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PUC DOCKET NO. 50405

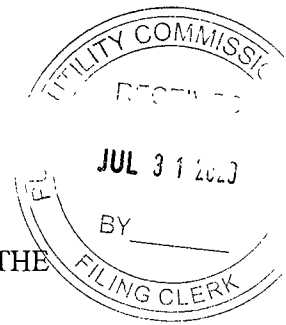
PETITION BY THE SANCTUARY
TEXAS, LLC,
FOR EXPEDITED RELEASE FROM
WATER CCN NO. 13201 HELD BY
AQUA TEXAS IN
DENTON COUNTY

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BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS



**THE SANCTUARY TEXAS, LLC'S REPLY TO AQUA TEXAS, INC.'S
SUPPLEMENTAL RESPONSE AND COMMISSION STAFF'S RECOMMENDATION
ON FINAL DISPOSITION TO ITS PETITION FOR
STREAMLINED EXPEDITED RELEASE**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

The Sanctuary Texas, LLC ("Petitioner" or "The Sanctuary") files this Reply to Aqua Texas, Inc.'s Supplemental Response (the "Response") and Commission Staff's Recommendation on Final Disposition ("Staff's Recommendation") to Its Petition for Streamlined Expedited Release and in support thereof respectfully shows as follows:

I. Procedural Status

1. On February 10, 2020, Petitioner filed its First Amended Petition (the "Petition") with the Public Utility Commission of Texas for expedited release from Aqua Texas's ("Aqua") water certificate of convenience and necessity ("CCN") No. 13201. The Petition was found administratively complete on July 10, 2020. *See* Order No. 4. On July 17, 2020 Aqua filed its Response, and Staff's Recommendation was filed on July 24, 2020. Petitioner now files its Reply seeking approval of its Petition or, alternatively, an opportunity to cure the concern addressed by Staff.

II. Argument and Authority

2. Petitioner's request for expedited release from CCN No. 13201 meets the requirements of Texas Water Code Section 13.2541(b) and 16 Texas Administrative Code Section 24.245(l). The "Property," as defined in the Petition, contains the approximately 70.146 acres of contiguous property, as shown by the filed mapping information. The Property is greater than twenty-five (25) acres, is located within a qualifying county, and is not receiving water service. The Petition has been found administratively complete by meeting these statutory elements.

A. Reply to Aqua's Supplemental Response

3. In its Response, Aqua argues that it is providing "service" to the Property. Aqua bases this argument on the following:

- (i) that there is a four-inch water line on the Property;
- (ii) that there is a stand-by meter on the Property; and
- (iii) that there are facilities adjacent to the Property.

These items are strikingly similar to those identified by Crystal Clear Water Supply Corporation in *Texas Gen. Land Office v. Crystal Clear Water Supply Corporation* in its unsuccessful attempt to prove it was providing "service" to decertified property. 449 S.W. 3d 130, 138 (Tex. App.—Austin 2014, pet.denied).

4. Service is defined as "any act performed, anything furnished or supplied, and any facilities or lines committed or used by the retail public utility in the performance of its duties." TEX. WATER CODE § 13.2541. In *Crystal Clear*, the court further explained the factual inquiry that is necessary to determine if a tract is receiving "service." *See id.* at 140.

The mere existence of water lines or facilities *on or near* a tract would not necessarily mean that tract was "receiving water service." Rather ... such a determination is a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water *to the*

particular tract or has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN. *Id.* (emphasis added).

Here, the single meter cited by Aqua is not active. Rather it is on “stand-by,” is attached to an uninhabited dwelling, and is not receiving bills. Moreover, the waterline and adjacent facilities do not amount to furtherance of Aqua’s obligation to provide water to the Property under its CCN. One vacant residence does not constitute the tract or the Property identified by Aqua for decertification. It is undisputed that Aqua is not *actively* supplying water to this dwelling or to the Property. Therefore, the question is whether the Property is receiving “service” in some manner other than by the present delivery of water to the Property. *See id.* at 141. Aqua has previously informed the Sanctuary that it does not have the capacity to serve the 265 residences planned for the Property. *See* Preliminary Plat Approval as Exhibit “A”. There is no evidence that Aqua has committed any facilities or lines to serving the Property, including the approved plat, and/or that the water supply dedicated to meeting the Property’s future demand is sufficient to deem it to be receiving “service.” *See id.*

5. While Aqua argues that there is an existing water line, inactive meter, and facilities adjacent to the Property, it has not shown the facilities are not committed to providing water to the Property, as required under *Crystal Clear*. Instead, Aqua has failed to demonstrate that its water line, meter, or adjacent facilities were installed for the purpose of providing water to the Property or that it has the capacity to serve the Property, including future development, under its CCN. As such, the Sanctuary LLC’s Petition for Streamlined Expedited Release should be granted.

B. Response to Commission Staff’s Recommendation on Final Disposition

6. Of the three items described as providing “service” to the Property, Staff was only persuaded that “the continuing presence of a water meter” could amount to water service because “the meter remains at the ready to provide service again.” As pointed out above, the mere presence

of the water meter does not amount to active service nor bolster Aqua's ability to provide service to future development under its CCN. Additionally, The Sanctuary filed its Amended Petition on February 10, 2020, which supersedes any prior petition, and includes the February 6, 2020 of Mr. Marlon McMakin verifying that Aqua was not providing "service" to the Property on that date. *See* Affidavit to Amended Petition at ¶3. Accordingly, the Petition meets the criteria for approval. However, the concern addressed by Staff regarding the meter can be easily addressed by either disconnecting the water meter, or by excluding the dwelling from the definition of the Property.

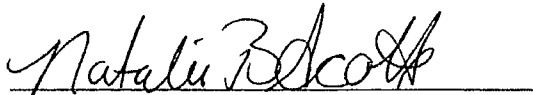
III. Conclusion and Prayer

WHEREFORE, Petitioner respectfully requests this Court to enter and Order GRANTING the Sanctuary' LLC'S Petition for Expedited Decertification. In the alternative, Petitioner requests an Order GRANTING the Petition with instructions to cure the defect presented by the "stand-by" water meter either through a request to Aqua to disconnect the meter or by excluding the residential meter location through a revised metes and bounds description of the Property.

Respectfully submitted,

COATS | ROSE

By:



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**ATTORNEY FOR PETITIONER
THE SANCTUARY TEXAS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, a true and correct copy of this document was served on all parties of record in this proceeding by electronic mail and by filing on the PUC Interchange System.

Counsel for Aqua Texas, Inc.

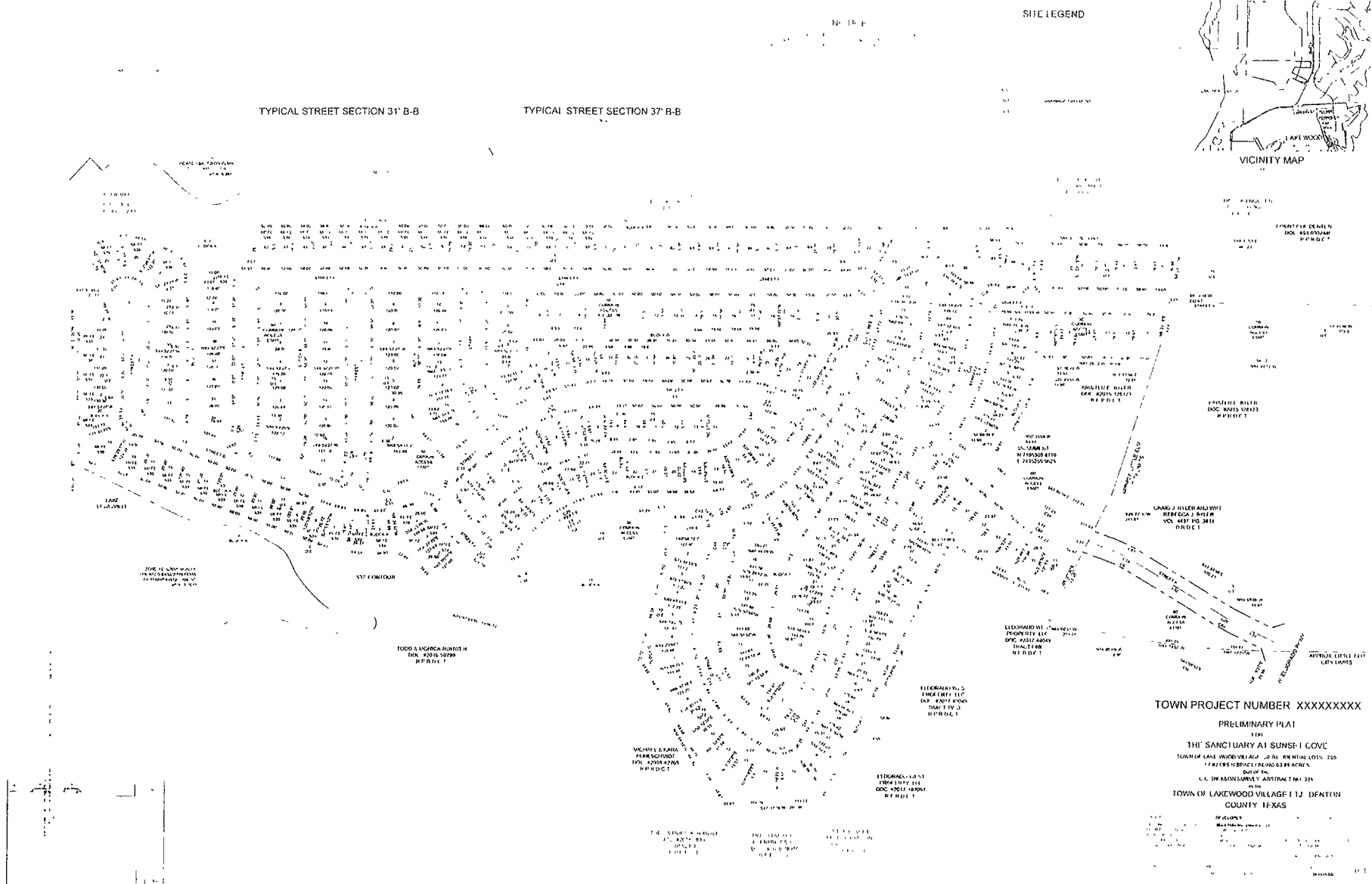
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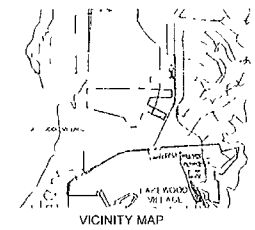
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Natalie B. Scott

EXHIBIT “A”





VICINITY MAP

CURVE TABLE						CURVE TABLE						CURVE TABLE						CURVE TABLE						CURVE TABLE					
CHANG	STATION	BEARING	CHORD	DELTA	ANGLE	CHANG	STATION	BEARING	CHORD	DELTA	ANGLE	CHANG	STATION	BEARING	CHORD	DELTA	ANGLE	CHANG	STATION	BEARING	CHORD	DELTA	ANGLE	CHANG	STATION	BEARING	CHORD	DELTA	ANGLE
C1	150.00	100.00	100.00	180.00	180.00	C16	150.00	100.00	100.00	180.00	180.00	C31	150.00	100.00	100.00	180.00	180.00	C46	150.00	100.00	100.00	180.00	180.00	C61	150.00	100.00	100.00	180.00	180.00
C2	150.00	100.00	100.00	180.00	180.00	C17	150.00	100.00	100.00	180.00	180.00	C32	150.00	100.00	100.00	180.00	180.00	C47	150.00	100.00	100.00	180.00	180.00	C62	150.00	100.00	100.00	180.00	180.00
C3	150.00	100.00	100.00	180.00	180.00	C18	150.00	100.00	100.00	180.00	180.00	C33	150.00	100.00	100.00	180.00	180.00	C48	150.00	100.00	100.00	180.00	180.00	C63	150.00	100.00	100.00	180.00	180.00
C4	150.00	100.00	100.00	180.00	180.00	C19	150.00	100.00	100.00	180.00	180.00	C34	150.00	100.00	100.00	180.00	180.00	C49	150.00	100.00	100.00	180.00	180.00	C64	150.00	100.00	100.00	180.00	180.00
C5	150.00	100.00	100.00	180.00	180.00	C20	150.00	100.00	100.00	180.00	180.00	C35	150.00	100.00	100.00	180.00	180.00	C50	150.00	100.00	100.00	180.00	180.00	C65	150.00	100.00	100.00	180.00	180.00
C6	150.00	100.00	100.00	180.00	180.00	C21	150.00	100.00	100.00	180.00	180.00	C36	150.00	100.00	100.00	180.00	180.00	C51	150.00	100.00	100.00	180.00	180.00	C66	150.00	100.00	100.00	180.00	180.00
C7	150.00	100.00	100.00	180.00	180.00	C22	150.00	100.00	100.00	180.00	180.00	C37	150.00	100.00	100.00	180.00	180.00	C52	150.00	100.00	100.00	180.00	180.00	C67	150.00	100.00	100.00	180.00	180.00
C8	150.00	100.00	100.00	180.00	180.00	C23	150.00	100.00	100.00	180.00	180.00	C38	150.00	100.00	100.00	180.00	180.00	C53	150.00	100.00	100.00	180.00	180.00	C68	150.00	100.00	100.00	180.00	180.00
C9	150.00	100.00	100.00	180.00	180.00	C24	150.00	100.00	100.00	180.00	180.00	C39	150.00	100.00	100.00	180.00	180.00	C54	150.00	100.00	100.00	180.00	180.00	C69	150.00	100.00	100.00	180.00	180.00
C10	150.00	100.00	100.00	180.00	180.00	C25	150.00	100.00	100.00	180.00	180.00	C40	150.00	100.00	100.00	180.00	180.00	C55	150.00	100.00	100.00	180.00	180.00	C70	150.00	100.00	100.00	180.00	180.00
C11	150.00	100.00	100.00	180.00	180.00	C26	150.00	100.00	100.00	180.00	180.00	C41	150.00	100.00	100.00	180.00	180.00	C56	150.00	100.00	100.00	180.00	180.00	C71	150.00	100.00	100.00	180.00	180.00
C12	150.00	100.00	100.00	180.00	180.00	C27	150.00	100.00	100.00	180.00	180.00	C42	150.00	100.00	100.00	180.00	180.00	C57	150.00	100.00	100.00	180.00	180.00	C72	150.00	100.00	100.00	180.00	180.00
C13	150.00	100.00	100.00	180.00	180.00	C28	150.00	100.00	100.00	180.00	180.00	C43	150.00	100.00	100.00	180.00	180.00	C58	150.00	100.00	100.00	180.00	180.00	C73	150.00	100.00	100.00	180.00	180.00
C14	150.00	100.00	100.00	180.00	180.00	C29	150.00	100.00	100.00	180.00	180.00	C44	150.00	100.00	100.00	180.00	180.00	C59	150.00	100.00	100.00	180.00	180.00	C74	150.00	100.00	100.00	180.00	180.00
C15	150.00	100.00	100.00	180.00	180.00	C30	150.00	100.00	100.00	180.00	180.00	C45	150.00	100.00	100.00	180.00	180.00	C60	150.00	100.00	100.00	180.00	180.00	C75	150.00	100.00	100.00	180.00	180.00

LINE TABLE		LINE TABLE		LINE TABLE	
LINE	BEARING	LINE	BEARING	LINE	BEARING
L1	100.00	L11	100.00	L21	100.00
L2	100.00	L12	100.00	L22	100.00
L3	100.00	L13	100.00	L23	100.00
L4	100.00	L14	100.00	L24	100.00
L5	100.00	L15	100.00	L25	100.00
L6	100.00	L16	100.00	L26	100.00
L7	100.00	L17	100.00	L27	100.00
L8	100.00	L18	100.00	L28	100.00
L9	100.00	L19	100.00	L29	100.00
L10	100.00	L20	100.00	L30	100.00
L11	100.00	L21	100.00	L31	100.00
L12	100.00	L22	100.00	L32	100.00
L13	100.00	L23	100.00	L33	100.00
L14	100.00	L24	100.00	L34	100.00
L15	100.00	L25	100.00	L35	100.00
L16	100.00	L26	100.00	L36	100.00
L17	100.00	L27	100.00	L37	100.00
L18	100.00	L28	100.00	L38	100.00
L19	100.00	L29	100.00	L39	100.00
L20	100.00	L30	100.00	L40	100.00
L21	100.00	L31	100.00	L41	100.00
L22	100.00	L32	100.00	L42	100.00
L23	100.00	L33	100.00	L43	100.00
L24	100.00	L34	100.00	L44	100.00
L25	100.00	L35	100.00	L45	100.00
L26	100.00	L36	100.00	L46	100.00
L27	100.00	L37	100.00	L47	100.00
L28	100.00	L38	100.00	L48	100.00
L29	100.00	L39	100.00	L49	100.00
L30	100.00	L40	100.00	L50	100.00
L31	100.00	L41	100.00	L51	100.00
L32	100.00	L42	100.00	L52	100.00
L33	100.00	L43	100.00	L53	100.00
L34	100.00	L44	100.00	L54	100.00
L35	100.00	L45	100.00	L55	100.00
L36	100.00	L46	100.00	L56	100.00
L37	100.00	L47	100.00	L57	100.00
L38	100.00	L48	100.00	L58	100.00
L39	100.00	L49	100.00	L59	100.00
L40	100.00	L50	100.00	L60	100.00
L41	100.00	L51	100.00	L61	100.00
L42	100.00	L52	100.00	L62	100.00
L43	100.00	L53	100.00	L63	100.00
L44	100.00	L54	100.00	L64	100.00
L45	100.00	L55	100.00	L65	100.00
L46	100.00	L56	100.00	L66	100.00
L47	100.00	L57	100.00	L67	100.00
L48	100.00	L58	100.00	L68	100.00
L49	100.00	L59	100.00	L69	100.00
L50	100.00	L60	100.00	L70	100.00
L51	100.00	L61	100.00	L71	100.00
L52	100.00	L62	100.00	L72	100.00
L53	100.00	L63	100.00	L73	100.00
L54	100.00	L64	100.00	L74	100.00
L55	100.00	L65	100.00	L75	100.00
L56	100.00	L66	100.00	L76	100.00
L57	100.00	L67	100.00	L77	100.00
L58	100.00	L68	100.00	L78	100.00
L59	100.00	L69	100.00	L79	100.00
L60	100.00	L70	100.00	L80	100.00
L61	100.00	L71	100.00	L81	100.00
L62	100.00	L72	100.00	L82	100.00
L63	100.00	L73	100.00	L83	100.00
L64	100.00	L74	100.00	L84	100.00
L65	100.00	L75	100.00	L85	100.00
L66	100.00	L76	100.00	L86	100.00
L67	100.00	L77	100.00	L87	100.00
L68	100.00	L78	100.00	L88	100.00
L69	100.00	L79	100.00	L89	100.00
L70	100.00	L80	100.00	L90	100.00
L71	100.00	L81	100.00	L91	100.00
L72	100.00	L82	100.00	L92	100.00
L73	100.00	L83	100.00	L93	100.00
L74	100.00	L84	100.00	L94	100.00
L75	100.00	L85	100.00	L95	100.00
L76	100.00	L86	100.00	L96	100.00
L77	100.00	L87	100.00	L97	100.00
L78	100.00	L88	100.00	L98	100.00
L79	100.00	L89	100.00	L99	100.00
L80	100.00	L90	100.00	L100	100.00

TOWN PROJECT NUMBER XXXXXXXXX

PRELIMINARY PLAN

THE SANCTUARY AT SUNSET COVE
 A DEVELOPMENT OF THE TOWN OF LAKWOOD VILLAGE
 IN THE COUNTY OF LAKWOOD, STATE OF TEXAS

TOWN OF LAKWOOD VILLAGE L.L. DENTON

COUNTY OF LAKWOOD

STATE OF TEXAS

DATE OF PREPARATION: 10/1/2010

BY: [Signature]

FOR: [Signature]

10/1/2010