



Control Number: 51367



Item Number: 11

Addendum StartPage: 0

DOCKET NO. 51367

**PETITION OF DESTINY
DEVELOPMENT, LLC TO AMEND
WEST WISE SPECIAL UTILITY
DISTRICT'S CERTIFICATE OF
CONVENIENCE AND NECESSITY
IN WISE COUNTY BY
EXPEDITED RELEASE**

§
§
§
§
§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**



COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff's Recommendation on Final Disposition. Staff recommends that the petition be approved. In support thereof, Staff shows the following:

I. BACKGROUND

On September 25, 2020, Destiny Development, LLC (Destiny Development) filed a petition on behalf of Cyd Bailey (Ms. Bailey) to amend West Wise Special Utility District's (West Wise) water Certificate of Convenience and Necessity (CCN) No. 10284 in Wise County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Destiny Development seeks the expedited release of an approximately 31-acre tract of land within the boundaries of West Wise's water CCN. Destiny Development filed this petition on behalf of the landowner Ms. Bailey with her express consent.

On October 27, 2020 the administrative law judge (ALJ) filed Order No. 3, requiring Staff to file a recommendation on final disposition by November 10, 2020. Therefore, this pleading is timely filed.

II. STATUTORY APPROVAL DEADLINE

Under TWC § 13.2541 and 16 TAC § 24.245(h), the Commission must render a decision on a petition for expedited release no later than the 60th day after the landowner files the petition. A petition is not considered filed until it is deemed administratively complete.¹ Destiny Development's petition was deemed administratively complete in Order No. 3, issued October 27, 2020. Therefore, the 60-day deadline for administrative approval is December 26, 2020.

¹ 16 TAC § 24.8(d).

11

III. STAFF'S REPLY TO WWSUD

West Wise argues in its Objection to the Petition that “[t]he Petition is defective on its face because the petitioner in this docket, Destiny Development LLC, is not an owner of the subject property.”² West Wise specifically cites to 16 TAC 24.245(h)(3) which states that a “landowner seeking streamlined expedited release under this subsection must file with the commission a petition” to argue that landowners cannot be represented by another party in these proceedings and must file the petition themselves. Staff notes that the rule does not include such a restriction. Here, the landowner has expressly consented to Destiny Development filing the petition and has executed an affidavit filed in this docket giving Destiny Development express permission to do so.³ West Wise would appear to be suggesting that Ms. Bailey be required to refile the same petition already filed in this docket as the petitioner while still being represented by Destiny Development, and to start the process over again. Aside from the fact that the rule does not contain the restriction outlined by West Wise, the principles of administrative efficiency and judicial economy suggest this course of action is not necessary. Therefore, Staff respectfully recommends that the petition be allowed to proceed. However, if the ALJ concludes that West Wise’s argument has merit, Staff respectfully recommends that the existing petition be amended to reflect that Ms. Bailey is the petitioner and that she is represented by Destiny Development.

West Wise also argues in its Objection to the Petition that West Wise “is fully capable of providing continuous and adequate retail water service to the Property.”⁴ Staff is not aware of any documentation West Wise has provided to support this claim. Further, in response to Staff’s First Request for Information, West Wise stated that “[t]o the best of my knowledge, there was no time period during which Destiny Development, LLC received water service for the tract of land from West Wise SUD.”⁵ Therefore, because West Wise did not provide any actual documentation that it is capable of providing continuous and adequate service to the property Staff respectfully recommends that the petition be approved.

² West Wise Special Utility District’s Response and Objection to the Petition at 2.

³ Petition of Destiny Development, LLC to Amend West Wise Special Utility District’s Certificate of Convenience and Necessity in Wise County by Expedited Release at Exhibit A.

⁴ West Wise Special Utility District’s Response and Objection to the Petition at 2.

⁵ West Wise Special Utility District’s Responses to Commission Staff’s First Request for Information to West Wise Special Utility District Question Nos. Staff 1-1 through Staff 1-4 at 6.

IV. STAFF'S RECOMMENDATION

Staff has reviewed the petition for expedited release and, as supported by the attached memorandum from Reginal Tuvilla, Infrastructure Division, recommends that the petition be approved. Staff recommends that Destiny Development, on behalf of Ms. Bailey, has provided maps and digital data with adequate information to determine that the petition satisfies the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(h). Specifically, the petition demonstrates that the property for which expedited release is sought is located in a qualifying county (Wise County), is not receiving water service, and that the requested area is at least 25 contiguous acres. In addition, Destiny Development has provided deeds confirming that Ms. Bailey is the legal owner of the property.

Accordingly, Staff recommends that Destiny Development's petition for expedited release, on behalf of Ms. Bailey, be approved. The final water CCN map and water certificate are attached to this filing. Staff additionally recommends that the final map and certificate be provided to West Wise and that West Wise file a certified copy of the CCN map and a boundary description of the CCN service area in the Wise County Clerk's office, as required under TWC §§ 13.257(r)-(s).

V. CONCLUSION

Staff respectfully requests that Destiny Development's petition, on behalf of Ms. Bailey, be approved and that an order be issued consistent with the foregoing recommendations.

Dated: November 10, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Heath D. Armstrong
Managing Attorney

/s/ Robert Dakota Parish
Robert Dakota Parish
State Bar No. 24116875
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7442
(512) 936-7268 (facsimile)
Robert.Parish@puc.texas.gov

DOCKET NO. 51367

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on November 10, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish
Robert Dakota Parish

Public Utility Commission of Texas

Memorandum

TO: Robert Parish, Attorney
Legal Division

FROM: Reginald Tuvilla, Infrastructure Analyst
Infrastructure Division

DATE: November 10, 2020

RE: Docket No. 51367 – *Petition of Destiny Development, LLC to Amend West Wise Special Utility District's Water Certificate of Convenience and Necessity in Wise County by Expedited Release*

On September 25, 2020, Destiny Development, LLC (Destiny Development) filed an application for expedited release from West Wise Special Utility District's (West Wise) water Certificate of Convenience and Necessity (CCN) No. 10284 in Wise County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Destiny Development asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Wise County, which is a qualifying county.

Destiny Development submitted adequate maps delineating the requested area for expedited release with enough detail to confirm the accurate positioning of its digital data pursuant to 16 TAC § 24.245(k). The map and digital data are sufficient for determining the locations of the requested release areas within West Wise's certificated area. Mapping Staff was able to confirm the acreage of the subject property and determined that the requested areas are located within West Wise's water CCN. Destiny Development provided warranty deeds confirming Cyd Bailey's ownership of the tracts of land within West Wise's certificated area. In addition, Destiny Development submitted a sworn affidavit attesting that the property was not receiving water from the CCN holder. The area being requested for expedited release is approximately 30 acres.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Destiny Development has met the Commission's requirements to allow for the release of the requested area from West Wise's CCN No. 10284. Therefore, I recommend approval of the petition. Enclosed is a final map and certificate for Commission approval.

Additionally, I recommend that a final map and certificate be provided to West Wise. Pursuant to TWC §§ 13.257 (r)-(s), I further recommend that West Wise file the following information in the Wise County Clerk's office: (1) a certified copy of the CCN map; (2) a certified copy of the amended certificate; and (3) a boundary description of the CCN service area.



Public Utility Commission of Texas

By These Presents Be It Known To All That

West Wise Special Utility District

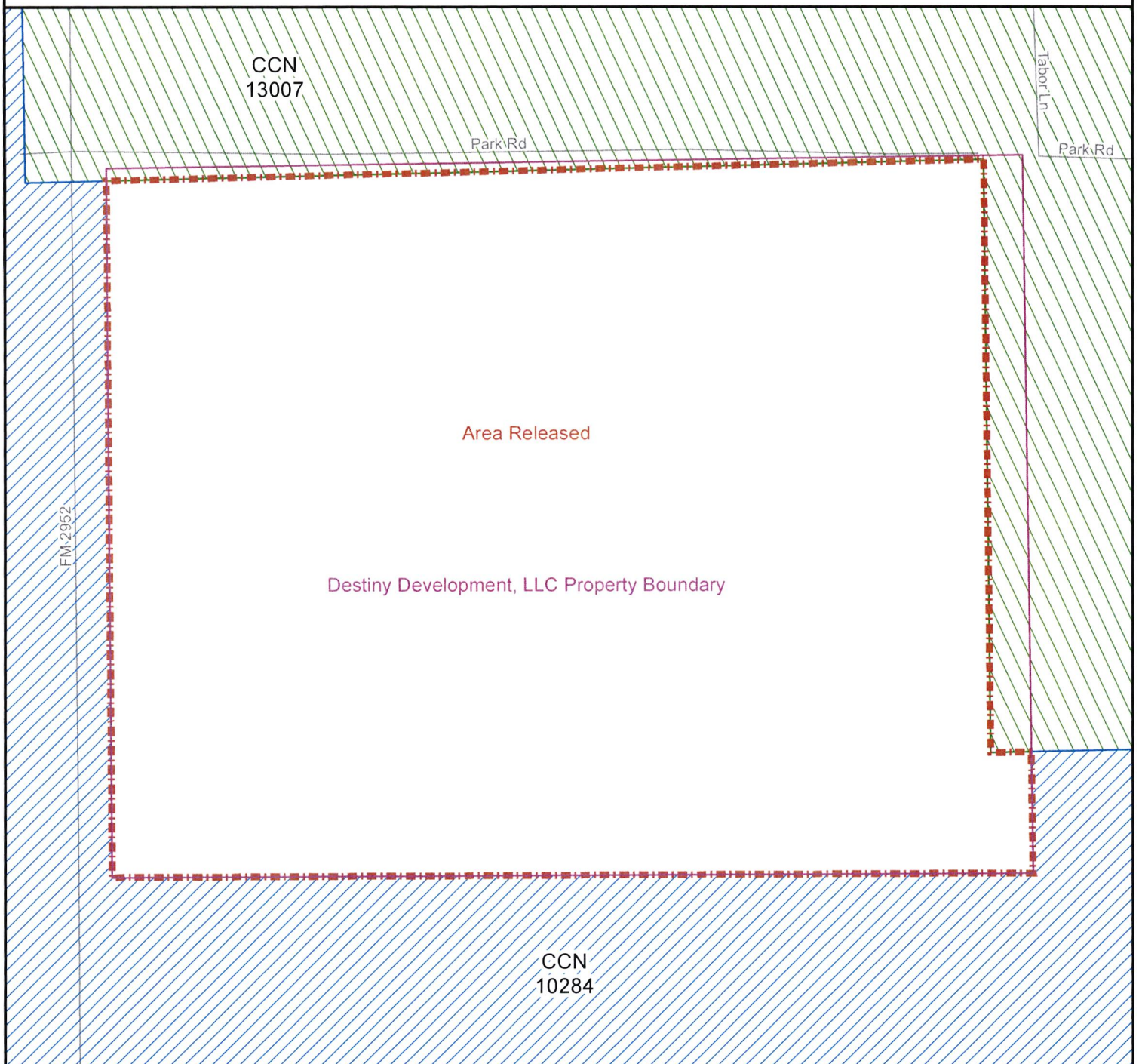
having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, West Wise Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 10284

to provide continuous and adequate water utility service to that service area or those service areas in Wise County as by Final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51367 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of West Wise Special Utility District to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____ day of _____ 20__.

West Wise Special Utility District
Portion of Water CCN No. 10284
PUC Docket No. 51367
Petition by Destiny Development, LLC to Amend
West Wise Special Utility District's CCN by Expedited Release in Wise County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN

-  10284 - West Wise SUD
-  13007 - City of Chico

-  Area Released
-  Property Boundary

0 100 200
Feet



Map by: Komal Patel
Date created: November 5, 2020
Project Path: n:\finalmapping\
51367WestWiseSUD.mxd