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DOCKET NO. 52442

PETITION OF MERITAGE HOMES OF TEXAS, LLC TO AMEND NORTH COLLIN SPECIAL UTILITY DISTRICT'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF’S RECOMMENDATION ON FINAL DISPOSITION

On June 30, 2021, Meritage Homes of Texas, LLC (Meritage) filed a petition for streamlined expedited release from the North Collin Special Utility District's (North Collin SUD) water Certificate of Convenience and Necessity (CCN) No. 11035 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h).¹ Meritage asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Collin, which is a qualifying county.² According to the 2010 Census,³ Collin County has a population of 782,341.⁴ Additionally, Collin County is adjacent to Dallas County, which has a population of 2,368,139.⁵

On December 30, 2021, the ALJ filed Order No. 10, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file its final recommendation by January 14, 2022. Therefore, this pleading is timely filed.

¹ On August 19, 2021, the administrative law judge (ALJ) filed Order No. 1, granting the request by Meritage Homes to sever this application from the pending application in Docket No. 52293 and requiring Meritage to file this application in this docket by August 23, 2021. This proceeding, Docket No. 52442, will address the petition of Meritage Homes for streamlined expedited release from water CCN No. 11035 held by North Collin SUD in Collin County.

² TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).

³ See Tex. Gov't Code § 2058.0021 for applicability of 2010 Census for determination whether the land is in a qualifying county.

⁴ U.S. Census Bureau, Census Data for Collin County, QuickFacts Collin County, Texas (2010), <https://www.census.gov/quickfacts/fact/table/collincountytexas/POP010210> (last accessed on Jan. 13, 2022).

⁵ U.S. Census Bureau, Census Data for Dallas County, QuickFacts Dallas County, Texas (2010), <https://www.census.gov/quickfacts/fact/table/dallascountytxas/POP010210> (last accessed on Jan. 13, 2022).

I. RECOMMENDATION ON FINAL DISPOSITION

Staff has reviewed the petition and, as detailed in the attached memorandum from Jolie Mathis, Infrastructure Division, recommends that the petition satisfies the requirements of TWC § 13.2541 and 16 TAC § 24.245(h) and should be approved. In its response to the petition, North Collin SUD stated that the petition should be denied.

North Collin SUD asserted that Meritage cannot meet its burden of proof because the requested area is receiving service.⁶ To receive water service, a retail water utility must have “facilities or lines committed to providing water to the particular tract or has performed acts or supplied anything to the particular tract”⁷ North Collin SUD specifically argued that it provides water service to Meritage’s property through a 1965 service agreement between a prior landowner of the property and Altoga Water Supply Corporation (Altoga WSC) , who had the CCN over the property prior to North Collin SUD’s acquisition of the certificated service area in 2019.⁸ Additionally, North Collin SUD included a 1999 handwritten note from the prior landowner, allowing for a meter reading and various repairs in the furtherance of receiving water service from Altoga WSC.⁹ Lastly, North Collin SUD stated that the property last received actual water service over 15 years ago.¹⁰

North Collin SUD’s argument is flawed, because the evidence that it submitted is not relevant for consideration in whether the property is receiving service in this proceeding. Specifically, the only relevant time period for this determination is at the time the petition is filed and whether the property had previously received water service is irrelevant.¹¹ The only relevant

⁶ North Collin SUD's Response and Objection to Administratively Complete Petition and Motion to Dismiss at 4-12 (Nov. 12, 2021) (Response).

⁷ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d.130, 140 (Tex. App.—Austin 2014, pet. denied); *see also* TWC § 13.002(21), 16 TAC § 24.33, and Docket No. 50404, Order at Findings of Fact Nos. 38-48.

⁸ Response at 5-7.

⁹ *Id.* at 6.

¹⁰ *Id.* at Attachment A.

¹¹ *Petition of Sanctuary Texas, LLC to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 51738, Order at Conclusion of Law No. 13 (Jul. 30, 2021); *Petition of HMP Ranch, Ltd. to Amend Johnson County Special Utility District's Certificate of Convenience and Necessity in Johnson and Tarrant Counties by Expedited Release*, Docket No. 45037, Final Order at Conclusion of Law No. 7 (Dec. 18, 2015), affirmed by *Johnson County Special Utility District v. Public Utility Comm'n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App-Austin May 11, 2018, pet. denied) (mem. op.).

evidence is that currently there is a 2-inch water line on the property.¹² However, in Staff's analysis, North Collin SUD did not provide any evidence how it is currently committed to providing water service to the property. As such, Staff recommends that North Collin SUD has not provided sufficient evidence to rebut Meritage's statements, verified by affidavit, that the property is not receiving water service.

Additionally, North Collin SUD argued that it is protected under 7 U.S.C. § 1926(b).¹³ Staff, however, recommends that North Collin SUD's claim of protection is moot. The TWC explicitly states that "[t]he utility commission may not deny the petition based on the fact that the certificate holder is a borrower under a federal loan program."¹⁴ While a federal district court had previously held that 7 U.S.C. § 1926(b) preempted TWC § 13.2541 (formerly, TWC § 13.254(a-5) and (a-6)), that decision has been vacated by the Fifth Circuit.¹⁵ Further, the Fifth Circuit decision in *Green Valley Special Utility District v. City of Schertz* specifically dismissed the preemption claim and determined that the court lacked jurisdiction to consider it.¹⁶ Absent any controlling federal court ruling on preemption,¹⁷ Staff's recommendation must comply with state law. As such, Staff's recommendation does not take North Collin SUD's federally indebted status into consideration.

Accordingly, Staff recommends that the petition for release of the 273.5 acre tract of land be granted. Further, the final water CCN map and certificate are attached to this filing. Staff recommends that the final map and certificate be provided to North Collin SUD and for North Collin SUD to file a certified copy of the CCN map and a boundary description of the CCN service area in the Collin County Clerk's office, as required under TWC § 13.257(r)-(s).

¹² Response at Attachment A.

¹³ Response at 12-17.

¹⁴ TWC § 13.2541(d).

¹⁵ *Crystal Clear Special Util. Dist. v. Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

¹⁶ *Green Valley Special Util Dist. v. City of Schertz*, 969 F.3d 460, 472 and 478 (5th Cir. 2020) (en banc).

¹⁷ Staff notes that North Collin SUD cites to a 10th Circuit Court case, *Rural Water Sewer and Solid Waste Management v. City of Guthrie*, 344 Fed.Appx. 462 (10th Cir. 2009), stating that 7 U.S.C. § 1926(b) preempts local or state law. However, it was filed in 2009 before the *Crystal Clear and Green Valley* decisions and is not precedential.

II. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the petition be approved and that the Commission issue an order consistent with this recommendation.

Dated: January 14, 2022

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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DOCKET NO. 52442

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 January 14, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Forrest Smith
Forrest Smith

Public Utility Commission of Texas

Memorandum

TO: Forrest Smith, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: January 14, 2022

RE: Docket No. 52442 – *Petition of Meritage Homes of Texas, LLC to Amend North Collin Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

On August 23, 2021, Meritage Homes of Texas, LLC (Meritage) filed a petition for streamlined expedited release from North Collin Special Utility District's (North Collin SUD) water Certificate of Convenience and Necessity (CCN) No. 11035 in Collin County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Meritage asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, which is a qualifying county.

Tracy Montes, Infrastructure Division, determined the map and digital data are sufficient for determining the location of the tract of land considered for streamlined expedited release is located within North Collin SUD's water CCN. Furthermore, Meritage provided a warranty deed confirming ownership of the tract of land within North Collin SUD's certificated service area. In addition, Meritage submitted a sworn affidavit attesting that the property was not receiving water service from the CCN holder.

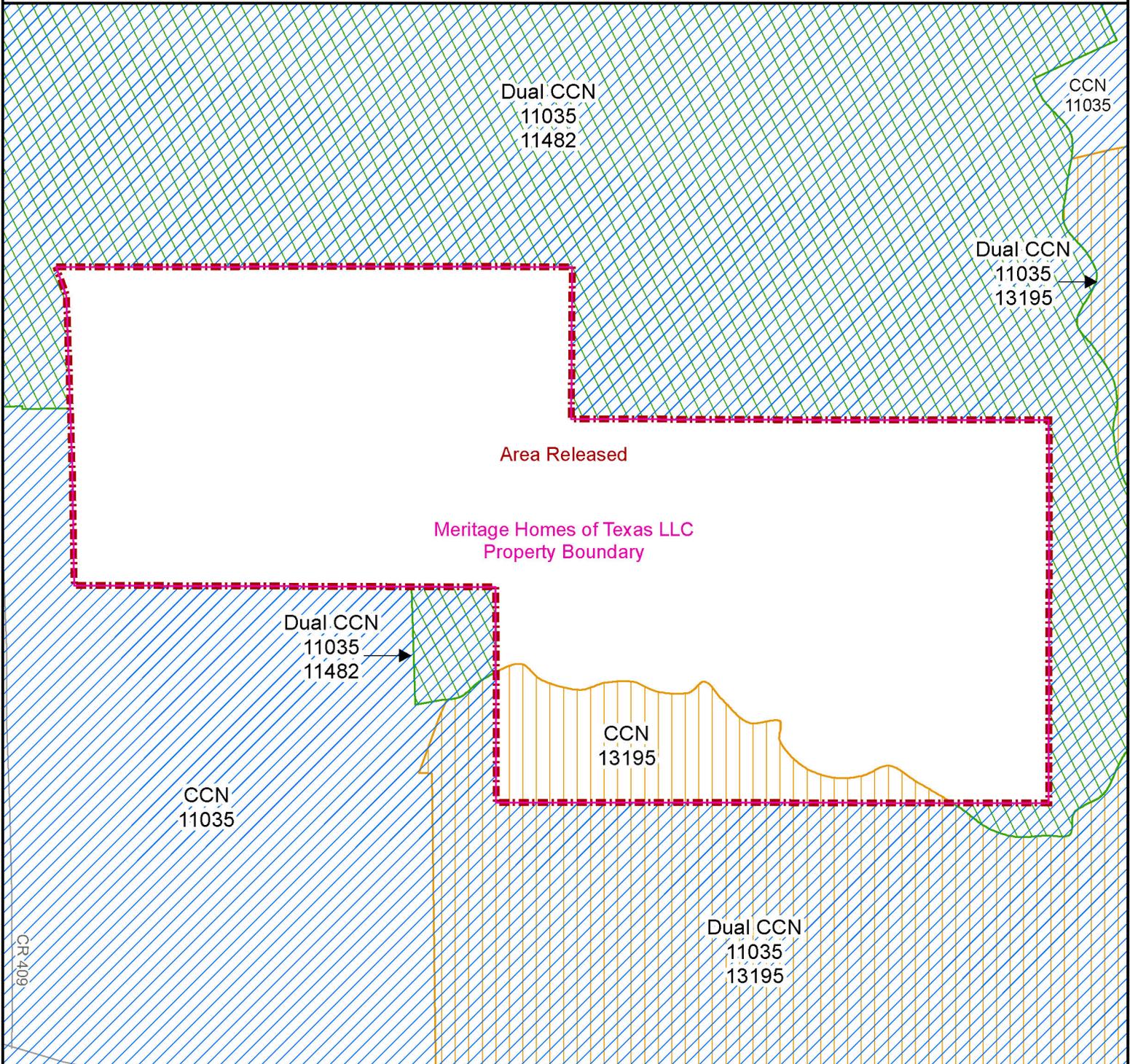
The petition indicates that the total acreage for the tract of land is approximately 73.6 acres. However, based on the mapping review by Ms. Montes and as further explained in the memorandum attached to Staff's filing of December 20, 2021, it was determined the tract of land considered for release from North Collin SUD (CCN No. 11035) is approximately 273.5 acres

North Collin SUD requested to intervene. North Collin SUD maintains that it is providing water service to the property.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Meritage has met the Commission's requirements to allow for the release of the tract of land from North Collin SUD's CCN No. 11035. 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 the CCN holder.

North Collin Special Utility District
 Portion of Water CCN No. 11035
 PUC Docket No. 52442
 Petition by Meritage Home of Texas, LLC to Amend
 North Collin Special Utility District's CCN by Streamlined Expedited Release in Collin County



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

Water CCN

-  11035 - North Collin SUD
-  10194 - City of McKinney
-  11482 - City of Melissa
-  13195 - City of Princeton

-  Area Released
-  Property Boundary



Map by: Komal Patel
 Date: December 21, 2021
 Project: 52442NorthCollinSUD.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

North Collin 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, North Collin Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 11035

to provide continuous and adequate water utility service to that service area or those service areas in Collin County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52442 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 North Collin 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.