

APPENDIX A

RULES FOR MANUFACTURED HOME RENTAL COMMUNITIES



ORDER ESTABLISHING MINIMUM INFRASTRUCTURE STANDARDS FOR MANUFACTURED HOME RENTAL COMMUNITIES and Setting out Regulations Applicable to Manufactured Home Rental Communities

In accordance with Local Government Code Section 232.007, an Infrastructure Development Plan (IDP) is required for all manufactured home rental communities, as defined in §232.007, Local Government Code.

The Grimes County Commissioners' Court finds that minimum infrastructure standards for manufactured home rental communities are necessary to promote public health and safety, to provide adequate emergency access, to provide for orderly growth within the County, and to ensure that the ultimate residents in manufactured home rental communities have adequate access, proper utilities and other health and safety assurances.

For purposes of this Order, Manufactured Home Rental Community shall mean a plot or tract of land that is separated into two or more spaces or lots that are rented, leased, or offered for rent or lease, for a term of less than sixty (60) months without a purchase option, for the installation of manufactured homes for use and occupancy as residences, and as defined in §232.007, Local Government Code, VTCA.

1. PROCEDURES

For the purposes of this Order, owner shall mean the owner of a proposed manufactured home rental community or the owner's designated representative. On or after the effective date of this Order, all owners of proposed Manufactured Home Rental Communities shall submit an infrastructure development plan to Commissioners' Court which complies with the minimum infrastructure development standards by this Commissioners' Court.

A. PLAN TO BE SUBMITTED

A manufactured home rental community infrastructure plan shall be submitted along with a copy of the proposed infrastructure plan to the County's Representative, along with a development application. All preliminary infrastructure plans submitted to the Road and Bridge Dept. shall be accompanied by the appropriate filing fees.

1. The infrastructure development plan shall include a plat which identifies the proposed manufactured home rental community's boundaries, proposed utility locations, proposed locations of manufactured home rental community spaces, roads and streets, and dedications of rights of way.
2. The plat shall be prepared substantially in accordance with the Final Plat Requirements of Grimes County as set out in the current GRIMES COUNTY, TEXAS SUBDIVISION RULES AND REGULATIONS, adopted by Commissioners' Court.
3. The infrastructure development plan shall also include written narrative which provides explanation as to how the owner proposes to satisfy the various requirements of the infrastructure development plan and this Order.

B. DESIGNATED COUNTY OFFICIAL

Grimes County designates the Commissioners' Court as that County body responsible for approval or rejection of the manufactured home rental community plan. During the review of the plan, the County's Representative shall consult with an outside engineering firm, the County Attorney, the County Environmental Department and the Commissioner in whose precinct the proposed Manufactured Home

Rental Community is located. The expense of the contracted engineering firm to oversee the preliminary and final infrastructure Development Plans will be at the developer's expense.

C. TIMELY APPROVAL OF INFRASTRUCTURE DEVELOPMENT PLANS

Not later than the 60th business day after the date the owner of a proposed manufactured home rental community submits a preliminary infrastructure development plan for approval to the County with appropriate fees paid, the County shall approve or reject the plan in writing. If the plan is rejected, the written rejection must specify the reasons for the rejection and the actions required for approval of the plan.

D. APPROVAL

Failure to reject the infrastructure plan by the Commissioners' Court within the sixty (60) days constitutes approval of the plan.

E. CONSTRUCTION PROHIBITED WITHOUT APPROVED PLAN

Construction of a proposed manufactured home rental community may not begin before the Commissioners' Court approves the proposed manufactured home rental community final infrastructure plan.

F. FINAL INSPECTION

A final inspection of the manufactured housing rental community infrastructure upon its completion is required. Final inspection shall be made by the County's Representative. Final inspection shall be made prior to the Commissioners' Court's approval and issuance of a Certificate of Compliance. The County's Representative shall make the final inspection not later than the second (2nd) business day after the County's Representative receives written confirmation of completion from the owner.

G. CERTIFICATE OF COMPLIANCE BY COMMISSIONERS' COURT

If the County's Representative advises the Commissioners' Court that the infrastructure plan has been properly carried out, Commissioners' Court shall issue a Certificate of Compliance not later than the fifth (5th) business day after the County's Representative's final inspection is completed. Commissioners Court may delegate issuance of the Certificate of Compliance to the County Judge's Office.

H. CORRECTIVE ACTION IF CONSTRUCTION IS NOT APPROVED

If the County's Representative determines that the manufactured home rental community infrastructure plan has not been properly carried out, then the owner shall be advised in writing and shall have thirty (30) days from the date of notification to make the required corrections or to perform the additional work required. On completion of the corrective work, the owner shall again follow the procedures set out in this Order, before the owner is eligible to receive a Certificate of Compliance.

I. FEES

Preliminary/Final/IDP's and bonds shall be in accordance with current Subdivision Rules and Regulations Manual, and shall be paid prior to approval by the Commissioners' Court.

2. MINIMUM STANDARDS FOR PLANS

Grimes County adopts the following minimum standards for manufactured home rental community infrastructure and infrastructure plans. No Manufactured Home Rental Community infrastructure plan shall be approved unless it complies with the following standards:

A. ROADS AND STREETS

1. Road and street layout, width, design standards:

- a. The development shall have a minimum of sixty (60) feet fronting a street or roadway which has been previously dedicated to the public for the public's use and benefit as a street or roadway.
- b. Connections required - The arrangement of roads in a manufactured housing rental community shall provide for the continuation of arterial roads. Provision for the continuation of collector roads between adjacent properties shall be provided when such continuation is

necessary for convenient movement of traffic, effective fire protection or for efficient provision of utilities.

- c. **Conformance to Topography** - Roads and their construction shall be appropriate to the topography of the area. Roads shall be laid out and built so that, to the maximum extent possible, all building sites will be higher than the average elevation of the abutting road. Combinations of steep grades and curves are to be avoided.
- d. **Right-of-Way Width** - The minimum right-of-way widths in all manufactured home rental communities shall not be less than sixty (60) feet for local roads, seventy (70) feet for collector roads, or eighty (80) feet for arterial roads.
- e. **Traffic Surface Widths** - The improved traffic surface of roads shall be centered within the right-of-way, and shall have a minimum improved width of twenty (20) feet for local roads, forty (40) feet for collector roads, and fifty (50) feet for arterial roads.
- f. **Angle of Intersection** - All streets and alleys should intersect at a ninety (90) degree angle with variations often (10) degrees. Acute angle intersections as may be approved should have thirty (30) feet or greater radii at the acute corners.
- g. **Street Off-Sets** - Proposed new intersections along one side of an existing road shall, wherever practicable, coincide with any existing intersections on the opposite side of such road. Road jogs with center-line offsets of less than one hundred twenty-five (125) shall not be permitted.
- h. **Cul-de-Sac Roads** - When a road terminates in a cul-de-sac, the minimum right-of-way radius shall be sixty (60) feet and the maximum length shall be on a case-by-case evaluation in the judgment of the County's Representative.
- i. **Road Surfacing and Improvements** - Roadways within a manufactured home rental community shall be constructed in accordance with the Grimes County Subdivision Rules and Regulations Manual. No space may contain more than one single family residential unit. No common driveway shall be allowed. Each space shall have separate and individual space and be paved in accordance with the subdivision manual.

B. EASEMENTS

1. **Utility easements** - easements for utilities are required across parts of lots, or along lot lines. The owner of a manufactured home rental community shall coordinate with utility service providers to determine the locations and widths of required easements. Evidence of such coordination will be required as a condition of manufactured home rental community approval. No manufactured home rental community infrastructure plan shall be approved until the owner has obtained a satisfactory agreement with utility service providers regarding utility easements. At minimum, utility service companies which must be consulted include; electric service, telephone service and any water or wastewater district or other utility which has jurisdiction.
2. **Other Recorded Easements** - Other prior existing recorded easements in a manufactured home rental community shall be clearly identified in the infrastructure plan.

C. DRAINAGE

1. No manufactured home rental community infrastructure plan shall be approved which does not make adequate provision for storm water runoff. A drainage plan shall be prepared, in accordance with standard engineering practice, as part of the manufactured home rental community infrastructure plans. No manufactured home rental community infrastructure plan will be allowed if it will result in an increase in the rate of flow of storm water and would thereby endanger downstream properties or residents of the manufactured home rental community.
2. Drainage design plans to ensure adequate drainage off of the rental spaces to drainage channels and out of the development, including the design of drainage structures, culverts, and/or systems using a ten (10) year storm frequency, such that the drainage out of the development does not have a negative drainage impact on neighboring properties. If additional right of way is required for existing county road drainage and access as determined by the outside engineer to achieve a sixty (60) foot wide right of way, the owner shall dedicate these areas of right of way to the County.
3. Requirements of the drainage plan can be found in the Grimes County Subdivision manual.

D. UTILITIES

1. A utility may not provide utility services, including water, sewer, gas and electric services to a manufactured home rental community subject to an IDP or to a manufactured home in the community unless the owner provides the utility with a copy of the Certificate of Compliance issued by the County. This requirement applies to:
 - a. A municipality that provides utility services;
 - b. A municipality owned or municipality operated utility that provides utility services;
 - c. A public utility that provides utility services;
 - d. A nonprofit water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides utility services;
 - e. A county that provides utility services; and
 - f. A special district or authority created by state law that provides utility services.

3. ENGINEERING REPORT FOR MANUFACTURED HOME RENTAL COMMUNITIES

This report, which shall be signed, dated and sealed by a licensed professional engineer registered in Texas, shall contain detailed and definitive information on the following:

A. WATER SUPPLY FACILITIES - PUBLIC WATER SYSTEMS

1. If the water supplier is a political subdivision of the state: a city, municipality, utility district, water control and improvement district, nonprofit water supply corporation, etc., the developer shall furnish a signed letter of service availability from the water supplier to provide the state's minimum requirements of quality and quantity of water to the proposed development.
2. Where there is no existing facility or owner intending to construct and maintain the proposed water supply facilities, the developer may establish an investor-owned utility or create a municipal utility district and obtain a Certificate of Convenience and Necessity (CCN) from the Texas Commission of Environmental Quality (TCEQ) and include evidence of the CCN issuance for the development area. Prior to IDP approval, plans and specifications for the proposed water facilities system shall have been approved by all entities having jurisdiction over the proposed project, including TCEQ.
3. Water service must be extended into the development to each lot or rental space if the existing water lines are located within three hundred (300) feet of the development and if there is sufficient water available by the water supplier.

B. PRIVATE WELLS (OR NON-PUBLIC WATER SYSTEMS)

1. Quantitative and qualitative results of sampling test wells in accordance with requirements promulgated by the TCEQ and the Texas Department of Health shall be included where individual wells are proposed for the supply of drinking water to residences and other establishments. The results of the analysis shall be made available to the prospective property owners or renters.
2. Prior to IDP approval, plans and specifications for the proposed water facilities system shall have been approved by all entities having jurisdiction over the proposed project, including TCEQ. Evidence of the approvals shall be included in the engineering report.

C. WASTEWATER DISPOSAL FACILITIES

1. Centralized Sewerage Facilities:

- a. If wastewater treatment is provided by a political subdivision of the state (city, municipality, utility district, water control and improvement district, nonprofit water supply corporation or an existing investor-owned water supply corporation, etc.) the developer shall furnish a signed letter of service availability to provide the state's minimum wastewater treatment standard for the proposed development from the utility.
- b. Where there is no existing entity or owner to build or maintain the proposed wastewater treatment and collection facilities, the developer may establish an investor-owned utility or a municipal utility district by obtaining a Certificate of Convenience and Necessity (CCN) from the TCEQ.

- c. Prior to IDP approval, an appropriate permit to treat and/or dispose of wastes for the ultimate build-out of the development shall have been obtained from the TCEQ and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project, including the TCEQ. Evidence of the approvals shall be included in the engineering report.
 - d. Wastewater disposal service must be extended into the development to each lot or rental space if the existing wastewater lines are within two hundred (200) feet of the development and there is sufficient wastewater capacity available from the wastewater service provider.
2. **On-Site Sewage Facilities**
- a. The engineering report shall include soils analysis results as required under the Grimes County Rules and Regulations for On-Site Sewerage Facilities – through the Grimes County Environmental Department. *See Appendix C.*

D. STREET NAMES AND SIGNS:

- 1. **Street names** - new streets and roads in manufactured home rental communities shall be named so as to provide continuity of name with existing streets and so as to prevent conflict with identical or similar street and road names in other parts of Grimes County. Street names for new manufactured home rental community streets *may* be suggested by the owner. Street names shall be reasonable and not similar to existing names of streets and roads in Grimes County. Suggested names shall be approved by the 911 Addressing Database Maintenance Coordinator for approval as a part of the proposed manufactured home rental community infrastructure plan.
- 2. **Street and Road Name Signs required** - the owner shall install street or road name signs at all intersections in the manufactured home rental community. The proper installation of these signs is a part of the required construction standards of Grimes County. Final approval of construction will not be given by Commissioners' Court until signs are installed.
- 3. **Street and Road Name Sign** - Street and road name signs shall be of the same standard and quality as required by Grimes County.
- 4. **Placement**- Street and road name sign assembly will be placed on a post and located two (2) feet behind the curb on curbed roadways, or six (6) to ten (10) feet beyond the edge of the pavement on non-curbed roadways. Signs should be placed as near to the tangent point of the edge of the less important roadway with the radius of the curve at the intersection.

E. THE MANUFACTURED HOME RENTAL COMMUNITY INFRASTRUCTURE DEVELOPMENT PLAN SHALL SHOW AT MINIMUM THE FOLLOWING:

- 1. Only 18" x 24" sheets will be acceptable and at a maximum scale of 1" = 200' (1" = 100' preferred). An index on the first sheet is required when more than two sheets are required for the IDP.
- 2. Names, locations, dimensions (bearings and distances) and layouts of existing and proposed streets, alleys, easements, and other public rights-of-way and public/private encumbrances (deed restrictions, etc.) on the property and any proposed street right-of-way, easement, alley, park, or other public dedication.
- 3. Dimensions, bearings and distances, of the proposed rental spaces:
 - a. **Minimum Width** – Sub-lots of a condominium or manufactured housing park should be fifty-five (55) feet if double-wide mobile homes are to be placed upon such sub-lots; forty (40) feet if only single-wide mobile home units are to be placed on such sub-lot.
 - b. **Minimum Distance** - between each outside dimension shall be no less than twenty (20) feet.
- 4. Signatures and date of approval and certifications on the IDP. These approval signatures shall be not more than six (6) months prior to the submission.
- 5. Legal description, acreage, and name of the proposed development. The development's name shall not be spelled or pronounced similarly to the name of any existing development or subdivision located within the county.
- 6. The boundary of the development indicated by a heavy line and described by bearings and distances.
- 7. Scale, legend, north arrow, spot elevations on 100' or an appropriate grid, with two (2) foot contour lines. Alternate contour intervals may be submitted based on terrain, with approval from the county.

8. Deed record, name of owner, volume and page number of adjoining properties.
9. Dates of survey and preparation of IDP.
10. Identification code, location, description, and elevation of the USGS or appropriate benchmark used in the survey.
11. Front building setback lines must be twenty-five (25) feet from the property line. Back and side building setback lines not less than ten (10) feet.
12. Location of any City's corporate limits line or extra territorial jurisdiction line. If located within the extra territorial jurisdiction (ETJ) approval of the IDP must be by the city.
13. Vicinity map with streets, ditches, general drainage flow directions to the ultimate outfall, city limits and ETJ's, and other major land features.
14. Net area (gross area less easements) of rental spaces to the nearest 1/100 of an acre for lots using On Site Sewage Facilities and/or well water.
15. Limits of flood hazard areas as defined by the appropriate FEMA FIRM panel and the proposed finished floor elevation of buildings within these flood hazard areas on each space.
16. A certification by a Surveyor or Engineer describing any area of the development that is in a flood plain or stating that no area is in a flood plain, as delineated by the appropriate FEMA FIRM panel and date. In addition, a flood permit must be obtained from the county environmental department.
17. A surveyor's signature and seal on the IDP for certification.
18. The description of the water and sewer facilities, electricity and gas utilities, the roadways and easements dedicated for the provision of water and sewer facilities that will be constructed or installed to serve the development and a statement of the date by which the facilities will be fully operable, prepared by an engineer (may be included in an attached document). A certification must be included that the water and sewer facilities described by the IDP, or document attached to the IDP, are in compliance with these regulations.
19. Approvals by other regulatory and governing bodies, as required.
20. Letters signed and dated from water, wastewater, and electric utilities of service commitment and availability and statement of approval of existing and proposed utility easements.
21. A clear title and a tax certificate showing that all taxes currently due with respect to the original tract have been paid.
22. Results of soils analysis certified by a qualified site evaluator (as defined by 30 TAC Chapter 285) for on-site sewage facilities (OSSF).
23. Engineering Design Construction Plans for roadway access to each rental space for fire and emergency vehicles.
24. Traffic impact study. For manufactured home rental communities of 100 spaces or greater, the engineering report may, at the request of the county, be required to include a Traffic Impact Study to assess the effects of additional traffic on the existing and proposed transportation system.

4. APPLICABILITY

A. EFFECTIVE DATE

This Order is effective upon the date of final approval by the Grimes County Commissioners' Court.

B. DATE CONSTRUCTION COMMENCED

This Order applies only to a manufactured home rental community for which construction is commenced on or after the date infrastructure standards are adopted by this Commissioners' Court.

C. EXPANSION OF EXISTING MANUFACTURED HOME COMMUNITY RENTALS

These regulations are applicable to any expansion of existing manufactured home rental communities on or after the effective date of these regulations.

D. APPLICABLE OUTSIDE CITY LIMITS

These regulations are applicable in Grimes County outside the City limits of any incorporated City.

5. INTERPRETATION - CONFLICT, SEVERABILITY, SAVINGS AND AMENDMENTS

A. INTERPRETATION

In their interpretation and application, the provisions of these Regulations shall be held to be minimum requirements for the promotion of the public health, safety, and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.

B. PUBLIC PROVISIONS

These Regulations are not intended to interfere with, abrogate, or annul any other County regulation, state statute, or other provision of law except as provided in these Regulations. Where any provision of these Regulations or any other rule or regulation or other provisions of law are in conflict, the provision which is more restrictive or imposes higher standards shall control.

C. PRIVATE PROVISIONS

These Regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these Regulations are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of these Regulations shall govern.

D. SEVERABILITY

If any part or provision of these Regulations, or the application of these Regulations to any person or circumstance is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these Regulations or application of them to other persons or circumstances. The Commissioners' Court hereby declares that it would have enacted the remainder of these Regulations, even without any such part, provision, or application which is judged to be invalid.

E. SAVING PROVISION

These Regulations shall not be construed as abating any action now pending under or by virtue of; prior existing subdivision regulations, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving the right of the State or County under any section or provision existing at the time of adoption of these Regulations, or as vacating or annulling any rights obtained by any person, firm, or corporation by lawful action of the County except as shall be expressly provided for in these Regulations.

F. AMENDMENTS

For the purpose of protecting the public health, safety and general welfare or for any other valid purpose, the Commissioners' Court may, from time to time, amend these Regulations at a public meeting following public notice in the manner prescribed by law.

This Order supersedes any previous rules and regulations pertaining to mobile home rental communities as may be stated in Grimes County Subdivision Rules and Regulations.

ORDER TO ESTABLISH MINIMUM INFRASTRUCTURE STANDARDS FOR MANUFACTURED HOME RENTAL COMMUNITIES on this 26th day of July, 2011, the Grimes County Commissioners' Court, pursuant to §232.007, Local Government Code, adopted the above minimum infrastructure standards for manufactured home rental communities located in the county outside the limits of a municipality, with a vote of 4 eyes and 0 nays.

APPENDIX B

**MODEL SUBDIVISION RULES
(TEXAS ADMINISTRATIVE CODE CHAPTER 364)**

Additional Rules and Standards for subdivisions which create two or more lots of five acres or less intended for residential purposes.

The rules of this section supersede any conflicting regulations of the county, namely the Grimes County Subdivision Rules and Regulations.

It is the intent of this section to adopt the applicable provisions of the Texas Administrative Code, Title 31, Natural Resources and Conservation, Part 10 Texas Water Development Board, Chapter 364 Model Subdivision Rules.

A. General Provisions

1. Purpose

The model rules provide the criteria for assuring that an adequate supply of safe drinking water and adequate safe sewer facilities are available to residential areas in accordance with state standards established by the Texas Department of Health and the Texas Commission on Environmental Quality. The model rules prohibit the establishment of residential developments with lots of five acres or less without adequate power supply and sewer services, prohibit more than one single-family, detached dwelling to be located on each subdivision lot, and establish minimum setbacks to ensure proper operation of water supply and sewer services and to reduce the risk of fire hazards.

(TAC 364.2; SOURCE: The provisions of this §§364.2 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29 TexReg 1203).

2. Authority and Scope of Rules

These rules are adopted by Grimes County, Texas under the authority of the Local Government Code, Chapter 232 and Water Code §16.350. Notwithstanding any provision to the contrary, these rules apply only to a subdivision which creates two or more lots of five acres or less intended for residential purposes. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and in all deeds and contracts for deeds.

(TAC 364.11; SOURCE: The provisions of this §§364.11 adopted to be effective February 10, 2000, 25 TexReg 800).

3. Purpose

It is the purpose of these rules to promote the public health of the county residents, to ensure that adequate water and wastewater facilities are provided in subdivisions within the jurisdiction of this county, and to apply the minimum state standards for water and

wastewater facilities to these subdivisions.

(TAC 364.12; SOURCE: The provisions of this §§364.12 adopted to be effective February 10, 2000, 25 TexReg 800).

4. Effective Date

These rules become effective on the 1st day of June, 2008.

(TAC 364.13; SOURCE: The provisions of this §§364.13 adopted to be effective February 10, 2000, 25 TexReg 800).

5. Plat Required

(a) The owner of a tract of land located outside the corporate limits of a municipality that divides the tract in any manner that creates two or more lots of five acres or less intended for residential purposes must have a plat of the subdivision prepared. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and all deeds and contracts for deeds.

(b) No subdivided land shall be sold or conveyed until the subdivider:

(i) has received approval of a final plat of the tract; and

(ii) has filed and recorded with the county clerk of the county in which the tract is located a legally approved plat.

(c) A division of a tract is defined as including metes and bounds description, or any description of less than whole parcel, in a deed of conveyance or in a contract for a deed, using a contract of sale or other executory contract, lease/purchase agreement, or using any other method to convey property.

(TAC 364.15; SOURCE: The provisions of this §§364.15 adopted to be effective February 10, 2000, 25 TexReg 800).

6. Supersession

These rules supersede any conflicting regulations of the county.

(TAC 364.16; SOURCE: The provisions of this §§364.16 adopted to be effective February 10, 2000, 25 TexReg 800).

7. Severability

If any part or provision of these regulations, or application thereof, to any person or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgments shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The commissioners' court thereby declares that it would have enacted the remainder of these regulations without any such part, provision or application.

(TAC 364.17; SOURCE: The provisions of this §§364.17 adopted to be effective February 10, 2000, 25 TexReg 800).

8. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(a) Commission— the Texas Commission on Environmental Quality and any of its predecessor or successor entities.

(b) Commissioners' Court (or court)— The Commissioners' Court of Grimes County, Texas.

(c) County— Grimes County, Texas.

(d) Drinking water— All water distributed by any agency or individual, public or private, for the purpose of human consumption, use in the preparation of foods or beverages, cleaning any utensil or article used in the course of preparation or consumption of food or beverages for human beings, human bathing, or clothes washing.

(e) Engineer— A person licensed and authorized to practice engineering in the State of Texas under the Texas Engineering Practice Act.

(f) Final Plat— A map or drawing and any accompanying material of a proposed subdivision prepared in a manner suitable for recording in the county records and prepared as described in these regulations.

(g) Lot— An undivided tract or parcel of land.

(h) Non-public water system— Any water system supplying water for domestic purposes which is not a public water system.

(i) OSSF— On-site sewage facilities as that term is defined in rules and/or regulations adopted by the commission, including, but not limited to, 30 TAC Chapter 285.

(j) Platted— Recorded with the county in an official plat record.

(k) Public water system— A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition of drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served", an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(l) Purchaser— Shall include purchasers under executory contracts for conveyance or real property.

(m) Retail public utility— Any entity meeting the definition of a retail public utility as defined in Water Code §13.002.

(n) Sewerage facilities— The devices and systems which transport domestic wastewater from residential property, treat the wastewater, and dispose of the treated water in accordance with the minimum state standards contained or referenced in these rules.

(o) Subdivider— Any owner of land or authorized agent thereof proposing to divide or dividing land so as to constitute a subdivision.

(p) Subdivision— Any tract of land divided into two or more parts that results in the creation of two or more lots of five acres or less intended for residential purposes. A subdivision includes re-subdivision (replat) of land which was previously divided.

(q) TAC— Texas Administrative Code, as compiled by the Texas Secretary of State.

(r) Water facilities— Any devices and systems which are used in the supply, collection, development, protection, storage, transmission, treatment, and/or retail distribution of water for safe human use and consumption.

(TAC 364.18; SOURCE: The provisions of this §364.18 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29 TexReg 1203).

B. MINIMUM STANDARDS

1. Scope of Standards

The establishment of a residential development with two or more lots of five acres or less where the water supply and sewer services do not meet the minimum standards of this division is prohibited. A subdivision with lots of five acres or less is presumed to be a residential development unless the land is restricted to nonresidential use on the final plat and all deeds and contracts for deeds.

(TAC 364.31; SOURCE: The provisions of this §§364.31 adopted to be effective February 10, 2000, 25 TexReg 800).

2. Water Facilities Development

(a) Public water systems.

(i) Subdividers who propose to supply drinking water by connecting to an existing public water system must provide a written agreement with the retail public utility in substantially the form attached in Appendix 1A. The agreement must provide that the retail public utility has or will have the ability to supply the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of water meters and other necessary connection equipment, membership fees, water rights acquisition costs, or other fees associated with connection to the public water system so that service is available to each lot upon completion of construction of the water facilities described on the final plat.

(ii) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission. The public water system, the water quality and system design, construction and operation shall meet the minimum criteria set forth in 30 TAC §§§§ 290.38-290.51 and §§§§ 290.101-290.120. If groundwater is to be the source of the water supply, the subdivider shall have prepared and provide a copy of a groundwater availability study that complies with the requirements of 30 TAC §§§§ 230.1 through 230.11 for water availability for new public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply, the subdivider shall provide evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the

subdivision for a term of not less than 30 years.

(b) Non-public water systems. Where individual wells or other non-public water systems are proposed for the supply of drinking water to residential establishments, the subdivider shall have prepared and provide a copy of a groundwater availability study that complies with the requirements of 30 TAC §§§§ 230.1 through 230.11 for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. The water quality of the water produced from the test well must meet the standards of water quality required for community water systems as set forth in 30 TAC §§§§ 290.104, 290.106, 290.108 and 290.109, either:

(i) without any treatment to the water; or

(ii) with treatment by an identified and commercially available water treatment system.

(c) Transportation of potable water. 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. Absence of a water system meeting the standards of these rules due to the negligence of the subdivider does not constitute an emergency.

(TAC 364.32; SOURCE: The provisions of this §§364.32 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29 TexReg 1203).

3. Wastewater Disposal

(a) Organized sewerage facilities.

(i) Subdividers who propose the development of an organized wastewater collection and treatment system must obtain a permit to dispose of wastes from the commission in accordance with 30 TAC Chapter 305 and obtain approval of engineering planning materials for such systems under 30 TAC Chapter 317 from the commission.

(ii) Subdividers who propose to dispose of wastewater by connecting to an existing permitted facility must provide a written statement agreement in substantially the form attached in Appendix 1B with the retail public utility. The agreement must provide that the retail public utility has or will have the ability to treat the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of all fees associated with connection to the wastewater collection and treatment system have been paid so that service is available to each lot upon completion of construction of the wastewater facilities described on the final

plat. Engineering plans for the proposed wastewater collection lines must comply with 30 TAC Chapter 317.

(b) On-site sewerage facilities.

(i) On-site facilities which serve single family or multi-family residential dwellings with anticipated wastewater generations of no greater than 5,000 gallons per day must comply with 30 TAC Chapter 285.

(ii) Proposals for sewerage facilities for the disposal of sewage in the amount of 5,000 gallons per day or greater must comply with 30 TAC Chapter 317.

(iii) The commission or its authorized agent shall review proposals for on-site sewage disposal systems and make inspections of such systems as necessary to assure that the system is in compliance with the Texas Health and Safety Code, Chapter 366 and rules in 30 TAC Chapter 285, and in particular §§§§ 285.4, 285.5, and 285.30-285.39. In addition, to the unsatisfactory on-site disposal systems listed in 30 TAC §§285.3(i), pit privies and portable toilets are not acceptable waste disposal systems for lots platted under these rules.

(TAC 364.33; SOURCE: The provisions of this §364.33 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29, TexReg 1203).

4. Greywater Systems for Reuse of Treated Wastewater

(a) Organized or municipal sewerage systems. Any proposal for sewage collection, treatment and disposal which includes greywater reuse shall meet minimum criteria of 30 TAC Chapter 210 promulgated and administered by the commission.

(b) On-site sewerage facilities. Any proposal for on-site sewage disposal which includes provisions for greywater shall meet the minimum criteria of 30 TAC Chapter 285.

(TAC 364.34; SOURCE: The provisions of this §364.34 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29, TexReg 1203).

5. Sludge Disposal

The disposal of sludge from water treatment and sewerage facilities shall meet the criteria of 30 TAC Chapter 312 and Chapter 317.

(TAC 364.35; SOURCE: The provisions of this §364.35 adopted to be effective February 10, 2000, 25 TexReg 800).

6. Setbacks

In areas that lack a nationally recognized fire code as listed in Local Government Code §233.062(c) and lack water lines sized for fire protection, setbacks from roads and right-of-ways shall be a minimum of 10 feet, setbacks from adjacent property lines shall be a minimum of five feet, and shall not conflict with separation or setback distances required by rules governing public utilities, on-site sewerage facilities, or drinking water supplies. Setback lines required elsewhere in the orders or rules of the county shall control to the extent greater setbacks are therein required.

(TAC 364.36; SOURCE: The provisions of this §§364.36 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29, TexReg 1203).

7. Number of Dwellings Per Lot

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. This restriction shall be placed in all deeds and contracts for deeds for real estate sold within the subdivision. Proposals which include multi-family residential shall include adequate, detailed planning materials as required for determination of proper water and wastewater utility type and design.

(TAC 364.37; SOURCE: The provisions of this §§364.37 adopted to be effective February 10, 2000, 25 TexReg 800).

C. PLAT APPROVAL

1. Applications for Plat Approval

(a) Owner representation. An application for approval of a plat shall be filed with the county by the record owner of the property to be subdivided or the duly authorized agent of the record owner.

(b) Standards. Every plat creating two or more lots of five acres or less for residential use shall comply with the standards of Division 2 and the requirements of Division 3 of this subchapter.

(TAC 364.51; SOURCE: The provisions of this §§364.51 adopted to be effective February 10, 2000, 25 TexReg 800).

2. Final Engineering Report

The final plat shall include on the plat or have attached to the plat an engineering report bearing the signed and dated seal of a professional engineer registered in the State of

Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the county shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve each lot of the subdivision. The plan shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under §§ 364.54 of this title, the schedule shall include the start dates and completion dates.

(a) Public water systems.

(i) Where water supplies are to be provided by an existing public water system, the subdivider shall furnish an executed contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1A and referenced in §§ 364.32(a)(1) of this title. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project which may include in addition to the county the commission and the county health department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§§§ 230.1 through 230.11 for water availability for a public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision.

(ii) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission and include evidence of the CCN issuance with the plat. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§§§ 230.1 through 230.11 for water availability for a public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

(b) Non-public water systems. Where individual wells are proposed for the supply of drinking water to residences, the final engineering report shall include the quantitative and qualitative results of sampling the test wells in accordance with §§ 364.32 of this title. The

results of such analyses shall be made available to the prospective property owners. If the water quality of the test well required pursuant to §§ 364.32(b) of this title does not meet the water quality standards as set forth in that section without treatment by an identified and commercially available water treatment system, then the final report must state the type of treatment system that will treat the water produced from the well to the specified water quality standards, the location of at least one commercial establishment within the county at which the system is available for purchase, and the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. The final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§§§ 230.1 through 230.11 for water availability for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. The description of the required sanitary control easement shall be included.

(c) Organized sewerage facilities.

(i) Where wastewater treatment is to be provided by an existing retail public utility, the subdivider shall furnish evidence of a contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1B and referenced in §§ 364.33(a)(2) of this title. Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the commission and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project.

(ii) Where there is no existing retail public utility to construct and maintain the proposed sewerage facilities, the subdivider shall establish a retail public utility and obtain a CCN from the commission. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the commission and plans and specifications for the proposed sewerage facilities shall have been approved by all entities having jurisdiction over the proposed project.

(d) On-site sewerage facilities. Where private on-site sewerage facilities are proposed, the final engineering report shall include planning materials required by 30 TAC §§ 285.4(c), including the site evaluation described by 30 TAC §§ 285.30 and all other information required by the county's OSSF order.

(TAC 364.52; SOURCE: The provisions of this §§ 364.52 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29 TexReg 1203).

3. Additional Information

The county may, at its option, require additional information necessary to determine the adequacy of proposed water and wastewater improvements as part of the plat approval process. Such information may include, but not be limited to:

- (a) layout of proposed street and drainage work;
- (b) legal description of the property;
- (c) existing area features;
- (d) topography;
- (e) flood plains;
- (f) description of existing easements;
- (g) layout of other utilities;
- (h) notation of deed restrictions;
- (i) public use areas; or
- (j) proposed area features.

(TAC 364.53; SOURCE: The provisions of this §§ 364.53 adopted to be effective February 10, 2000, 25 TexReg).

4. Financial Guarantees for Improvements

(a) **Applicability.** If an adequate public or non-public water system or sewerage facility is not available from a retail public utility, or are not constructed by the subdivider, to serve lots intended for residential purposes of five acres or less at the time final plat approval is sought, then the commissioners court shall require the owner of the subdivided tract to execute an agreement with the county in substantially the form attached in Appendix 2A secured by a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit which meet the requirements set forth below.

(b) **Bonds.** A bond that is submitted in compliance with subsection (a) of this section shall meet the following requirements:

- (i) The bond or financial guarantee shall be payable to the county judge of the county, in his official capacity, or the judge's successor in office.

(ii) The bond or financial guarantee shall be in an amount determined by the commissioners court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.

(iii) The bond shall be executed with sureties as may be approved by the commissioners court. The county shall establish criteria for acceptability of the surety companies issuing bonds that include but are not limited to:

(a) registration with the Secretary of State and be authorized to do business in Texas;

(b) authorization to issue bonds in the amount required by the commissioners court; and

(c) rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

(iv) The bond shall be conditioned upon construction or installation of water and wastewater facilities meeting the criteria established by Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.

(c) Letter of credit. A letter of credit that is submitted in compliance with subsection (a) of this section shall meet the following requirements:

(i) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$ 10,000 and less than \$ 250,000 must be from financial institutions which meet the following qualifications:

(a) Bank qualifications:

- (i) must be federally insured;
- (ii) Sheshunoff rating must be 10 or better and primary capital must be at least 6.0% of total assets; and
- (iii) total assets must be at least \$25 million.

(b) Savings and loan association qualifications:

- (i) must be federally insured;
- (ii) tangible capital must be at least 1.5% of total assets and total assets must be greater than \$25 million or tangible capital must be at least 3.0% of total assets if total assets are less than \$25 million; and
- (iii) Sheshunoff rating must be 30 or better.

(c) Other financial institutions qualifications:

- (i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and
- (ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(ii) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$ 250,000 must be from financial institutions which meet the following qualifications:

(a) Bank qualifications:

- (i) must be federally insured;
- (ii) Sheshunoff rating must be 30 or better and primary capital must be at least 7.0% of total assets; and

(iii) total assets must be at least \$75 million.

(b) Savings and loan association qualifications:

(i) must be federally insured;

(ii) tangible capital must be at least 3.0% of total assets and total assets must be greater than \$75 million or tangible capital must be at least 5.0% of total assets if total assets are less than \$75 million; and

(iii) Sheshunoff rating must be 30 or better.

(c) Other financial institutions qualifications:

(i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and

(ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(iii) The letter of credit shall list as sole beneficiary the county judge of the county, in his official capacity, or the judge's successor in office, and must be approved by the county judge of the county. The form of the letter of credit shall be modeled after the form attached in Appendix 2B.

(iv) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.

(d) Financial guarantee. The county will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities in the subdivision.

(e) Alternative to county accepting a financial guarantee. The county may approve a final plat under this section without receiving a financial guarantee in the name of the county if:

- (i) the property being subdivided lies wholly within the jurisdiction of the county;
- (ii) the property being subdivided lies wholly within the extra-territorial jurisdiction of a municipality; and
- (iii) the municipality has executed an interlocal agreement with the county that imposes the obligation on the municipality to:
 - (a) accept the bonds, letters of credit, or other financial guarantees, that meet the requirements of this section;
 - (b) execute the construction agreement with the subdivider; and
 - (c) assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.

(TAC 364.54; SOURCE: The provisions of this §§ 364.54 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29 TexReg 1203).

5. Review and Approval of Final Plats

- (a) **Scope of review.** The county will review the final plat to determine whether it meets the standards of Division 2 and the requirements of Division 3 of this subchapter.
- (b) **Disapproval authority.** The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under these rules.
- (c) **Prerequisites to approval.** Final plat approval shall not be granted unless the subdivider has accomplished the following:
 - (i) dedicated the sites for the adequate water and sewerage facilities identified in the final plat to the appropriate retail public utility responsible for operation and maintenance of the facilities; and
 - (ii) provided evidence that the water facilities and sewerage facilities have been constructed and installed in accordance with the criteria established within these rules and the approvals from the commission of the plans and specifications for such construction, including any change orders filed with these agencies; or
 - (iii) obtained all necessary permits for the proposed water facilities and

sewerage facilities (other than for OSSF permits on individual lots within the proposed subdivision) and has entered into a financial agreement with the county secured by a bond or other alternative financial guarantee such as a cash deposit or letter of credit for the provision of water and sewerage facilities with the bond or financial guarantee meeting the criteria established in Division 3 of this subchapter.

(TAC 364.55; SOURCE: The provisions of this §§ 364.55 adopted to be effective February 10, 2000, 25 TexReg 800; amended to be effective February 10, 2004, 29 TexReg 1203

6. Time Extensions for Providing Facilities

(a) Reasonableness. The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the required water and sewer service facilities must be fully operable if:

(i) any financial guarantees provided with the final plat as originally submitted are effective for the time of the requested extension or new financial guarantees that comply with §§ 364.54 are submitted which will be effective for the period of the extension; and

(ii) the court finds the extension is reasonable and not contrary to the public interest.

(b) Timeliness. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner.

(c) Unreasonableness. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services that meet the standards of Division 2 of this subchapter.

(TAC 364.56; SOURCE: The provisions of this §§ 364.56 adopted to be effective February 10, 2000, 25 TexReg 800).

7. Criteria for Subdivisions that Occurred Prior to September 1, 1989

(a) Authority and scope. This section shall apply only to tracts of land that were divided into two or more parts to lay out a subdivision before September 1, 1989 and have not been platted or recorded. This section is in addition to the authority of the county to grant a delay or variance pursuant to Local Government Code §232.043 or a rule of the county adopted pursuant to such provision.

(b) Purpose. It is the purpose of this section to promote the public health of the county residents, to ensure that adequate water and sewerage facilities are provided in subdivisions within the jurisdiction of this county, and to establish the minimum standards

for pre-1989 subdivisions for which no plat has been filed or recorded in the records of the county.

(c) Required plat. In the event that the owner of tract of land located outside the limits of a municipality who subdivided the tract into two or more parts to lay out a subdivision of the tract prior to September 1, 1989, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts, was legally obligated to, but has failed to have a plat of the subdivision prepared, approved by the commissioners court, and filed, the owner of a residential lot which was created by the subdivision may have a plat of the individual lot prepared and approved by the commissioners court as provided in this section in lieu of the filing of a plat of the subdivision.

(d) Special criteria. The commissioners court may approve the plat of a residential lot which does not comply with the provisions of §§§§ 364.15(b) of this title (sale restrictions), 364.36 of this title (Setbacks), 364.37 of this title (Number of Dwellings per Lot), 364.52 of this title (Final Engineering Report), and 364.54 of this title (Financial Guarantees for Improvements) as applied to an individual subdivided lot if such approval is in harmony with the general purpose and intent of these rules so that the public health, safety, and welfare may be secured and substantial justice done.

(i) Owners of individual lots in a single unplatted subdivision may file a joint request for approval of their respective individual residential lots.

(ii) An application for approval of the plat of an individual lot shall be made in writing. The application shall state specifically the chapter, section, or subsection with which the plat does not comply and from which a waiver is being requested. The application shall contain available information and documentation which supports the requested approval. The applicant shall also provide such additional documentation as the commissioners court may request to support the application, including:

(a) a copy of a dated plat, sales contract, utility records, or other acceptable documentation that the subdivision occurred prior to September 1, 1989;

(b) the name and address of the original subdivider or the subdivider's authorized agent, if known;

(c) a survey and plat of the lot for which approval is requested, showing existing residences, roads, and utilities; and

(d) a deed, an affidavit of ownership or other evidence of ownership of the lot for which approval is requested.

(iii) Approval of plats of individual lots shall be granted subject to the limitations of state law, and based on written findings by the commissioners court that:

(a) the lot for which approval is requested is within a tract that was subdivided prior to September 1, 1989, and is not owned by the original subdivider;

(b) a plat was required for the subdivision, but has not been filed with the county by the subdivider legally obligated to file it;

(c) an existing, currently occupied residential dwelling is located on the lot;

(d) existing water and sewer services which comply with the minimum standards set forth herein are available to the lot; and

(e) the request is reasonable, compliance with specified sections of these rules is impractical, and a waiver is not contrary to the public health and safety.

(e) Final determination. The commissioners court shall make the final decision on an application for a waiver, following review and recommendation by the county planning commission or department, if any. The applicant may withdraw a request for a waiver at any point in the process. If the requested waiver application is approved by the commissioners court, the county shall issue a certificate stating that a plat of the residential lot has been reviewed and approved.

(TAC 364.57; SOURCE: The provisions of this §§ 364.57 adopted to be effective February 10, 2000, 25 TexReg 800)

D. ENFORCEMENT

1. Oversight

The owner, by submitting a plat, acknowledges the authority of the county and state

agencies to lawfully enter and inspect property for purposes of execution of their statutory duties. Such inspection will not release the owner from any obligation to comply with the requirements of these rules.

(TAC 364.71; SOURCE: The provisions of this §§ 364.71 adopted to be effective February 10, 2000, 25 TexReg 800).

2. General Enforcement Authority of County

The provisions of this chapter are enforceable pursuant to the specific provisions hereof related to enforcement and state law including Water Code, Chapter 7 and §§§§ 16.352, 16.353, 16.3535, 16.354, and 16.3545, and Local Government Code§232.037 and §§ 232.080.

(TAC 364.72; SOURCE: The provisions of this §§ 364.72 adopted to be effective February 10, 2000, 25 TexReg 800).

Figure: 31 TAC §364.32(a)(1)

APPENDIX 1A. SAMPLE FORM FOR WATER SERVICE AGREEMENT

AGREEMENT REGARDING WATER SERVICE FOR THE PROPOSED
SUBDIVISION

PARTIES: This Agreement is by and between the Utility and the Subdivider, to wit:
The Utility is the governing board or owner of a retail public utility which supplies of drinking water known as _____

The Subdivider is _____
who is the owner, or the authorized agent of the owner, of a tract of land in _____
County, Texas, that has been proposed to be divided into a subdivision (the Subdivision) known
as _____

TERMS: This Agreement is entered into in partial satisfaction of requirements under the Texas Water Development Board's Economically Distressed Areas Program Model Subdivision Rules. The Subdivider has prepared a plat of the Subdivision for submission to _____ County for its approval. The Subdivider plans to construct for the Subdivision a drinking water distribution system to be connected to the Utility's public water system. The Utility has reviewed the plans for the Subdivision (the Plans) and has estimated the drinking water flow anticipated to be needed by the Subdivision under fully built-out conditions (the anticipated water flow) to be approximately _____ gallons daily.

The Utility covenants that it has or will have the ability to provide the anticipated water flow for at least thirty years, and that it will provide that water flow. These covenants will be in effect until thirty years after the plat of the Subdivision has been recorded and the Subdivision's water distribution system has been connected to the Utility's water supply system.

The Subdivider covenants that the water distribution system will be constructed as shown in the Plans and as provided for through the plat-approval process so that the residents of the lots of the Subdivision may receive drinking water service from the Utility. Upon completion of the water distribution system and upon its approval and acceptance by the Utility, the Subdivider will convey to the Utility all right and title to the water distribution system.

The Subdivider has paid the Utility the sum of \$ _____ which sum represents the total costs of water meters, water rights acquisition fees, and all membership or other fees associated with connecting the individual lots in the Subdivision to the Utility's water supply system.

The above provisions notwithstanding, this Agreement shall no longer be in effect if the plat of the Subdivision is not approved by _____ County or by a municipality whose approval is required.

By affixing his or her signature to this Agreement, the person signing for the Utility warrants that he or she is authorized to sign this Agreement on behalf of the Utility. By affixing his or her

signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on _____, 20_____.

The Utility

By: _____

Printed Name: _____

Office or Position: _____

Date: _____

The Subdivider

By: _____

Printed Name: _____

Office or Position: _____

Date: _____

Figure: 31 TAC §364.33(a)(2)

APPENDIX 1B. SAMPLE FORM FOR WASTEWATER SERVICE AGREEMENT
AGREEMENT REGARDING WASTEWATER SERVICE FOR THE PROPOSED
_____ SUBDIVISION

PARTIES: This Agreement is by and between the Utility and the Subdivider, to wit:
The Utility is the governing board or owner of a retail public utility which provides wastewater
treatment and is known as _____

The Subdivider is _____
who is the owner, or the authorized agent of the owner, of a tract of land in _____
County, Texas, that has been proposed to be divided into a subdivision (the Subdivision) known
as _____

TERMS: This Agreement is entered into in partial satisfaction of requirements under the Texas
Water Development Board's Economically Distressed Areas Program Model Subdivision Rules.
The Subdivider has prepared a plat of the Subdivision for submission to _____ County for its
approval. The Subdivider plans to construct for the Subdivision a wastewater collection system
to be connected to the Utility's wastewater treatment system. 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 Utility has reviewed the plans for the Subdivision
(the Plans) and has estimated the wastewater flow projected from the Subdivision under fully
built-out conditions (the projected wastewater flow) to be approximately _____ gallons daily.

The Utility covenants that it has or will have the capacity to treat the projected wastewater flow,
and that it will treat that wastewater flow for at least thirty years. These covenants will be in
effect until thirty years after the plat of the Subdivision has been recorded and the Subdivision's
wastewater collection system has been connected to the Utility's wastewater treatment plant.

The Subdivider covenants that the wastewater collection system will be constructed as shown in
the Plans and as provided for through the plat approval process so that the residents of the lots of
the Subdivision may receive wastewater treatment service from the Utility. Upon completion of
the wastewater collection system and upon its approval and acceptance by the Utility, the
Subdivider will convey to the Utility all right and title to the wastewater collection system.

Insert the following paragraph if the Utility imposes any fees for connection of individual lots to
the Utility's wastewater collection and treatment system:

The Subdivider has paid the Utility the sum of \$ _____ which sum represents the total
costs of tap fees, capital recovery charges, and other fees associated with connecting the
individual lots in the Subdivision to the Utility's wastewater collection and treatment system.

The above provisions notwithstanding, this Agreement shall no longer be in effect if the plat of
the Subdivision is not approved by _____ County or by a municipality whose approval is
required.

By affixing his or her signature to this Agreement, the person signing for the Utility warrants that he or she is authorized to sign this Agreement on behalf of the Utility. By affixing his or her signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on _____, 20 ____.

The Utility

By: _____
Printed Name: _____
Office or Position: _____
Date: _____

The Subdivider

By: _____
Printed Name: _____
Office or Position: _____
Date: _____

Figure: 31 TAC §364.54(a)

APPENDIX 2A: SUBDIVISION CONSTRUCTION AGREEMENT SAMPLE FORM

1. Parties. This Subdivision Construction Agreement (the Agreement) is by and between the County and the Subdivider. The County is _____ County, Texas, acting by and through its Commissioners Court, or authorized representative as designated by the Commissioners Court. The Subdivider is _____, who is the owner, or the authorized agent of owner, of a tract of land located within the geographic area and jurisdiction of the County.

2. Effective Date. This Agreement is effective on the date the County approves the final plat for the subdivision described in Paragraph 3 of this agreement (the Effective Date).

Recitals

3. Subdivider is the owner of the land included in the proposed final subdivision plat of the _____ subdivision, as shown in County's File Number (the Subdivision) and more particularly described by the metes and bounds description attached and incorporated into this Agreement as Exhibit A (the Property); and

4. Subdivider seeks authorization from the County to subdivide the Property in accordance with the requirements imposed by Texas statute and the County's ordinances, regulations, and other requirements; and

5. County ordinances require the completion of various improvements in connection with the development of the Subdivision to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions; and

6. The purpose of this Agreement is to protect the County from the expense of completing subdivision improvements required to be installed by the Subdivider; and

7. This agreement is authorized by and consistent with state law and the County's ordinances, regulations, and other requirements governing development of a subdivision.

IN CONSIDERATION of the foregoing recitals and the mutual covenants, promises, and obligations by the parties set forth in this Agreement, the parties agree as follows:

Subdivider's Obligations

8. Improvements. The Subdivider agrees to construct and install, at Subdivider's expense, all subdivision improvements required to comply with County orders, ordinances, regulations, and policies governing subdivision approval, specifically including without limitation those improvements listed on Exhibit B attached and incorporated by reference into this Agreement (collectively, the Improvements, any one of which is an Improvement). All Improvements shall be constructed in conformity to the County's requirements, procedures, and specifications, pursuant to construction plans, permits, and specifications approved by the County prior to commencement of construction, and subject to inspection, certification, and acceptance by the County.

9. Completion. Unless a different time period is specified for a particular Improvement in Exhibit B, construction of all the Improvements shall be completed no later than three (3) years after the Effective Date (the Completion Date); provided, however, that if the Subdivider or the Issuer delivers to the County no later than the Completion Date a substitute Letter of Credit satisfying the criteria established by Paragraph 11 and which has an expiration date no earlier than one year from the Completion Date, then the Completion Date shall be extended to the expiration date of that substitute Letter of Credit or any subsequent substitute Letter of Credit provided in accordance with this Paragraph. Upon completion of each of the Improvements, the Subdivider agrees to provide to the County a complete set of construction plans for the Improvements, certified "as built" by the engineer responsible for preparing the approved construction plans and specifications.

10. Warranty. The Subdivider warrants the Improvements constructed by Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees will be free from defects for a period of one (1) year from the date the County accepts the dedication of a completed Improvement or group of Improvements (the Warranty Period), as such Improvement or group of Improvements is separately identified and listed on Exhibit B, except the Subdivider does not warrant the Improvements for defects caused by events outside the control of the Subdivider or the Subdivider's agents, contractors, employees, tenants, or licensees. The Subdivider agrees to repair any damage to the Improvements before and during the Warranty Period due to private construction-related activities. As a condition of the County's acceptance of dedication of any of the Improvements, the County may require the Subdivider to post a maintenance bond or other financial security acceptable to the County to secure the warranty established by this Agreement. If the Improvements have been completed but not accepted, and neither the Subdivider nor Issuer is then in default under this Agreement or the Letter of Credit, at the written request of the Subdivider or the Issuer the County shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to an amount equal to the face amount of the maintenance bond or other financial security acceptable to the County.

11. Security. To secure the performance of Subdivider's obligations under this Agreement, Subdivider agrees to provide adequate financial guarantees of performance in the form of a surety bond acceptable to the County, a cash deposit to be held by the County in escrow, or an irrevocable letter of credit in the amount of _____ Dollars (\$_____) (the Stated Amount), which amount is the estimated total cost of constructing each of the Improvements as shown on Exhibit B. If a letter of credit is provided pursuant to this Agreement, it shall be in a standard form acceptable to the County, shall have an expiration date no earlier than one year from the date of its issuance, and shall be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the County's financial institution rating system in effect at the time the initial letter of credit is issued pursuant to this Agreement (the Issuer). During the term of this Agreement and subject to the terms of Paragraph 22 of this Agreement, the County may revise the standard form letter of credit it reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this agreement. A letter of credit satisfying the criteria of this Paragraph (and any substitute or confirming letter of credit) is referenced to in this agreement as the "Letter of Credit."

12. **Reduction In Letter of Credit.** After the acceptance of any Improvement, the amount which the County is entitled to draw on the Letter of Credit shall be reduced by an amount equal to ninety percent (90%) of the Quoted cost of the accepted Improvement, as shown on Exhibit B. Upon completion of an Improvement, at the written request of Subdivider or Issuer, and if neither the Subdivider nor Issuer is then in default under this agreement or the Letter of Credit, the County shall complete, execute, and deliver to the Issuer a reduction letter verifying the acceptance of the Improvement and documenting that the Stated Amount has been reduced by stating the balance of the Stated Amount remaining after the reduction required by the first sentence of this Paragraph. No later than sixty (60) days after its receipt of a written request to reduce the Stated Amount submitted by the Subdivider or the Issuer, the County shall determine the Estimated Remaining Cost and shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to the Estimated Remaining Cost if the County determines the Stated Amount exceeds the Estimated Remaining Cost. Notwithstanding the preceding sentence, the County shall not be required to authorize reductions in the Stated Amount more frequently than every ninety (90) days. As used in this Paragraph, "Estimated Remaining Cost" means the amount the County estimates to be the cost of completing all Improvements which are incomplete as of the time of such estimate.

County's Obligations

13. **Inspection and Certificate.** The County agrees to inspect Improvements during and at the completion of construction and, if completed in accordance with the standards and specifications for such Improvements, to certify the Improvements as being in compliance with County standards and specifications. The inspections and certifications will be conducted in accordance with standard County policies and requirements. The Subdivider grants the County, its agents, employees, officers, and contractors an easement and license to enter the Property to perform such inspections as it deems appropriate.

14. **Notice of Defect.** The County will provide timely notice to the Subdivider whenever inspection reveals that an Improvement is not constructed or completed in accordance with the standards and specifications for health or safety, and if the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm, the cure period may be shortened to no less than five (5) days and the County may declare a default under this Agreement if not satisfied that the defect is cured after the cure period. Any cure period should be reasonable in relation to the nature of the defect.

15. **Use of Proceeds.** The County will disburse funds drawn under the Letter of Credit only for

the purposes of completing the Improvements in conformance with the County's requirements and specifications for the Improvements, or to correct defects in or failures of the Improvements. The Subdivider has no claim or rights under this Agreement to funds drawn under the Letter of Credit or any accrued interest earned on the funds. All funds obtained by the County pursuant to one or more draws under the Letter of Credit shall be maintained by the County in an interest bearing account or accounts until such funds, together with accrued interest thereon (the Escrowed Funds), are disbursed by the County. The County may disburse all or portions of the Escrowed Funds as Improvements are completed and accepted by the County, or in accordance with the terms of a written construction contract between the County and a third party for the construction of Improvements. Escrowed Funds not used or held by the County for the purpose of completing an Improvement or correcting defects in or failures of an Improvement, together with interest accrued thereon, shall be paid by the County to the Issuer of the Letter of Credit no later than sixty (60) days following the County's acceptance of the Improvement or its decision not to complete the Improvement using Escrowed Funds, whichever date is earlier.

16. Return of Excess Escrowed Funds. No later than sixty (60) days after its receipt of a written request from the Subdivider or the Issuer to return Excess Escrowed Funds to the Issuer, the County shall disburse to the Issuer from the Escrowed Funds all Excess Escrowed Funds. For purposes of this Paragraph, "Excess Escrowed Funds" means the amount of Escrowed Funds exceeding one hundred ten percent (110%) of the estimated cost of constructing Improvements the County intends to construct but which have not been accepted, as such cost is shown on Exhibit B. Notwithstanding the first sentence in this Paragraph, the County shall not be required to disburse Excess Escrowed Funds more frequently than every ninety (90) days.

17. Cost Participation by County. If the County and Subdivider agree the County will participate in the expense of installing any of the Improvements, the respective benefits and obligations of the parties shall be governed by the terms of a Community Facilities Construction Agreement executed by the parties thereto, and the terms of that agreement shall control to the extent of any inconsistency with this Agreement.

18. Conditions of Draw on Security. The County may draw upon any financial guarantee posted in accordance with Paragraph 11 upon the occurrence of one or more of the following events:

- (a) Subdivider's failure to construct the Improvements in accordance with Paragraph 8 of this Agreement;
- (b) Subdivider's failure to renew or replace the Letter of Credit at least forty-five (45) days prior to the expiration date of the Letter of Credit;
- (c) Subdivider's failure to replace or confirm the Letter of Credit if the Issuer fails to maintain the minimum rating acceptable to the County, in accordance with Paragraph 11 of this Agreement; or
- (d) Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure.

The County shall provide written notice of the occurrence of one or more of the above events to the Subdivider, with a copy provided to the Issuer. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraph (a), the County shall provide notice to the Subdivider and the Issuer of the specific default and the notice shall

include a statement that the County intends to perform some or all of Subdivider's obligations under Paragraph 8 for specified Improvements if the failure is not cured. The notice with respect to a default under subparagraph (a) shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit, unless, in the reasonable opinion of the County, the failure creates an immediate and substantial harm to the public health or safety, in which case the notice shall state why the failure creates an immediate and substantial harm to the public health or safety, and shall be given no less than five (5) days before presentation of a draft on the Letter of Credit. In the event of a draw based on subparagraph (a), the County shall be entitled to draw in the amount it considers necessary to perform Subdivider's obligations under Paragraph 8, up to the amount allocated according to Exhibit B for any Improvement it states its intent to construct or complete in accordance with the standards and specifications for such improvement. The subdivider hereby grants to the County, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such Improvements. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraphs (b), (c), or (d), the notice shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit. In lieu of honoring a draft based on an event described in subparagraphs (b) or (c), the Issuer or the Subdivider may deliver to the County a substitute Letter of Credit if the event is described by subparagraph (b) or a substitute or confirming Letter of Credit if the event is described by subparagraph (c). If the Issuer has acquired all or a portion of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on an event described in subparagraph (d), the Issuer may deliver to the County a substitute or confirming Letter of Credit.

19. Procedures for Drawing on the Letter of Credit. The County may draw upon the Letter of Credit in accordance with Paragraph 18 by submitting a draft to the Issuer in compliance with the terms of the Letter of Credit governing such draft. The Letter of Credit must be surrendered upon presentation of any draft which exhausts the Stated Amount of such Letter of Credit. The County may not draft under a Letter of Credit unless it has substantially complied with all its obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with the terms of the Letter of Credit.

20. Measure of Damages. The measure of damages for breach of this Agreement by the Subdivider is the reasonable cost of completing the Improvements in conformance with the County's requirements, procedures, and specifications. For Improvements upon which construction has not begun, the estimated cost of the Improvements shown on Exhibit B will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the Letter of Credit establishes the maximum amount of the Subdivider's liability.

21. Remedies. The remedies available to the County, the Subdivider, and Issuer under this Agreement and the laws of Texas are cumulative in nature.

22. Provisions for the Benefit of Issuer. The provisions of Paragraphs 9, 10, 11, 12, 15, 16, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, and 36 of this Agreement for the benefit of the Issuer may not be modified, released, diminished, or impaired by the parties without the prior written consent of the Issuer.

23. Third Party Rights. No person or entity who or which is not a party to this Agreement shall have any right of action under this Agreement, nor shall any such person or entity other than the County (including without limitation a trustee in bankruptcy) have any interest in or claim to funds drawn on the Letter of Credit and held in escrow by the County in accordance with this Agreement. Notwithstanding the preceding sentence, the Issuer shall have a right of action to enforce any provision of this Agreement where the Issuer is specifically named as a beneficiary of such provision pursuant to Paragraph 22.

24. Indemnification. The Subdivider hereby expressly agrees to indemnify and hold the County harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the County if the County is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act of negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements, except where such suit is brought by the Subdivider. The Subdivider is not an employee or agent of the County. Notwithstanding anything to the contrary contained in this agreement, the Subdivider does not agree to indemnify and hold the County harmless from any claims, demands, costs, or liabilities arising from any act or negligence of the County, its agents, contractors, employees, tenants, or licensees.

25. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute continuing waiver unless expressly provided for by a written amendment to this Agreement; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or covenant by the County, the Subdivider, or the Issuer, their heirs, successors or assigns, whether any violations thereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

26. Attorney's Fees. Should either party or the Issuer, to the extent Issuer is named as specific beneficiary, be required to resort to litigation to enforce the terms of this agreement, the prevailing party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

27. Assignability. The benefits and burdens of this Agreement are personal obligations of the Subdivider and also are binding on the heirs, successors, and assigns of the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the express written approval of the County. The County's written approval may not be withheld if the Subdivider's assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required security. The County agrees to release or reduce, as appropriate, the Letter of Credit provided by the Subdivider if it accepts substitute security for all or any portion of the Improvements. The County, in its sole discretion, may assign some or all of its rights under this

Agreement, and any such assignment shall be effective upon notice to the Subdivider and the Issuer.

28. Expiration. This Agreement shall terminate upon the expiration of the approval of the proposed final plat of the Subdivision or if the Subdivision is vacated by the Subdivider.

29. Notice. Any notice required or permitted by this Agreement is effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Subdivider:

Attn: _____

Printed Name: _____

Office or Position: _____

Address: _____

if to County:

Attn: _____

Printed Name: _____

Office or Position: _____

Address: _____

if to the Issuer: at Issuer's address shown on the Letter of Credit.

The parties may, from time to time, change their respective addresses listed above to any other location in the United States for the purpose of notice under this Agreement. A party's change of address shall be effective when notice of the change is provided to the other party in accordance with the provisions of this Paragraph.

30. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or enforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

31. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement or the Issuer, whether arising out of or relating to the Agreement or the Letter of Credit, will be deemed to be proper only if such action is commenced in District Court for _____ County, Texas, or the United States District Court for the _____ District of Texas, _____ Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Letter of Credit pursuant to the terms of this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

32. Release Upon Completion. Upon acceptance of all Improvements, the County agrees: (a) to complete, execute and deliver to the Subdivider and the Issuer a release in recordable form releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement except those contained in Paragraph 10, and (b) to return to the Issuer the Letter of Credit and any Escrowed Funds not expended or obligated by the County for the completion of the Improvements.

33. Captions Immaterial. The numbering, order, and captions or headings of the paragraphs of this agreement are for convenience only and shall not be considered in construing this agreement.

34. Entire Agreement. This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent written modification executed by both parties.

35. Authorization to Complete Blanks. By signing and delivering this agreement to the appropriate official of the County, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.

36. Binding Agreement. The execution and delivery of this agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the County. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Letter of Credit.

EXECUTED by the parties to be effective as of the _____ day of _____, 20__.

County Official

Subdivider

[SIGNATURES OF THE PARTIES TO BE ACKNOWLEDGED]

EXHIBIT A: METES AND BOUNDS DESCRIPTION OF PROPERTY

EXHIBIT B: SUBDIVISION IMPROVEMENTS

Subdivision Improvements. Subdivider and County agree the following improvements are required in connection with the approval and development of the Subdivision (collectively, the Subdivision Improvements). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the County in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of Improvement(s)	Estimated Cost of Completion
-------------------------------	------------------------------

- a)
- b)
- c)

APPENDIX 2B. IRREVOCABLE LETTER OF CREDIT SAMPLE FORM

IRREVOCABLE LETTER OF CREDIT NO.

TO: _____, Texas

DATE: _____, 20__

We hereby authorize you to draw at sight on [NAME AND LOCATION OF BANK], for the account of [NAME OF CUSTOMER] (the Customer), up to the aggregate amount of _____ DOLLARS (\$ _____) (the Stated Amount) available by our draft, accompanied by a certification by the county judge, any county commissioner, or the county treasurer that the following condition exists:

"A Condition of Draw exists under Subdivision Construction Agreement dated _____, 20__, by and between Subdivider and the County of _____ (the Agreement). County is in substantial compliance with the terms of said Agreement and has calculated the amount of this draft in accordance with the terms of the Agreement."

Drafts must be drawn and presented by or on [EXPIRATION DATE] by the close of business of the Issuer of this credit and must specify the date and number of this credit. Drafts will be honored within five calendar days of presentment. We hereby engage all drawers that drafts drawn and presented in accordance with this credit shall be duly honored. Partial draws are permitted and the letter of credit shall be reduced by the amount of such partial draws as well as by any reduction letters authorized by the County. The sum of such partial draws shall on no account exceed the Stated Amount of this credit, and upon any draw or reduction letter which exhausts this credit, the original of this credit will be surrendered to us.

Except as expressly stated, this credit shall be subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce (Publication No. 500).

This credit is irrevocable prior to its expiration date unless both parties consent to revocation in writing.

Address of Issuer:

Signature of Issuer's Authorized Officer

Printed Name:

Title:

APPENDIX C

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF THE APPLICATION § BEFORE THE EXECUTIVE
OF THE COUNTY OF GRIMES § DIRECTOR OF THE TEXAS
FOR A TEXAS HEALTH AND SAFETY § COMMISSION ON
CODE §366.031 ORDER § ENVIRONMENTAL QUALITY

On APR 06 2004 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Grimes, ("Applicant" or "Grimes"), for an Order pursuant to §366.031, Texas Health and Safety Code ("Code"), and 30 Texas Administrative Code (TAC) §285.10 of the rules of the Commission.

No person has requested a public hearing on the application, therefore the Executive Director, on behalf of the Commission, is satisfied that the Applicant has satisfied the requirements of §366.031 of the Code and, therefore, the Commission finds that the Grimes County Order should be approved.

FINDINGS OF FACT

1. The County of Grimes drafted a proposed amendment to the current order which regulates on-site sewage facilities.
2. On December 10, 2003 the County of Grimes caused notice to be published, in a newspaper regularly published and of general circulation, in Grimes's area of jurisdiction, of a public meeting to be held on Monday, December 22, 2003.
3. The County of Grimes held a public meeting to discuss the proposed amendment on December 22, 2003.
4. Grimes County Order regulating on-site sewage facilities was adopted on January 12, 2004.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of Grimes County Order was submitted to the Texas Commission on Environmental Quality.

7. The order is at least equivalent to the standards of the Texas Commission on Environmental Quality.

CONCLUSIONS OF LAW

1. The above facts are conditions sufficient to issue this order pursuant to §366.031 of the Code.
2. Section 5.102 of the Texas Water Code authorizes the Commission to issue orders and make determinations necessary to effectuate the purposes of Chapter 366 of the Health and Safety Code.
3. Issuance of this order will effectuate the purposes of Chapter 366 of the Code.

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

1. The County of Grimes is hereby authorized to implement Grimes County On-site Sewage Facility Order.
2. Any amendments to Grimes County On-site Sewage Facility Order must be approved by the Texas Commission on Environmental Quality.
3. The Chief Clerk of the Commission is directed to forward a copy of this Order to the Applicant and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: APR 06. 2004

Texas Commission on Environmental Quality

Margaret Hoffman

For the Commission

**ORDER ADOPTING RULES
OF GRIMES COUNTY, TEXAS,
FOR ON-SITE SEWAGE FACILITIES**

PREAMBLE

WHEREAS, the Texas Commission on Environmental Quality has established rules for on-site sewage facilities to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, the Legislature has enacted legislation, codified as the Texas Health & Safety Code, Chapter 366, which authorizes a local government to regulate the use of on-site sewage facilities in its jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of on-site sewage facilities, and

WHEREAS, due notice was given of a public meeting to determine whether the Commissioners Court of Grimes County, Texas, should enact an Order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Grimes, Texas; and

WHEREAS, the Commissioners Court of Grimes County, Texas, finds that the use of on-site sewage facilities in Grimes County, Texas, is causing or may cause pollution, and is injuring or may injure the public health; and

WHEREAS, the Commissioners Court of Grimes County, Texas, has considered the matter and deems it appropriate to enact an Order adopting Rules regulating on-site sewage facilities to abate or prevent pollution, or injury to public health in Grimes County, Texas.

NOW, THEREFORE, BE IT ORDERED by the Commissioners Court of Grimes County, Texas:

SECTION 1. That the matters and facts recited in the preamble hercof are hereby found and determined to be true and correct;

SECTION 2. That the use of on-site sewage facilities in Grimes County, Texas, is causing or may cause pollution or is injuring or may injure the public health;

SECTION 3. That an Order for Grimes County, Texas, be adopted entitled "On-Site Sewage Facilities," which shall read as follows:

AN ORDER ENTITLED ON-SITE SEWAGE FACILITIES

SECTION 4. CONFLICTS.

This Order repeals and replaces any other On-site Facility Order for Grimes County.

SECTION 5. CHAPTER 366.

The County of Grimes, Texas, clearly understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and will fully enforce Chapter 366 of the Texas Health & Safety Code (H&SC), Chapters 7 and 37 of the Texas Water Code (TWC), and associated rules referenced in Section 8 of this Order.

SECTION 6. AREA OF JURISDICTION.

The Rules shall apply to all the area lying in Grimes County, Texas, except for the area regulated under an existing Rule and the areas within incorporated cities.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Grimes County, Texas, must comply with the Rules adopted in Section 8 of this Order.

SECTION 8. ON-SITE SEWAGE FACILITY RULES ADOPTED.

The Rules, Title 30, Texas Administrative Code (TAC), Chapter 285 and Chapter 30, attached hereto, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Grimes County, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

SECTION 9. INCORPORATION BY REFERENCE.

The Rules, Title 30 TAC, Chapters 30 and 285, and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules. A copy of the current Rules are attached to these Rules as Appendix I.

SECTION 10. AMENDMENTS.

The County of Grimes, Texas, wishing to adopt more stringent rules for its On-Site Sewage Facility Order, understands that the more stringent conflicting local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Grimes County, Texas:

(A) An OSSF System for any single family residence, regardless of the area of the tract of land upon which same is located, is required to apply for a permit for new construction.

(B) An annual fee will be charged to all owners of an OSSF that require on going maintenance that must be tracked by the Authorized Agent and as stipulated by the issuance of the permit. This fee will help offset the cost of the Authorized Agent's requirement to maintain records of maintenance as required by rules.

Each of the above and foregoing amendments are based on a greater public health and protection.

SECTION 11. DUTIES AND POWERS.

The OSSF Inspector of Grimes County, Texas, must be certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities.

SECTION 12. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to Grimes County, Texas.

SECTION 13. APPEALS.

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the Commissioners Court of Grimes County, Texas.

SECTION 14. PENALTIES.

This Order adopts and incorporates all applicable penalty provisions related to on-site sewage facilities, which includes, but is not limited to, those found in Chapters 341 and 366 of the Texas Health & Safety Code, Chapters 7, 26, and 37 of the Texas Water Code, and Section 30 TAC, Chapters 30 and 285.

SECTION 15. SEVERABILITY.

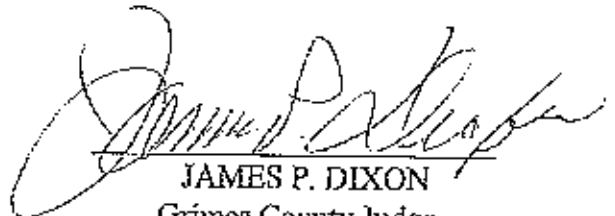
It is hereby declared to be the intention of the Commissioners Court of Grimes County, Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Order are severable, and if any phrase, clause, sentence, paragraph, or section of this Order should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Order, since the same would have been enacted by the Commissioners Court without incorporation in this Order of such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 16. EFFECTIVE DATE.

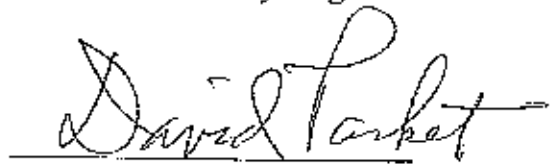
This Order shall be in full force and effect from and after its date of approval as required by law and upon the approval of the Texas Commission on Environmental Quality, AND IT IS SO ORDERED.

PASSED AND APPROVED this 12th day of January, 2004.

APPROVED:



JAMES P. DIXON
Grimes County Judge



DAVID PASKET
Grimes County Clerk