

## Legislation Details (With Text)

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**File #:** 21-1313      **Name:**

**Type:** Resolution      **Status:** Individual Item Ready

**File created:** 11/29/2021      **In control:** City Council

**On agenda:** 12/13/2021      **Final action:**

**Title:** Discuss and consider a request to consent to the creation of Comal County Municipal Utility District (MUD) No. 4 within the City's ETJ in Comal County, consisting of approximately 349.7 acres located on the north side of FM 1863, across from Krueger Canyon and Word Ranch Roads.

**Sponsors:****Indexes:****Code sections:**

**Attachments:** 1. Area Reference map, 2. Aerial Map, 3. Water CCN Map, 4. Resolution

| Date       | Ver. | Action By    | Action   | Result |
|------------|------|--------------|----------|--------|
| 12/13/2021 | 1    | City Council | approved | Pass   |

**PRESENTER:**

Christopher J. Looney, AICP, Planning and Development Services Director

**SUBJECT:**

Discuss and consider a request to consent to the creation of Comal County Municipal Utility District (MUD) No. 4 within the City's ETJ in Comal County, consisting of approximately 349.7 acres located on the north side of FM 1863, across from Krueger Canyon and Word Ranch Roads.

**DEPARTMENT:** Planning and Development Services

**COUNCIL DISTRICTS IMPACTED:** Outside City Limits

**BACKGROUND INFORMATION:**

**Case #:** CS21-0393

**Applicants/Owners:** Rhonda Vollbrecht and Michael Porter  
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New Braunfels, TX 78132  
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The Texas Water Code (Chapter 54) and the Texas Local Government Code (Chapter 42, Section 42.042) (see resource links) outline the procedures for the creation of Municipal Utility Districts (MUDs). A MUD is a political subdivision of the State; they are one of several types of special districts that function as independent, limited governments of their own. The purpose of a MUD is to provide a developer an alternate way to finance infrastructure, such as water, sewer, drainage, and roads (typically through bond sales). Managed by a board of directors elected by the property owners within the MUD, the MUD can then levy its own taxes and fees on the future property owners within the development to repay their debt. MUDs are generally desired by developers when the subject properties lie beyond the physical reach of utility providers and/or outside utility company Certificates of Convenience and Necessity (CCNs).

When a proposed MUD lies within the boundaries of a city's Extraterritorial Jurisdiction (ETJ), the respective city must give its consent before the MUD may be established. Consent by the municipality allows the developer to initiate proceedings to create the MUD through the Texas Commission on Environmental Quality (TCEQ). For their consent, cities typically expect superior development to what would occur without the MUD. If a city does not consent within 90 days, state statute allows the property owners 120 days to work directly with utility providers. If there is no resolution, the state authorizes the applicant to appeal to TCEQ.

#### Location and Sensitive Features

The subject property is comprised of 349.7 acres on the north side of FM 1863 across from Krueger Canyon and Word Ranch Roads in New Braunfels' ETJ in Comal County (see attached maps). It is currently undeveloped and has an existing water well and utility shed for agricultural use. The applicant would like to develop approximately 226 single-family residential lots on the site. The entire tract is situated over the Edward's Aquifer Recharge Zone with approximately 41 acres lying in the 100-year floodplain along Dry Comal Creek.

#### Transportation

The City's Regional Transportation Plan identifies a proposed 200-foot wide Parkway across the subject property that will be part of the planned connection from State Highway 46 to Word Ranch Road; the developer would need to dedicate right-of-way for this Parkway, and likely build a portion as well for neighborhood access. The Transportation Plan also identifies a 60-foot wide Collector that is part of a planned connection between State Highway 46 and FM 1863; the developer would need to dedicate and build this collector segment. A hike & bike trail is identified to cross the property as well, following the 100-year floodplain; the developer would need to build this trail. Dedication and corresponding construction of these transportation routes is part of the normal platting process.

#### Utilities

The subject property is not located within an existing sewer or water provider Certificate of Convenience and Necessity (CCN). The applicant is proposing each lot to be served with an on-site septic system in compliance with TCEQ and Comal County permitting requirements. NBU's water CCN is in close proximity, approximately 600 feet south of the nearest subject property boundary, running parallel to the north side of FM 1863 (see attached water CCN boundary map).

#### **ISSUE:**

The following actions from Envision New Braunfels are related to this request:

- Action 1.3: Encourage balanced and fiscally responsible land use patterns.
- Action 6.5: Utilize public/private partnerships to guide growth and investment.

- Regional Planning:
  - Balance resources in an equitable manner that does not lead to disinvestment in existing new Braunfels.
  - Assure the long-term fiscal health of New Braunfels, and that policy decisions do not create an undue fiscal burden on the City or others.
  - Ensure that the policy provides guidance for decisions made by utility providers, so they can aid in achieving Envision New Braunfels.
- The subject property lies within the Hoffman Lane Sub-Area which is identified for conservation communities focused around maintaining and enhancing ecological integrity while allowing some level of development to occur.

#### **FISCAL IMPACT:**

The applicant has stated the MUD is intended to be perpetual at this time. There are currently no proposed assurances as to who will be responsible for the water system should it fail and/or when the term of the MUD expires. Without a Development Agreement executed to address these issues, should the water system fail or not be maintained, the State would likely require the City and/or NBU to step in (at the cost of every taxpayer/ratepayer) to repair the system and/or take over the operation and maintenance of the system.

#### **RECOMMENDATION:**

Approval with the following conditions:

1. The developer shall enter into a development agreement with the City that includes, at a minimum, the following:
  - a. Residential lots within the MUD shall be a minimum of 1-acre in size, which will accommodate individual septic systems and shall align with Envision New Braunfels and NBU's goals of low-density development over the Edwards Aquifer Recharge Zone.
  - b. There shall be no package treatment plants for sewage within the MUD.
  - c. Master plans and plats within the MUD shall comply with the City of New Braunfels Regional Transportation Plan and Hike and Bike Trails Plan.
  - d. Development within the MUD shall comply with the City's Subdivision Platting Ordinance.
  - e. Internal mid-block trail connections may count as block breaks for the maximum block length requirement (encouraging multi-modal transportation connections).
  - f. Parks and trails shall be dispersed throughout the development rather than concentrated in one location, to enhance access and quality of life to all residents.
  - g. To enhance public safety and ensure quality development for future residents, the builders shall obtain and pay corresponding fees for City building permits and inspections to comply with the City's building, fire, etc. codes adopted at the time of permit application.
  - h. The developer shall waive any Chapter 245 rights (vested rights).
  - i. To minimize traffic and public safety concerns, homes shall not front onto collector streets unless they have semicircular front driveways with more than one vehicular entrance.
  - j. Expiration of the MUD automatically triggers a voluntary annexation request with the City of New Braunfels; however, the City reserves the right to annex or not annex at any point thereafter.
  - k. The MUD may only issue bonds for the purposes outlined in state statute, and the MUD may only issue those bonds after the City of New Braunfels and New Braunfels Utilities have reviewed and approved the issuance.
2. The developer commence communications with New Braunfels Utilities (NBU) on a potential agreement, and discussions on options for water provision. If the developer proceeds with a well and water distribution system to serve the future homes, the developer agrees:
  - a. The design, construction and installation of the internal water distribution system shall be built in accordance with NBU standards.
  - b. The developer shall submit to NBU and the City their plan for long term maintenance of the

water distribution infrastructure.

3. If a centralized sewer system is extended and made available to the property in the future, homeowners will be required to connect to the sewer system at their expense.

Resource Links:

- Chapter 54 of the Texas Water Code:  
[WATER CODE CHAPTER 54. MUNICIPAL UTILITY DISTRICTS \(texas.gov\)](https://statutes.capitol.texas.gov/Docs/WA/htm/WA.54.htm)  
<<https://statutes.capitol.texas.gov/Docs/WA/htm/WA.54.htm>>
- Chapter 42 of the Texas Local Government Code:  
[LOCAL GOVERNMENT CODE CHAPTER 42. EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES \(texas.gov\)](https://statutes.capitol.texas.gov/Docs/LG/htm/LG.42.htm)  
<<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.42.htm>>
- Section 118-4 Development Agreements, of the City of New Braunfels Code of Ordinances:  
[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOR\\_CH118SUPL\\_ARTIINGE\\_S118-](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOR_CH118SUPL_ARTIINGE_S118-)

Attachments:

- Area Reference Map
- Aerial Map
- Water CCN Map
- Resolution