

MEMORANDUM

TO: Board of Directors

FROM: Joe P. Cooper

DATE: March 20, 2013

RE: Forestar (USA) Real Estate Group, Inc. Applications for Well Registrations, Operating Permits, and Transfer Permits for Well Nos. 1-10

*PASSED
10-10*

RECD MADE: DEFER TO APRIL

DESCRIPTION OF APPLICATIONS

Forestar (USA) Real Estate Group, Inc. ("Applicant") has filed applications for Well Registration, Operating Permits, and Transfer Permits for 10 wells to be located in Lee County, Texas. A map showing the locations of the 10 wells is attached as **Attachment A**. Applicant proposes to complete the wells in the Simsboro Aquifer and to withdraw an aggregate of 45,000 acre-feet of water per year from the 10 wells to be used for public water supply purposes in Bastrop, Hays, Lee, Travis and Williamson Counties. Each well will be designed to pump 3,500 gallons per minute.

SUMMARY OF RECOMMENDATION

I recommend that the Board grant the applications under the terms and conditions set out in the draft permit attached as **Attachment B**. Under the draft permit, Applicant would be authorized withdraw an aggregate of 45,000 acre-feet per year from the Simsboro Aquifer from the 10 wells, at an instantaneous withdrawal rate of 3,500 gpm per well, for public water supply use in Bastrop, Hays, Lee, Travis, and Williamson Counties, subject to the following special conditions: (1) a requirement that Applicant submit binding contracts to provide 45,000 acre-feet per year for public water supply uses within one year, with automatic termination of any amounts for which binding contracts have not been provided; (2) a requirement that applicant submit End User water conservation plans and drought contingency plans with the contracts; and (3) a provision stating that the permit is issued subject to any future production limits adopted by the District under District Rules.

RELEVANT CONSIDERATIONS UNDER DISTRICT RULES

District Rule 5.2.C provides ten criteria for evaluating Operating Permit applications.

(1) Conformance with Texas Water Code Chapter 36 and District Rules. The application conforms to Water Code requirements and is Administratively Complete under the District Rules.

(2) Unreasonable effect on existing groundwater and surface water resources or existing permit holders. The District's hydrologists have advised that Applicant's proposed withdrawal of 45,000 acre-feet per year will have an impact on the water levels in the Simsboro Aquifer across the District, but in particular in Lee County where the project is located. Drawdowns estimated with the Central Queen City-Sparta Groundwater Availability Model (GAM) for 2060, assuming production of the full permitted amount each year, are summarized in Table 1. As indicated in this table, the drawdown estimated to occur due to the permit applications is approximately 118 feet across the entire District, with a much larger amount of drawdown occurring in Lee County, where the project is located. Maps of drawdowns estimated by the GAM are attached as Attachment C. The largest drawdowns are located in the immediate vicinity of the project. There are no permitted or registered Simsboro wells within 5,000 feet of the proposed well locations.

Table 1. Projected drawdowns (in feet) in 2060 from pumpage included in the Forestar applications

	Bastrop County	Lee County	Lost Pines District Total
Forestar Project Pumpage Only	44	201	118
Forestar Pumpage + Existing LPGCD Pumpage	123	457	280

The GAM is not a good tool to effectively evaluate impacts to surface water within the District based on this application. However, because the majority of the flow in the Colorado River is controlled by the release of water from the Highland Lakes, and because of the great distance from this project to the Colorado River, the applications will likely have little impact on flow in the Colorado River. There is no evidence that the applications will impact smaller streams and rivers.

(3) Dedicated to a beneficial use. Section 36.113(d) of the Texas Water Code provides that, in considering whether to grant or deny an application, a groundwater conservation district "shall" consider whether "the proposed use of water is dedicated to any beneficial use."

Applicant has submitted some evidence that the proposed public water supply use will be dedicated to a beneficial use. Applicant has submitted a non-binding letter of intent between Applicant and Hays County dated August 1, 2011 for the negotiation and

execution of a Wholesale Water Supply Contract on or before September 30, 2013, pursuant to which Applicant would deliver 25,000 to 45,000 acre-feet of water per year to Hays County. In addition, Applicant has submitted a non-binding letter of intent between Applicant and Dripping Springs Water Supply Corporation dated January 13, 2013 for the negotiation and execution of a Water Supply Contract on or before June 30, 2013, pursuant to which Applicant would supply 1,000 to 5,000 acre-feet of water per year to the Corporation. Hays County is in Region K and Regional L for regional water planning purposes. The most recent Region K and Region L plans indicate that Hays County has a need for approximately 35,600 acre-feet per year of additional municipal water supply by 2060. The relevant regional plans also indicate that additional water for public water supply also will be needed in Travis and Williamson Counties by 2060.

The draft permits contain a special condition that requires the Applicant to submit binding contracts to supply the 45,000 acre-feet per year for municipal use within a reasonable time (one year) following the date of the issuance of the permit, with an automatic termination of the right to withdraw any amount of water for which a binding contract is not timely submitted.

(4) Consistent with the District Management Plan. The proposed use is not inconsistent with the District Management Plan.

(5) Agreement to avoid waste and achieve water conservation. Applicant has submitted a water conservation plan. The draft permits contain special conditions that require the Applicant to submit water conservation plans and drought contingency plans for End Users.

(6) Reasonable diligence will be used to protect groundwater quality. Applicant has agreed to use reasonable diligence to protect water quality.

(7) Well plugging guidelines. Applicant has agreed to follow well plugging guidelines at the time of well closure.

(8) Management of total groundwater production on a long-term basis to achieve Desired Future Condition. See discussion in (2). The draft permit contains a special condition that provides notice that the permit is granted subject to any future production limits adopted by the District under its rules.

(9) Conditions to prevent waste, achieve water conservation, minimize drawdown or reduction of artesian pressure, or lessen well interference. See attached draft permits.

(10) History of non-compliance. Applicant does not have a history of non-compliance with the District Rules or Texas Water Code Chapter 36.

District Rule 6.3.B provides three additional criteria for evaluating Transport Permit applications. The Texas Water Code provides that a District “may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the district but may limit a permit issued under this section” if the following issues “warrant the limitation:”(1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested; (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and (3) the approved regional water plan and the District Management Plan.

However, any limitation based on these considerations must (1) apply to all subsequent new permit applications and permit amendment applications, (2) bear a reasonable relationship to the existing District management plan, and (3) be reasonably necessary to protect existing uses.

The draft permits include special conditions: (1) requiring submission of binding contracts to provide the permitted amount for municipal uses in Bastrop, Hays, Lee, Travis, and Williamson Counties, within one year of issuance of the permits; (2) requiring submission of End User water conservation and drought contingency plans; and (3) subjecting the permits to future production limits adopted under District Rules.

**LOST PINES GROUNDWATER CONSERVATION DISTRICT
OPERATING PERMIT**

District Well Number: 5933122

Permit Approved: _____

Permittee:

Forestar (USA) Real Estate Group, Inc.
6300 Bee Caves Rd., Bldg. 2, Suite 500
Austin, Texas 78746-5149

Location of Well: approximately 4.5 miles northeast of the City of Lexington and 1.5 miles east of US Highway 77 off County Road 411 in Lee County (W096°58'6" N30°28'22"), Well #1

Permittee is authorized to operate Well No. 5933122 within the Lost Pines Groundwater Conservation District under the following conditions:

Authorized annual withdrawal: See Special Condition (1)

Maximum rate of withdrawal: 3500 gal/min

Aquifer unit: Simsboro

Type of water use: Municipal

Place of water use: Bastrop, Hays, Lee, Travis and Williamson Counties

Standard Permit provisions:

This Operating Permit is granted subject to the District Rules, the orders of the Board, the District Management Plan, and Chapter 36 of the Texas Water Code. In addition to any well-specific permit provisions and special conditions included in this Operating Permit, this Operating Permit includes the following provisions:

- (1) This permit is granted in accordance with District Rules, and acceptance of this permit constitutes an acknowledgement and agreement that Permittee will comply with the terms, conditions, and limitations set forth in this permit, the District rules, the orders of the Board, and the District Management Plan.
- (2) Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited.

GENERAL MANAGER'S DRAFT OPERATING PERMIT

- (3) Water produced from the well must be measured using a water measuring device or method approved by the District that is within plus or minus 10% of accuracy.
- (4) The well site must be accessible to District representatives for inspection, and Permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.
- (5) The application pursuant to which this permit has been issued is incorporated in this permit by reference, and this permit is granted on the basis of and contingent upon the accuracy of the information provided in that application. A finding that false or inaccurate information has been provided is grounds for revocation of the permit.
- (6) Violation of the permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawals, may subject the permittee to enforcement action under District Rules.
- (7) Whenever the special conditions in the permit are inconsistent with other provisions of the permit or the District Rules, the special condition will prevail.

Special conditions:

This Operating Permit is granted subject to the following special conditions:

- (1) The authorized annual withdrawal amount under this permit is hereby aggregated with the authorized annual withdrawal amount for the following designated wells: Well No. 5933409 (Well #2); Well No. 5933410 (Well #3); Well No. 5933411 (Well #4); Well No. 5933412 (Well #5); Well No. 5933217 (Well #6); Well No. 5933123 (Well #7); Well No. 5933413 (Well #8); Well No. 5933504 (Well #9); and Well No. 5933505 (Well #10). Subject to the terms of this permit, Permittee may withdraw an aggregated annual withdrawal amount of not more than 45,000 acre-feet per year from Well No. 5933122 and the designated wells.
- (2) Within 365 days from the date of issuance of the permit, Permittee shall submit to the District a binding contract to provide water in the full authorized annual withdrawal amount for the authorized purpose of use to one or more End Users in the authorized places of use. For purposes of this section, a "binding contract" means a contract that sets forth in detail the terms, provisions and conditions for the sale and purchase of water produced under this permit and that is binding and will continue in effect for so long as may be agreed to by the parties. If Permittee fails to submit a binding contract or contracts in the aggregated annual withdrawal amount of 45,000 acre-feet per year within 365 days from the date of issuance of this permit, then the aggregated annual withdrawal amount in this permit shall be automatically reduced to the amount for which Permittee has submitted a binding contract or contracts; and the

GENERAL MANAGER'S DRAFT OPERATING PERMIT

General Manager is authorized to issue an amendment to this permit reflecting the reduced amount.

(3) At the time that Permittee submits a binding contract with an End User to the District, Permittee shall provide the District with the End User's water conservation plan and drought contingency plan, which must comply with the relevant provisions of the Texas Water Code and rules of the Texas Commission on Environmental Quality or successor agency.

(4) This permit is issued subject to any future production limits adopted by the District under the District Rules.

Term:

(1) This Operating Permit shall automatically terminate if, within 180 days of the date of issuance of the permit, (1) the permitted well has not been completed or (2) the well log required by Texas Occupations Code Section 1901.251 has not been filed with the District, unless the Permittee files a request for an extension of time to drill the well as provided in the District Rules.

(2) This Operating Permit shall automatically terminate if, within 24 months of the date that the permitted well is completed, the permittee has not used water from the permitted well for a purpose authorized in the Operating Permit, unless the Permittee requests an extension of time to operate the well as provided in the District Rules.

(3) This Operating Permit shall be effective for a period of five years from the date the permit is approved, unless terminated, amended or revoked as provided in the District Rules.

Acceptance of this permit by the Permittee constitutes acknowledgment and agreement to comply with all of the terms, provisions, conditions, and restrictions stated in the permit and the rules of the Lost Pines Groundwater Conservation District.

ISSUED:

President, Lost Pines Groundwater
Conservation District Board of Directors

Date: _____

**LOST PINES GROUNDWATER CONSERVATION DISTRICT
TRANSPORT PERMIT**

District Well Number: 5933122

Permit Approved: _____

Permittee:

Forestar (USA) Real Estate Group, Inc.
6300 Bee Caves Rd., Bldg. 2, Suite 500
Austin, Texas 78746-5149

Location of Well: approximately 4.5 miles northeast of the City of Lexington and 1.5 miles east of US Highway 77 off County Road 411 in Lee County (W096°58'6" N30°28'22"), Well #1

Permittee is authorized to transfer water produced from Well No. 5933122 outside the boundaries of the Lost Pines Groundwater Conservation District under the following conditions:

Maximum annual transfer amount: an aggregated annual amount of not more than 45,000 acre-feet per year from Well No. 5933122, Well No. 5933409 (Well #2), Well No. 5933410 (Well #3), Well No. 5933411 (Well #4), Well No. 5933412 (Well #5), Well No. 5933217 (Well #6), Well No. 5933123 (Well #7), Well No. 5933413 (Well #8), Well No. 5933504 (Well #9), and Well No. 5933505 (Well #10)

Type of water use: Municipal

Place of water use: Bastrop, Hays, Lee, Travis and Williamson Counties

Standard Permit provisions:

This Transport Permit is granted subject to the District Rules, the orders of the Board, the District Management Plan, and Chapter 36 of the Texas Water Code. In addition to any well-specific permit provisions and special conditions included in this Transport Permit, this Transport Permit includes the following provision:

- (1) Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited.

Term:

- (1) The term of this Transport Permit shall be three years if construction of a conveyance system has not been initiated prior to the issuance of the permit.

(2) The term of this Transport Permit shall be thirty (30) years if construction of a conveyance system has been initiated prior to the issuance of the permit.

(3) A three-year term under subsection (1) shall automatically be extended to a 30-year term under subsection (2) if construction of a conveyance system is begun before the expiration of the initial three-year term.

Acceptance of this permit by the Permittee constitutes acknowledgment and agreement to comply with all of the terms, provisions, conditions, and restrictions stated in the permit and the rules of the Lost Pines Groundwater Conservation District.

ISSUED:

President, Lost Pines Groundwater
Conservation District Board of Directors

Date: _____