

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 19, 2009

CHIEF CLERKS OFFICE

2009 MAR 19 PM 4:38

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2008-1204-UCR; Consideration of a request for a Commission Order approving a contract designating service areas between New Caney Municipal Utility District ("New Caney") and the White Oak Developers, Inc. ("White Oak") pursuant to Texas Water Code Section 13.248;

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality ("Commission") is the original plus seven copies of the following backup materials for the April 8, 2009, agenda item on the above referenced matter:

1. Agenda Executive Summary;
2. Caption;
3. Request for a Commission order approving a Texas Water Code 13.248 agreement filed by New Caney MUD on January 19, 2006, and declared administratively complete on July 17, 2006;
4. Agreement between New Caney and White Oak executed on or about July 21, 2005;
5. City of Houston Ordinance dated October 17, 2007, giving consent to the agreement between New Caney and White Oak to transfer the CCNs within the City's ETJ;
6. Financial and Managerial analysis of New Caney's ability to operate in the affected area;
7. Certificates of Convenience and necessity (CCN) Nos. 11969, 20575, 12894, and 20859;
8. Proposed Order;
9. Final proposed maps of the water and sewer service area subject to the 13.248 agreement; and

10. Consent forms signed by representatives for both New Caney and White Oak giving approval to the ED for the above final maps.

Please do not hesitate to contact me at (512) 239-6257 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

Ross Henderson (by *Kayla Murray*)

Ross Henderson, Staff Attorney
TCEQ, Environmental Law Division

Enclosures

cc: mailing list

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 19, 2009

Mr. William E. Dark
White Oak Developers, Inc.
19221 IH-45 South, Suite 370
Conroe, Texas 77385

Mr. Jon C. Pfening, PC
Attorney at Law
1300 Rollingbrook, Suite 606
P.O. Box 269
Baytown, Texas 77522-0269

Re: TCEQ Docket No. 2008-1204-UCR; Consideration of a request for a Commission order approving a contract designating service areas between New Caney Municipal Utility District and White Oak Developers, Inc.

Dear Mr. Dark and Mr. Pfening:

This letter is to inform you that the above-referenced application has been set on the agenda for consideration by the Texas Commission on Environmental Quality (TCEQ). This agenda will occur on April 8, 2009, beginning at 9:30 a.m. in Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. Included with this letter are the agenda backup materials to be considered by the Commission. At least one of you will need to attend the agenda to explain the agreement and to answer any questions the Commissioners may have.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the Agenda should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD) at least one week prior to the hearing. If you have any questions about this matter, then you may contact Sheresia Perryman from the Water Supply Division at 1-512-239-3654 or me at 1-512-239-6257.

Sincerely,

Ross Henderson (by Kayla Murray)

Ross Henderson
Staff Attorney
Environmental Law Division

Enclosure

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** March 19, 2009
THRU: LaDonna Castañuela, Chief Clerk
FROM: Environmental Law Division
SUBJECT: Consideration of a request for a Commission Order approving a contract designating service areas between New Caney Municipal Utility District and White Oak Developers, Inc. pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2008-1204-UCR.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 MAR 19 PM 4:58
CHIEF CLERKS OFFICE

DESCRIPTION OF APPLICATION

Applicant: New Caney Municipal Utility District ("New Caney")
Regulated Activity: Retail water and sewer utility service
Type of Application: Request for a Commission Order approving a contract
Commission Action: Hearing regarding approval of the contract
Authority: Texas Water Code (TWC) §13.248 and 30 Texas Administrative Code (TAC) § 291.117

FACTUAL BACKGROUND

New Caney Municipal Utility District ("New Caney") Certificate of Convenience and Necessity ("CCN") Nos. 11969 (water) and 20575 (sewer), and White Oak Developers, Inc. ("White Oak"), CCN Nos. 12894 (water) and 20859 (sewer) provide retail water and sewer service in Montgomery County, Texas.

On or about July 21, 2005, New Caney and White Oak executed an annexation agreement ("the Agreement") regarding an approximate 29.270 acre tract owned by White Oak and subject to CCN Nos. 20859 (water) and 12894 (sewer) held by White Oak. The agreement states that New Caney will provide White Oak water and sewer service to the approximate 29.270 acres shown in the attached map entitled Exhibit A ("map") and that the area will be transferred to New Caney's CCN Nos. 11969 (water) and 20575 (sewer). No facilities or customers are proposed to be transferred under the Agreement.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility from providing retail sewer utility service directly or indirectly to the public without first obtaining a CCN from the Commission. *TWC § 13.242(a)*. Conversely, a municipality is not required to obtain a CCN to provide retail sewer service.¹ However, a municipality may not provide service to areas that are within the certificated area of another retail public utility without first obtaining written consent from that retail public utility. *TWC § 13.242(b)*.

The Texas Water Code and TCEQ's regulations allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs. *TWC § 13.248; see also 30 TAC § 291.117 (incorporating § 13.248 into TCEQ's rules)*.² However, a retail public utility must receive consent to obtain or amend a CCN within the corporate boundaries or extraterritorial jurisdiction ("etj") of a municipality with a population of 500,000 or more. *30 TAC § 291.105(b)(1)*. Therefore, an amendment of a CCN to effect a service area agreement within such an area also requires consent from the municipality.

A transfer of a water or sewer system that includes the transfer of customers and/or facilities may also require separate Commission approval for the transfer of customers and/or facilities. *TWC § 13.301*.³

The request to approve a Section 13.248 agreement is not subject to the notice provisions of Title 30, Section 291.106 of the Texas Administrative Code which apply to applications for new or amended CCNs. *30 TAC § 291.106(b)(3)(A)*. The Commission may approve the service area agreement at an agenda hearing pursuant to Section 13.248 of the Texas Water Code with the appropriate notice under the Open Meetings Act. The Executive Director mailed notice of the hearing to the parties on March 19, 2009.

¹ A municipality is a "retail public utility" under Section 13.002(19) of the Texas Water Code and is not a "utility" under Section 13.002(23). Therefore, the *TWC § 13.242(a)* requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

² Section 13.248 of the Texas Water Code provides:

Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

³ Section 13.301 of the Texas Water Code requires some applicants to also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the Staff's recommendation:

1. Request for a Commission order approving a Texas Water Code 13.248 agreement filed by New Caney MUD on January 19, 2006, and declared administratively complete on July 17, 2006;
2. Agreement between New Caney and White Oak executed on or about July 21, 2005;
3. City of Houston Ordinance dated October 17, 2007, giving consent to the agreement between New Caney and White Oak to transfer the CCNs within the City's ETJ;
4. Financial and Managerial analysis of New Caney's ability to operate in the affected area.
5. Proposed Order;
6. Final proposed maps of the water and sewer service area subject to the 13.248 agreement; and
7. Consent forms signed by representatives for both New Caney and White Oak which give approval to the ED for the above final maps.

STAFF RECOMMENDATION

Based upon the facts stated in the application and the supporting documentation submitted by New Caney and White Oak, staff supports the request for a Commission order approving a contract transferring this portion of White Oak's water and sewer service area to New Caney MUD. Staff has confirmed that both parties are retail public utilities with active water and sewer CCNs and that the City of Houston has consented to this transfer within its ETJ. Further, staff is satisfied that New Caney possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the areas being transferred. Specifically, staff found that the transfer of approximately 29.27 acres of unimproved acres contains no facilities, no current customers, and that the area would be equal to .3% of New Caney's present service area of 9,098 acres. Additionally, New Caney provided service to over 3,500 equivalent single-family units as of May 31, 2005. Finally, the parties have reviewed the ED's proposed final maps and have signed consent forms showing approval for the proposed maps.

STAFF CONTACTS

Ross Henderson, Environmental Law Division (239-6257)
Sheresia Perryman, Water Supply Division (239-3654)

CAPTION
NEW CANEY MUD
TCEQ Docket No. 2008-1204-UCR

Consideration of a request for a Commission Order approving a contract designating service areas between New Caney Municipal Utility District ("New Caney") Certificate of Convenience and Necessity ("CCN") Nos. 11969 (water) and 20575 (sewer), and White Oak Developers, Inc. ("White Oak"), CCN Nos. 12894 (water) and 20859 (sewer) in Montgomery County, Texas pursuant to Texas Water Code Section 13.248. On or about July 21, 2005, New Caney and White Oak executed an annexation agreement regarding an approximate 29.270 acre tract owned by White Oak and subject to CCN Nos. 20859 (water) and 12894 (sewer) held by White Oak. Under the agreement, New Caney will provide White Oak water and sewer service to the approximate 29.270 acres tract and the area will be transferred to New Caney's CCN Nos. 11969 (water) and 20575 (sewer). No facilities or customers will be transferred under the agreement. (Ross Henderson, Sheresia Perryman).

COPY

Law Office of Patrick G. Hubbard

1306 Kingwood Drive, Kingwood, Texas 77339
Tele: 281.358.7035 Fax: 281.358.7008

January 19, 2006

RECEIVED
JAN 26 2006
**UTILITIES & DISTRICTS
SECTION**

CHIEF CLERKS OFFICE

JAN 23 AM 10:07

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

LaDonna Castañuela
Chief Clerk
Texas Commission of Environmental Quality
P. O. Box 13087
Austin, TX 78711-3087

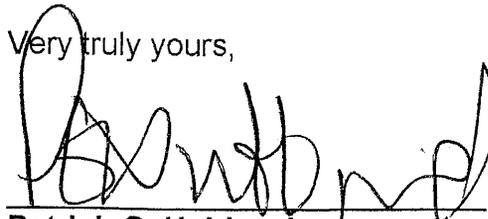
Re: Request for partial transfer of CCN property

Gentlemen:

The purpose of this correspondence is to request that a portion of the property under CCN Nos. 12894 and 20859 presently held by White Oak Developers, Inc. be transferred to New Caney MUD under CCN Nos. 11969 and 20575. The holders of the respective CCN's are agreed to the transfer as evidenced by the enclosed agreements and maps. The property to be transferred is located immediately adjacent to property within New Caney MUD's CCN's and is not presently served by any utility company and has no service lines or sewer facility in place.

Please advise of any additional information needed to process this application.

Very truly yours,



Patrick G. Hubbard

Enclosures

RECEIVED

JAN 24 2006

TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

STATE OF TEXAS

COUNTY OF MONTGOMERY

§
§
§

ANNEXATION AGREEMENT

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

200 JAN 23 AM 10: 07

CHIEF CLERKS OFFICE

WHEREAS, White Oak Developers, Inc. is the owner of a 29.270 acre tract in Montgomery County, Texas, being described by metes and boundaries in Exhibit "A" attached hereto, that is within the boundaries of CCN Nos. 20859 and 12894; and

WHEREAS, the 29.270 acre tract has no water or sewer utility lines in place; and

WHEREAS, the 29.270 acre tract is located immediately adjacent to the boundary line of New Caney Municipal Utility District that holds CCN Nos. 11969 and 20575 for water and sewer service; and

WHEREAS, White Oak Developers, Inc. desires to have New Caney Municipal District provide water and sewer services to the 29.270 acre tract; and

WHEREAS, New Caney Municipal Utility District is willing to provide water and sewer service to the 29.270 acre tract;

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, White Oak Developers, Inc. and New Caney Municipal Utility District hereby covenant and agree as follows:

1. New Caney Municipal Utility District and White Oak Developers, Inc. shall file a petition for New Caney Municipal Utility District to annex the 29.270 tract of land and seek approval of the City of Houston for such annexation and the approval of Texas Commission on Environmental Quality for the heretofore 29.270 acre tract from the CCN Nos. 20859 and 12894 and to CCN's held by New Caney Municipal Utility District, to wit: 11969 and 12894.

2. Upon approval of the City of Houston and TCEQ, New Caney Municipal Utility District shall complete annexation of the 29.270 acre tract.

3. Upon New Caney Municipal Utility District's annexation of the 29.270 tract, White Oak Developers, Inc. will, at its sole cost and expense, install water and sewer service lines on the 29.270 acre tract in accordance with specifications and inspections required by the rules of New Caney Municipal District and thereafter shall transfer ownership of such service lines together with easements deemed adequate by New Caney Municipal Utility District to ownership of New Caney Municipal Utility District.

4. From and after completion of annexation of the 29.270 acre tract, the owners thereof shall be subject to compliance with all rules of New Caney Municipal Utility District and responsible to pay its ratable share of the public obligations of New Caney Municipal Utility District.

5. The parties agree that any disputes arising pursuant to this agreement shall be mediated before litigation may be instituted and that Montgomery County, Texas shall be the county of venue for any litigation concerning this agreement.

6. This document contains the complete agreement of the parties and it may be amended only by written instrument executed by both parties.

7. This agreement may be executed in multiple copies for the use and convenience of the parties.

Dated the 26th day of July, 2005.

White Oak Developers, Inc.

By: William E. Dark
WILLIAM E. DARK, President

NEW CANEY MUNICIPAL UTILITY DISTRICT

Dorothy Rawlinson
By: DOROTHY RAWLINSON, President

THE STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on this 23rd day of June, 2005, by William E. Dark, President of White Oak Developers, Inc.

Marilyn R. Lupe
Notary Public in and for
The State of Texas

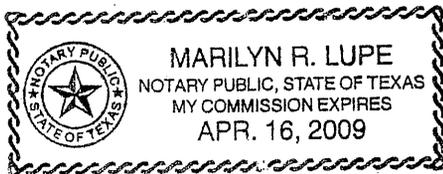


EXHIBIT "A"

Being 29.270 acres of land situated in the State of Texas, County of Montgomery, a part of the Wiatt Anderson Survey, A-49, and being a part of the 316.719 acres described in deed to White Oak Developers, Inc. recorded under Clerk's File No. 9750031 of the Montgomery County Official Public Records of Real Property, and this 29.270 acre tract being more particularly described by metes and bounds as follows:

Beginning at a 1/2" iron rod found for the north common corner between said 316.719 acre tract and White Oak Crossing, Section One, a subdivision in said Montgomery County, Texas, as shown by the map or plat thereof recorded in Cabinet L, Sheet 86 of the Montgomery County Map Records, same being the north common corner between said Anderson Survey and the Joseph M. Everett Survey, A-197, located on the south line of the William Smith Survey, A-540, said point also being located on the south line of the lands titled to Claud R. Jones by Last Will and Testament of Allie Mae Clark recorded under Clerk's File No. 9757182 of said Official Public Records of Real Property;

Thence S 89° 17' 29" E 500.00 ft. along the north line of said White Oak Developers, Inc. 316.719 acres, same being the common survey line between said Anderson and Smith Surveys, common in part with the south lines of said Jones lands, the called 2.502 acres described in deed to Jerry Lee Scott and Lee Ella Scott recorded under Clerk's File No. 8424449 of said Official Public Records of Real Property, the called 2.51 acres described in deed to James P. Slaughter and wife, Sally E. Slaughter, recorded under Clerk's File No. 9320956 of said Official Public Records of Real Property, and the called 10 acres described in deed to Porter-New Caney Recreation Center recorded in Volume 613, Page 114 of said Deed Records, to a 1/2" iron rod set for the northeast corner of the herein described 29.270 acre tract;

Thence S 00° 34' 11" W 2,550.00 ft. to a 1/2" iron rod set for the southeast corner of the herein described 29.270 acre tract;

Thence N 89° 17' 29" W 500.00 ft. to a 1/2" iron rod set for the southwest corner of the herein described 29.270 acre tract located on the west line of said White Oak Developers, Inc. 316.719 acre tract and the east line of the called 31.00 acre tract described in deed to the Congregation of the Mother Co-Redemptrix recorded under Clerk's File No. 8620518 of said Official Public Records of Real Property, same being the common survey line between said Anderson and Everett Surveys;

Thence N 00° 34' 11" E 2,550.00 ft. along the west line of said 316.719 acre tract, same being the common survey line between said Anderson and Everett Surveys, common in part with the east lines of said called 31.00 acre tract and said White Oak Crossing, Section One, to the place of beginning and containing within these bounds 29.270 acres of land.

City of Houston, Texas, Ordinance No. 2007- 1151

AN ORDINANCE CONSENTING TO THE ADDITION OF 29.270 ACRES OF LAND TO NEW CANEY MUNICIPAL UTILITY DISTRICT, FOR INCLUSION IN ITS DISTRICT; CONSENTING TO THE PARTIAL TRANSFER OF CERTIFICATES OF CONVENIENCE AND NECESSITY NOS. 12894 AND 20859 FOR THE LAND TO THE NEW CANEY MUNICIPAL UTILITY DISTRICT'S CERTIFICATES OF CONVENIENCE AND NECESSITY NOS. 11969 AND 20575 IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That attached to this ordinance and made a part hereof is a petition requesting the consent of the City of Houston, Texas, to the annexation of 29.270 acres of land (the "Land") into **NEW CANEY MUNICIPAL UTILITY DISTRICT**; such petition is hereby granted, subject to the terms and conditions set forth herein.

Section 2. That the City Council further consents to the partial transfer of Certificates of Convenience and Necessity Nos. 12894 and 20859 for the Land from White Oak Developers to the New Caney Municipal Utility District's Certificates of Convenience and Necessity Nos. 11969 and 20575 and the inclusion of the Land in Certificates of Convenience and Necessity Nos. 11969 and 20575.

Section 3. That the City Council further hereby notifies the referenced district, its residents and property owners of the provisions of applicable law allowing the City to annex any portion of the district located within the City's extraterritorial jurisdiction, including without limitation the land authorized to be included in the district hereby. That the City requests that the district include a statement in its form required under Section 49.455,

Texas Water Code, reflecting the possibility of such annexation by the City.

Section 4. That the City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Tex. Gov't Code Ann., ch. 551 (Vernon Supp. 2006); and that this meeting was open to the public as required by law at all times during which this ordinance and the subject matter thereof was discussed, considered and formally acted upon. That the City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. That a public emergency exists requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor; provided, however, that if the Mayor fails to sign this ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 17th day of October, 2007.

APPROVED this _____ day of _____, 2007.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is OCT 23 2007



 City Secretary

(Prepared by Legal Dept. DEBORAH F. ALBEE)
 (DFM:dfm October 3, 2007) Senior Assistant City Attorney
 (Requested by Michael S. Marcotte, P.E., DEE, Director, Public Works and Engineering Department)
 (L.D. File No. 0910700019001)
 G:\LANDMUDS2007\NewCaney.wpd

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		EDWARDS
✓		WISEMAN
	ABSENT-OUT OF CITY CITY BUSINESS	KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
	ABSENT	BERRY
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: OCT 23 2007

PETITION FOR CONSENT TO INCLUDE ADDITIONAL LAND IN NEW CANEY
MUNICIPAL UTILITY DISTRICT

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

TO THE HONONARBLE MAYOR AND
CITY COUNCIL OF THE CITY OF HOUSTON

New Caney Municipal Utility District (the "District"), a political subdivision of the State of Texas and White Oak Developers, Inc. ("Landowner"), (Landowner and District hereinafter called "Petitioners"), acting pursuant to the provisions of Section 54.016, Texas Water Code, respectfully petition for consent to include additional land in a municipal utility district. In support of this petition, Petitioners would show as follows:

I.

The District, to which the land hereinafter described is sought to be annexed, exists under the terms and provisions of Article XVI, Section 59 of the Constitution of Texas and Chapters 49 and 54, Texas Water Code, as amended, and was created by Order of the Texas Water Rights Commission on July 1, 1978.

II.

Landowner is the sole owner and holder of fee simple title to the land sought to be annexed to the District, as indicated by the tax rolls of Montgomery Count, Texas. Landowners represent and warrant that there are no liens against said land sought to be annexed.

III.

The land sought to be added to the District contains approximately 29.270 acres of land, more or less, and lies wholly within Montgomery County, Texas. No part of said area is within the limits of any incorporated city or town. Under the provisions of the Texas Local Government Code, Section 42.001 et. seq., as amended, said area is within the extraterritorial jurisdiction of the City of Houston and is not within such jurisdiction of any other city. All of the territory to be annexed may properly be annexed to the District.

IV.

The land sought to be added to the area of the District is described by metes and bounds in exhibit "A" attached hereto and incorporated herein for all purposes.

V.

The general nature of the work proposed to be done in the are sought to be annexed shall be the purchase, construction, acquisition, repair, extension, and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to collect transport, process, dispose of and control all domestic, industrial or communal wastes whether in fluid, solid or composite state.

VI.

There is necessity for the improvements described above. The area of the District is urban in nature, is within the growing environs of Houston, and is in close proximity to populous and developed sections of Montgomery County. The land sought to be added to the District is not supplied with Water or sanitary sewer facilities and services, nor is it presently economically feasible for such facilities to be provided to said land. The health and welfare of the present and future inhabitants of the District, The land sought to be added to the District and of Territories adjacent thereto, require the installation an acquisition of an adequate Water supply and sewage disposal system for and within the land sought to be added the District. A public necessity exists for the addition of the aforesaid lands to the District in order to provide for the purchase, constriction, extension, improvement, maintenance and operation of such water supply and sanitary sewer system, so as to promote and protect the purity and sanitary conditions of the State's waters and the public health and welfare of the community.

VII.

Petitioners agree and covenant to abide by the conditions set forth in Exhibit "B", attached hereto and made a part hereof for all purposes, until such time as said conditions may be changed by City ordinance or resolution, either specific or general.

VIII.

It is estimated by the Petitioners from such information as is available at this time, that the cost of extending the District's facilities to serve the are sought to be annexed will be approximately \$250,000.00

WHEREFORE, Petitioners respectfully pray that this petition be granted in all respects and that the City of Houston give its consent to the annexation of the aforesaid land in said District.

Dated this the 21 of July, 2005

New Caney Municipal Utility District
(the "District")

Dorothy Rawlinson
President, Board of Directors

ATTEST:

Stephen Bush
Secretary, Board of Directors

White Oak Developers, Inc.

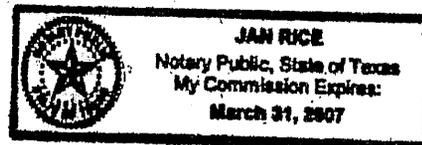
William E. Dark
By: William E. Dark, President

(the "Landowner")

THE STATE OF TEXAS

COUNTY OF MONTGOMERY

§
§
§



This instrument was acknowledged before me on this 21 day of July, 2005, by Dorothy Rawlinson and Stephen Bush, the President and Secretary of New Caney Municipal Utility District on behalf of said Municipal Utility District.

Jan Rice
Notary Public in and for
The State of Texas

EXHIBIT "A"

Being 29.270 acres of land situated in the State of Texas, County of Montgomery, a part of the Wiatt Anderson Survey, A-49, and being a part of the 316.719 acres described in deed to White Oak Developers, Inc. recorded under Clerk's File No. 9750031 of the Montgomery County Official Public Records of Real Property, and this 29.270 acre tract being more particularly described by metes and bounds as follows:

Beginning at a 1/2" iron rod found for the north common corner between said 316.719 acre tract and White Oak Crossing, Section One, a subdivision in said Montgomery County, Texas, as shown by the map or plat thereof recorded in Cabinet L, Sheet 86 of the Montgomery County Map Records, same being the north common corner between said Anderson Survey and the Joseph M. Everett Survey, A-197, located on the south line of the William Smith Survey, A-540, said point also being located on the south line of the lands titled to Claud R. Jones by Last Will and Testament of Allie Mae Clark recorded under Clerk's File No. 9757182 of said Official Public Records of Real Property;

Thence S 89° 17' 29" E 500.00 ft. along the north line of said White Oak Developers, Inc. 316.719 acres, same being the common survey line between said Anderson and Smith Surveys, common in part with the south lines of said Jones lands, the called 2.502 acres described in deed to Jerry Lee Scott and Lee Ella Scott recorded under Clerk's File No. 8424449 of said Official Public Records of Real Property, the called 2.51 acres described in deed to James P. Slaughter and wife, Sally E. Slaughter, recorded under Clerk's File No. 9320956 of said Official Public Records of Real Property, and the called 10 acres described in deed to Porter-New Caney Recreation Center recorded in Volume 613, Page 114 of said Deed Records, to a 1/2" iron rod set for the northeast corner of the herein described 29.270 acre tract;

Thence S 00° 34' 11" W 2,550.00 ft. to a 1/2" iron rod set for the southeast corner of the herein described 29.270 acre tract;

Thence N 89° 17' 29" W 500.00 ft. to a 1/2" iron rod set for the southwest corner of the herein described 29.270 acre tract located on the west line of said White Oak Developers, Inc. 316.719 acre tract and the east line of the called 31.00 acre tract described in deed to the Congregation of the Mother Co-Redemptrix recorded under Clerk's File No. 8620518 of said Official Public Records of Real Property, same being the common survey line between said Anderson and Everett Surveys;

Thence N 00° 34' 11" E 2,550.00 ft. along the west line of said 316.719 acre tract, same being the common survey line between said Anderson and Everett Surveys, common in part with the east lines of said called 31.00 acre tract and said White Oak Crossing, Section One, to the place of beginning and containing within these bounds 29.270 acres of land.

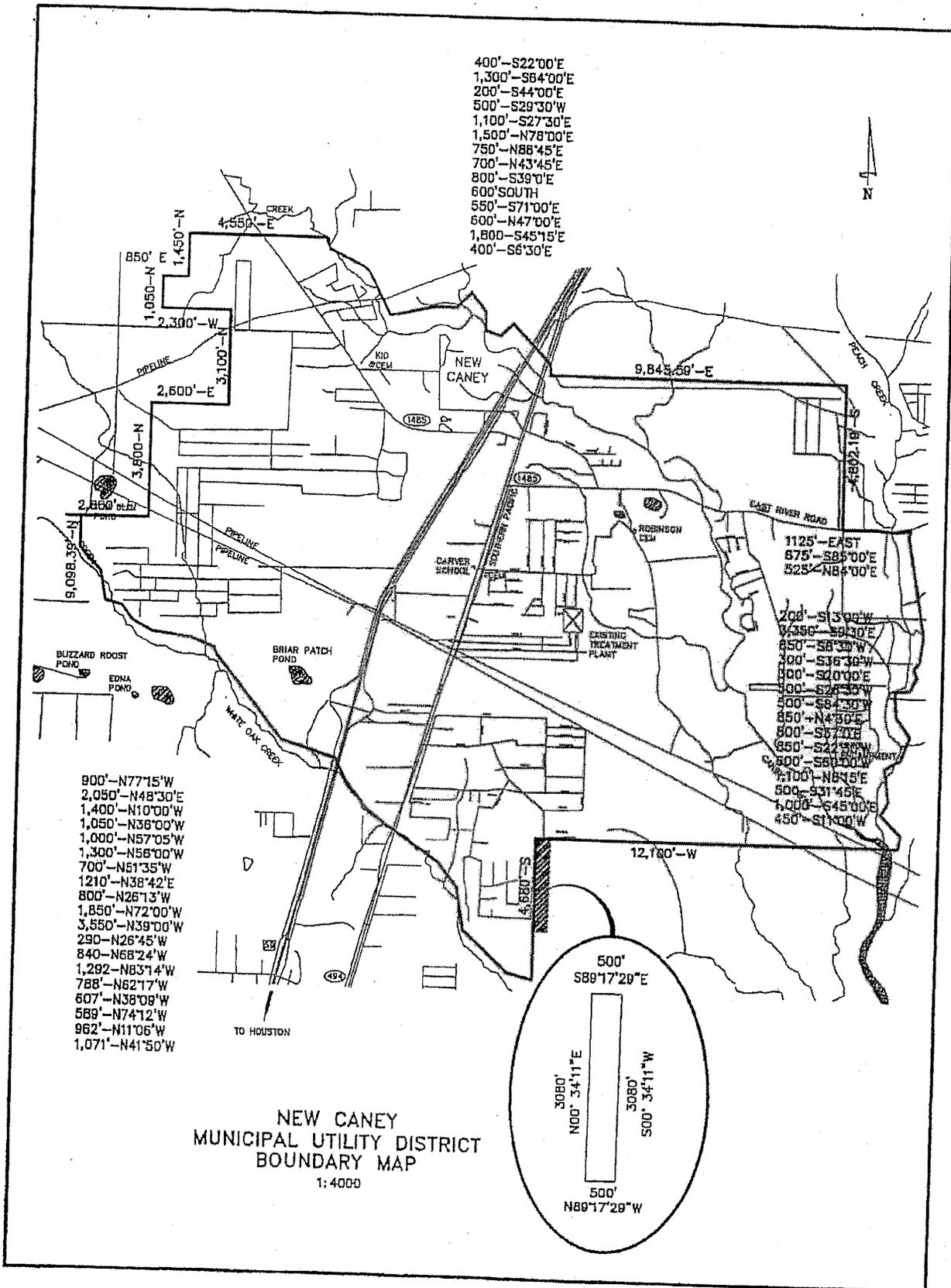




EXHIBIT "B"

(a) To the extent authorized by law, the District will issue bonds only for the purpose of purchasing and constructing, or purchasing, or constructing under contract with the City of Houston, or otherwise acquiring waterworks systems, sanitary sewer systems, storm sewer systems, drainage facilities, recreational facilities, road facilities, or facilities for fire-fighting services, or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions, and repairs thereto, and to purchase or acquire all necessary land, right-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefor, and to operate and maintain same, and to sell water, sanitary sewer, and other services within or without the boundaries of the District. Such bonds will expressly provide that the District reserves the right to redeem the bonds on any interest-payment date subsequent to the fifteenth (15th) anniversary of the date of issuance without premium and will be sold only after the taking of public bids therefor, and none of such bonds, other than refunding bonds, will be sold for less than 95% of par; provided that the net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, will not exceed two percent (2%) above the highest average interest rate reported by the Dally Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such bonds is given, and that bids for the bonds will be received not more than forty-five (45) days after notice of sale of the bonds is given. The resolution authorizing the issuance of the District's bonds will contain a provision that any pledge of the revenues from the operation of the District's water and sewer and/or drainage system to the payment of the District's bonds will terminate when and if the City of Houston, Texas, annexes the District, takes over the assets of the District and assumes all of the obligations of the District. No land located within the extraterritorial jurisdiction of the City of Houston will be added or annexed to the District until the City of Houston has given its written consent by resolution or ordinance of the City Council to such addition or annexation.

(b) (1) Before the commencement of any construction within the District, its directors, officers, or developers and landowners will submit to the Director of the Department of Public Works and Engineering of the City of Houston, or to his designated representative, all plans and specifications for the construction of water, sanitary sewer, drainage, and road facilities and related improvements to serve the District and obtain the approval of such plans and specifications therefrom. All water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto, installed or used within the District, will conform exactly to the specifications of the City of Houston. All water service lines and sewer service lines, lift stations, sewage treatment facilities, and road facilities, and appurtenances thereto, installed or used within the District will comply with the City of Houston's standard plans and specifications as amended from time to time. Prior to the construction of any water, sanitary sewer, drainage or road facilities within or by the District, the District or its engineer will give written notice by registered or certified mail to the Director of Public Works and Engineering, stating the date that such construction will be commenced. The construction of the District's water, sanitary sewer, drainage and road facilities will be in accordance with the approved plans and specifications, and with applicable standards and specifications of the City of Houston; and during the progress of the construction and installation of such facilities, the Director of Public Works and

Engineering of the City of Houston, or an employee thereof, may make periodic on-the-ground inspections.

(2) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of recreational facilities, the District shall obtain and maintain on file, from a registered landscape architect, registered professional engineer or a design professional allowed by law to engage in architecture, a certification that the recreational facilities, as constructed, conform to the applicable recreational facilities design standards and specifications of the City of Houston's Department of Parks and Recreation and shall submit a copy of the certification and the "as built" plans and specifications for such recreational facilities to the Director of the City of Houston Parks and Recreation Department.

(3) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of facilities for fire-fighting services, the District shall obtain and maintain on file, from a registered architect, registered professional engineer or a design professional allowed by law to engage in facility design and construction, a certification that the facilities for fire-fighting services, as constructed, conform to the applicable fire-fighting facilities design standards and specifications of the City of Houston's Fire Department and shall submit a copy of the certification and the "as built" plans and specifications for such facilities for fire-fighting services to the Chief of the City of Houston Fire Department.

(c) The District will agree to engage a sewage plant operator holding a valid certificate of competency issued under the direction of the Texas Commission on Environmental Quality, or such successor agency as the legislature may establish ("TCEQ"), as required by Section 26.0301, Texas Water Code, as may be amended from time to time. The District will agree to make periodic analyses of its discharge pursuant to the provisions of Order No. 69-1219-1 of the Texas Water Quality Board (predecessor agency to the TCEQ) and further to send copies of all such effluent data to the Department of Public Works and Engineering, City of Houston, as well as to the TCEQ. The District will agree that representatives of the City of Houston may supervise the continued operations of the sewage treatment facility by making periodic inspections thereof.

(d) The District, its board of directors, officers, developers, and/or landowners will not permit the construction, or commit to any development within, the District that will result in a wastewater flow to the serving treatment facility which exceeds that facility's legally permitted average daily flow limitations or the District's allocated capacity therein.

(e) Prior to the sale of any lot or parcel of land, the owner or the developer of the land included within the limits of the District will obtain the approval of the Planning Commission of the City of Houston of a plat which will be duly recorded in the Real Property Records of Harris County, Texas, and otherwise comply with the rules and regulations of the Department of Planning and Development and the Department of Public Works and Engineering of the City of Houston.

Texas Commission On Environmental Quality

By These Presents Be It Known To All That

New Caney Municipal Utility District

having duly applied for 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 by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 11969

to provide continuous and adequate water utility service to that service area in Montgomery County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35381-C 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 New Caney Municipal 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 _____

For the Commission

Texas Commission On Environmental Quality

By These Presents Be It Known To All That

New Caney Municipal Utility District

having duly applied for certification to provide sewer 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 by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20575

to provide continuous and adequate sewer utility service to that service area in Montgomery County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35382-C 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 New Caney Municipal 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 _____

For the Commission

Texas Commission On Environmental Quality

By These Presents Be It Known To All That

White Oak Developers, Inc.

having duly applied for 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 by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 12894

to provide continuous and adequate water utility service to that service area in Montgomery County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35381-C 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 White Oak Developers, Inc., 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 _____

For the Commission

Texas Commission On Environmental Quality

By These Presents Be It Known To All That

White Oak Developers, Inc.

having duly applied for certification to provide sewer 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 by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20859

to provide continuous and adequate sewer utility service to that service area in Montgomery County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35382-C 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 White Oak Developers, Inc., 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 _____

For the Commission

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER approving an agreement designating service areas between New Caney Municipal Utility District and White Oak Developers, Inc. pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2008-1204-UCR.

A request for a Commission Order approving a contract designating service areas between New Caney Municipal Utility District ("New Caney") Certificate of Convenience and Necessity ("CCN") Nos. 11969 (water) and 20575 (sewer), and White Oak Developers, Inc. ("White Oak"), CCN Nos. 12894 (water) and 20859 (sewer) in Montgomery County, Texas, was presented to the Texas Commission on Environmental Quality ("Commission") for approval pursuant to Section 13.248 of the Texas Water Code and Title 30, Section 291.117 of the Texas Administrative Code.

On or about July 21, 2005, New Caney and White Oak executed an annexation agreement ("the Agreement") regarding an approximate 29.270 acre tract owned by White Oak and subject to CCN Nos. 20859 (water) and 12894 (sewer) held by White Oak. The agreement states that New Caney will provide White Oak water and sewer service to the approximate 29.270 acres shown in the attached maps and that the areas will be transferred to New Caney's CCN Nos. 11969 (water) and 20575 (sewer). The Agreement also specifies that New Caney will seek consent for the CCN transfer from the City of Houston in accordance with Title 30, Section 291.105(b)(2) of the Texas Administrative Code. Ordinance No. 2007-1157 ("the Ordinance") granting consent for the CCN transfer of approximately 29.270 acres from White Oak to New Caney was passed by the City Council of the City of Houston and became effective on October 23, 2007.

Contracts between retail public utilities that designate areas to be served and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. TEXAS WATER CODE, §13.248.

The Commission held a hearing on the request at April 8, 2009, agenda and found the request had merit.

New Caney is capable of rendering continuous and adequate sewer service to every customer in its current CCNs and approximately 29.270 acres to be transferred under the Agreement. The CCN transfers are necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

The Agreement addressing the transfer of a portion of White Oak's CCN No. 11969 and designating that retail water service shall be provided by New Caney, CCN No. 20575 in the affected approximate 29.270 acres, is hereby approved.

The Agreement addressing the transfer of a portion of White Oak's CCN No. 12894 and designating that retail sewer service shall be provided by New Caney, CCN No. 20575 in the affected approximate 29.270 acres, is hereby approved.

CCN Nos. 20859 (water) and 12894 (sewer) in Montgomery County, held by White Oak, and CCN Nos. 11969 (water) and 20575 (sewer) held by New Caney are hereby amended in accordance with the Agreement.

The Executive Director is directed to re-draw the respective CCNs as provided in the Agreement and as set forth on the maps attached to this Order, and to amend the Commission's official water and sewer service area maps for Montgomery County, Texas. The certificate amendments requested in the application are necessary for the service, accommodation, convenience, and safety of the public.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

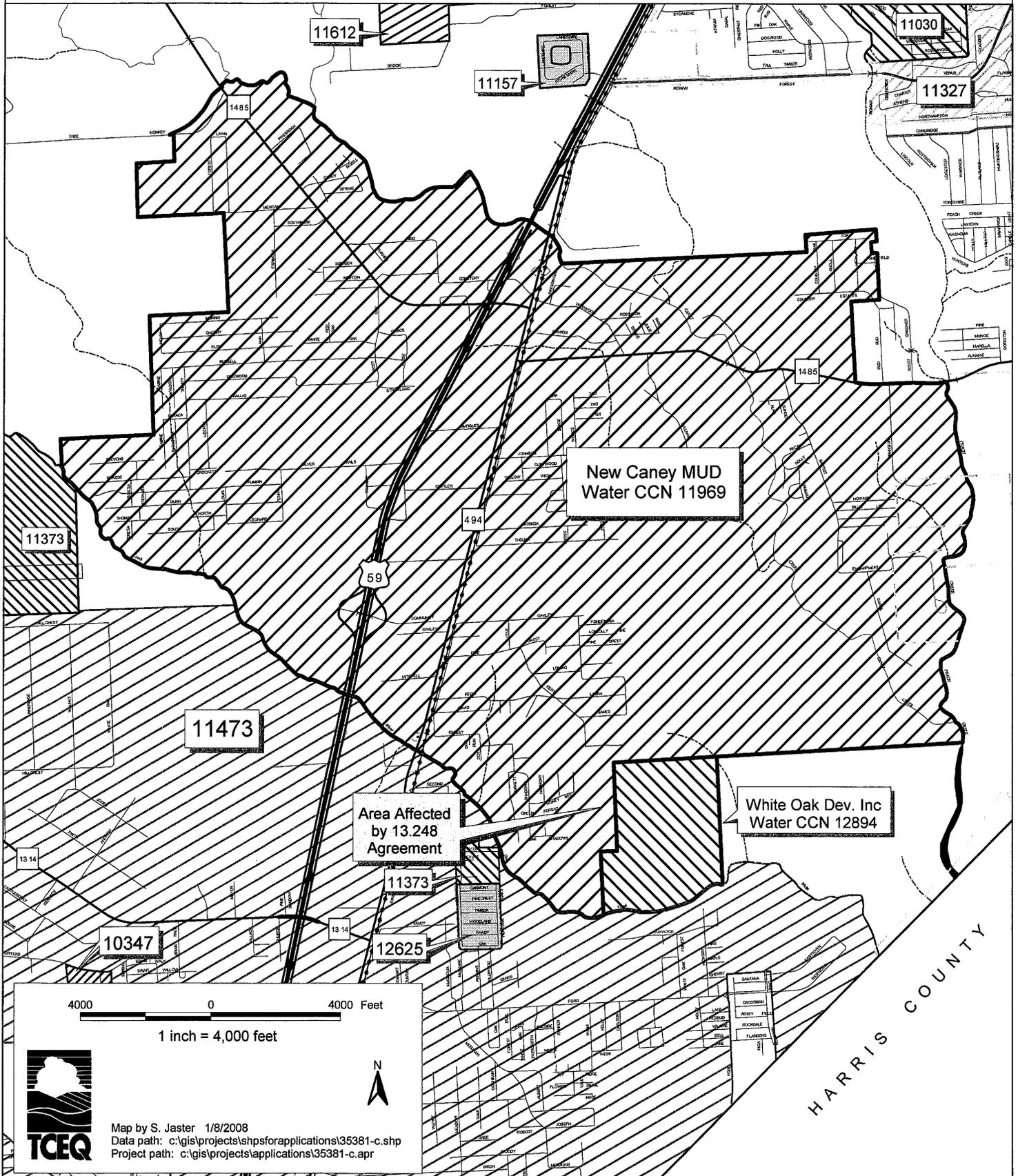
If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

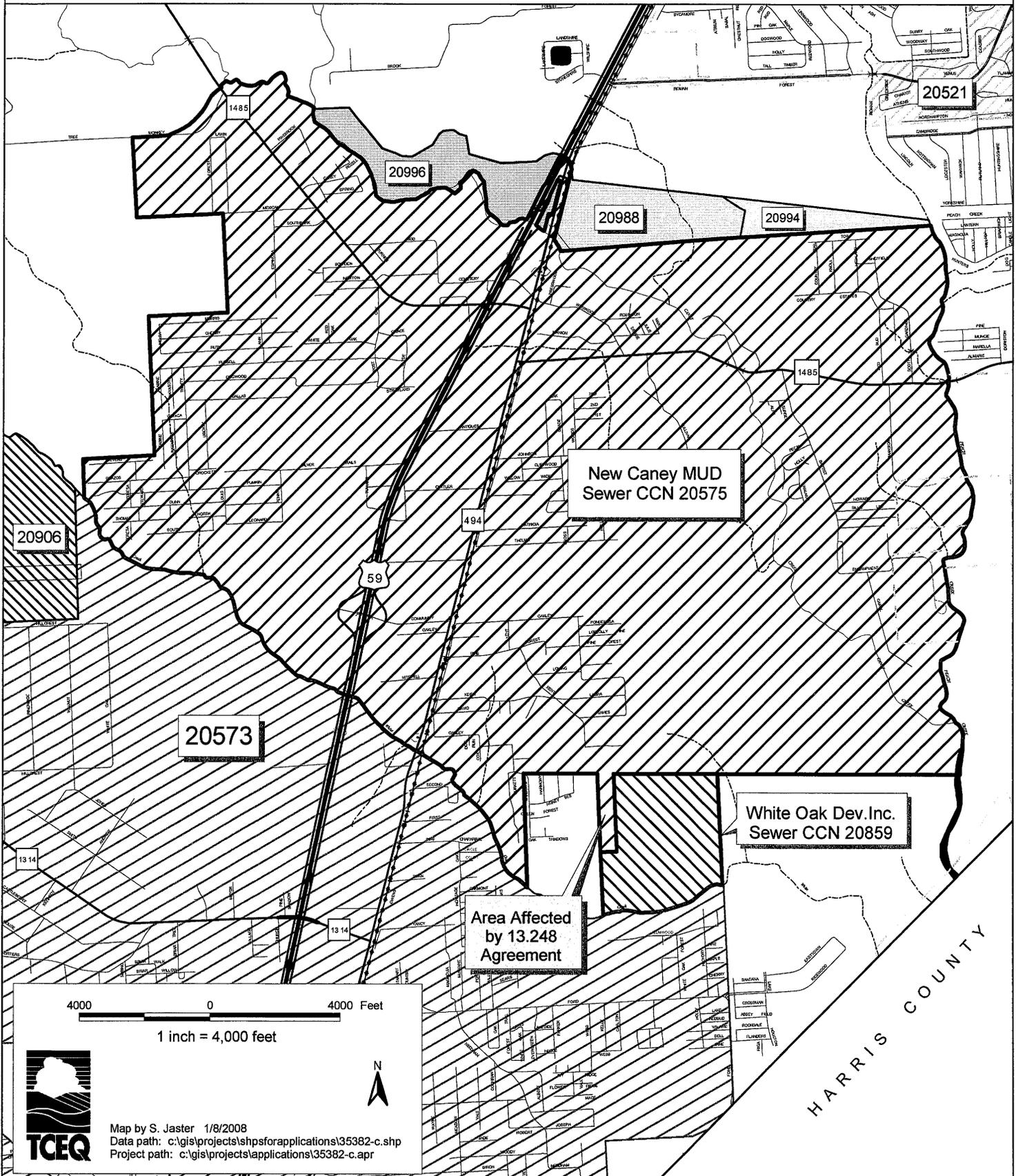
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

New Caney MUD / White Oak Developers, Inc. 13.248 Agreement
Water Service Areas
 Application No. 35381-C (Decertified a Portion of White Oak Developers, Inc., CCN No. 12894
 and Amended to Include within New Caney MUD, CCN No. 11969)
 Montgomery County



New Caney MUD / White Oak Developers, Inc. 13.248 Agreement
Sewer Service Areas
Application No. 35382-C (Decertified a Portion of White Oak Developers, Inc., CCN No. 20859
and Amended to Include within New Caney MUD, CCN No. 20575)
Montgomery County



From: NEW CANEY MUD

281 6893619

02/08/2008 11:51

#1504 P. 002/002

FEB-04-2008(MON) 15:06

Jon C. Pfennig P.C.

(FAX)8325560062

P. 003/005

CONSENT FORM

Applicant's Name: New Caney Municipal Utility District (MUD)
Application Nos.: 35381-C and 35382-C

- I concur with the recommendation contained in the staff memorandum transmitted by letter dated January 28, 2008.
- I do not concur with and intend to respond to the recommendation contained in the staff memorandum transmitted by letter dated January 28, 2008. I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by the New Caney Municipal Utility District (MUD) to sign this form.

Signature: *Billy W. Gos*Printed Name: Billy W. GosRelationship to Applicant: General managerDate signed: 2-8-08

Mall or Fax to:
Sherissa Perryman
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-6972

CONSENT FORM

Applicant's Name: New Caney Municipal Utility District (MUD)

Application Nos.: 35381-C and 35382-C

WED
3/4/08

I concur with the recommendation contained in the staff memorandum transmitted by letter dated January 28, 2008.

I do not concur with and intend to respond to the recommendation contained in the staff memorandum transmitted by letter dated January 28, 2008. I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by the White Oak Developers, Inc. to sign this form.

Signature: *William E. Dark*

Printed Name: William E. Dark

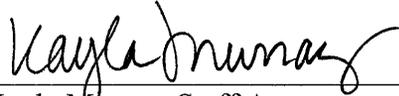
Relationship to Applicant: President

Date signed: 2/8/08

Mail or Fax to:
Sheresia Perryman
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-6972

CERTIFICATE OF SERVICE

I certify that on March 19, 2009, a copy of the foregoing documents was sent by first class, agency mail, and/or facsimile to the persons on the attached Mailing List.



Kayla Murray, Staff Attorney
Environmental Law Division

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 MAR 19 PM 4:38

CHIEF CLERKS OFFICE

MAILING LIST
New Caney MUD / White Oak Developers, Inc. 13.248 agreement
TCEQ Docket No. 2008-1204-UCR

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Mr. William E. Dark
White Oak Developers, Inc.
19221 IH-45 South, Suite 370
Conroe, Texas 77385

Mr. Jon C. Pfening, PC
Attorney at Law
1300 Rollingbrook, Suite 606
P.O. Box 269
Baytown, Texas 77522-0269