

MONTGOMERY COUNTY UTILITY DISTRICT NO. 4
c/o Hays Utility Service Corporation
P.O. Box 2002
Conroe, Texas 77305

July 30, 2004

April Sound Property Owners' Association
100 April Park Drive
Montgomery, Texas 77356

Re: Continuing Drainage Concerns

Gentlemen;

Since our letter to the Architectural Control Committee "ACC") of November 30, 2001 (copy attached), we believe there has been improvement in some aspects of new construction practices, particularly as it relates to new driveways, curb heights and slab elevations. However, because of the continuing building activity on the remaining residential lots within April Sound and the ingenuity of our existing residents in making and having made improvements to existing properties, the POA and MCUD #4 continue to receive complaints and demands from residents because of associated drainage problems. Most of these problems stem from makeshift improvements to existing homes (including additions, landscaping, fencing, walls and other means of diverting storm water runoff) or filling and/or grading of lots for new construction, in each case without regard to an acceptable site drainage plan.

MCUD #4 manages and maintains a public drainage system that was designed and constructed by the developer of April Sound to receive and dispose of storm water drainage from individually owned lots, in most events. It remains, however, the responsibility of both builder and homeowner to provide for the drainage of storm water from each private parcel of land or lot

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to the public drainage system. The components of the public system are the storm water pipes and the inlets to them, most of which are located in the streets and some in rights-of-way and common areas. The unregulated and unplanned construction of improvements which alter or ignore natural drainage patterns, or which block or unnaturally divert upstream storm water onto adjoining properties, or which excessively concentrate the volume or accelerate the velocity of storm water onto downstream properties, impedes the effectiveness of the public drainage system by diverting storm water from its natural course into the public system. In many cases, the natural drainage of storm water necessitates the use of the 10 foot space between houses that may however be blocked by landscaping or other improvements by the homeowners. Occasionally, impediments to effective drainage can be remedied after the fact by modifications to the existing public drainage system at taxpayer expense, but more often they cannot be cured at all because of costs, right-of-way limitations, physical restraints or objections by adjoining property owners.

We have further reviewed the April Sound Deed Restrictions and Covenants, discussed drainage issues and background with the ACC and others who have been involved in this matter, and also reviewed this area with our counsel. We are advised by our counsel that each downstream landowner has a legal duty to receive storm water drainage from the upstream properties, without blockage or diversion onto adjoining properties, so long as the upstream storm water is not unreasonably concentrated or accelerated in a manner that causes damage to the downstream property. Failure by either the upstream or downstream landowners to abide by these principles can lead to civil liability under both common law and Texas Water Code, Section 11.086. From this, we have concluded that, except in unusual circumstances, drainage problems at existing residences are the responsibility of the landowners and/or builders, and we believe this conclusion applies to the property at April Waters North and April Cove. To avoid legal consequences, these problems must be corrected without diverting water from its otherwise natural flow to other or adjoining properties in a manner which causes damage.

In view of the increasing density of development on the remaining lots in April Sound, which will surely amplify these problems, and to prevent needless taxpayer expense, homeowner dissatisfaction and damage to the reputation of our community, it appears that aggressive enforcement is needed of the applicable covenants and restrictions (i) regarding advance approval by ACC of new or additional construction, perhaps including requirement for

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an engineered site drainage plan with each application, and (ii) prohibiting nuisance or injurious uses of property, including the removal or modification of unapproved additions, dams, diversion berms, walls, barriers, fences, landscaped areas and similar impediments to drainage flow.

The District stands ready to assist in this task by providing the ACC and landowners, as well as any other interested party, with such detailed information as may be available showing the size, type, location and capability of the various components of the existing public drainage system. Your very truly,

Signed _____

President, Board of Directors
Montgomery County Utility
District No. 4