

TCEQ DOCKET NO. 2023-0858-DIS

PETITION BY BAHAMAS LAGUNA AZURE, LLC FOR THE CREATION OF ROCKWALL COUNTY MUNICIPAL UTILITY DISTRICT NO. 11 IN ROCKWALL COUNTY, TEXAS	§ § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**PETITIONER BAHAMAS LAGUNA AZURE, LLC'S
RESPONSE TO HEARING REQUESTS**

Bahamas Laguna Azure, LLC ("***Bahamas***") files this response to the requests for a contested case hearing (the "***Hearing Requests***") submitted on Bahamas' Petition ("***Petition***") for the creation of Rockwall County Municipal Utility District No. 11 ("***District***"). Only two Hearing Requests were received by the Texas Commission on Environmental Quality ("***TCEQ***") Chief Clerk's Office, which were from the City of Royse City, Texas ("***City***") and from a Rockwall County ("***County***") public official.

In accordance with applicable legal standards, Bahamas respectfully requests that the TCEQ Commission (the "***Commission***") deny both Hearing Requests and grant the Petition.

I. BACKGROUND

Bahamas owns approximately 541.937 total acres of property ("***Bahamas Development***") generally south of the City in Rockwall County, Texas as shown in **Attachment A**. Approximately 111.311 acres of the Bahamas Development is located within the City's corporate limits, and approximately 430.626 acres is located within the City's Extraterritorial Jurisdiction ("***ETJ***"). Bahamas submitted the Petition to TCEQ to create the District within the 430.626 acres located entirely inside the City's ETJ.

Given the need to begin the Bahamas Development as expeditiously as possible, in addition to pursuing creation of the District, Bahamas is also in the process of dynamically pursuing other simultaneous efforts to enable development, including in the portion of the Bahamas Development

within the proposed District and in the portion of the Bahamas Development outside of the proposed District. For example, since the City holds Water certificate of convenience and necessity (“CCN”) No. 12827 (“**Water CCN**”) and sewer CCN No. 20813 (“**Sewer CCN**”) which each include the entirety of the property within the Bahamas Development, on March 3, 2022 Bahamas submitted to the City a “Request for Water and Sanitary Sewer Service Commitment”. This is a very common type of request for development projects such as the Bahamas Development, and typically result in a “Will Serve” letter providing notice and a commitment from the utility to provide the requested water and wastewater utility service. After several meetings with the City and no mutually agreeable resolution over the course of more than a year, Bahamas then submitted to the City a non-standard service request for water and wastewater service on May 11, 2023, which included changes to the development plans due to changes in market conditions.¹ Further, Bahamas also filed an application with TCEQ on July 1, 2022 for a wastewater discharge permit, which if issued would authorize wastewater treatment capacity for the Bahamas Development per TCEQ Permit No. WQ0016186001.² As with many development projects, a landowner such as Bahamas will simultaneously facilitate the creation of a political subdivision such as the District, engage consultants to prepare engineering plans, obtain various governmental approvals, and then subsequently enter into various agreements with the political subdivision and

¹ Bahamas filed a formal complaint with the Public Utility Commission of Texas regarding Bahamas’ requests for water and wastewater utility service on September 14, 2022 which is pending. *See Bahamas Laguna Azure, LLC’s Complaint Against the City of Royse City for Impairment of Water Service in Water CCN No. 12827 and of Sewer Service in Sewer CCN No. 20813*, Docket No. 54071 (filed September 14, 2022). Various litigation is also pending involving Bahamas and the City which includes issues relating to water and wastewater utility service. *See Cause No. 1-22-1456, City of Royse City, Texas v. Bahamas Laguna Azure, LLC, et al., 382nd District Court of Rockwall County, Texas; Civil Action No. 3:23-cv-0517-N, Bahamas Laguna Azure, LLC v. City of Royse City, Texas, United States District Court for the Northern District of Texas, Dallas Division.*

² The TCEQ Executive Director issued preliminary decision on July 17, 2023 that the application for TCEQ Permit No. WQ0016186001 meets all requirements of applicable law. The deadline to request a contested case hearing is August 16, 2023. The City and North Texas Municipal Water District have requested a hearing as of the date of this filing.

other entities in order to further the orderly development after the political subdivision is created. This is exactly the methodical process Bahamas has undertaken here, and the creation of the District is one of many components needed for a successful project proceeding concurrently on parallel paths.

Prior to filing the Petition for District creation with TCEQ, Bahamas submitted a petition to the City on February 14, 2022 requesting City consent to create the District. However, after more than 90 days passed without receiving City consent, Bahamas submitted an additional petition to the City on May 17, 2022 requesting water and sanitary sewer services that would otherwise be provided by the District. However, there was no mutually agreeable contract to provide such service within 120 days. Thus, by operation of law the City statutorily consented to District creation pursuant to Tex. Local Gov't Code §42.042(c). Further, since there was no mutually agreeable contract, pursuant to Tex. Water Code §54.016(d), Bahamas was authorized to file the Petition to create the District, which was received by TCEQ on September 22, 2022,

Notice of the Petition was posted at the Rockwall County Clerk's Office on January 24, 2023, and Notice was published in the *Royse City Herald-Banner* on February 1 and on February 9, 2023. After more than a six-month detailed review, the TCEQ Executive Director issued a Technical Memorandum ("**ED's Technical Memorandum**") dated March 31, 2023, and a Proposed Order, both of which are attached hereto as **Attachment B**. The ED's Technical Memorandum states that:

Based on TCEQ policy, compliance with TCEQ rules, and review of the engineering report and supporting documents, the proposed District is considered feasible, practicable, would be a benefit to the land within the proposed District, and would be necessary as a means to finance utilities and to provide utility service to future customers.

Prior to the March 13, 2023 deadline for submission of Hearing Requests, TCEQ received three identical Hearing Requests from the City dated March 10, 2022, and two identical hearing

requests on letterhead of the Rockwall County Criminal District Attorney. No other Hearing Requests were received.

II. APPLICABLE LAW

Determining whether to deny or grant a Hearing Request on a petition such as Bahamas' Petition to create a municipal utility district ("**MUD**") such as Rockwall County Municipal District No. 11 includes an application of the statutes and TCEQ's rules relating to MUD creation, as well as an application of the applicable TCEQ rules relating to Hearing Requests.

A. Legal Parameters of District Creation

Creation of a MUD is governed primarily by Tex. Water Code, Chapter 54, Subchapter A.³ Pursuant to Tex. Water Code §54.012, a MUD can be created to perform a variety of functions. Consistent with those statutory functions, as explained in the published notice for the District in this case:

[T]he proposed District will construct, maintain, and operate a waterworks system including the purchase and sale of water for domestic and commercial purposes; to construct, maintain and operate a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes; to construct, install, maintain, purchase and operate drainage and roadway facilities and improvements; and to construct, install, operate, purchase and maintain facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized.

Tex. Water Code §54.021(a) provides that the MUD must be created if the Commission determines based on the following factors outlined in Tex. Water Code §54.021(b) that a petition to create a MUD is feasible and practicable and is necessary and would be a benefit to the land to be included in the MUD:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

³ See also Tex. Water Code, Chapter 49, Subchapter B and TCEQ's rules at 30 Tex. Admin. Code, Chapter 293 which are entirely consistent with the statutes and TCEQ rules cited herein.

- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

Prior to filing a petition with TCEQ to create a MUD which would be located in the ETJ of a city, Tex. Local Gov't Code §42.042(a) and Tex. Water Code §54.016(a) require city consent. However, if the city fails or refuses to provide consent within 90 days, pursuant to Tex. Local Gov't Code §42.042(b) and Tex. Water Code §54.016(b), a petition can be submitted to the city requesting the city to make available to the area the water, sanitary sewer services, or both that would be provided by the MUD. If within 120 days the city fails to enter into a mutually agreeable contract to provide the services, then *that failure constitutes the city's consent to the creation of the MUD* pursuant to Tex. Local Gov't Code §42.042(c) and Tex. Water Code §54.016(c). If within the statutory timeframes noted above the city fails or refuses consent to MUD creation, *or* if the city fails or refuses to enter into a *mutually agreeable contract* for water and sanitary sewer services, then Tex. Local Gov't Code §42.042(f) and Tex. Water Code §54.016(d) authorize a landowner to petition TCEQ for creation of the MUD. Further, Tex. Local Gov't Code §42.042(f) expressly provides that:

The commission *shall allow* creation or confirmation of the creation of the political subdivision or inclusion of the land in a proposed political subdivision on finding that the municipality either does not have the reasonable ability to serve or has *failed to make a legally binding commitment* with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. (emphasis added) *See also* Tex. Water Code §54.016(d).

As explained above, Bahamas sought consent of the City to create the District and requested water and sanitary sewer service from the City, but the City did not enter into a legally binding, mutually agreeable contract for such service.

B. Legal Parameters for Evaluating Hearing Requests

Availability of a contested case hearing on Bahamas' Petition is governed by TCEQ rules at 30 Tex. Admin. Code, Chapter 55, Subchapter G (Sections 55.250-55.256) and is controlled by several basic requirements. First, and foremost, only the Commission, the Executive Director, the applicant, or an affected person when authorized by law may request a contested case hearing as provided by 30 Tex. Admin. Code §55.251(a). A Hearing Request must include several elements, including that it must be in writing, must identify a personal justiciable interest, and must be timely filed no later than 30 days after publication of the notice as provided by 30 Tex. Admin. Code §55.251(c)-(d). However, even if a Hearing Request includes all of the other required elements, the Commission may not grant a Hearing Request unless the Commission first determines that the request was filed by an affected person as provided by 30 Tex. Admin. Code §55.255(b)(2).

An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to the general public, as provided by 30 Tex. Admin. Code §55.256(a). As provided by 30 Tex. Admin. Code §55.256(b), whether or not a Hearing Requester is an affected person is determined by the following factors:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;

- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application. (emphasis added)

Two (2) of the six factors provided in 30 Tex. Admin. Code §55.256(b) for determining whether or not a Hearing Requester is an affected person with a personal justiciable interest are the “likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person” and the “likely impact of the regulated activity on use of the impacted natural resource by the person.” Alleged injuries “couched in terms of potentialities or events that “may” happen” are “mere speculation, and as such, it falls short of establishing a justiciable interest and standing.”⁴

[To] have such an interest, the complainant must show that a concrete, particularized, actual or imminent injury faces him due to the decision; a hypothetical or speculative injury is not enough.”⁵

Further, the Austin Court of Appeals has determined that it is reasonable to conclude that hearing requestors are not affected persons if the proposed “activity will have minimal effect on their health, safety use of property, and use of natural resources.”⁶ Thus, two (2) of the considerations regarding the Hearing Requests of the City and from a County official provide that the requests must be denied unless they make an affirmative demonstration that granting of the Petition would have likely, specific, actual and imminent injury.⁷ Neither the City nor the letter from the County official has made such a demonstration.

⁴ *Texas Disposal Systems Landfill, Inc. v. Texas Comm’n on Env’tl. Quality*, 259 S.W.3d 361, 363-64 (Tex.App.—Amarillo 2008, no pet.) (emphasis added).

⁵ *Id.* at 363 (emphasis added).

⁶ See *Tex. Comm’n on Env’tl. Quality v. Sierra Club*, 455 S.W.3d 228, 240 (Tex. App. – Austin 2014) (emphasis added).

⁷ Although the cases cited in the previous footnotes are based on the language of 30 Tex. Admin. Code §55.203 which are not applicable to hearing requests for petitions to create a MUD, the applicable language in 30 Tex. Admin. Code §55.256(c) which is applicable to MUD creations is identical.

III. IMPLEMENTATION OF THE APPLICABLE LAW TO THE HEARING REQUESTS ON BAHAMAS' PETITION

Based on an application of the foregoing statutes and rules, neither the City nor the County is an affected person entitled to a contested case hearing.

A. The City's Hearing Request Fails to Meet the Legal Parameters

The City's offers only three (3) possible bases to support its Hearing Request, none of which is sufficient to demonstrate that a hearing should be held.

1. The City's Water CCN and Wastewater CCNs

The City's Water CCN and Wastewater CCN provide the City with an obligation to respectively provide water and wastewater service to the land within the District. However, there is not currently a single water or wastewater meter located within the territory of the District. As explained in detail above, the City and Bahamas have not entered into a mutually agreeable contract to provide water and wastewater utility services, despite Bahamas petition to the City on May 17, 2022 requesting water and sanitary sewer services that would otherwise be provided by the District, despite Bahamas' request for a Will Serve letter in March 2022, and despite Bahamas' request for a non-standard service agreement in May 2023. If a mutually agreeable contract cannot be executed despite Bahamas' best efforts, as a landowner of more than twenty-five (25) contiguous acres in Rockwall County, Bahamas has the option at Bahamas' sole discretion to remove the Bahamas Development from the City's Water CCN and Sewer CCN pursuant to the streamlined expedited release provisions in Tex. Water Code § 13.2541(b) and 16 Tex. Admin. Code § 24.245(h). As part of Bahamas' dynamic approach to developing the Bahamas Properties described above, Bahamas could certainly decertify the City's CCNs as its efforts proceed and alternatively enter into agreements with the District and/or other entities in order to provide such service the Bahamas Development. Thus, the City's asserted interest based on its CCN is

speculative at best, and the City has not made the required demonstration that creation of the District would result in the type of concrete, particularized, actual or imminent injury required to establish a personal justiciable interest, given the facts of this case.

2. Roadway and Drainage Facilities

The City also asserts an interest based on the City's Subdivision Ordinances relating to roadways and drainage within the City's ETJ. Although the District is currently inside the City's ETJ, beginning September 1, 2023, Bahamas will have the legal option at Bahamas' sole discretion to remove the Bahamas Development from the City's ETJ pursuant to Tex. Local Gov't Code Chapter 42, Subchapter D.⁸ As part of Bahamas' dynamic approach to developing the Bahamas Properties described above, Bahamas could certainly remove its property from the City's ETJ, which would make the City's ordinances inapplicable. Thus, the City's asserted interest based on its roadway and drainage ordinances are speculative at best, and the City has not made the required demonstration that creation of the District would result in the type of concrete, particularized, actual or imminent injury required to establish a personal justiciable interest, given the facts of this case.

3. Mutually Agreeable Contract for Water or Sewer Service

The City's Hearing Request suggests Bahamas has a burden and an obligation to enter into a mutually agreeable contract for water and sanitary sewer services within 120 days of requesting it pursuant to Tex. Water Code §54.016(b) and (c). However, the plain face of Tex. Water Code §54.016(c) simply states that if the City and Bahamas:

... fail to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within 120 days after receipt of the petition, the failure shall constitute authorization for the inclusion of the land in the district . . .
(emphasis added)

⁸ See Acts 2023, 88th Leg., S.B. 2038, § 2 effective September 1, 2023.

The statute does not qualify why such a mutually agreeable contract may or may not have been executed. Although Bahamas agrees with the City's assertion that the City and Bahamas have met on several occasions to discuss the provision of water and sewer service, an agreement or lack thereof does not implicate whether the City is an affected person for purposes of Bahamas' Petition.

Further, as discussed above, the City's failure to respond to the petition Bahamas submitted to the City or to arrive at a mutually agreeable contract for water and sanitary sewer service serves as statutory consent by the City for creation of the District pursuant to Tex. Local Gov't Code §42.042(c) and Tex. Water Code §54.016(c), which is directly contrary to the City's Hearing Request.

B. The Hearing Request from a County Official Fails to Meet the Legal Parameters

The Hearing Request submitted on the letterhead of the Rockwall County Criminal District Attorney is signed by Craig Stoddart, Assistant Criminal District Attorney, and includes an Exhibit A with the signature of Rockwall County Judge Frank New. The Hearing Request letter does not provide any indication that it is an official request of the County, or whether it has been authorized by the Rockwall County Commissioners Court. Further, even if the Commissioners Court did authorize the Hearing Request, it does not provide any discernible, specific concerns or demonstrate in any way how the County might be an affected person with a personal justiciable interest, and makes no mention of any likely impact of the District to the County. Specifically, the statement in Exhibit A only expresses broad, generalized issues related to overall development in the County. The text of the Hearing Request letter simply references statutory provisions relating to statutory authority of counties, but does not positively tie such authority to creation of the District in this case or to any likely impact, and does not even go so far as to speculate about

potential impact. Thus, the Hearing Request letter, even if it was authorized by the Commissioners Court, fails to demonstrate that the County has a personal justiciable interest.

The Hearing Request letter also recognizes that Tex. Water Code §54.0161(b)(2) allows a commissioners court to provide comments to TCEQ relating to creation of a MUD. However, the statute expressly requires that any comments to TCEQ on a petition to create a MUD outside the corporate limits of a municipality be approved by a vote of the commissioners court and submitted at least 10 days before action is taken on the petition. That has not happened here. There is no indication in the Hearing Request letter whether it was approved by the commissioners court. In addition, nowhere does Tex. Water Code §54.0161(b) state or imply that a county is entitled to a hearing. Although the Texas Supreme Court has determined that every word of a statute is presumed to have been used for a purpose and every word excluded from a statute must be presumed to have been excluded for a purpose, the counterpart is that:

When the Legislature expresses its intent regarding a subject in one setting, but, as here, remains silent on that subject in another, we generally abide by the rule that such silence is intentional.⁹

The Legislature chose in Tex. Water Code §54.0161(b)-(c) to provide a county with express statutory authority to submit to TCEQ “any findings, conclusions, and other information that the commissioners court thinks would assist the commission in making a final determination on the petition” which TCEQ “shall consider”. (emphasis added) By remaining silent about whether a county may qualify for a hearing in a MUD creation petition in any other part of Tex. Water Code, Chapter 54, the Legislature has therefore determined that a county’s limited participation in MUD

⁹ See *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 497 (Tex. 2013)(“Thus, the Legislature's express provision of procedures for re-evaluating temporary benefit eligibility and the absence of such a procedure for permanent benefits indicates a deliberate choice . . .”(emphasis added)).

creation petitions should be limited to submitting comments to TCEQ, and only if approved by the commissioners court.

IV. CONCLUSION AND PRAYER

As summarized in the ED's Technical Memorandum, the proposed District is feasible, practicable, would be a benefit to the land within the proposed District, and would be necessary as a means to finance utilities and to provide utility service to future customers. Neither the City nor the Hearing Request letter submitted on County letterhead establishes that either the City or the County is an affected person. Thus, neither of them is entitled to a contested case hearing on Bahamas' Petition. Bahamas therefore respectfully requests that the Commission deny both Hearing Requests and issue the Proposed Order granting the Petition.

Respectfully Submitted,



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COUNSEL FOR
BAHMAS LAGUNA AZURE, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Bahamas Lagua Azure, LLC's foregoing Response to Hearing Requests has been forwarded on this day of August 14, 2023 to the attached mailing list as indicated in the mailing list, either via electronic mail or U.S. Mail.

By:



Derek Seal

MAILING LIST

Rockwall Municipal Utility District No. 11
Docket No. 2023-0858-DIS; Internal Control No. D-09222022-043

REQUESTER(S):

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Lloyd Gosselink Rochelle & Townsend PC
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chloe.daniels@lglawfirm.com

Frank New
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Fnew@rockwallcountytexas.com

Craig Stoddart
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Rockwall, Texas 75087

INTERESTED PERSON(S):

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Rockwall County
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csevier@rockwallcountytexas.com

FOR ALTERNATIVE DISPUTE RESOLUTION:

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Alternative Dispute Resolution, MC-222
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FOR THE EXECUTIVE DIRECTOR:

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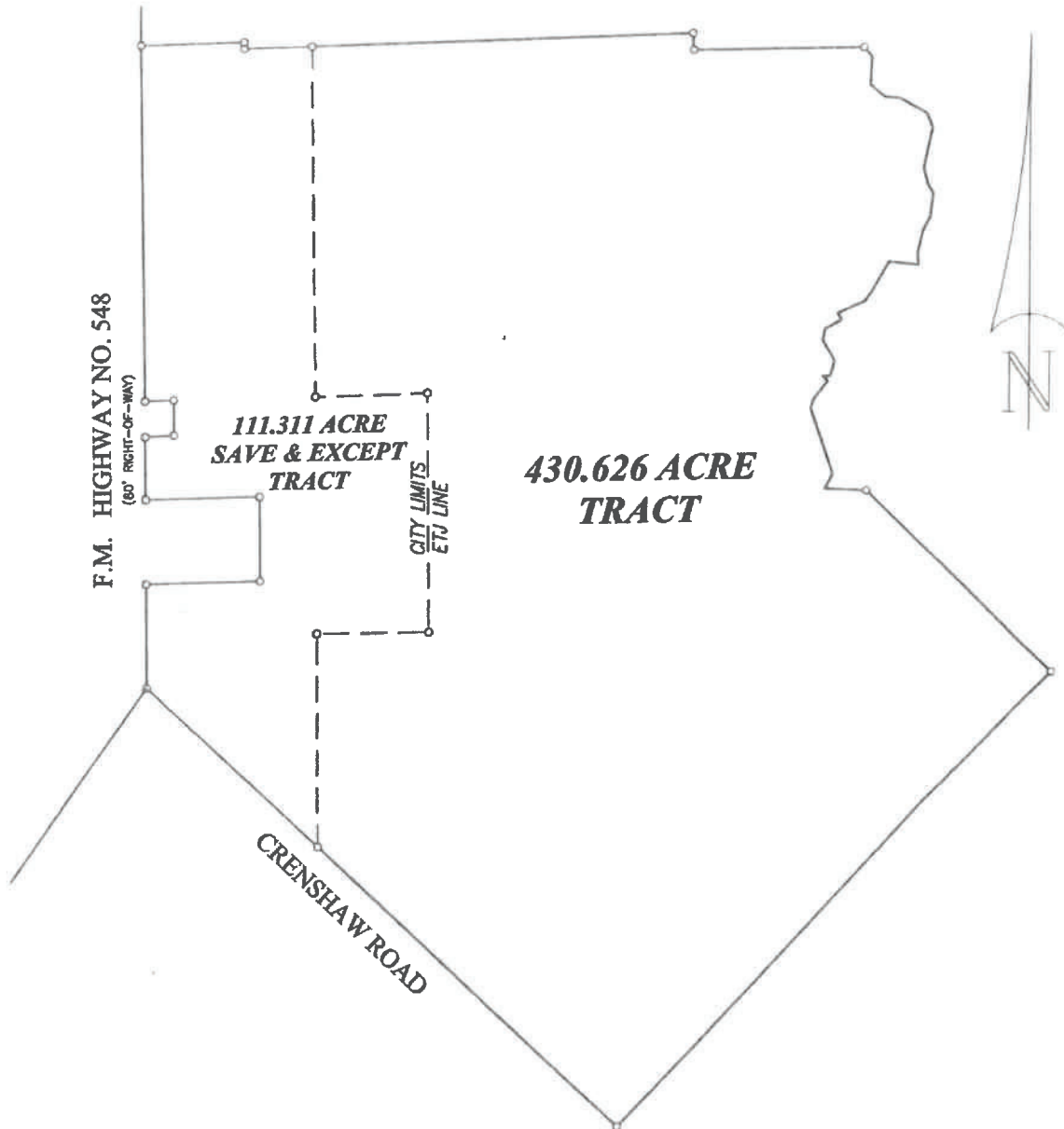
Ryan Vise, Deputy Director
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FOR PUBLIC INTEREST COUNSEL:

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ATTACHMENT A

EXHIBIT "B"



BAHAMAS ROYSE CITY



USA PROFESSIONAL SERVICES GROUP, INC.
1525 VICEROY DRIVE, DALLAS, TX 75235
PHONE 214-634-3300
FAX 214-634-3338
REGISTERED ENGINEERING FIRM F-1845
REGISTERED SURVEYING FIRM 101074-00

OWNER: MEGATEL HOMES III, LLC
SURVEY: ANDREW NAIL SURVEY, ABSTRACT NO. 355
LOCATION: ROCKWAL COUNTY, STATE

JOB No. 2021003.00
DATE: FEBRUARY 2, 2022

DRAWN BY: JDR
EXHIBIT B PAGE 1 OF 1

CAD FILE: CITYLIMITS TO JR.DWG
SCALE: NOT TO SCALE

ATTACHMENT B

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 31, 2023

Ms. Mindy Koehne
Coats Rose
16000 North Dallas Parkway, Suite 350
Dallas, Texas 75248

Re: Rockwall County Municipal Utility District No. 11; Petition for Approval of Creation;
Pursuant to Texas Water Code Chapters 49 and 54.
TCEQ Internal Control No. D-09222022-043
CN: 606061422 RN: 111574679

Dear Ms. Koehne:

Enclosed are (1) a copy of the Texas Commission on Environmental Quality's (TCEQ) initialed memorandum that constitutes the official TCEQ report on the referenced petition and (2) a copy of the draft order for your review. After we receive your consent, we will finalize the order approving your application and submit it to the Executive Director for signature.

The Executive Director is authorized to sign the order on behalf of the Commission in accordance with Section 5.122 of the Texas Water Code and the TCEQ's rules. Please e-mail the executed consent form to technical manager Daniel Harrison at Daniel.Harrison@tceq.texas.gov. Please do not send additional copies via mail or fax. If the executed consent form is not received within 5 working days, the application for your district will be considered "contested" and finalization of the order could be delayed significantly. After the Executive Director signs the order, the Chief Clerk's office will provide you with a signed copy.

If you request amendments to the staff memorandum and/or draft order because of changes to your application or because you provide more information, additional time will be required to review the requested changes and modify the memorandum and/or draft order. **This could result in significant delays for obtaining approval of your application.**

If you have any questions, please contact Daniel Harrison at 512-239-1224 or by e-mail at daniel.harrison@tceq.texas.gov.

Sincerely,



Justin P. Taack, Manager
Water Supply Division - Districts Section
Texas Commission on Environmental Quality

JPT/dh



I concur with the recommendations contained in the memorandum dated March 31, 2023, and the associated draft order.

I intend to respond to the recommendations contained in the memorandum dated March 31, 2023, and the associated draft order.

I concur with the recommendations contained in the memorandum dated March 31, 2023, and the associated draft order, with the exception of the below stated objection(s)¹. I request that the Commission proceed with issuing the order as drafted and understand that the objections will be addressed in a subsequent application.

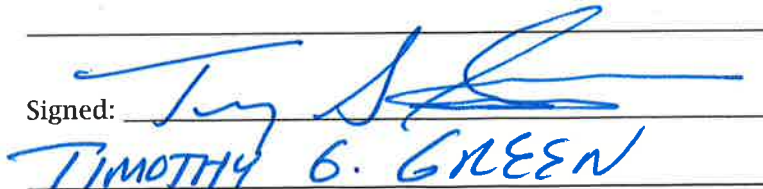
1. Objections described below include items deemed ineligible as stated in the memorandum or order which the District believes are reimbursable. The District may include items deemed ineligible in this application in a subsequent application and may provide additional information in favor of reimbursement justifying these items as part of the subsequent application. Please reference the section and page number of the staff memorandum when noting your objections.

I concur with the recommendations contained in the memorandum dated March 31, 2023, and the associated draft order. However, the following non-substantive² changes are recommended.

2. Non-substantive changes described below, include typos, transposition of numbers, dates, etc. Please reference the section and page number of the staff memorandum when providing your comments.

Objections/Comments: _____

Signed: _____



TIMOTHY G. GREEN

Printed Name

Date: _____

4/14/23

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Justin P. Taack, Manager
Districts Section

Date: March 31, 2023

Through: Dan Finnegan, Lead
Districts Bond Team

From: Daniel Harrison
Districts Bond Team

Subject: Petition by Bahamas Laguna Azure, LLC for Creation of Rockwall County Municipal Utility District No. 11; Pursuant to Texas Water Code Chapters 49 and 54.
TCEQ Internal Control No. D-09222022-043 (TC)
CN: 606061422 RN: 111574679

A. GENERAL INFORMATION

The Texas Commission on Environmental Quality (TCEQ) received a petition within the application requesting approval for the creation of Rockwall County Municipal Utility District No. 11 (District). The petition was signed by Zach Ipour, Co-president, Bahamas Laguna Azure, LLC (Petitioner). A certificate was provided from the Rockwall Central Appraisal District confirming that Bahamas Laguna Azure, LLC holds title to at least a 50% majority of the assessed value of real property in the proposed District. The Petitioner states that there is one lienholder on the lands included in the proposed District, and written documentation of the consent of that lienholder was provided.

The District is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59 of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code (TWC).

Location and Access

The proposed District is located entirely within the extraterritorial jurisdiction of the City of Royse City (City). Physically, the proposed district is located north of Crenshaw Road and east of FM 548. Access to the proposed District will be via a proposed collector road to Crenshaw Road and another collector intersecting FM 548.

Metes and Bounds Description

The proposed District contains one tract of land, consisting of 430.45 acres. TCEQ's staff has checked the metes and bounds legal description, and it has been found to form an acceptable closure.

City Consent

In accordance with Local Government Code Section 42.042 and TWC Section 54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by TWC

Section 54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to TWC Section 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the district.

Statements of Filing Petition

Evidence of filing the petition with the City, the Rockwall County Clerk's Office, the TCEQ's Fort Worth Regional office, the applicable Texas state representative and the applicable Texas state senator has been provided.

Type of Project

The proposed District will be considered a "developer project" as defined by 30 Texas Administrative Code (30 TAC) Section 293.44(a). Therefore, developer cost participation in accordance with 30 TAC Section 293.47 will be required.

Developer Qualifications

Megatel Homes, LLC will be the developer of the land within the proposed District. Information provided supports that the developer has considerable experience in residential development within the Rockwall County area.

Certificate of Ownership

By certificate dated November 4, 2022, the Rockwall Central Appraisal District has certified that its tax rolls indicate that Bahamas Laguna Azure, LLC owns at least a 50% majority of the assessed value of the real property in the proposed District.

Temporary Director Affidavits

The TCEQ has received affidavits for consideration of the appointment of temporary directors for the following:

Kelli Green
Peggy Helge

Calvin Jackson
Sherry Savoie

D. Jan Pippard

Each of the above persons named is qualified, as required by 30 TAC Section 293.32(a), to serve as a temporary director of the proposed District as each (1) is at least 18 years old, (2) is a resident of the State of Texas, and (3) either owns land subject to taxation within the proposed District or is a qualified voter within the proposed District. Additionally, as required by TWC Section 54.022, the majority are residents of the county in which the proposed District is located, a county adjacent to the county in which the proposed District is located, or if the proposed District is located in a county that is in a metropolitan statistical area designated by the United States Office of Management and Budget or its successor agency, a county in the same metropolitan statistical area as the county in which the proposed District is located.

Notice Requirements

Proper notice of the application was published on February 2 and 9, 2023, in the *Royse City Herald-Banner*, a newspaper regularly published or circulated in Rockwall County, the county in which the district is proposed to be located. Proper notice of the

application was also posted on January 24, 2023 at the Rockwall County Clerk's Office. The 30-day comment period ended March 13, 2023. Accordingly, the notice requirements of 30 TAC Section 293.12(b) have been satisfied.

B. ENGINEERING ANALYSIS

The creation preliminary engineering report indicates the following:

Availability of Comparable Service

The preliminary engineering report indicates, and TCEQ staff have verified, that the District land is currently within the water service area of the City of Royse City. The District land is also near the water service area for the Certificate of Convenience and Necessity (CCN) held by BHP Water Supply Corporation, but this supplier declined to provide service. The Petitioner has requested water service from the City, but the City has not responded to this request. The Petitioner proposes to supply water service for District residents from the District's own water supply and distribution system.

According to the preliminary engineering report, and based on TCEQ staff determination, the area of the proposed District is within the service area for wastewater service of the City. As previously stated, the City has not responded to the request for wastewater service. The Petitioner determined it is most economical to construct and operate a District wastewater treatment plant to serve the District.

Water Supply

The preliminary engineering report states that the proposed District will construct and operate one water plant with water wells. To serve the estimated 1,145 single-family connections (ESFCs) planned for the District, an average daily demand of 0.4122 million-gallons-per-day (MGD) at full build-out will be required. The District plans to construct the water supply system phased to coincide with the rate of development.

Water Distribution Improvements

The water distribution system for full development of the proposed District is to consist of a network of 8-inch and 12-inch water lines to ensure that all connections are provided with an ample supply of water at adequate pressure.

Wastewater System

The District will construct a wastewater treatment system to serve the District. The District plans to construct a wastewater treatment plant (WWTP) capable of treating an ultimate capacity of 0.3435 MGD, which is the estimated capacity requirement for the 1,145 ESFCs in the District. The WWTP will be located within the District and will discharge to a tributary of the South Fork Sabine River.

The District will construct a gravity wastewater collection system designed to accommodate normal infiltration and sewage flows from the District's customers.

Storm Water Drainage

Storm water runoff within the proposed District will be directed through curb-and-gutter streets, buried drain pipes and onsite detention basins. The drainage pipes will

have a minimum diameter of 24 inches, a minimum flow velocity of three feet per second and be designed following approved City of Royse City and Rockwall County design criteria. Detention storage of storm water will be located onsite, will convey the runoff through the floodplain and discharge into a tributary of South Fork of the Sabine River. Storm water will be discharged to Sabine Creek, the South Fork Sabine River and ultimately to Lake Tawakoni.

Road Improvement

Application material indicates the proposed District will fund roadway improvements including major thoroughfares and collector roads within its boundary.

Topography/ Floodplain / Elevation

The land within the proposed District is sloped to the east to Sabine Creek and to the southeast down South Fork Sabine River with elevations ranging from approximately 502 feet above to 550 feet above mean sea level.

According to Federal Emergency Management Agency Flood Insurance Rate Map Panels No. 448397C-0055L and 48397C-0065L dated September 26, 2008, approximately 225 acres of the District are within the 100-year floodplain. According to the Preliminary Engineering Report, most proposed development will be outside the 100-year floodplain. In addition, a flood study will be completed prior to design to confirm floodplain limits, and in areas where development encroaches upon the floodplain, a mitigation strategy will be included in the flood study and implemented to assure there are no adverse impacts to downstream or adjacent properties.

The proposed District will comply with rules and regulations for subdivision insurance pursuant to Section 203(b) of Title II of the National Housing Act of 1934, and as a result, no major land elevation changes of any type are planned, according to the preliminary engineering report.

Impact on Natural Resources

The creation of the proposed District is expected to have minimal effects on runoff rates and drainage, subsidence, groundwater recharge capability or surface water quality. The area of the District is currently gently sloped agricultural fields, and the surface flow drains to a creek which eventually discharges to Lake Tawakoni. The preliminary engineering report states that planned detention improvements should prevent significant problems from the increased run-off resulting from the development. According to the preliminary engineering report, the domestic water usage by the District will not contribute significantly to the rate of subsidence. Regarding groundwater levels, the preliminary engineering report states that the District is located over the Trinity and Nacatoch aquifers, and ultimate water usage is estimated to be 412,200 gallons-per-day (gpd) average daily flow. No adverse effect is anticipated on the quality of ground or surface water since wastewater disposal for the District will be by a WWTP which will discharge treated effluent to a tributary of South Fork Sabine River, according to application material.

Dam Safety

There are no dams associated with the proposed District according to a letter dated August 26, 2022 from the TCEQ Critical Infrastructure Division.

C. SUMMARIES OF COSTS

WATER, WASTEWATER AND DRAINAGE

<u>Construction Costs</u>	<u>Total Costs</u>	District's <u>Share</u> ⁽¹⁾
A. Water Treatment Plant Facilities	\$ 5,665,000	\$ 4,815,250
B. Wastewater Treatment Plant Facilities	8,070,000	6,859,500
C. Water, Wastewater & Drainage Internal Facilities	10,478,000	8,906,300
D. Water & Wastewater Trunk Line Facilities	860,000	731,000 ⁽²⁾
E. Detention Pond Facilities	1,351,000	1,148,350
F. Land Acquisition Costs	11,764,000	9,999,400 ⁽³⁾
D. Contingencies for Items A through F	3,963,600	3,369,060
F. Engineering for Items A through F	<u>4,756,320</u>	<u>4,042,872</u>
TOTAL CONSTRUCTION COSTS (77.4% OF BIR)	\$ 46,907,920	\$ 39,871,732
<u>Non-Construction Costs</u>		
A. Legal Fees (2.5%)		\$ 1,289,000
B. Fiscal Agent Fees (2%)		1,031,000
C. Interest		
1. Capitalized Interest (12 months @ 5.0%)		2,577,000
2. Developer Interest (24 months @ 5.0%)		3,987,000
D. Bond Discount (3%)		1,546,000
E. Bond Issuance Costs		237,268
F. Creation and Operating Costs		400,000 ⁽⁴⁾
G. Bond Report Engineering		400,000
H. Market Study		20,000
I. Attorney General Fee (0.1% per bond issue)		52,000
J. TCEQ Bond Issuance Fee (0.25% per bond issue)		<u>129,000</u>
TOTAL NON-CONSTRUCTION COSTS		\$ 11,668,268
TOTAL BOND ISSUE REQUIREMENT		\$ 51,540,000

- Notes: (1) Assumes 85% District funding of anticipated developer contribution items, where applicable, according to application material.
 (2) According to estimate provided, the \$860,00 total includes \$510,000 for Trunk Water Distribution plus \$350,000 for Trunk Wastewater Distribution.
 (3) Represents 85% of estimated costs of \$11,764,000 for 6 acres for the water and wastewater plants at \$30,000 per acre plus 231.68 acres of detention and drainage at \$50,000 per acre, according to application material.
 (4) Includes \$300,000 for Operating Costs plus \$100,000 for Creation Costs, according to application material.

ROADS

<u>Construction Costs</u>	<u>Total Cost</u>	District's <u>Share</u>
A. Roadways	\$ 2,250,000	\$ 2,250,000
B. Contingencies	337,500	337,500
C. Engineering (18%)	<u>405,000</u>	<u>405,000</u>
TOTAL CONSTRUCTION COSTS (78.2% OF BIR)	\$ 2,992,500	\$ 2,992,500

Non-Construction Costs

A. Legal Fees (2.5%)	\$ 98,000
B. Fiscal Agent Fees (2%)	78,000
C. Interest	
1. Capitalized Interest (12 months @ 5.0%)	195,000
2. Developer Interest (24 months @ 5.0%)	299,000
D. Bond Discount (3%)	117,000
E. Bond Issuance Costs	66,500
F. Bond Report Engineering	50,000
F. Attorney General Fee (0.1%)	<u>4,000</u>
TOTAL NON-CONSTRUCTION COSTS	\$ <u>907,500</u>
TOTAL ROAD BOND ISSUE REQUIREMENT	\$ 3,900,000

Eligibility of costs for District funding and 30% developer contribution requirements will be determined in accordance with TCEQ rules in effect at the time utility bond applications are reviewed.

A preliminary layout of roads proposed for funding has been provided, and they appear to benefit the District and the land included within the District. Eligibility of costs for roads may be subject to TCEQ review to be determined in accordance with TCEQ rules in effect at the time bond applications are reviewed.

D. ECONOMIC ANALYSIS

Land Use

The land use for the proposed District is projected in the following table:

<u>Development</u>	<u>Acres</u>	<u>ESFCs</u>
Single-Family Residential	192.8	1,145
Floodplain/Detention Pond/Open Space	231.7	0
Water and Wastewater Plants	<u>6.0</u>	<u>0</u>
Totals	430.5	1,145

Market Study

A market study, prepared by John Burns Real Estate Consulting, dated May 26, 2022, has been submitted in support of the creation of the proposed District. The market study indicates that the proposed District is located in the extra territorial jurisdiction (ETJ) of the City of Royse City and is generally south of Royse City and northeast of Rockwall. The study indicates single-family homes within the subject community are expected to be absorbed at a rate sufficient to sell all 1,145 homes in the District by the year 2035.

Project Financing

The District's ability to amortize the required bond debt is based on ultimate improvements and full development of the District. Each particular bond issue will be reviewed and justified on its own economic feasibility merits prior to the issuance of any bonds by the District. The projected taxable assessed valuation (AV) for the proposed District is as follows:

<u>Development Type</u>	<u>Acres/Units</u>	<u>Average Unit Value</u>	<u>Total Value at Build Out</u>
Single-Family Homes	1,145	\$399,350	\$457,255,750
TOTAL ASSESSED VALUATION			\$457,288,750

Considering an estimated utility and road bond issue requirement of \$55,440,000 (\$51,540,000 in water and drainage bonds plus \$3,900,000 in road bonds), a coupon bond interest rate of 5.0%, a 25-year bond life, the average annual debt service requirement would be approximately \$3,934,000. Assuming a 98% collection rate, 12 months of capitalized interest, and an ultimate assessed valuation (AV) of \$457,288,750, a tax rate of approximately \$0.88 per \$100 AV would be necessary to meet the annual debt service requirement. In addition, the District estimates that a maintenance tax rate of \$0.12 per \$100 AV would be required, resulting in a combined District tax rate of \$1.00 per \$100 AV.

The total year 2021 overlapping tax rates on land within the proposed District are shown in the following table:

<u>Taxing Jurisdiction</u>	<u>Tax Rates</u>
Royse City Independent School District (ISD)	\$1.4603
Rockwall County	0.3131
Proposed District	<u>1.0000</u>
Total tax per \$100 AV	\$2.7734

Based on the proposed District tax rate and the year 2021 overlapping tax rate on land within the proposed District, the project is considered economically feasible.

Water and Wastewater Rates

According to information provided, the District will provide retail water service to the proposed District's customers. The proposed water rates are as follows:

Water:

<u>Consumption</u>	<u>Single-Family Rate</u>	<u>Commercial/Multi-Family Rate</u>
Up to 10,000 gallons	\$32.00 (flat)	\$50.00 (flat)
10,001 to 20,000 gallons	\$2.90 per 1,000 gallons	\$2.90 per 1,000 gallons
20,001 to 25,000 gallons	\$3.30 per 1,000 gallons	\$3.30 per 1,000 gallons
Above 25,000	\$4.40 per 1,000 gallons	\$4.40 per 1,000 gallons

Based on the above rates, the estimated monthly fee for a single-family residential connection and 10,000 gallons of water service would be approximately \$32.00.

The District will provide wastewater service to the customers in the District. The estimated wastewater rates will be as follows:

Wastewater:

Consumption	Single-Family Rate	Commercial/Multi-Family Rate
Up to 10,000 gallons	\$32.00 (flat)	\$50.00 (flat)
10,001 to 20,000 gallons	\$1.50 per 1,000 gallons	\$1.50 per 1,000 gallons
20,001 to 25,000 gallons	\$1.75 per 1,000 gallons	\$1.75 per 1,000 gallons
Above 25,000	\$2.00 per 1,000 gallons	\$2.00 per 1,000 gallons

Based on the above rates, the estimated monthly fee for a single-family residential customer for 10,000 gallons of wastewater service would be approximately \$32.00.

Comparative Water District Tax Rates

A combined tax rate of \$1.00 per \$100 assessed valuation for the proposed District appears to be acceptable for this type of development. Based on the requirements of 30 TAC Section 293.59, this project is considered economically feasible.

E. SPECIAL CONSIDERATION

Request for Road Powers

A request for approval of road powers was included in the petition for creation of the proposed District. Pursuant to TWC Section 54.234, approval of road powers may be requested at the time of creation. The engineering report provided with the application included a summary of the estimated costs. The proposed roads appear to benefit the proposed District, and financing appears feasible.

F. CONCLUSIONS

1. Based on TCEQ policy, compliance with TCEQ rules, and review of the engineering report and supporting documents, the proposed District is considered feasible, practicable, would be a benefit to the land within the proposed District, and would be necessary as a means to finance utilities and to provide utility service to future customers.
2. Based on a review of the preliminary engineering report; market study; the proposed District's water, drainage and road facilities; a combined projected tax rate of \$1.00 per \$100 AV; the proposed District obtaining a 5.0% bond coupon interest rate; and other supporting data, the proposed District is considered feasible under the feasibility limits prescribed by 30 TAC Section 293.59.
3. The recommendations are made under authority delegated by the Executive Director of the TCEQ.

G. RECOMMENDATIONS

1. Grant the petition for creation of Rockwall County Municipal Utility District No. 11.

2. Grant the District's request to acquire road powers in accordance with TWC Section 54.234 and 30 TAC Sections 293.11(d)(11), 293.201, and 293.202, subject to the requirements imposed by the TCEQ and the general laws of the State of Texas relating to the exercise of such powers.
3. The Order granting the petition should include the following statement:

“This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the petition for creation, nor as a commitment or requirement of the TCEQ in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for TCEQ consideration.”
4. Appoint the following to serve as temporary directors until permanent directors are elected and qualified:

Kelli Green
Peggy Helge
Calvin Jackson

D. Jan Pippard
Sherry Savoie

H. ADDITIONAL INFORMATION

The Petitioner's professional representatives are:

Attorney:	Mr. Ross Martin – Winstead, PC
Engineer:	Mr. Alex Pfefferkorn, P.E. – Quiddity Engineering, LLC
Financial Advisor:	Mr. Ryan R. Nesmith – Robert W. Baird & Co., Inc.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER GRANTING THE PETITION FOR CREATION OF ROCKWALL COUNTY MUNICIPAL UTILITY DISTRICT NO. 11 AND APPOINTING TEMPORARY DIRECTORS

A petition by Bahamas Laguna Azure, LLC (Petitioner) was presented to the Executive Director of the Texas Commission on Environmental Quality (TCEQ) for approval of the creation of Rockwall County Municipal Utility District No. 11 (District) pursuant to Article XVI, § 59 of the TEXAS CONSTITUTION and TEX. WATER CODE Chapters 49 and 54.

The TCEQ, after having considered the petition, application material, and memorandum from the Executive Director dated March 31, 2023 (Memorandum), attached as Exhibit "B," finds that the petition for creation should be approved.

The TCEQ finds that the creation of the proposed District as set out in the application is feasible, practicable, and necessary, and would be a benefit to the land to be included in the proposed District.

The TCEQ further finds that the proposed District and its system and subsequent development within the proposed District will not have an unreasonable effect on land elevation, subsidence, and groundwater level within the region, recharge capability of a groundwater source, natural runoff rates and drainage, water quality, or total tax assessments on all land located within the proposed District.

All of the land and property proposed may properly be included within the proposed District.

All statutory and regulatory requirements for creation of Rockwall County Municipal Utility District No. 11 have been fulfilled in accordance with TEX. WATER CODE § 54.021 and 30 TEX. ADMIN. CODE §§ 293.11–293.12.

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

1. The petition for the creation of Rockwall County Municipal Utility District No. 11 is hereby granted.
2. The District is created under the terms and conditions of Article XVI, Section 59 of the TEXAS CONSTITUTION and TEX. WATER CODE Chapters 49 and 54.
3. The District shall have, and shall be subject to, all of the rights, duties, powers, privileges, authority, and functions conferred and imposed by the TCEQ and the general laws of the State of Texas relating to municipal utility districts, including road powers under TEX. WATER CODE § 54.234, subject to the requirements of the TCEQ and the general laws of the State of Texas relating to the exercise of such powers.

4. The District shall be composed of the area described by metes and bounds in Exhibit "A" attached hereto and incorporated herein for all purposes.

5. The Memorandum dated March 31, 2023, attached as Exhibit "B," is hereby incorporated as part of this Order.

6. The persons listed in Recommendation No. 4 of the Memorandum are hereby named and appointed as temporary directors and shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oaths of office. All such bonds shall be approved by the Board of Directors of the District, and each bond and oath shall be filed with the District and retained in its records.

7. This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the petition for creation, nor as a commitment or requirement of the TCEQ in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for TCEQ consideration.

8. The Chief Clerk of the TCEQ shall forward a copy of this Order to all affected persons.

9. 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: **DRAFT**

For the Commission