



Legislation Text

File #: MSD14-0001, **Version:** 1

Agenda Information Sheet

DEPARTMENT: Planning and Development

CM/ ACM: John Cabrales, Jr.

DATE: September 16, 2014

SUBJECT

Hold a public hearing and consider adoption of an ordinance of the City Council of the City of Denton authorizing the acceptance of deed restrictions prohibiting the use of designated groundwater from beneath a 34.06 acre property generally described as 100 and 306 North State Loop 288 and including the full width of adjacent Right of Ways of North State Loop 288, Market Street, and E. McKinney Street (FM 426), generally at the northeast corner of McKinney Street and North State Loop 288, Denton, Texas, to facilitate certification of a municipal setting designation (MSD) of said property by the Texas Commission on Environmental Quality (TCEQ), pursuant to the Texas Solid Waste Disposal Act; and providing for an effective date.

BACKGROUND

The subject property is located at the northeast corner of McKinney Street and Loop 288. There was previously a lumberyard on the southern portion of the property. There is a Denton County building on the northern portion of the property. The majority of the property remains undeveloped. A Phase 1 environmental assessment was performed on the site prior to being acquired by the current owner. During that assessment, no concerns were raised about contamination. However, during a Phase 2 environmental assessment, contaminants in the shallow groundwater were discovered on the property. The applicant is proposing to address this contamination through a Municipal Setting Designation (MSD).

In 2003, the 78th Texas Legislature passed a MSD law concerning requirements for removing contaminants from groundwater. The law authorizes the Texas Commission on Environmental Quality (TCEQ) to receive, process, and certify MSD applications for properties with contaminated groundwater that are located within the corporate limits or extraterritorial jurisdiction (ETJ) of municipalities. However, the TCEQ requires an applicant to provide a "resolution or ordinance of support" from municipalities in which the MSD is being sought as part of the MSD application process. This case is coming before the City Council for action to meet the TCEQ requirement for municipal support.

The aforementioned MSD law provides a new alternative for people who wish to voluntarily address groundwater contamination. In effect, the MSD law sets conditions for MSD properties that limit the requirement for contaminated groundwater to be remediated to potable water standards. As such, MSDs are applicable in cases where the designated groundwater is not currently used for potable water and will likely not be used for potable water purposes in the future. The MSD itself ensures groundwater exposures will be

minimized by establishing restrictive conditions that prohibit the future uses of designated groundwater for potable purposes. Prohibition must be in the form of a resolution or ordinance that is enforceable by the Municipality. The municipal resolution or ordinance, in turn, requires establishment of a deed restriction prohibiting the use of the designated groundwater for potable purposes, and specifies that this deed restriction must be filed in the County property records of the site.

The purpose of the MSD law is to provide a less expensive and faster alternative to existing state environmental regulations concerning groundwater. In general, the MSD law recognizes that in some locations no one is using groundwater as potable water in the vicinity of a contaminated groundwater zone. The law further recognizes that use of the designated groundwater as a future potable source is unlikely because a public supply that relies on another source of water is available and/or the groundwater in question is not economical to develop for use as a supply. In such cases, a prohibition is placed on the designated groundwater beneath the MSD property to prevent the use of the contaminated groundwater. The MSD ensures that public health is protected by establishing a legal mechanism that eliminates the possibility of the designated groundwater being used for potable purposes.

It is important to note that all the MSD accomplishes is the establishment of a deed restriction that designates groundwater at the site as non-potable, which facilitates removal of the requirement to evaluate contaminant concentrations for certain types of groundwater exposure pathways. To understand what this means within a regulatory context requires a brief summary of the State's approach to cleanup for these kinds of sites. In general terms (realizing that this is a highly complex series of regulations), State cleanup "standards" are based on the concept of Protective Concentration Levels (PCLs) for an appropriate exposure pathway. In cases where groundwater is present and is thought to be contaminated, the State usually requires the cleanup "standard" to include groundwater ingestion PCLs because of the notion that someone might use this groundwater for potable purposes at some time in the future. These types of groundwater PCLs tend to be the most restrictive PCLs (require the contaminant to be cleaned up to the lowest concentration of all cleanup standards) because they are based on the exposure pathway of consuming the groundwater repeatedly over long periods of time. The MSD, however, offers a process to recognize that the groundwater exposure pathway might not be appropriate in circumstances where the groundwater is unlikely to be developed for potable purposes due to naturally poor water quality, low yield potential, or in situations where water from a municipal supply is readily available. In other words, by using a restrictive mechanism to ensure that the groundwater will not be used for potable purposes, the TCEQ can remove the requirements for certain groundwater cleanup standards and apply the next most stringent standards applicable to the site in question.

State Regulatory Requirements for Voluntary Cleanup Program (VCP) and MSDs

As mentioned, the MSD in effect allows the site owner to remediate to the most appropriate human health and ecological exposure pathways, since the designated groundwater will not be used for potable purposes at the site. However, in terms of overall site cleanup, the MSD itself does not offer a mechanism to obtain a closure letter for the site from the TCEQ. The only way for a property owner to obtain a closure letter (or equivalent) from the TCEQ is to meet all the requirements of the TCEQ's Voluntary Cleanup Program (VCP). Meeting all the requirements of the VCP within a "non-MSD" situation would require that all constituents in all environmental media meet applicable PCLs. With an MSD, the applicant no longer has to meet the Groundwater Ingestion PCLs or Groundwater Protection PCLs (for soil / groundwater interaction). However, the site still must meet the next appropriate (and most stringent) exposure PCLs.

Influence on surrounding property

The issue of an MSD having an influence on surrounding property is a key consideration. It is important to note that the restrictions for potable water use that are imposed as a part of an MSD are only pertinent to the

groundwater that is designated within the MSD. For this particular property, this means that only the shallow ground water that is deemed potentially contaminated and is designated through the MSD will be subjected to any restrictions. Based on the information submitted by the applicant's consultant, it could not be concluded that the plume of contaminants in the groundwater of the site is contained within the property boundary. Therefore, is unknown whether the surrounding properties have groundwater contamination.

Contaminant(s) of Concern

Analyses of groundwater samples at the site indicated concentrations of arsenic, lead, and selenium above the State of Texas ingestion protective concentration levels (PCLs) for groundwater. The groundwater is located approximately 6 to 12 feet below the surface. The sources of these contaminants are suspected to be past land uses and the drainage ditches conveying runoff from Loop 288 and McKinney Street. The highest level of contaminants detected in the groundwater samples and their ingestion protective concentrations are listed below, along with the TCEQ ingestion PCL.

Chemical of Concern	Highest Conc. Detected (mg/l)	Ingestion PCL ^{GW} GW _{Ing} (mg/l)
Arsenic	0.357	0.01
Lead	0.623	0.015
Selenium	0.0663	0.05

Concentrations of other contaminants such as silver, barium, cadmium, total chromium, and mercury were also assessed. The levels detected for these contaminants were either below the protective concentration levels, below background concentrations, or below the method quantitation level (MQL). Monitoring conducted as a component of the study could not confirm if the plume is contained within the boundaries of the proposed MSD.

Public Meeting

As part of the MSD application, the applicant was required to provide notification to the owners of all state-registered water wells within five miles of the property, provide notice in a newspaper of local circulation, post a sign on site, and present information to interested parties in a public meeting.

Two public meetings were scheduled. The first meeting was held on July 16, 2014, at the City of Denton City Hall City Council Work Session room. During this meeting, the applicant provided information about why he is seeking an MSD designation for the subject property, the nature and extent of contamination at the property, and notification requirements for water well owners. Denton staff members were also present to provide information on the MSD application and review, including an explanation of the local and state components of the application process. Nine community members attended the first meeting. The concerns expressed by the attendees at the first meeting centered mainly on any effects that the MSD designation could have on the use of their water wells and the reasons for the widespread notification requirements.

A second meeting with just property owners of land within 200 feet of the subject property will be held on September 11, 2014. A description of the outcome of the second public meeting will be presented to Council during the public hearing for this item.

Summary

The applicant is seeking approval of an ordinance (Exhibit 2) that establishes the terms and conditions of an MSD for the 34.06 acre property generally described as 100 and 306 North State Loop 288 (Exhibit 1). This ordinance, if approved, indicates the City of Denton's support of the MSD, and is required for the MSD application to the TCEQ. The ordinance sets forth the conditions of the Designation, including the applicant's requirements to establish the appropriate deed restrictions for the property and will be used by the applicant as evidence of municipal support when the applicant seeks the MSD from the TCEQ.

OPTIONS

1. Support the ordinance
2. Modify the ordinance, and support as modified
3. Do not support the ordinance

RECOMMENDATION

The Development Review Committee recommends **approval** of the Municipal Setting Designation request.

ESTIMATED SCHEDULE OF PROJECT

Not applicable.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

None

FISCAL INFORMATION

Not applicable.

BID INFORMATION

Not applicable.

EXHIBITS

1. Site Location Map
2. Ordinance

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