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TCAA SUMMER CONFERENCE 2025

MUDs, Not a Day at the Spa. . . .

1. Why is the developer or property owner requesting a MUD?
 - a) Financing Tool. The developer will use the MUD as a financing vehicle to be reimbursed for the infrastructure costs after sufficient taxable value has been created to support the issuance of bonds by the MUD Board of directors to reimburse the developer.
 - b) Control.
 - i. Developers will control the initial bond election and initial board of directors and thus can ensure that the bonds are issued for their own reimbursement.
 - ii. Inability to force a future city council to sell PID bonds.
 - c) Simple Creation. Although it takes some time and is expensive, the TCEQ creation process is relatively easy and well established. Can also get a custom made MUD if can get legislature to create.
 - d) PUC. Not subject to PUC oversight and rate approval that apply to investor-owned utilities.
2. Why would a city support or oppose Creation of a MUD?
 - a) Reasons to Oppose:
 - i. The effects of the proposed development; i.e., strain on police, fire and EMS, traffic, depletion of natural resources.
 - ii. Conditions of off-site county roads are inadequate for hundreds of homes.
 - iii. Regionalization and the proliferation of wells and package plants.
 - iv. MUD's property tax rate usually higher than city's property tax rate, making home ownership more expensive.
 - v. MUDs can divide and grow in size.
 - vi. Duplicative governmental entities can cause confusion for voters and residents.
 - vii. Lack of transparency in way MUDs post meeting notices and locations of

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meetings frequently not within the MUD, but in high rise law firm offices inconvenient for the residents.

- viii. Lack of experience by a MUD board to operate and maintain public infrastructure.
- ix. The developer has failed to adequately demonstrate the feasibility of the project and the viability of the MUD.
- x. The City can provide water and sewer services at a reasonable cost to the developer.
- xi. For MUDs in the ETJ, assuming there is an agreement to annex the MUD, if the debt is not paid before annexation, the city will assume the debt when the development is annexed. This can be an impediment to annexation even if there is a strategic partnership agreement.
- xii. For MUDs in the ETJ, assuming there is an agreement to annex the MUD, the city will be assuming 30-year old facilities in need of repair and maintenance---why would MUD residents tax themselves the last 10 years for such costs when they know the cost will be spread over the entire city once annexed?
- xiii. Politics.

b) Reasons to Consent:

- i. The low likelihood of a successful protest and the expense of protesting creation at TCEQ.
- ii. The MUD, and not the City, can be responsible for operating and maintaining infrastructure and parks.
- iii. The City doesn't have the ability to provide utility services.

- 3. Can a City prevent creation of a MUD? It is difficult. The issues TCEQ will consider are generally limited (see Tad Cleaves' portion of materials for procedures and list of items TCEQ will consider).
- 4. What to do if City receives a petition to consent to creation of a MUD (see Tad Cleaves' portion of materials for detailed procedural list):
 - a) Use the 90-day period the City has to give or withhold consent to negotiate with the developer. Request the city's financial advisor and/or PID administrator work with the developer to create financial comparisons of MUD versus, PID, TIRZ and other financing tools. If possible, enter into an agreement with developer.
 - b) If negotiations are unsuccessful or still ongoing, adopt a resolution withholding consent as close to the end of the 90-day period as possible. This will trigger the developer to submit a petition to the city for water and/or sewer service.
 - c) Following receipt of petition for water and/or sewer service, do the following:
 - i. Confirm the petition identifies how many living unit equivalents per year will be developed. The developer can't just say we want service and not tell the city how many houses in each phase and when each phase will be developed and expect a blanket promise for service. If not provided, ask for more details in writing.
 - ii. Continue negotiating an agreement. If developer is not negotiating in good faith, approve an agreement that states City will serve (assuming City

believes it can provide service) and the cost to developer will not exceed the developer's proportionate share. Submit to developer before end of 120-day period. It is difficult to argue city wouldn't provide the services at a reasonable cost if you are only being asked to pay your proportionate share—even if your proportionate share is 100%.

- iii. If no agreement is reached, the city is deemed to have consented to the MUDs creation by TCEQ. Thus, the City's consent can be forced. One MUD attorney told me they refer to this as the "cram down" approach.
5. What if property owner files SB 2038 petition to be removed from the City's ETJ?
- a) Petition to consent to MUD creation will not come to the city and the city will not have a seat at the table. The process will go through the county.
 - b) Consider letting the developer and county know the MUD will need to create its own fire department, or if the City wants to serve, communicating the costs of capital the MUD will need to pay (is an entire new station needed to serve the MUD) and how annual maintenance and operations costs owned by the MUD to the City will be calculated. Developers tend to overlook this expensive cost when developing their financial models and I have had MUD attorneys say they expect to get this service from the City and the City to merely accept what little the county will pay the city.
6. Legislative changes to Water Code Chapters 49 and 54 in 2025 (89R)²:
- a) Chapter 49
 - i. SB 766—simply updated name of TNRC to TCEQ.
 - ii. SB 612—Amends 49.2127 to add a definition of "developer" and adds the following:

“(e) A district may not impose on a developer that proposes to construct a water or sewer pipeline or associated infrastructure in the district's service area a fee that is greater than the actual, reasonable, and documented costs incurred by the district for review, legal services, engineering services, inspection, construction, repair, and infrastructure relocation or conversion associated with the construction, and any other related costs incurred by the district in association with the construction of a subdivision.”
 - b) Chapter 54
 - i. SB 766—simply updated name of TNRC to TCEQ.
 - ii. HB 4370—adds that preservation of natural resources can be done through the use of geothermal water conveyance systems and authorizes issuance of MUD bonds for such systems.

² Current at time of drafting this paper.