

**A Review of Hidalgo County's Enforcement
of Model Subdivision Rules - Phase II**

November 16, 1998

Members of the Legislative Audit Committee:

At the request of the Texas Water Development Board, we reviewed the status of water and wastewater services in Hidalgo County subdivisions approved from 1991 to 1994. The results of this review, when combined with the results of our earlier review of subdivisions approved from 1995 to 1997, establish that in subdivisions approved since the adoption of the Model Subdivision Rules:

- Hidalgo County accurately reported conditions in these subdivisions.
- There are relatively few cases overall where occupied dwellings lack water meters and sewer or septic services.
- Although most lots in these subdivisions were sold without water meters and septic tanks or financial guarantees for the purchase of these devices, residents generally obtain the necessary permits and service for themselves as dwellings are constructed on these lots.
- As subdivisions are built out, the number of violations of the Model Rules appears to decrease.

Early this year, investigators for the Attorney General advised the Texas Water Development Board that occupied dwellings in several Hidalgo County subdivisions approved since the adoption of the Model Rules lacked required water and wastewater services. Upon receiving this information, the Texas Water Development Board was justifiably concerned about the level of compliance with the Model Rules in Hidalgo County. Over the last several months, through the efforts of County officials and personnel, Hidalgo County has been able to demonstrate that the inadequate services found by the Attorney General in several subdivisions are not representative of conditions in the County overall.

This does not mean that a review of the County's enforcement efforts was unnecessary or produced no beneficial results. To the contrary, the County has adopted a number of recommendations from our earlier review and has taken initiative to strengthen its monitoring and enforcement procedures. Examples of improvements completed or underway include:

- Amending Hidalgo County Subdivision Rules to more clearly specify responsibilities for installing water and wastewater facilities, or providing financial guarantees for same.
- Establishing a Subdivision Advisory Board to independently review subdivision applications and advise the Commissioners' Court regarding approval of subdivision plats.
- Hiring more inspection staff members and upgrading the training program for inspectors.

- Conducting workshops for developers and other interested parties regarding Hidalgo County Subdivision Rules and platting requirements.
- Working with the Appraisal District to develop an automated system for tracking permits.

We encourage the County to continue these efforts, with particular attention paid to:

- Establishing a risk-based monitoring system to focus more of its inspection and enforcement efforts on areas with a history of compliance problems.
- Automating the septic permit records and tracking these records by subdivision and lot rather than by lot owner.

Once the above improvements are fully implemented, the County will have better tools to ensure compliance with the Model Rules and will also have needed data with which to demonstrate the effectiveness of its monitoring and enforcement efforts.

As noted above, in subdivisions approved since the adoption of the Model Rules, there are relatively few cases where occupied dwellings have substandard water and wastewater services. Nevertheless, a cautionary note must be sounded. Any violations, regardless of how few in number, represent a threat to the health and safety of County residents. It is important for the County to maintain the vigilance and level of effort it has exhibited over the last several months to ensure that all violations of the Model Rules are quickly detected and corrected.

We also wish to reiterate that the length and complexity of statutes and regulations establishing requirements for water and wastewater services make enforcement more difficult. For example, the requirements vary depending on whether a subdivision is located within a city, an extraterritorial jurisdiction, or an unincorporated area of a county. Because Hidalgo County is a patchwork of overlapping jurisdictions, oversight officials and developers alike often have difficulty determining which rules apply to a

Objective, Scope, and Methodology

At the request of the Texas Water Development Board, the objectives of our review were to:

- Develop an accurate population of subdivisions approved by Hidalgo County from 1991 to 1994.
- Draw a statistically valid sample of subdivisions composed of four or more residential lots not located within any city limit from this population.
- Determine an accurate number of exceptions within the sample.
- Project a reliable rate of exception for the entire 1991 to 1994 population.

This methodology included:

- Examination of historical tax roll information from the Hidalgo County Tax Appraisal District for the sample period.
- Examination of Hidalgo County subdivision plats recorded with the Hidalgo County Clerk.
- Examination of subdivision files retained by the County Planning Department.
- Interviews with County officials.

In order to validate the survey conducted by the County, we drew a statistically supported sample of lots from the population of subdivisions inspected by the County. We conducted on-site inspections of these lots to verify the presence of water meters and septic tanks.

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particular subdivision. We believe the State's long-term interest in preventing the spread of colonias would be best served by a simple, easy-to-understand set of basic standards that could be uniformly applied to all subdivisions throughout an affected county, irrespective of location.

Detailed findings from our work are included in the attachment to this letter. We wish to provide special thanks to Judge Renato Cuellar and other Hidalgo County officials and staff who have worked diligently and cooperatively with us during this review. If you need additional information, please contact me at 479-4900.

Sincerely,

Lawrence F. Alwin, CPA
State Auditor

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Attachment

cc: Texas Water Development Board Members
Mr. Craig D. Pedersen, Executive Administrator, Texas Water Development Board
The Honorable Renato Cuellar, Hidalgo County Judge

Summary of Results of Current and Prior Work Performed in Hidalgo County

Current Exception Rates for All Subdivisions Since Model Rules Were Implemented

Table 1 summarizes the results of current and prior work performed in Hidalgo County. The percentage of total lots with exceptions is shown for the two population groups reviewed. Although the variances in the exception rates for the periods 1991 to 1994 and 1995 to 1997 were too different to allow them to be combined, based on Table 1, the reader can obtain an overall assessment of the extent of exceptions for the entire seven-year period.

Table 1

Population	Total Number of Subdivisions	Total Number of Lots	Total Number of Exceptions	Percentage of Total Lots with Exceptions
1991-1994	182 ¹	4,598	36 ²	0.78% ⁵
1995-1997	285 ³	9,012	254 ⁴	2.82% ⁵

¹ This number is derived from a 100 percent census performed by the County and verified by the State Auditor.

² The County found 35 actual exceptions within its 100 percent inventory, which the State Auditor verified. We found only one additional exception during our sampling test, which led us to conclude that the County's inventory was reliable.

³ This number differs from the County's inventory because the County excluded a number of subdivisions that should have been included based upon predetermined criteria. The County did not inspect all of these subdivisions.

⁴ This number represents a statistical projection of potential exceptions that could be expected within all subdivisions submitted for approval from 1995 to 1997, as of the date of SAO inspections in May 1998 and falling within the predetermined criteria.

⁵ This number is based on a 99 percent confidence interval.

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Percentage Distribution of Population and Exceptions by Precinct

Table 2 shows the exception rates confirmed by precinct, as a result of our current review of 1991 to 1994 subdivisions, by percentage distribution of the population. It can be determined from this table that a majority of the exceptions were found in Precinct 3, which represents 43 percent of the population (79 of 182). In addition, Precinct 3 contained 71 percent of the subdivisions with exceptions (17 of 24) and 80 percent of the occupied lots with exceptions (29 of 36).

Table 2

Precinct	Percentage of Population (n = 182)	Percentage of Subdivisions With Exceptions (n = 24)	Percentage of Occupied Lots With Exceptions (n = 36)
1	20%	8%	6%
2	6%	8%	6%
3	43%	71%	80%
4	31%	13%	8%

Section 2:

Occupancy Status, by Precinct, of Lots in Subdivisions Approved From 1991 to 1997

Occupancy Status of All 1991 to 1994 Subdivisions (Reviewed in October 1998)

Table 3 reflects the occupancy status as of October 1998 of all lots in all subdivisions approved by the County from 1991 to 1994. For the purposes of this review, we only considered residential use. Any lot with a use other than single family residential was excluded from our count of "Occupied" and "Unoccupied" lots. The status is categorized by precinct. A lot was considered "Occupied" if it contained an inhabited dwelling, regardless of whether it was a permanent structure, mobile home, or travel trailer. A lot was considered "Unoccupied" if it was vacant. In a few cases, we encountered abandoned dwellings. The lots with abandoned dwellings were also considered "Unoccupied."

Table 3

Precinct No.	Number of Subdivisions	Occupied Lots	Unoccupied Lots	Total Lots
1	36	471	296	767
2	10	194	56	250
3	79	1,774	750	2,524
4	57	697	360	1,057
Total	182	3,136	1,462	4,598

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Occupancy Status of all 1995 to 1997 Subdivisions (Reviewed in May 1998)

Table 4 reflects the occupancy status as of May 1998 of all lots in subdivisions approved by the County during the time period 1995 to 1997. The numbers of "Occupied" and "Unoccupied" lots were projected from the statistical sample we used during the review to determine if adequate water and wastewater facilities existed on the lots tested.

Table 4

Precinct No.	Number of Subdivisions	Occupied Lots	Unoccupied Lots	Total Lots
1	68	573	1,737	2,310
2	21	385	164	549
3	110	1,606	2,302	3,908
4	86	1,196	1,049	2,245
Total	285	3,760	5,252	9,012

Section 3:

Status of Improvements Made by Hidalgo County to Subdivision Approval and Tracking Processes

Table 5 lists changes that the County has made to its subdivision approval and tracking processes since our last report in June 1998.

Table 5

Issue or SAO Recommendation	Condition that Existed as of June 1998 SAO Report	Current Condition Found During SAO Follow Up Review, October 1998
Strengthen Controls Over the Subdivision Approval Process (State Auditor's Recommendation, June 1998)	<ul style="list-style-type: none"> Instances were noted where subdivision plats were approved without meeting the requirements of the Model Rules and without 30-year contracts with water suppliers or final engineering reports. Lots were sold without water meters and septic systems or financial guarantees for the purchase of these devices. 	<ul style="list-style-type: none"> The County established a Subdivision Advisory Board in July 1998. This five-member board is responsible for independently reviewing subdivision applications and providing advice to the Commissioners' Court regarding the approval of subdivision plats and amendments or modifications to the County Subdivision Rules. The County amended and restated its subdivision rules as of June 17, 1998. The most significant change is that the rules now clearly require developers to provide water meters and septic tanks for all lots, or provide financial guarantees for these devices, before subdivisions are approved.

Issue or SAO Recommendation	Condition that Existed as of June 1998 SAO Report	Current Condition Found During SAO Follow Up Review, October 1998
<p>Automate Subdivision Record Keeping</p> <p>(State Auditor's Recommendation, June 1998)</p>	<ul style="list-style-type: none"> • Subdivision and permit history information was maintained only in paper form. Information requests and searches were handled manually. • Frequently, records maintained by one department or office did not agree or correlate with records maintained by another department or office. 	<ul style="list-style-type: none"> • The Planning Department is using an automated database to store and track all subdivision information. • The County established a local access network (LAN) for the Planning Department and its precinct field offices. • The Hidalgo Appraisal District Office assisted the Planning Department in designing a system to help the Department track the various permits it issues. The system can also be accessed by the Appraisal District Office and provide the Office with current and accurate information for property tax purposes.
<p>Develop Controls Over the Permitting Process</p> <p>(State Auditor's Recommendation, June 1998)</p>	<p>The Planning Department issued handwritten building permits and clearance forms that authorized the Health Department to issue septic tank permits. The clearance forms were filled out manually and could easily be altered or falsified, thus circumventing controls.</p>	<p>The Planning Department is issuing computer-generated building permits. This will make it easier to track the permits and will also reduce the likelihood that permits can be altered or falsified.</p>
<p>Improve Compliance Monitoring</p> <p>(State Auditor's Recommendation, June 1998)</p>	<p>The Planning Department had only six field inspectors on staff. This shortage of inspectors reduced enforcement presence in County subdivisions.</p>	<p>The Planning Department increased the number of field inspectors from six to nine. In addition, procedures have been established to follow up on previous violations.</p>
<p>Coordinate and Facilitate Information Sharing Between Departments</p> <p>(State Auditor's Recommendation, June 1998)</p>	<ul style="list-style-type: none"> • Communication between Health and Planning Department officials was limited. • Planning and Health Department records were maintained in independent formats that did not facilitate the development of a comprehensive enforcement database. 	<ul style="list-style-type: none"> • The Planning Department, with assistance from the County Appraisal District, developed a permit tracking system, thus reducing the time and cost of developing a system of its own. • Planning and Health Department officials met and agreed to share information vital to developing a comprehensive monitoring system. In addition, officials from both departments have agreed to work together to facilitate the sharing of information regarding septic tank permitting and inspections.

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Section 4:

Texas Water Development Board's Request for Additional Work and the State Auditor's Summary of Work Performed

In response to the State Auditor's *A Review of Hidalgo County's Enforcement of Model Subdivision Rules*, SAO Report Number 98-346, June 1998, the Texas Water Development Board (Board) made a request to the State Auditor for additional work regarding the County's enforcement actions. (See Board letter dated July 1998 included as part of this attachment). As a result, the State Auditor performed a second review to supplement our earlier work. The following table explains how the State Auditor's Office (SAO) addressed these requests.

Table 6

Board's Request to the SAO	SAO Response/Actions
<p>Determine the criteria used by the County for subdivision approval since May 1, 1990 (the effective date of the Model Subdivision Rules), and whether the criteria used was consistent with the Model Rules.</p>	<p>The SAO concluded that with the Office of Attorney General's activities in this issue area, the request was beyond the scope of our work. The SAO work primarily focused on verifying actual conditions in the field, as opposed to determining whether platting requirements complied with the Model Rules. In addition, the response time requested by the Board placed an audit of this complexity out of the question.</p>
<p>Determine the number of residential subdivisions approved during the period in which Hidalgo County was or could have been enforcing the Model Rules and the number of residential lots created in those subdivisions.</p>	<p>See Section 2, "Occupancy Status, by Precinct, of Lots in Subdivisions Approved From 1991 to 1997." We determined that from 1991 to 1994 the County approved the platting of 182 subdivisions of 4 lots or more consisting of 4,598 residential lots. From 1995 to 1997, 285 subdivisions of this type, consisting of 9,012 lots, were platted and approved.</p>
<p>Determine the number of residences on lots in those approved subdivisions which lack adequate water or wastewater services.</p>	<p>See Section 1 "Summary of Results of Current and Prior Work Performed in Hidalgo County."</p> <p>For the 182 subdivisions (with 4,598 lots) approved from 1991 to 1994, test results indicate that 36 residences have inadequate water or wastewater services. This represents a .78% exception rate.</p> <p>For the 285 subdivisions (with 9,012 lots) approved from 1995 to 1997, our May 1998 test results allowed us to project 254 residences with inadequate water or wastewater services. This represents a 2.82% exception rate.</p>



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July 15, 1998

Mr. Lawrence F. Alwin, CPA
State Auditor
Office of the State Auditor
Two Commodore Plaza
200 East Ninth Street, Suite 1900
Austin, Texas 78701

Re: *A Review Hidalgo County's Enforcement of Model Subdivision Rules*
SAO Report Number 98-346, June 1998

Dear Mr. Alwin:

The Texas Water Development Board (TWDB) wants to thank you and your staff for expediting our request for a review of the enforcement of the Model Subdivision Rules (MSR) by Hidalgo County (County). This agency is in the process of evaluating the recommendations presented in SAO Report Number 98-346, June 1998, in conjunction with identifying any appropriate recommendations for presentation to the Texas Legislature. The report has provided this agency valuable information regarding enforcement efforts in Hidalgo County which will greatly assist the state in the evaluation of the subdivision regulation effort aimed at preventing the proliferation of colonias.

The audit establishes although Hidalgo County was not enforcing the MSR, nonetheless, there have been only limited circumstances where there have been residences occupied without the infrastructure required by the MSR. The audit notes that there is a large inventory of sold, but unoccupied residential lots within subdivisions approved by Hidalgo County which do not have the guarantees of adequate water and wastewater infrastructure required by the MSR. Therefore, a significant concern exists as to whether these unoccupied lots will become residences without adequate water and wastewater infrastructure. Due to time constraints, the scope of this audit was limited to a review of the subdivisions that were approved by Hidalgo County after 1995.

The TWDB requests that the State Auditors Office undertake a review of the Model Subdivision Rule enforcement efforts of Hidalgo County prior to 1995 similar to that undertaken and presented in SAO Report Number 98-346, June 1998. This request specifically includes a review which can reliably determine:

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Mr. Lawrence F. Alwin, CPA
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1. The criteria for subdivision approval by the County since May 1, 1990 (the effective date of the Model Subdivision Rules) and whether the criteria used was consistent with the MSR.
2. The number of residential subdivisions approved during the period in which Hidalgo County was or could have been enforcing the Model Subdivision Rules and the number of residential lots created in those subdivisions.
3. The number of residences on lots approved in those subdivisions which lack adequate water or wastewater service.

The information developed pursuant to this request will provide this agency and the Legislature a more complete experiential base regarding the effectiveness of the subdivision regulation. In order to present this information to the Legislature, it would be most helpful to have the results of this audit in our hands by October 1.

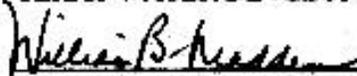
With respect to the report that you have provided, it has made specific recommendations that the TWDB should consider implementing. It is our intent to ensure that all your recommendations are considered and implemented in the most timely and efficient manner.

The insights provided in the report will help guide the TWDB in ensuring that current, and future, participants in the EDAP program understand their responsibilities to prevent the further proliferation of substandard subdivisions.

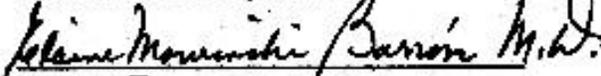
Again, thank you for your and your staff's time in addressing this critical issue.

Sincerely,

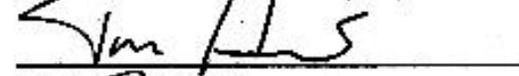
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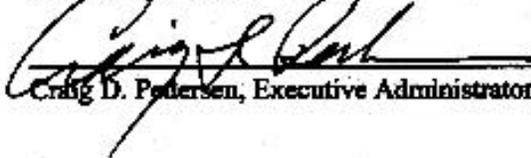
William B. Madden, Chairman



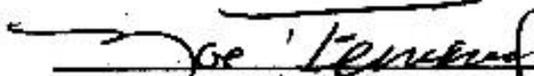
Dr. Elaine Barron-Mowinski, Member



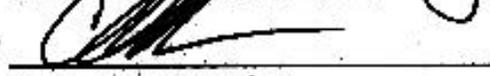
Jack Hunt, Member



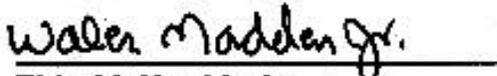
Craig D. Pedersen, Executive Administrator



Noel Fernandez, Vice-Chairman



Charles Geren, Member



Wales Madden, Member

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Mr. Lawrence F. Alwin, CPA
State Auditor
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cc: Members of the Legislative Audit Committee
The Honorable James E. "Pete" Laney, Speaker of the House, Chair
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The Honorable Bill Ratliff, Chair, Senate Finance Committee
The Honorable Kenneth Armbrister, Chair, Senate State Affairs Committee
The Honorable Robert Junell, Chair, House Appropriations Committee
The Honorable Tom Craddick, Chair, House Ways and Means Committee
The Honorable Renato Cuellar, Hidalgo County Judge
The Honorable Dan Morales, Attorney General
Mr. Jonathan Steinberg, Assistant General Counsel, TWDB
Mr. Ignacio Madera, Jr., Director, Border Project Management Division, TWDB

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