



**POLK COUNTY COMMISSIONERS COURT**

(Special Session)

November 24, 2008

1:30 P.M.

2008-130

Polk County Courthouse, 3rd floor

Livingston, Texas

**NOTICE**

is hereby given that a Special meeting of the Polk County Commissioners Court will be held on the date stated above, at which time the following subjects will be discussed:

**WORKSHOP**

To receive information from County Judges and Commissioners Association of Texas General Counsel on Model Rules recommended by Texas Water Development Board as a part of County Subdivision Regulations and discuss said regulation revision.

Posted: November 19, 2008

I, the undersigned County Clerk, do hereby certify that the above Notice of Meeting of the Polk County Commissioners Court is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice at the Polk County Courthouse at a place readily accessible to the general public during normal business hours on Wednesday, November 19, 2008 and that said Notice remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting. This notice has also been posted on the official website of Polk County, Texas ([www.co.polk.tx.us](http://www.co.polk.tx.us)).

BARBARA MIDDLETON, COUNTY CLERK

BY: Andrea Schmelt, Deputy

FILED FOR RECORD

2008 NOV 17 AM 11:24

*Barbara Middleton*  
COUNTY CLERK, POLK CO.

STATE OF TEXAS §

COUNTY OF POLK §

DATE: NOVEMBER 24, 2008

SPECIAL MEETING

Judge Thompson - Absent

Commissioner Purvis - Absent

**COMMISSIONERS COURT**  
**AGENDA POSTING #2008 - 130**

BE IT REMEMBERED ON THIS THE 24th DAY OF **NOVEMBER, 2008**  
THE HONORABLE COMMISSIONERS COURT MET IN "SPECIAL" CALLED  
MEETING WITH THE FOLLOWING OFFICERS AND MEMBERS PRESENT, TO WIT;

HONORABLE COMMISSIONER BOB WILLIS, PCT # 1, PRESIDING.  
RONNIE VINCENT - COMMISSIONER PCT #2, C.T. "TOMMY" OVERSTREET  
COMMISSIONER PCT #4, AND BARBARA MIDDLETON, COUNTY CLERK, THE  
FOLLOWING AGENDA ITEMS, ORDERS AND DECREES WERE DULY MADE,  
CONSIDERED & PASSED.

WELCOME & CALLED TO ORDER AT 1:33 P.M. BY COMMISSIONER BOB WILLIS.

WORKSHOP

TO RECEIVE INFORMATION FROM JIM ALLISON, LEGAL COUNSEL FOR THE  
COUNTY JUDGES & COMMISSIONERS ASSOCIATION ON MODEL RULES  
RECOMMENDED BY TEXAS WATER DEVELOPMENT BOARD AS A PART OF  
COUNTY SUBDIVISION REGULATIONS AND DISCUSS SAID REGULATION  
REVISION.

PUBLIC COMMENTS

COMMISSIONER WILLIS CALLED FOR QUESTIONS.  
NONE WERE GIVEN.

ADJOURN

MOTIONED BY TOMMY OVERSTREET, SECONDED BY RONNIE VINCENT,  
TO ADJOURN THIS SPECIAL SESSION "WORKSHOP" AT 2:32 P.M.  
ALL VOTING YES.



COMMISSIONER BOB WILLIS  
PRECINCT #1  
PRESIDING

ATTEST:



BARBARA MIDDLETON, COUNTY CLERK

# Key Players in Model Subdivision Rule Adoption & Enforcement

- County Judge & Commissioners
  - Residential subdivision developers
- Mayor & City Council
  - Engineering firms
  - Realtors, agents & brokers
  - Texas Water Development Board
- County Clerk
- City Clerk
- County Attorney
  - Office of the Attorney General
- City Attorney
  - Texas Commission on Environmental Quality
- County Engineer
  - Texas Secretary of State
- City Planning and Zoning
  - Homeowners

# **Model Subdivision Rule Training**

## **Part 1 – History & Background**

## **Part 2 – State Laws & Agency Rules**

## **Part 3 – Model Subdivision Rule Adoption & Plat Approval Process**

# Part 1 – History & Background

## Model Subdivision Rules (MSRs)

- Created due to inadequate water and wastewater services, lack of basic infrastructure, and growing health concerns in colonia communities, primarily along the Texas-Mexico border.
- Statute passed in 1989 by 71<sup>st</sup> Texas Legislature.
- Empowers local governments to prevent colonia proliferation.
- Require developers to plat residential subdivisions of two or more lots of "five acres" or less.
- Ensures installation of adequate water and wastewater systems.

# Part 1 – History & Background

Created in conjunction with the Economically Distressed Areas Program (EDAP), administered by the Texas Water Development Board (TWDB).

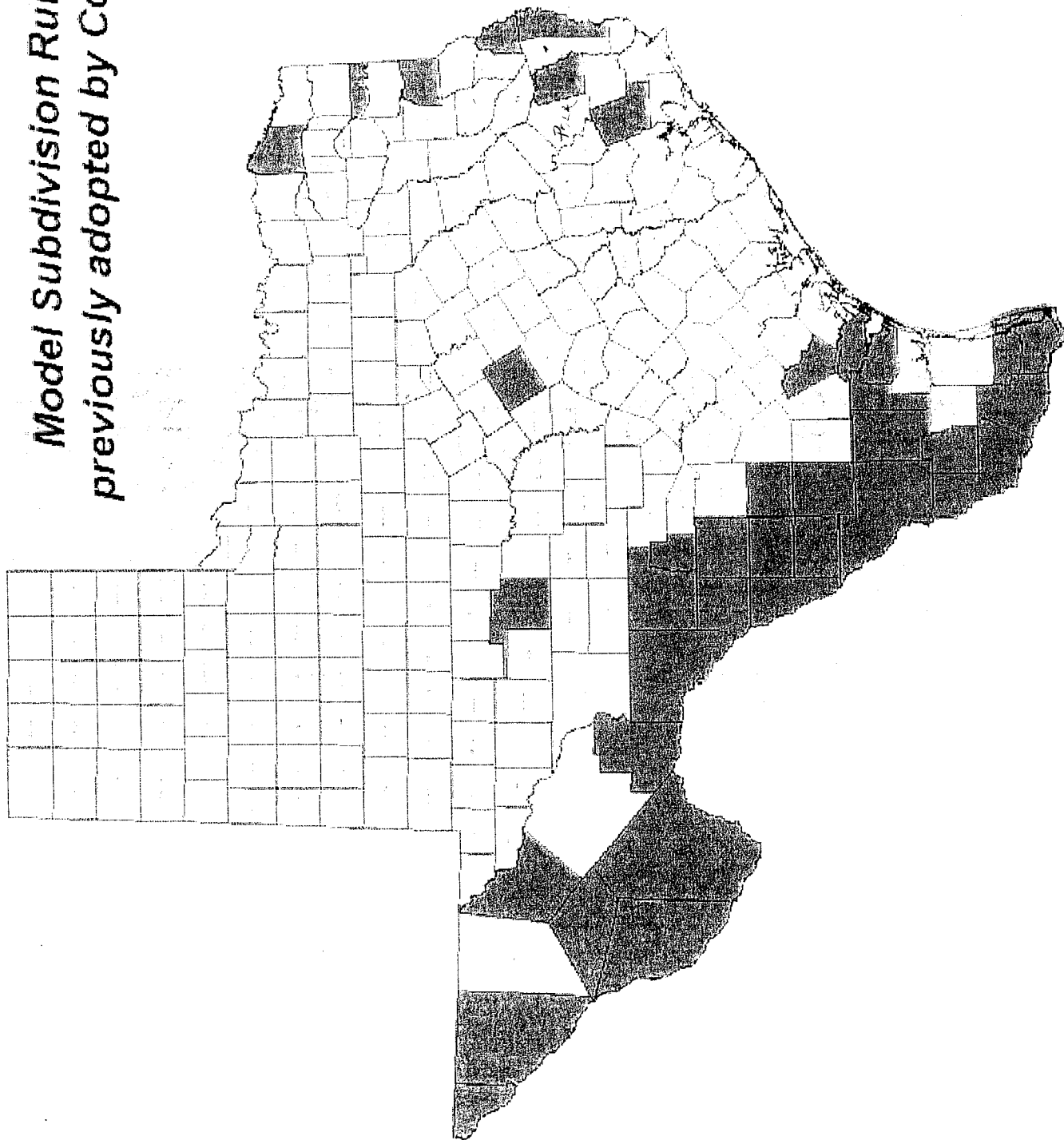
- EDAP provides grants/loans to political subdivisions for water or wastewater in economically distressed areas.
- MSRs are a requirement for a community to become eligible for EDAP grants/loans.

# Part 1 – History & Background

## Entities required to adopt & enforce MSRs

- Counties adjacent to the Texas-Mexico border.
- Non-border counties that seek financial assistance through the TWDB's EDAP.
- Cities that seek financial assistance through the TWDB's EDAP.
- Counties which have cities that seek financial assistance through the TWDB's EDAP.

*Model Subdivision Rules  
previously adopted by County*



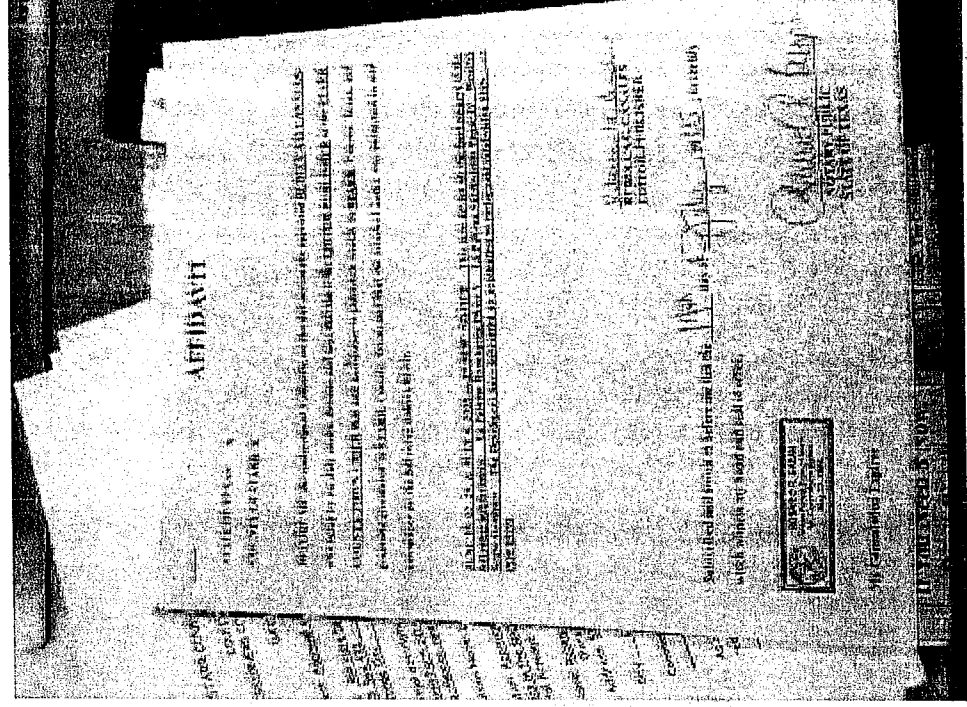


# Part 1 – History & Background

Economically Distressed Areas Program From 1989 through FY 07 (Aug. 31, 2007), TWDB in partnership with federal, state and local governments, has invested more than \$4.7M in planning grants and more than \$51.7M for construction projects to upgrade water and wastewater services in 617 colonia neighborhoods in 22 Texas border and non-border counties.

# Steps to Adopting Model Subdivision Rules

- 1 - Notice of public hearing and publish draft MSRs.
- 2 - Public hearing on draft MSRs.
- 3 - Consider public comment to draft MSRs.
- 4 - Notice of city/county consideration of draft MSRs.
- 5 - City/county adoption of MSRs.
- 6 - Submit adopted MSRs to TWDB.
- 7 - Enforce MSRs through platting process.



# Document Submittal to TWDB

- Public notice of draft MSRs public hearing in accordance with Open Meetings Act.
- Notes and comments on draft MSRs from public hearing.
- Public notice in accordance with Open Meetings Act of county/city meeting where MSRs are adopted.
- Submit adopted county/city regulations, ordinances and resolutions.
- Certified copy of County Commissioners Court/City Council meeting minutes documenting adoption of MSR regulations or ordinances.
- Affidavit from County Judge/Mayor certifying MSRs comply with State MSRs and acknowledging funding jeopardy if non-compliant.

# Plat Approval Process

To be approved, a final plat must include:

- A description for the method to provide adequate water service and wastewater service (including service contract, as appropriate);
- A certification from licensed Professional Engineer regarding the method to provide water and wastewater services;
- Must prohibit more than one single-family, detached dwelling to be located on each lot.
- Provide adequate setbacks as required by law and rule.

# Plat Approval Process

## Water Supply Requirements (3 options)

- Connect to an existing public water system;
- Create a new public water utility provider & comply requirements of Texas Commission on Environmental Quality (TCEQ); or
- Install wells: requires the water to meet public drinking water standards.

# Plat Approval Process

## Water Supply Option 1

May connect the subdivision's new drinking water distribution system to an existing public water system.

The existing public water system must review the subdivision plans and estimate the anticipated gallons per day needed under fully built-out conditions.

The existing public water system must commit to provide at least 30 years of water from the date the plat is recorded and the subdivision has been connected to the existing public water supply system.

# Plat Approval Process

## Water Supply Option 1

The subdivision developer commits that the water distribution system will be constructed to specifications.

Once built and approved by the existing public water system, the subdivision developer must convey the water distribution system to the public water system.

The public water system may require the subdivision developer to pay for the costs of water meters, water rights acquisition fees, and all membership or other fees associated with connecting the individual lots.

# Plat Approval Process

## Water Supply Option 2

- Establish a retail public water utility thru TCEQ;
- Obtain a Certificate of Convenience & Necessity from TCEQ;
- Ensure the water system, the water quality, the design, construction and operation of the new utility meets minimum state standards;
- Certify 30 years of water supply -  
For groundwater, provide a water availability study;  
For surface water, provide evidence of water rights.



# Plat Approval Process

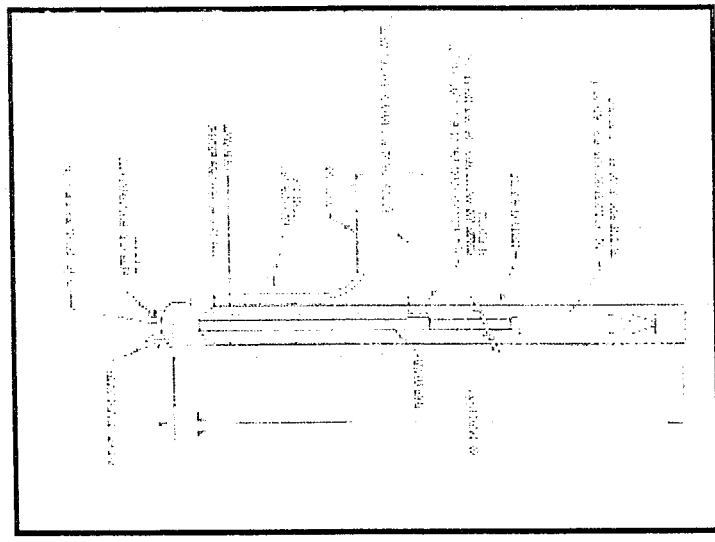
## Water Supply Option 3

Provide water through a non-public supply.

Certify 30 years of supply.

Provide a water availability study.

Water quality must meet minimum state standards.

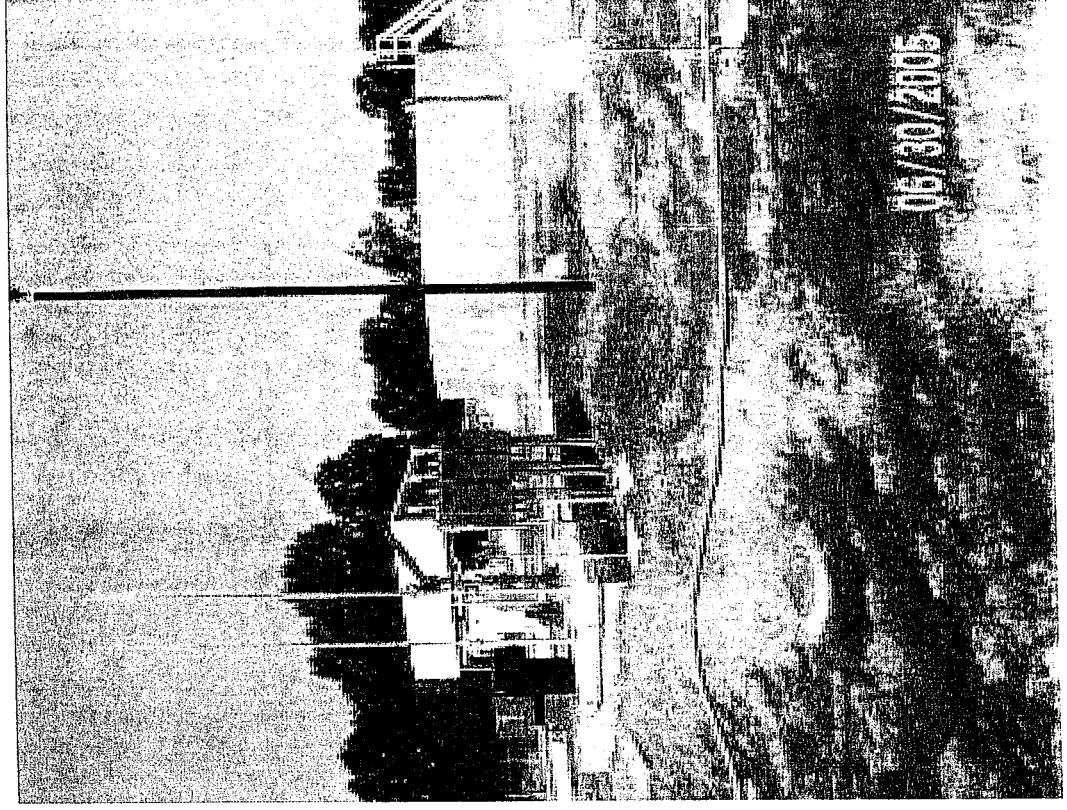


*The conveyance of potable water by transport truck or other mobile device to supply the domestic needs of the subdivision is not an acceptable method, except on an emergency basis.*

# Plat Approval Process

## Sewer System Requirements (3 options)

- Connect to an existing wastewater utility;
- Create a new central wastewater provider; or
- Install On-Site Sewerage Facilities (OSSF).



# Plat Approval Process

## Sewer System Requirement Option 1

Connecting the residential subdivision's wastewater collection system to an existing wastewater treatment system requires a service agreement.

Such wastewater will consist of domestic sewage, i.e., waterborne human waste and waste from domestic activities such as bathing, washing, and food preparation.

The existing wastewater utility must review the plans and specifications and estimate the gallons per day flow projected under fully built-out conditions.

# Plat Approval Process

## Sewer System Requirement Option 1

Wastewater utility must commit it has the capacity and will treat the wastewater for at least 30 years after the plat has been recorded and the development has been connected to the system.

Subdivision developer commits that the wastewater collection system will be constructed to the utility's plans and specifications.

Once the subdivision developer builds the wastewater collection system and it is approved by the wastewater utility, the developer will convey the new system to the utility.

# Plat Approval Process

## Sewer System Requirement Option 1

The wastewater utility may require the subdivision developer to pay tap fees, capital recovery charges, and other fees associated with connecting to the wastewater system.

No more than one single family, detached dwelling shall be located on each lot.

A notation of this restriction shall be placed on the face of the final plat and placed in all deeds and contracts for deeds for real estate sold within the subdivision.

# Plat Approval Process

## Sewer System Requirement Option 2

Must obtain a permit from the Texas Commission on Environmental Quality.

Must obtain approval from the TCEQ of engineering planning materials for such systems.

The new utility is required to receive a Certificate of Convenience and Necessity from the TCEQ for its new service territory.

The new system must have the capacity to serve the wastewater flow of the residential subdivision at fully built-out conditions for at least 30 years after the plat has been recorded

# Plat Approval Process

## Sewer System Requirement Option 3

Installation of an On-Site Sewerage Facility (OSSF), i.e. septic tank.

TCEQ or authorized agent shall review proposals for OSSF and make inspections to assure compliance.

Limit of 5,000 gallons per day in wastewater generation.

# **Plat Approval Process: Final Engineering Report**

- Discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots.
- Provide a detailed cost estimate per lot for unconstructed facilities necessary to serve each lot.
- Include a construction schedule for each significant element needed to provide adequate water or wastewater facilities.
- If financial guarantees are to be provided, shall include the start dates and completion dates for construction schedule.



# **Plat Approval Process: Final Engineering Report**

- Provide an executed contract for 30 years of supply.
- Plans and specifications for the proposed water facilities shall have been approved by all appropriate regulatory entities.
- Copy of groundwater availability study, if required.
- If creating a new system, provide Certificate of Convenience & Necessity from TCEQ.

# Plat Approval Process: Final Engineering Report

## For non-public water systems

- Provide quantitative and qualitative results of sampling the test wells.
- State the type of treatment system necessary to treat the well water to the specified standards, the location of where the system can be purchased, and the cost of such system, including installation, and the estimated monthly maintenance cost of the treatment system.
- A copy of the groundwater availability study certifying long-term quantity and quality.
- The description of the required sanitary control easement.

# Plat Approval Process: Final Engineering Report

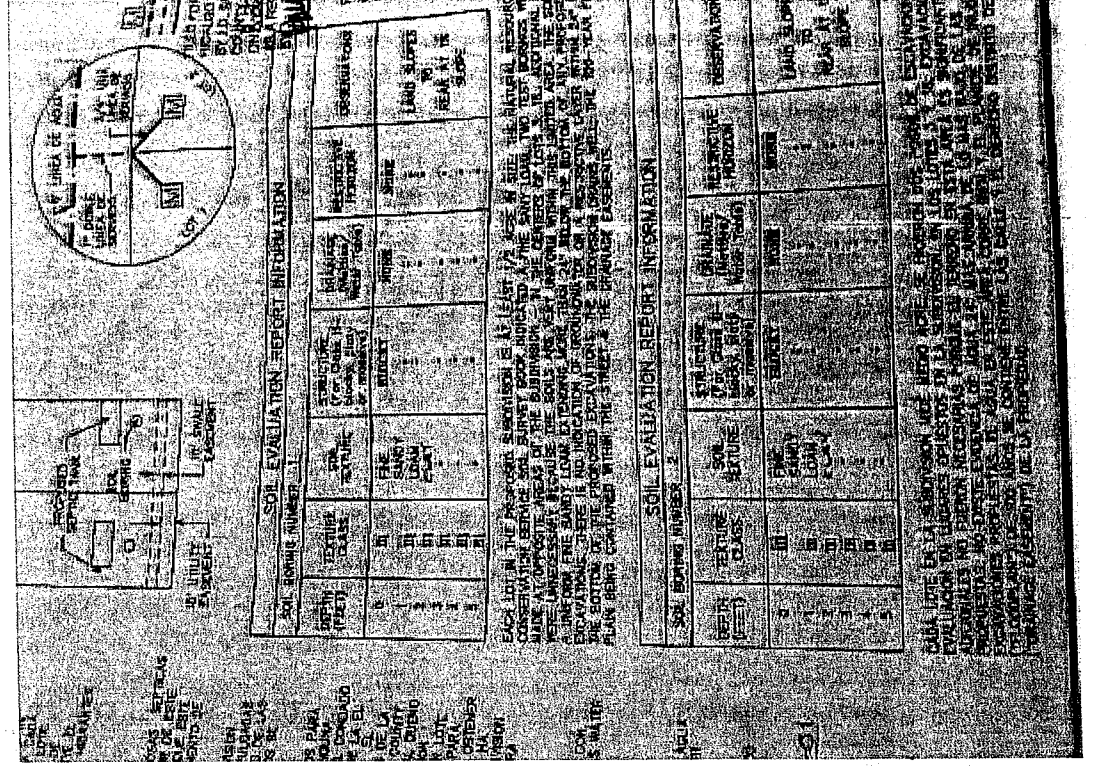
## For Sewer Facilities

- Furnish evidence of a contractual agreement with the retail public utility.
- Provide an approved TCEQ waste disposal permit.
- Provide approved plans and specifications for the proposed wastewater collection and treatment facilities from the appropriate regulatory entity.
- If creating a new system, provide Certificate of Convenience & Necessity from TCEQ.
  - Obtain appropriate permits from TCEQ.
  - Have plans and specifications approved for the proposed wastewater collection and treatment facilities from the appropriate regulatory entity.

# Plat Approval Process: Final Engineering Report

For on-site sewerage facilities  
(OSSF)

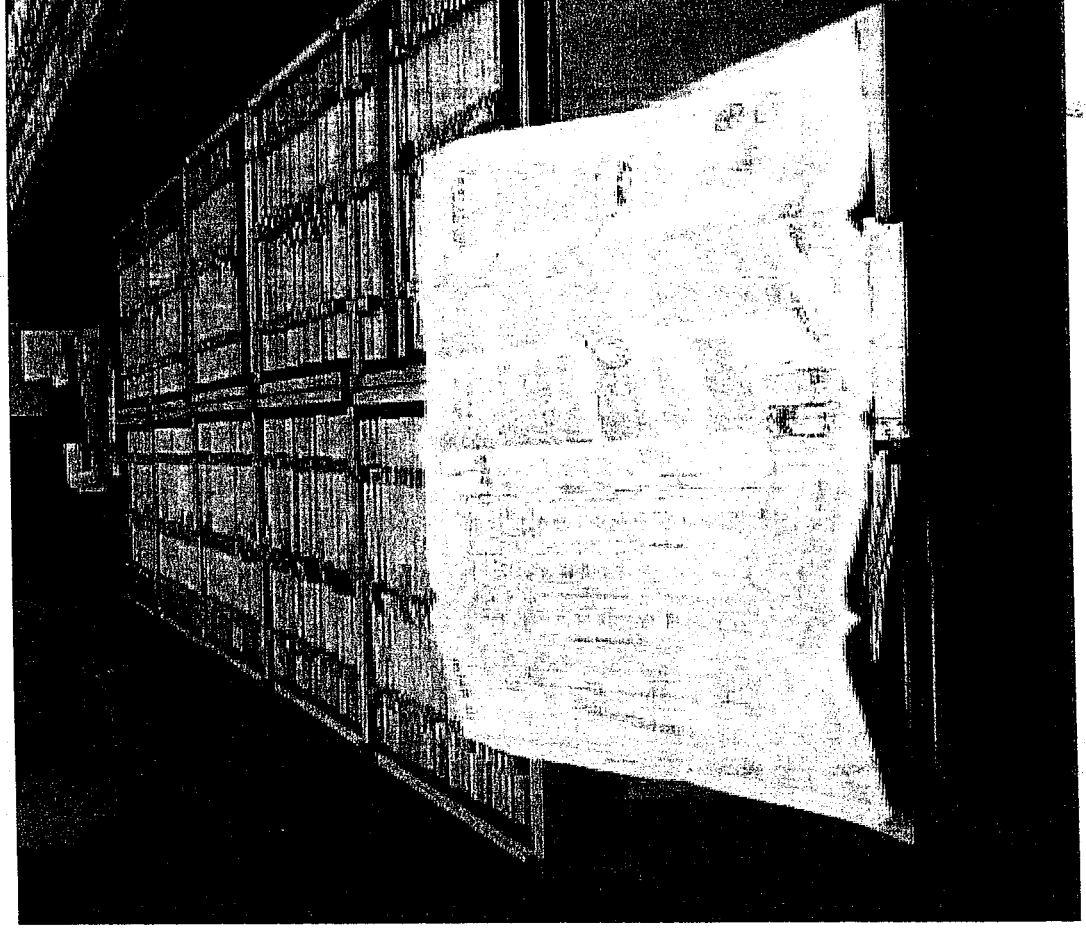
Include appropriate planning materials, including the site evaluation and all other information required by the county's OSSF order.



# Plat Approval Process: Final Engineering Report

Additional information  
that may be requested:

- (1) layout of proposed street and drainage work;
- (2) legal description of the property;
- (3) existing area features;
- (4) topography;
- (5) flood plains;
- (6) description of existing easements;
- (7) layout of other utilities;
- (8) notation of deed restrictions;
- (9) public use areas; or
- (10) proposed area features.



# Plat Approval Process: Final Engineering Report

## BUILD IT OR BOND IT

If water and wastewater facilities are not built at the time of FINAL plat approval, the subdivision developer shall execute an agreement with the county and/or city and secure by:

- (1) a bond,
- (2) an irrevocable letter of credit, or
- (3) other alternative financial guarantee such as a cash deposit.

The developer must agree to construct and install, at subdivider's expense, all subdivision improvements required to comply with county orders, ordinances, regulations, and policies governing subdivision approval.

# Plat Approval Process: Final Engineering Report

Commissioners Court or Council must see dated, signed, and sealed Final Engineering Report with all the appropriate information (financial guarantees, construction agreements, conveyances, permits, etc.) **BEFORE** approval of final plat.

- Cannot be delegated to staff from draft engineering report.
- The Final Engineering Report **MUST** comply with all MSR requirements.

# State Resources

## Texas Water Development Board (TWDB)

- Will review a city's and/or county's MSR compliance when reviewing an EDAP application.
- Will work with applicants to identify best available TWDB-administered financial assistance program for water/wastewater infrastructure project.

## Office of the Attorney General (OAG)

- Has colonia investigators in several border counties to prevent colonia developments and actively prosecutes illegal substandard developments.

[www.oag.state.tx.us/border/index.shtml](http://www.oag.state.tx.us/border/index.shtml)