



February 19, 2014

Delivered by Hand at the February 19, 2014 Board Meeting

Board of Directors  
Lost Pines Groundwater Conservation District  
908 Texas 230 Loop  
Smithville, TX 78957

**Re: Forestar (USA) Real Estate Group, Inc., Second Rehearing Request.**

Dear Board:

Environmental Stewardship (ES) is providing the following comments to the Board of Directors (Board) in response to Forestar's Second Motion for Rehearing.<sup>1</sup> Our comments do not represent ES's full concerns or objections to the statements made in the request but are intended to highlight only a selected portion of the motion. Many of our concerns and objections are the same as provided in our December 16, 2013 letter to the Board.

**Objection No. 1:** Forestar asserts<sup>2</sup> that its application and the General Manager's recommendations "constitute the sole record evidence" and that "the Board's reliance on extra-record information and factors" have deprived Forestar without due process of law. Forestar goes on to complain: "The only other statements made before the Board on which the Board's refusal to grant the permits in full could have been based were public comments opposing the Applications. Those comments from members of the public, however, are not competent evidence ... and are not part of the record before the Board."<sup>3</sup> "If the Board gave any credence or weight to the public comments or other information outside of the record of competent evidence, as it apparently did, it plainly violated Forestar's right to not be deprived of its property without due process of law."<sup>4</sup>

**ES Response:** Forestar is attempting to remove information from the record that it finds objectionable to its case, and then contradicts its own theory of a strictly limited record by seeking to improperly add information to the record in the form of a self-serving legal brief disguised as a motion for re-rehearing. Extensive public comments and a variety of hydrological information were provided to the District and Board in the exercise of its regulatory authority and duty to examine and rule on the Forestar application. If publicly provided information is not intended to help inform the process of evaluating and regulating such permits, one must ask, why are public meetings on the application, with opportunity for public comment, required under the statutes? The Board and District have the right to fully consider information that comes to their attention during the public comment process and thereby provide the public with some opportunity for meaningful input.

The Forestar application was not subject to a contested case hearing due to the manner in which the public notice of the meeting on the application was given. Had the public been better informed regarding the timing of a request, at least AQUA Water Supply Corporation, City of Giddings, Environmental Stewardship, and eight landowners, would have timely filed requests for a contested case hearing and party status as provided by the statutes and District's rules.

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<sup>1</sup> Forestar (USA) Real Estate Group, Inc.'s Second Motion for rehearing. Served to Gregory Ellis and David Lein on February 4, 2014.

<sup>2</sup> Motion: Section I. A. page 2

<sup>3</sup> Motion: Section III. A. page 12, last paragraph.

<sup>4</sup> Motion: Section III. A. page 13, first full paragraph.

**Objection No. 2:** Forestar asserts<sup>5</sup> "the Board members and the District are subject to liability under Section 1983."

**ES Response:** This statement by Forestar is intended to personally threaten and intimidate individual Board members and represents a "thug" tactic by Forestar. Forestar represents that it desires to be a good community citizen, yet it continues to take unfriendly and hostile actions while making, on more than one occasion now, threats against the Board and the District. This is not the kind of corporate citizen we need to have doing business in our community. ES has been advised by counsel that the Board members have acted in a manner that is in line with their duties and responsibilities and is immune from liability as Forestar contends. We hope that the Board's counsel agrees and has likewise advised the Board.

## **CONCLUSION**

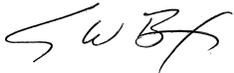
Clearly, Forestar has been pressuring the District through threatening and intimidating actions and statements. This is not the type of corporate "good neighbor" Forestar pretends to be, or a business we wish to have in our communities. Certainly it is not the type of corporate "person" that respects and contributes to the viability of our communities. What Forestar continues to ignore is the Board's credible decision, through analysis of science and law, that 12,000 acre-feet per year is the amount of water that is available from the Simsboro aquifer without exceeding the DFC, and the amount of water that Forestar has shown to be its demonstrated need. Forestar has failed to demonstrate a need for more than 12,000 acre-feet per year during the 5-year permit term. Evaluation of a demonstrated need for a supply of water is a competent inquiry for the District in evaluating a permit application. Forestar simply wants its way, 45,000 acre-feet ... or ... it will litigate. It disregards the District's regulatory responsibilities, as well as the health and viability of the aquifer system affected by its pumping.

Substantive information has been provided to the District and the Board by the public and other experts throughout the processing of Forestar's application.

**Nothing has changed to justify altering the Board's decision at a rehearing of Forestar's permit application.**

Once again ES encourages you to continue to stand strong. We fully support you and will make every possible effort to help you in defending our groundwater against those who would deplete it.

Respectfully submitted,



Steve Box  
Executive Director  
Environmental Stewardship

cc: David Lein, counsel for LPGCD  
Greg Ellis, counsel for LPGCD Board  
Eric Allmon, Lowerre, Frederick, Perales, Allmon & Rockwell, counsel for ES

Environmental Stewardship is a charitable nonprofit organization whose purposes are to meet current and future needs of the environment and its inhabitants by protecting and enhancing the earth's natural resources; to restore and sustain ecological services using scientific information; and to encourage public stewardship through environmental education and outreach. We are a Texas nonprofit 501(c) (3) charitable organization headquartered in Bastrop, Texas. For more information visit our website at <http://www.environmentstewardship.org/>.

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<sup>5</sup> Motion: Sectar III. D(3), page 16, third full paragraph.