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**PETITION OF E REAL ESTATE TO § PUBLIC UTILITY COMMISSION
AMEND MARILEE SPECIAL §
UTILITY DISTRICT'S CERTIFICATE § OF TEXAS
OF CONVENIENCE AND NECESSITY §
IN COLLIN COUNTY BY EXPEDITED §
RELEASE (TRACT 3) §**

COMMISSION STAFF'S REVISED RECOMMENDATION ON FINAL DISPOSITION

On September 8, 2021, E Real Estate, LLC (E Real Estate) filed a petition for streamlined expedited release from Marilee Special Utility District's (Marilee SUD) water Certificate of Convenience and Necessity (CCN) No. 10150 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). E Real Estate asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, Texas, which is a qualifying county. On February 3, 2022, Marilee SUD filed a verified response and motion to dismiss, indicating that there are three active meters receiving water service and one water line that provides water service to two of the meters, that are located on the portion of E Real Estate's tract of land that E Real Estate requests to be released from Marilee SUD's CCN. On February 17, 2022, the Staff (Staff) of the Public Utility Commission of Texas (Commission) filed a recommendation on final disposition that the petition be denied, recommending that Marilee SUD had sufficiently rebutted E Real Estate's assertion that the tract of land is not receiving service. On February 24, 2022 and February 28, 2022, E Real Estate filed a reply to both Marilee SUD's response and Staff's recommendation, as well as a signed affidavit in support of its reply, indicating that the meters referenced by Marilee SUD were not located on the tract of land being released. As such, the administrative law judge (ALJ) filed Order No. 7 on March 1, 2022, finding that E Real Estate had met its burden of proof and that the petition should be granted. On March 3, 2022, Staff filed a response to Order No. 7 recommending that E Real Estate should be ordered to demonstrate that the structures located on the tract of land are not receiving service from any of Marilee SUD's meters.

On March 3, 2022, the administrative law judge (ALJ) filed Order No. 8, directing E Real Estate to file such information and establishing a deadline of April 4, 2022 for Staff to file an updated recommendation of final disposition, if necessary. Therefore, this pleading is timely filed.

I. REVISED RECOMMENDATION ON FINAL DISPOSITION

Staff has reviewed the petition, Marilee SUD's response to the petition, E Real Estate's reply to Marilee SUD's response and Staff's recommendation on final disposition, and E Real Estate's Response to Order No. 8, and, as detailed in the attached memorandum from Pai Liu, Infrastructure Division, recommends that the petition satisfies the requirements of TWC § 13.2541 and 16 TAC § 24.245(h). In its response to the petition, Marilee SUD stated that the petition should be denied.

Marilee SUD first argued that E Real Estate cannot meet its burden of proof because the requested area is receiving service.¹ 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 . . ."² To support its argument, Marilee SUD submitted the sworn affidavits of Donna Loiselle and Eddy Daniel, who attested that there are three active meters receiving water service and one water line that provides water service to two of the meters, that are located in the requested area.³ Additionally, Marilee SUD provided accompanying exhibits showing the activity and presence of the meters and water line in the requested area.⁴ E Real Estate however filed a reply indicating that the relevant meters receiving service are in fact not located in the requested area.⁵ E Real Estate further provided supplemental information indicating that none of the structures located in the requested area are receiving service.⁶

Marilee SUD further argued that Marilee SUD has sufficient facilities in place to provide water service to E Real Estate's property through several water lines that are either located within or running adjacent to the requested area.⁷ Marilee SUD's argument is flawed. Specifically, the water lines located within or running adjacent to the requested area have not been shown to be

¹ Marilee Special Utility District's Verified Response and Motion to Dismiss at 5-7 and Exhibits A and B (Feb. 3, 2022) (Marilee SUD Response).

² *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.

³ Marilee SUD Response at 5-7 and Exhibits A and B.

⁴ *Id.* at A-1, A-2, A-3, and B-1.

⁵ E Real Estate, LLC's Reply to Marilee SUD's Verified Response, Motion to Dismiss and Commission Staff's Recommendation on Final Disposition (Feb. 24, 2022) and Letter Supplementing Affidavit (Feb. 28, 2022).

⁶ E Real Estate, LLC's Response to Order No. 8 (Mar. 18, 2022).

⁷ Marilee SUD Response at 6-7.

committed to providing water to the requested area. In *Crystal Clear*, the court looked to whether existing lines and facilities, located on or near property, were constructed for the purpose of providing water to the property in question.⁸ Finding that the facilities were constructed to serve the greater area, and not the particular property, the court determined that the facilities were not committed to the particular tract of land, and therefore, the property in question was not receiving service.⁹ Based on E Real Estate's reply that the relevant meters are not located in the requested area and that none of the structures in the requested area are receiving service, Marilee SUD cannot demonstrate that any of its water lines are committed in any way separate from supplying water to the greater area.

Additionally, Marilee SUD argued that E Real Estate has not met its burden of proof to decertify the property under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).¹⁰ Specifically, Marilee SUD stated that E Real Estate only provided a conclusory one-page affidavit and did not provide any information regarding an investigation of the requested area.¹¹ In turn, Marilee SUD argued that E Real Estate did not provide a sufficient statement of facts, as required by 16 TAC § 24.245(h)(3)(D), to establish the property is not receiving water service.¹² However, the Commission has previously granted, in Docket No. 50404, the release of a tract of land from Marilee SUD's CCN area, partly on the basis of an affidavit that is, in relevant part, identical to the affidavit filed in this docket.¹³ Regardless, based on the subsequent reply and supplemental information filed by E Real Estate, Staff recommends that E Real Estate has met its burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).

In addition to the first three arguments, Marilee SUD also asserted that releasing the requested area would curtail or limit its ability to service its federal debt, in violation of federal law.¹⁴ Specifically, Marilee SUD stated that it is federally indebted through a Water and

⁸ *Crystal Clear*, 449 S.W.3d at 140.

⁹ *Id.*

¹⁰ Marilee SUD Response at 7-9.

¹¹ *Id.*

¹² *Id.*

¹³ *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 50404, Petition at Exhibit A (Jan. 2, 2020); *Id.*, Order (Oct. 12, 2021); *Id.*, Order on Rehearing (Jan. 14, 2022).

¹⁴ Marilee SUD Response at 10-12.

Wastewater Guaranteed loan that received approval from the United States Department of Agriculture (USDA) on July 12, 2021, as well as the USDA loans that it assumed from the Mustang Special Utility District when the two districts consolidated on November 2, 2021.¹⁵ Marilee SUD argued that, under the Consolidated Farm and Rural Development Act of 1961 and 7 U. S. Code § 1926(b), it is prohibited by federal law to curtail or limit the service area of a USDA debtor.¹⁶ Marilee SUD claimed that, because it can show federal indebtedness, the protections of § 1926(b) prohibit the Commission from granting the release of the requested area.¹⁷

Staff recommends that Marilee SUD's claim of protection under 7 U.S.C. § 1926(b) 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."¹⁸ 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.¹⁹ 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.²⁰ Absent any federal court ruling on preemption, Staff's recommendation must comply with state law. As such, Staff's recommendation does not take Marilee SUD's federally indebted status into consideration.

Accordingly, Staff recommends that the petition for streamlined expedited release be approved. Further, the final water CCN map and certificate are attached to this filing. Staff recommends that the final map and certificate be provided to Marilee SUD and for Marilee 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).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ TWC § 13.2541(d).

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

²⁰ *Green Valley Special Util Dist. v. City of Schertz*, 969 F.3d 460, 472 and 478 (5th Cir. 2020) (en banc).

II. CONCLUSION

For the reasons detailed above, Staff recommends that the petition be approved and respectfully requests the entry of an order consistent with this recommendation.

Dated: April 4, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Keith Rogas
Division Director

Sneha Patel
Managing Attorney

/s/ Scott Miles
Scott Miles
State Bar No. 24098103
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7228
(512) 936-7268 (facsimile)
Scott.Miles@puc.texas.gov

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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 on April 4, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Scott Miles
Scott Miles

Public Utility Commission of Texas

Memorandum

TO: Scott Miles, Attorney
Legal Division

FROM: Pai Liu, Infrastructure Analyst
Infrastructure Division

DATE: April 4, 2022

RE: Docket No. 52532 – *Petition of E Real Estate, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 3)*

On September 8, 2021, E Real Estate, LLC (E Real Estate) filed a petition for streamlined expedited release from Marilee Special Utility District's (Marilee SUD) water Certificate of Convenience and Necessity (CCN) No. 10150 in Collin County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). E Real Estate 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.

E Real Estate provided a warranty deed confirming ownership of the tract of land within Marilee SUD's certificated service area. In addition, E Real Estate submitted a sworn affidavit attesting that the tract of land was not receiving water service from the CCN holder.

Based on the mapping review by Tracy Montes, Infrastructure Division, it was determined the landowner's total property is approximately 535.315 acres. The tract of land in the petition for streamlined expedited release is approximately 146.75 acres, of which approximately 146 acres overlap Marilee SUD (CCN No. 10150) and would be decertified from CCN No. 10150.

Marilee SUD filed a verified response to the petition on February 3, 2022. In its verified response, Marilee SUD submitted sworn affidavits of Donna Loiselle and Eddy Daniel, who attested that there are three active meters receiving water service and one water line that provides water service to two of the meters, that are located on the portion of E Real Estate's tract of land that E Real Estate requests to be released from Marilee SUD's CCN.¹

¹ Marilee Special Utility District's Verified Response and Motion to Dismiss at 5-7 and Exhibits A and B (Feb. 3, 2022) (Response).

Additionally, Marilee SUD provided accompanying exhibits showing the activity and presence of the meters and water line on the tract of land.²

E Real Estate respectively filed a reply to Marilee SUD's response, a signed affidavit in support of its reply, and a response to Order No. 8 on February 24, 2022, February 28, 2022, and March 18, 2022. In its reply, E Real Estate indicated that the relevant meters receiving service are in fact not located on the relevant tract of land to be released in this docket.³ In its response to Order No. 8, E Real Estate indicated that none of the structures located on the relevant tract of land to be released are receiving service.⁴

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), E Real Estate has met the Commission's requirements to allow for the release of the tract of land from Marilee SUD's CCN No. 10150. Therefore, I recommend approval of the petition. Enclosed is a final map and certificate for Commission approval.

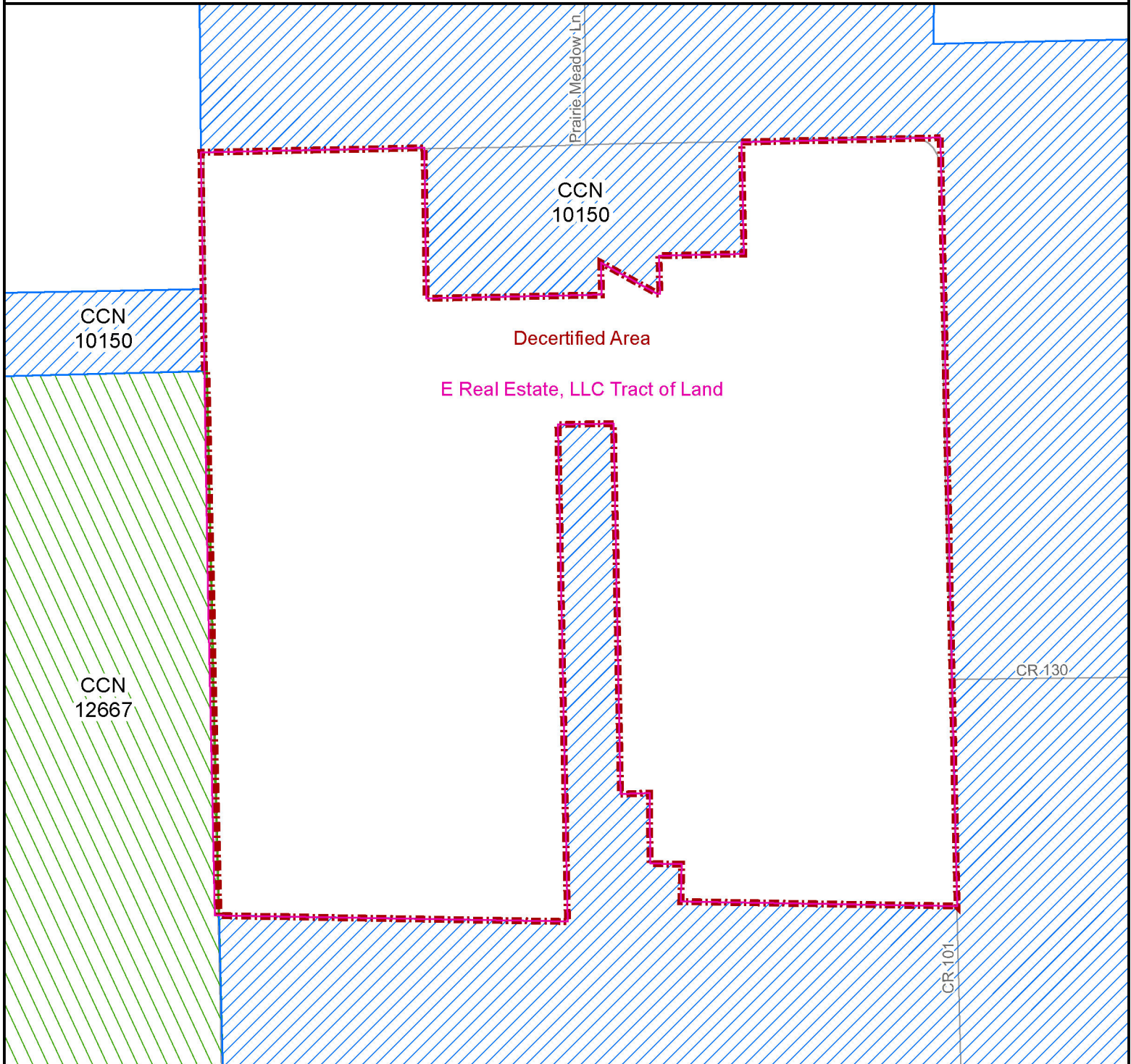
Additionally, I recommend that a final map and certificate be provided to the CCN holder.

² Response at A-1, A-2, A-3, and B-1.



³ E Real Estate, LLC's Reply to Marilee SUD's Verified Response, Motion to Dismiss and Commission Staff's Recommendation on Final Disposition (Feb. 24, 2022).



⁴ E Real Estate, LLC's Response to Order No. 8 (Mar. 18, 2022).

Marilee Special Utility District
Portion of Water CCN No. 10150
PUC Docket No. 52532
Petition by E Real Estate, LLC to Amend
Marilee Special Utility District's CCN by Streamlined Expedited Release in Collin County



Water CCN

-  10150 - Marilee SUD
-  12667 - City of Celina

-  Decertified Area
-  Tract of Land





Public Utility Commission of Texas

By These Presents Be It Known To All That

Marilee 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, Marilee Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 10150

to provide continuous and adequate water utility service to that service area or those service areas in Collin and Grayson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52532 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 the Marilee 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.