) If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), the presiding officer shall determine whether to prepare and submit a report to the board under this section.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.411. BOARD ACTION. The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS. (a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the board not later than the 20th day after the date of the board's decision.

(b) On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the board receives the request. A person who receives a certified copy of the findings and conclusions from the board may request a rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.

(c) A request for rehearing must be filed in the district office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.

(d) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(e) The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the board on a permit or permit amendment application is final:

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

(2) if a request for rehearing is filed on time, on the date:

(A) the board denies the request for rehearing; or

(B) the board renders a written decision after rehearing.

(b) Except as provided by Subsection (c), an applicant or a party to a contested hearing may file a suit against the district under Section 36.251 to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.

(c) An applicant or a party to a contested hearing may not file suit against the district under Section 36.251 if a request for rehearing was not filed on time.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.414. CONSOLIDATED HEARING ON APPLICATIONS. (a) Except as provided by Subsection (b), a district shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the district requires a separate permit or permit amendment application for:

(1) drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113;

(2) the spacing of water wells or the production of groundwater under Section 36.116;

or
(3) transferring groundwater out of a district under Section 36.122.

(b) A district is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.415. RULES; ADDITIONAL PROCEDURES. (a) A district by rule shall adopt procedural rules to implement this subchapter and may adopt notice and hearing procedures in addition to those provided by this subchapter.

(b) In adopting the rules, a district shall:

(1) define under what circumstances an application is considered contested; and

(2) limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. If a district contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.417. RULES; ALTERNATIVE DISPUTE RESOLUTION. A district by rule may develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.418. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. (a) A district may adopt rules establishing procedures for contested hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code, including the authority to issue a subpoena, require a deposition, or order other discovery.

(b) Except as provided by this section and Section 36.416, Chapter 2001, Government Code, does not apply to a hearing under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Sec. 36.419. EDWARDS AQUIFER AUTHORITY. (a) Except as provided by Subsection (b), this subchapter does not apply to the Edwards Aquifer Authority.

(b) Sections 36.412 and 36.413 apply to the Edwards Aquifer Authority.

Added by Acts 2005, 79th Leg., Ch. 970, Sec. 17, eff. September 1, 2005.

Original



**A RESOLUTION OF HAYS COUNTY SUPPORTING FULL AUTHORITY FOR
THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT UNDER
TWC CHAPTER 36**

WHEREAS, Groundwater Conservation Districts, as created by Chapter 36 of the Texas Water Code (TWC 36) are the State's preferred method of groundwater management; and

WHEREAS, the Hays Trinity Groundwater Conservation District (HTGCD) was confirmed by popular election on May 3, 2003, by a vote of nearly two to one; and

WHEREAS, the HTGCD covers approximately 370 square miles, or about 54 percent of Hays County, which has also been designated a Priority Groundwater Management Area (PGMA); and

WHEREAS, extraordinary effort by non-paid elected board members and volunteers has allowed the HTGCD to carry out its mandated duties under TWC 36 for the past six years; and

WHEREAS, Hays County is experiencing rapid population growth, and groundwater availability is becoming a critical issue effecting the public health, safety and welfare; and

WHEREAS, the HTGCD is a voice for property owners of western Hays County regarding groundwater allocations in regional and statewide water planning efforts; and

WHEREAS, clear, flowing surface waters of creeks, streams, and the Blanco, Onion, and Pedernales Rivers, which are sourced by spring flows from the aquifer, give western Hays County is unique sense of place, as well as driving eco-tourism and increasing property values; and

WHEREAS, the restrictive enabling legislation for the HTGCD, as set forth by the Texas Legislature in 1999 and 2001, provides for limited TWC 36 authority, making it very difficult if not impossible for the HTGCD to achieve effective aquifer management and efficient groundwater allocation; and

WHEREAS, restrictions on adequate funding mechanisms afforded under TWC 36 may prevent the HTGCD from successfully realizing its mandated duties for a growing population; and

WHEREAS, the HTGCD strives for equitable management of the resource based on the best available science and an open public process; and

NOW, THEREFORE, BE IT RESOLVED THAT the Hays County Commissioners Court respectfully requests the Texas Legislature to pass legislation giving the Hays Trinity Groundwater Conservation District full authority under TWC 36 to carry out its duties and manage these challenges by:

- Providing adequate funding mechanisms to carry out the research and mandated business of a TWC 36 Groundwater Conservation District; and
- Achieving effective aquifer management and efficient groundwater allocation; and
- Restoring other TWC 36 provisions so that the HTGCD can operate more efficiently, effectively, and on par with other groundwater conservation districts both within and outside of Hays County.

ADOPTED THIS THE 3rd DAY OF MARCH 2009.

Elizabeth Sumter, Hays County Judge

Debbie Gonzales-Ingalsbe
Commissioner Precinct 1

Jefferson W. Barton
Commissioner Precinct 2

Will Conley
Commissioner Precinct 3

Karen Ford
Commissioner Precinct 4

ATTEST:

Linda C. Fritsche, County Clerk

Approved

New



**A RESOLUTION OF HAYS COUNTY SUPPORTING FULL AUTHORITY FOR
THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT UNDER
TWC CHAPTER 36**

WHEREAS, Groundwater Conservation Districts, as created by Chapter 36 of the Texas Water Code (TWC 36) are the State's preferred method of groundwater management; and

WHEREAS, the Hays Trinity Groundwater Conservation District (HTGCD) was confirmed by popular election on May 3, 2003, by a vote of nearly two to one; and

WHEREAS, the HTGCD covers approximately 370 square miles, or about 54 percent of Hays County, which has also been designated a Priority Groundwater Management Area (PGMA); and

WHEREAS, extraordinary effort by non-paid elected board members and volunteers has allowed the HTGCD to carry out its mandated duties under TWC 36 for the past six years; and

WHEREAS, Hays County is experiencing rapid population growth, and groundwater availability is becoming a critical issue affecting the public health, safety and welfare; and

WHEREAS, the HTGCD is a voice for property owners of western Hays County regarding groundwater allocations in regional and statewide water planning efforts; and

WHEREAS, clear, flowing surface waters of creeks, streams, and the Blanco, Onion, and Pedernales Rivers, which are sourced by spring flows from the aquifer, give western Hays County its unique sense of place, as well as driving eco-tourism and increasing property values; and

WHEREAS, the restrictive enabling legislation for the HTGCD, as set forth by the Texas Legislature in 1999 and 2001, provides for limited TWC 36 authority, making it very difficult if not impossible for the HTGCD to achieve effective aquifer management and efficient groundwater allocation; and

WHEREAS, restrictions on adequate funding mechanisms afforded under TWC 36 may prevent the HTGCD from successfully realizing its mandated duties for a growing population; and

WHEREAS, the HTGCD strives for equitable management of the groundwater resource based on the best available science and an open public process; and

NOW, THEREFORE, BE IT RESOLVED THAT the Hays County Commissioners Court respectfully requests the Texas Legislature to pass legislation giving the Hays Trinity Groundwater Conservation District full authority under TWC 36 to carry out its duties and manage these challenges by:

- Providing adequate funding mechanisms to carry out the research and mandated business of a TWC 36 Groundwater Conservation District; and
- Achieving effective aquifer management and efficient groundwater allocation; and

- Guaranteeing that existing residential wells owners are not required to permit or meter their wells and certain existing lot owners with no other access to water are entitled to a permit; and
- Restoring other TWC 36 provisions so that the HTGCD can operate more efficiently, effectively, and on par with other groundwater conservation districts both within and outside of Hays County.

ADOPTED THIS THE 3rd DAY OF MARCH 2009.

Elizabeth Sumter, Hays County Judge

Debbie Gonzales-Ingalsbe
Commissioner Precinct 1

Jefferson W. Barton
Commissioner Precinct 2

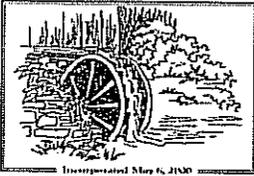
Will Conley
Commissioner Precinct 3

Karen Ford
Commissioner Precinct 4

ATTEST:

Linda C. Fritsche, County Clerk

City Council Agenda Form



Date Submitted: March 30, 2009

Agenda Date Requested: April 2, 2009

Project/Proposal Title: CONSIDER APPROVAL OF
THE 2009 FOURTH OF JULY PARADE ROUTE

Funds Required:

Funds Available:

Council Action Requested:

Ordinance

Resolution

X Motion

x Discussion

Project/Proposal Summary:

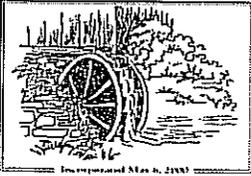
This item was placed on the agenda to allow City Council to discuss and consider approval of the route for the *2009 Wimberley Fourth of July Parade*.

The parade sponsor, the Wimberley Chamber of Commerce, is proposing to change the parade route used in the past. The proposed route calls for the parade to start on FM 2325 near Lions Field and proceed south to Ranch Road 12. From that point, the route continues on Ranch road 12 through the Square and turns onto Old Kyle Road. The parade will end at the former First Baptist Church parking lot where the parade began in years past.

As the Fourth of July this year falls on a *Market Days Saturday*, the Chamber is proposing to hold the parade on Friday, July 3rd.

City staff has reviewed the proposed route and recommends approval.

City Council Agenda Form



Date Submitted: March 30, 2009

Agenda Date Requested: April 2, 2009

Project/Proposal Title: CITY COUNCIL REPORTS

Funds Required:

Funds Available:

Council Action Requested:

- Ordinance
- Resolution
- Motion
- Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow for reports to be presented by Council members and for future agenda item requests.