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**REVIEWED****MAR 17 2023**By 

March 10, 2023

Ms. Laurie Gharis, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087 (MC-105)  
Austin, TX 78711-3087

**VIA HAND-DELIVERY, FAX  
AND TCEQ E-FILE**

Re: Petition by Bahamas Laguna Azure, LLC to the Texas Commission on Environmental Quality for the creation of Rockwall County Municipal Utility District No. 11; TCEQ Internal Control No. D-09222022-043

Dear Chief Clerk Gharis:

The City of Royse City (the "**City**") submits the following public comments and request for a contested case hearing on the petition of Bahamas Laguna Azure, LLC for the creation of Rockwall County Municipal Utility District No. 11 (the "**Petition**"). Please direct all future correspondence on this Petition to the following representative of the City:

**City of Royse City:**

Lloyd Gosselink Rochelle & Townsend, P.C.:  
Attn: David Klein, Attorney for the City  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
dklein@lglawfirm.com  
Daytime Phone: (512) 322-5800  
Fax: (512) 472-0532

**I. PROCEDURAL HISTORY CONCERNING THE PETITION**

On September 21, 2022, Bahamas Laguna Azure, LLC (the "**Petitioner**") filed its Petition for the creation of Rockwall County Municipal Utility District No. 11 (the "**District**") with the Texas Commission on Environmental Quality (the "**TCEQ**").<sup>1</sup> The TCEQ found the Petition

<sup>1</sup> Petitioner originally petitioned the City for consent to the creation of Rockwall County Municipal Utility District No. 10. However, an application to create such district over a different tract of land was already pending at the TCEQ. Petitioner subsequently changed the name of its proposed District to Rockwall County Municipal Utility District No. 11.

**FAX COVER SHEET****To:****From:** Ricoh Services**Company:****Date:** 03/10/23 03:33:53 PM**Fax Number:** 5122393311**Pages (Including cover):** 21**Re:** TCEQ**Notes:****RICOH**

Direct

Lloyd Gosselink Rochelle &amp; Townsend, P.C.

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March 10, 2023

Page 2

administratively complete on September 22, 2022. On December 13, 2022, the Petitioner filed a revised petition correcting language that the Petition was filed with the City of Greenville rather than the City of Royse City. On January 18, 2023, the Chief Clerk of the TCEQ sent a letter to Ross Martin, attorney for the Petitioner, with a copy of the draft Notice of District Creation (the "*Notice*"). The Notice specified that the deadline to request a hearing is 30 days after newspaper publication of the Notice. The Petitioner filed an Affidavit of Publication of the Notice of District Creation, indicating that notice was published on February 2, 2023 and February 9, 2023, and a Certificate of Posting Notice evidencing that the Notice was posted at the Rockwall County Courthouse on January 24, 2023. Therefore, based on these dates of posting and publication notice, the deadline to submit public comments and/or request a hearing regarding the Petition is March 13, 2023. Thus, these public comments and request for a contested case hearing are timely filed.

## II. PUBLIC COMMENT

With this filing, the City submits the following comments regarding the Petition. First, the jurisdictional boundaries of the proposed District, consisting of approximately 430.45 acres of land, are located entirely within the City's water and sewer Certificate of Convenience and Necessity ("*CCN*") Nos. 12827 and 20813, respectively. Given the overlap of the proposed District boundaries with the City's water and sewer CCNs, the City asks the TCEQ to explain how the District can provide retail water and wastewater service or build water and wastewater infrastructure within the proposed District's boundaries if the City has the exclusive right to provide retail water and wastewater over such land.

Second, the City asks for the Executive Director's Staff to explain the extent of its review to determine that the Petitioner met its obligation under Texas Water Code ("*TWC*") § 54.016(b) and (c). In short, with respect to the Petition, the City believes that a mutually agreeable contract for water and sewer service with the Petitioner was not reached because Petitioner would not provide the City with a reliable, consistent quantity of water and sewer service needed for the land within the proposed District.

## III. REQUEST FOR A CONTESTED CASE HEARING

The Petition requesting the creation of the District under TWC § 54.021 should be denied because (i) the Petitioner failed to meet its procedural requirements under TWC § 54.016 before filing the Petition at the TCEQ and (ii) the proposed District is not feasible or practicable, not necessary, and would not be a benefit to the land to be included in the District. Specifically, the Petition contemplates creating a municipal utility district over land within the City's water CCN No. 12827 and sewer CCN No. 20813, and the District would not be capable of meeting the requirements of the City's Subdivision Ordinances due to low estimated costs. The Petition has also been filed without sufficiently meeting the requirement to negotiate and execute a mutually agreeable contract with the City for water and wastewater services. For such reasons, which are explained in more detail herein, the City believes that it is an affected person with justiciable interests with respect to the Petition, and it requests a contested case regarding the Petition, pursuant to 30 TAC § 55.251.

March 10, 2023

Page 3

**A. Applicable Law**

Substantively, the legal standard that the TCEQ considers when processing an application to create a municipal utility district is set forth in TWC § 54.021. In relevant part, TWC § 54.021(a) and (b) state:

- (a) If the commission finds...that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.
- (b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider: (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities...<sup>2</sup>

Such rubric is applicable only after the landowner/petitioner completes the two procedural prerequisites provided in TWC § 54.016. Said another way, a landowner/petitioner cannot file an application to create a district at the TCEQ until it completes such procedural steps. As to the first step, TWC § 54.016(a) requires a petitioner to obtain consent from the city to the creation of the district, as follows:

- (a) No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section. The request to a city for its written consent to the creation of a district, shall be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls. A petition for the written consent of a city to the inclusion of land within a district shall describe the boundaries of the land to be included in the district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, and state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition.<sup>3</sup>

Second, if the city is unwilling to consent to the creation of the district, then the landowner/petitioner and the city must attempt to reach a mutually agreeable contract for the provision of water and sewer service to the land within the proposed district. Such requirement is provided in TWC § 54.016, as provided below:

- (b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district, including a

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<sup>2</sup> Tex. Water Code § 54.021 (a) and (b).

<sup>3</sup> Tex. Water Code § 54.016 (a).



March 10, 2023

Page 4

district created by a special act of the legislature, within 90 days after receipt of a written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

- (c) If the governing body of the city and a majority of the electors or the owner or owners of 50 percent or more of the land to be included in the district 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 under the provisions of this section.<sup>4</sup>

If such agreement is not reached, then, and only then, may the landowner/petitioner submit an application at the TCEQ to create the desired district.

**B. Bases for a Contested Case Hearing**

The City is entitled to a contested case hearing on the Petition for both substantive and procedural reasons, as provided in more detail, herein.

**1. The City possesses a water and sewer CCN over the boundaries of the proposed District**

The creation of the District is not feasible or practicable, not necessary, and would not be a benefit to the land within the proposed District because the City possesses both a water and sewer CCN over the entire jurisdictional boundary of the proposed District. Maps of the City's water and sewer CCN boundaries are attached hereto as **Attachment A** and are incorporated herein for all purposes. The City, as the holder of water and sewer CCNs over the proposed District's jurisdictional boundaries, is the only entity that legally can provide water and sewer service to that land. The District, if created, would not be able to provide such services. Said another way, the availability of water and sewer (comparable) services from the City is not just available, but the City is the only entity authorized by the State of Texas to provide such services to that geographic area. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(1), and these facts render the District useless.

**2. The City regulates roadways of new development under its Subdivision Ordinances**

The creation of the District is not feasible or practicable, not necessary, and would not be a benefit to the land within the proposed District because the Petitioner has failed to prepare a sufficient financial plan for the construction of roads and to conduct a traffic study contemplating the road work that would be necessary to develop the land within the City's extra-territorial

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<sup>4</sup> *Id.* at § 54.016 (b) and (c).

March 10, 2023

Page 5

jurisdiction ("*ETJ*"). The City has adopted roadway ordinances that the Petitioner must comply with to develop the land within the proposed District, and the Petitioner has failed to estimate sufficient funds in the Petition to fund such costs.<sup>5</sup> It is an established procedure of the City to require a plat in instances where land in its ETJ will be developed, in which case, the City's Subdivision Ordinances will apply. These ordinances require proportionality between the traffic impacts created by a new development and requirements placed on the property owner to dedicate and improve off-site, abutting, and internal thoroughfare rights-of-way to City standards.<sup>6</sup> It is the view of the City that the proposed District will require significantly more funding to comply with such ordinances and, therefore, the projected construction costs are not reasonable and would render the creation of the District infeasible, impractical, and unnecessary. Additionally, granting road powers to the proposed District is not feasible or practicable under TWC § 54.234(d) because the Petitioner has not completed a traffic study for the proposed District. These facts should also be considered in the TCEQ's determination of whether the Petition is feasible and practicable under TWC § 54.021(b)(2).

### **3. The City regulates drainage facilities of new development under its Subdivision Ordinances**

Likewise, the City's Subdivision Ordinances will apply to any drainage facilities the proposed District may construct. Under these ordinances, a developer is responsible for constructing off-site drainage improvements necessary to serve the subdivision or development and the surrounding area.<sup>7</sup> As mentioned above, the City disagrees with the Petitioner's estimated cost of the proposed District in light of the improvements needed for the surrounding area to reasonably support new development. Consequently, the City contends that there will be negative drainage issues resulting from the creation of the proposed District. The TCEQ should consider this when determining the feasibility and practicability of the Petition under TWC § 54.021(b)(2).

### **4. The Petitioner has failed to attempt to negotiate a mutually agreeable agreement for water and/or sewer service.**

The filing of the Petition is premature and it should be denied because the Petitioner has failed to attempt to negotiate a mutually agreeable agreement for water and/or sewer service as required under TWC § 54.016 (c). The City has met with Petitioner on many occasions in the past to negotiate a contract for the provision of water and sewer services to the proposed District. However, such negotiations were unsuccessful due to Petitioner's failure to provide the City with a reliable, consistent quantity of living unit equivalents of water and sewer service needed for the land within the proposed District. Two such plans provided to the City by Petitioner are attached hereto, as Attachment B, received in October 2022, and Attachment C, received in December 2022, both of which differ from the plan submitted with the Petition. As such, the City contends that the Petitioner has not, in good faith, attempted to negotiate a mutually agreeable contract as required by TWC § 54.016(c) and consequently filed the Petition prematurely.

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<sup>5</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(206).

<sup>6</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(a)(4) (2006).

<sup>7</sup> See CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-4(c) (2006).

March 10, 2023

Page 6

**C. The City is an Affected Person with Justiciable Interests**

With respect to the Petition, the City is an affected person under 30 Texas Administrative Code ("TAC") § 55.256 with justiciable interests unique from the general public, and, thus, it is entitled to a contested case hearing regarding the Petition. As (i) the holder of water CCN No. 12827 and sewer CCN No. 20813 with a water and sewer service area over the entire jurisdictional boundaries of the proposed District, (ii) the entity regulating roadways and drainage in its ETJ where the proposed District would be located, and (iii) the entity with whom the Petitioner must first attempt to negotiate a mutually agreeable contract of water and sewer services, the City is uniquely impacted by the Petition and by the creation of the potential District.

**1. Affected Person Prerequisites under 30 TAC §§ 55.251 and 55.256**

In accordance with the prerequisites for requesting a contested case hearing in 30 TAC § 55.251(b), the contact information of the person filing this request for the City is provided in the initial paragraph of this letter, and the City hereby requests a contested case hearing on the Petition.<sup>8</sup> Next, for an entity other than the Commissioners, Executive Director, or Petitioner to have standing to request a contested case hearing, it must demonstrate that it is an "affected person" under the standards set forth in 30 TAC § 55.256.<sup>9</sup> Under such rule, an affected person is one who has a personal justiciable interest not common to members of the general public that is related to a legal right, duty, privilege, power, or economic interest affected by the petition.<sup>10</sup> Governmental entities, such as the City, with authority under state law over issues contemplated by the petition, may be considered affected persons.<sup>11</sup> All relevant factors must be considered by the TCEQ in determining affected person status, including: (1) whether the interest claimed is one protected by the law under which the petition 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 activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on the 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.<sup>12</sup>

**2. The City's Justiciable Interests*****a. The City's Water and Sewer CCNs***

First, the jurisdictional boundaries of the proposed District are entirely within the City's water CCN No. 12827 and sewer CCN No. 20813 service areas, and such overlapping boundaries constitute a personal justiciable interest of the City that is uniquely and negatively affected by the Petition. To be clear, with respect to 30 TAC § 55.251(c)(2), the City's water and sewer CCNs

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<sup>8</sup> Addressing the factors in 30 TAC § 55.251(c)(1) and (3).

<sup>9</sup> 30 TAC § 55.251(b).

<sup>10</sup> 30 TAC § 55.256(a).

<sup>11</sup> 30 TAC § 55.256(b).

<sup>12</sup> 30 TAC § 55.256(c).

March 10, 2023

Page 7

service areas are at the same location as the jurisdictional boundaries of the proposed District. A map of the City's water and sewer CCN boundaries is attached hereto as Attachment A.

Under Texas law, a water and/or sewer CCN provides its holder with the exclusive right to provide retail water and/or sewer service to the service area designated in such certificate.<sup>13</sup> As to the City's right, privilege, and power under its CCNs, TWC § 13.242(a) states that:

...except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.<sup>14</sup>

Additionally, the City's obligation as a CCN holder to provide retail water and sewer service is established under TWC § 13.250(a), which provides that:

Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.<sup>15</sup>

In other words, such statutes grant the City, as a CCN holder, a legal right, duty, privilege, power, and economic interest in providing retail water and sewer service within the service areas of those CCNs and such interests are statutorily protected.<sup>16</sup> Here, the Petition contemplates creating a municipal utility district within those water and sewer CCN service areas.

The City is also an affected person by the Petition when evaluating its personal justiciable interests under the TCEQ's "other relevant factors" in 30 TAC § 55.256(c). As to 30 TAC § 55.256(c)(1) and (6), the City's interest in being the exclusive retail water and sewer service provider in its water and sewer CCN service areas is protected by law under TWC §§ 13.242 and 13.250. Such statutory protections are directly related to the analysis of whether to approve or deny the Petition under TWC § 54.021(a) and (b). As noted in TWC § 54.021(b)(1), when the TCEQ considers the feasibility and practicality of a petition to create a district, it must look to whether there are comparable services from other systems, such as municipalities. Clearly, with its water and sewer CCNs, the City is not just a comparable service provider, but rather is the mandatory water and sewer service provider within the jurisdictional boundaries of the proposed District.

As 30 TAC § 55.256(c)(2), there are no express distance restrictions or other limitations imposed by law on the City's affected interest in providing retail water and sewer service within the proposed District's boundaries. That being said, it is reasonable to assume that the applicable distance requirement should be based upon whether the proposed District's boundaries are inside

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<sup>13</sup> Tex. Water Code § 13.002(20).

<sup>14</sup> Tex. Water Code § 13.242(a).

<sup>15</sup> Tex. Water Code § 13.250(a).

<sup>16</sup> Tex. Water Code § 13.242(a).

March 10, 2023

Page 8

or outside the City's water and sewer CCN service areas. Here, such District boundaries would be entirely within the City's water and sewer CCN service areas.

Next, a reasonable relationship exists between the City's interest as the water and sewer CCN holder and the creation of the District, as contemplated under 30 TAC § 55.256(c)(3). The City, as the sole water and sewer CCN holder over the proposed District's jurisdictional boundaries, is uniquely impacted because the District would be a new political subdivision of the State attempting to provide retail water and sewer service within the City's CCNs. Plus, the Petition proposes the construction of waterworks and sanitary sewer infrastructure within the requested District, which with the drainage, storm sewer, and roadway infrastructure improvements, is estimated to cost \$55,440,000. So, such infrastructure would also be within the service areas of the City's water and sewer CCNs. The construction, installation, and operation of such infrastructure will also negatively affect the City's ability to provide retail service and economic interest in developing its water and sewer systems in the service area of the City's CCNs. From the District's perspective, it would be unable to provide water and sewer service within its boundaries. Otherwise, the District would be infringing not only on the City's statutory right to exclusively provide retail water and sewer service within its CCNs – namely, within the proposed District – but also its obligation to provide continuous and adequate service within such area.<sup>17</sup> For these reasons, creating the proposed District with jurisdictional boundaries within the City's sewer CCN service area uniquely impacts the City and constitutes a justiciable interest. Thus, the City is an affected person with the right to a contested case hearing on the Petition.

*b. The City's Ability to Regulate Roads and Drainage*

Second, the creation of the District under TWC § 54.021 would impact the City's ability to regulate its roads and traffic, and drainage. With respect to 30 TAC §§ 55.251(c)(2) and 55.256(c)(2), the distance between the location of the District and the roads leading to the District are nearly the same, as the roads in question directly lead to the District. As to the TCEQ's affected person factors in § 55.256(b) and (c)(1), (3), and (6), the City has the ability under its Subdivision Ordinances to regulate roads in its ETJ and a reasonable relationship exists as to such authority and the Petition's proposed plan for roads, given that the Petition requests road powers from the TCEQ.

As the municipal authority over the entire jurisdictional boundaries of the proposed District, the Petition's failure to adequately plan for roadway improvements is a personal and justiciable interest of the City that is negatively affected by the Petition. Under the City's Subdivision Ordinances, new development is required to offset its traffic impacts by improving internal and off-site rights of way.<sup>18</sup> Here, the Petition fails to reasonably take into consideration the full extent of roadway improvements that will be needed, as evidenced by the inadequate cost estimate. The proposed District has also failed to conduct a traffic study needed to assess traffic impacts. The proposed District's Preliminary Engineering Report is not sufficient enough for this purpose due to the missing traffic study and inadequate funding for necessary road improvements. Thus, as the regulating entity of subdivisions within its ETJ, this interest is unique to the City.

<sup>17</sup> See Tex. Water Code § 13.250 (setting forth a CCN holder's obligation to serve).

<sup>18</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(a)(4) (2006).

March 10, 2023

Page 9

Further, such unique fact negatively affects the City as it impairs the City's legal right, duty, privilege, and power in maintaining the roadways within its ETJ. Thus, the City is an affected person with a unique and affected interest in the management and maintenance of its public roadways.

Specifically, the City contends that the necessary roadway improvements have not been correctly accounted for by the Petition. Therefore, such District would not be a benefit to the land to be included in the District. In relevant part, TWC § 54.021 (b) states:

- (b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider: ... (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates...<sup>19</sup>

Here, of the total \$55,440,000 total estimated costs, the proposed District, in its Preliminary Engineering Report submitted with its Petition, estimates the cost of roadway improvements to be only \$2,250,000. The City disagrees that this is a reasonable projected cost in light of the current state of roadways in and near the proposed District's boundaries. FM-548 must be taken to access the proposed District's property. This is a two-lane, unimproved roadway that already suffers congestion due to other surrounding development. In its current state, FM-548 will require significant improvement to support increased traffic due to the proposed District. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(2).

As to drainage, the City has the authority under its Building Regulations<sup>20</sup> to regulate new development in floodplains within its ETJ. Thus, the City, by virtue of such Ordinances, has the unique ability and interest in regulating such matters, which address the factors in 30 TAC §§ 55.256(a), (b), and (c) (1), (3), (5) and (6). Specifically, with respect to the proposed District, a floodplain runs through the requested jurisdictional boundaries. A floodplain map is attached hereto as **Attachment D**. The City contends that the proposed District would require a flood study to determine the feasibility of developing that portion of the proposed District, and given that no study has been performed, the City believes that it would be impacted by flooding and drainage originating from the District. Thus, the City requests a contested case hearing to address this issue as well as to determine whether the proposed District would result in flooding and drainage issues.

*c. Failure of the Petitioner to Negotiate with the City for Water and Sewer Service*

Although the City has not finalized an agreement to provide service to the proposed District per Texas Local Government Code § 42.042, it is not for lack of willingness or ability of the City to do so. The reason for the City's inability to contractually agree to provide water and sewer service to the Petitioner, per their Petition for Services, was due to the lack of consistent specificity from the Petitioner as to its level of water and sewer service needed. Said another way, the Petitioner was unwilling to provide the City with the terms for which an agreement could be made.

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<sup>19</sup> Tex. Water Code § 54.021(b).

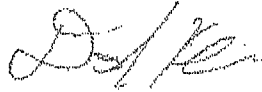
<sup>20</sup> CITY OF ROYSE CITY, TEX., BUILDING REGULATIONS art. 3 § 3.07 (2008).

March 10, 2023

Page 10

The City and Petitioner have met on many occasions in the past to discuss the potential provision of water and sewer service by the City to Petitioner's property; however, negotiations have been unsuccessful due to Petitioner being unable to provide the City with a final, consistent number of living unit equivalents of water/sewer service needed. The Petitioner has proposed various plans and has submitted multiple, varying plans to the City during agreement negotiations. The City's typical procedure is, upon receiving a service request, to (i) require a CCN check to ensure that the property to be served is within the City's CCN service area; (ii) engage in pre-application meetings with the applicant to discuss what utility infrastructure will be needed in order to connect to the City's existing facilities, in accordance with the City's subdivision regulations; and then (iii) negotiate and enter into a service agreement. Then, and only then, service capacity may be reserved by the applicant. The Petitioner was unable to satisfy these steps for failure to provide the needed level and manner of service to the City in order for it to determine the capacity the Petitioner will need. Thus, per 30 TAC §§ 55.256(a), (b), and (c)(1) and (6) the City's interest and statutory authority in negotiating an agreement with the Petitioner is protected under TWC § 54.016, and with respect to 30 TAC § 55.256(c)(3), the requirement for the Petitioner to negotiate with the City is directly related to the ability of the Petitioner to request TCEQ approval of a district creation application. Accordingly, the City has justiciable interests that are unique from the rest of the general public, and it is entitled to a contested case hearing as an affected person in this matter.

Sincerely,



David J. Klein

DJK/dsr

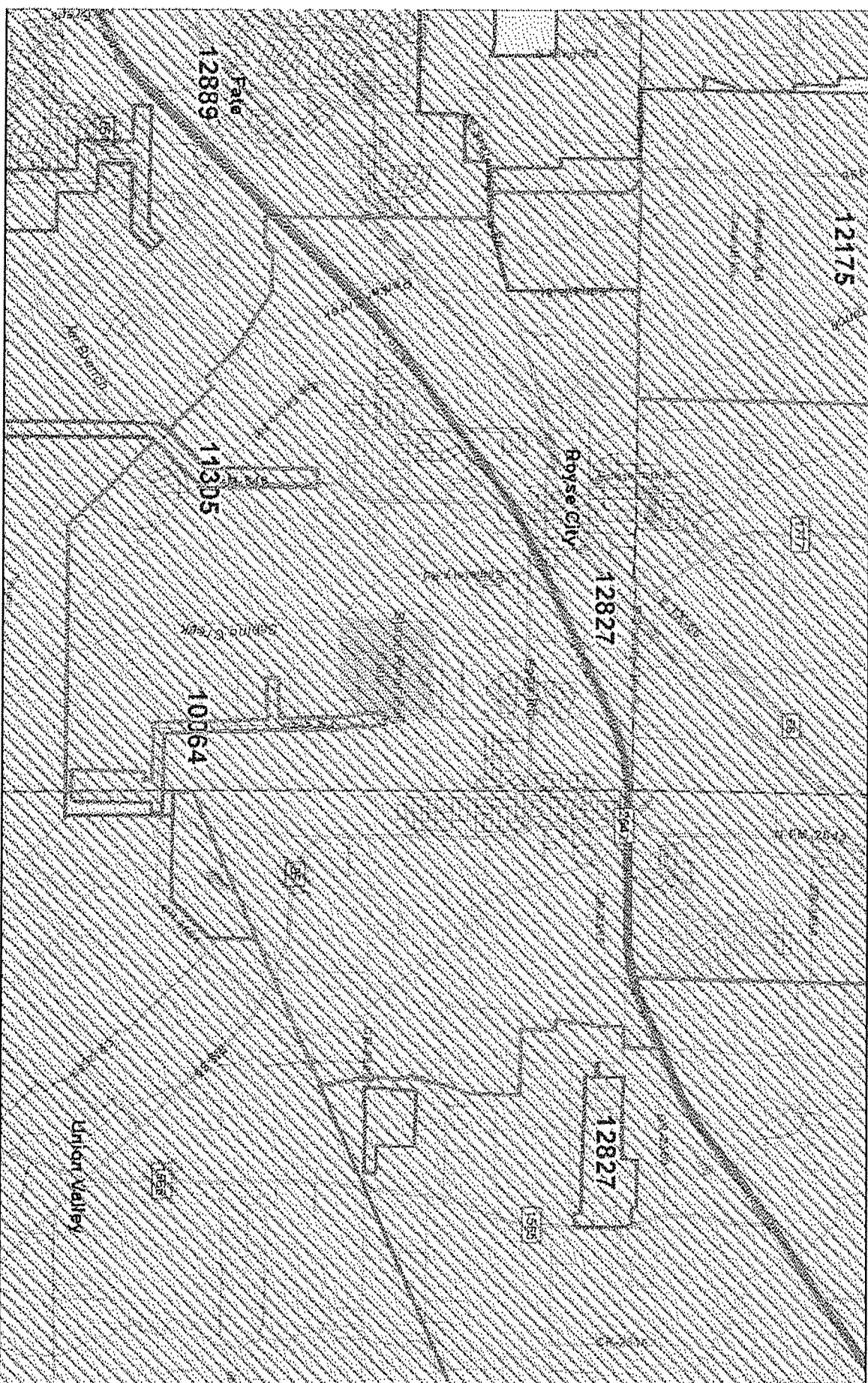
Enclosures

**Attachment A**

Maps of Water Certificate of Convenience and Necessity No. 12827 and Sewer Certificate of Convenience and Necessity No. 20813.



## City of Royse City Water CCN No. 12827



3/8/2023, 10:27:15 AM



**Water CCN Service Areas**

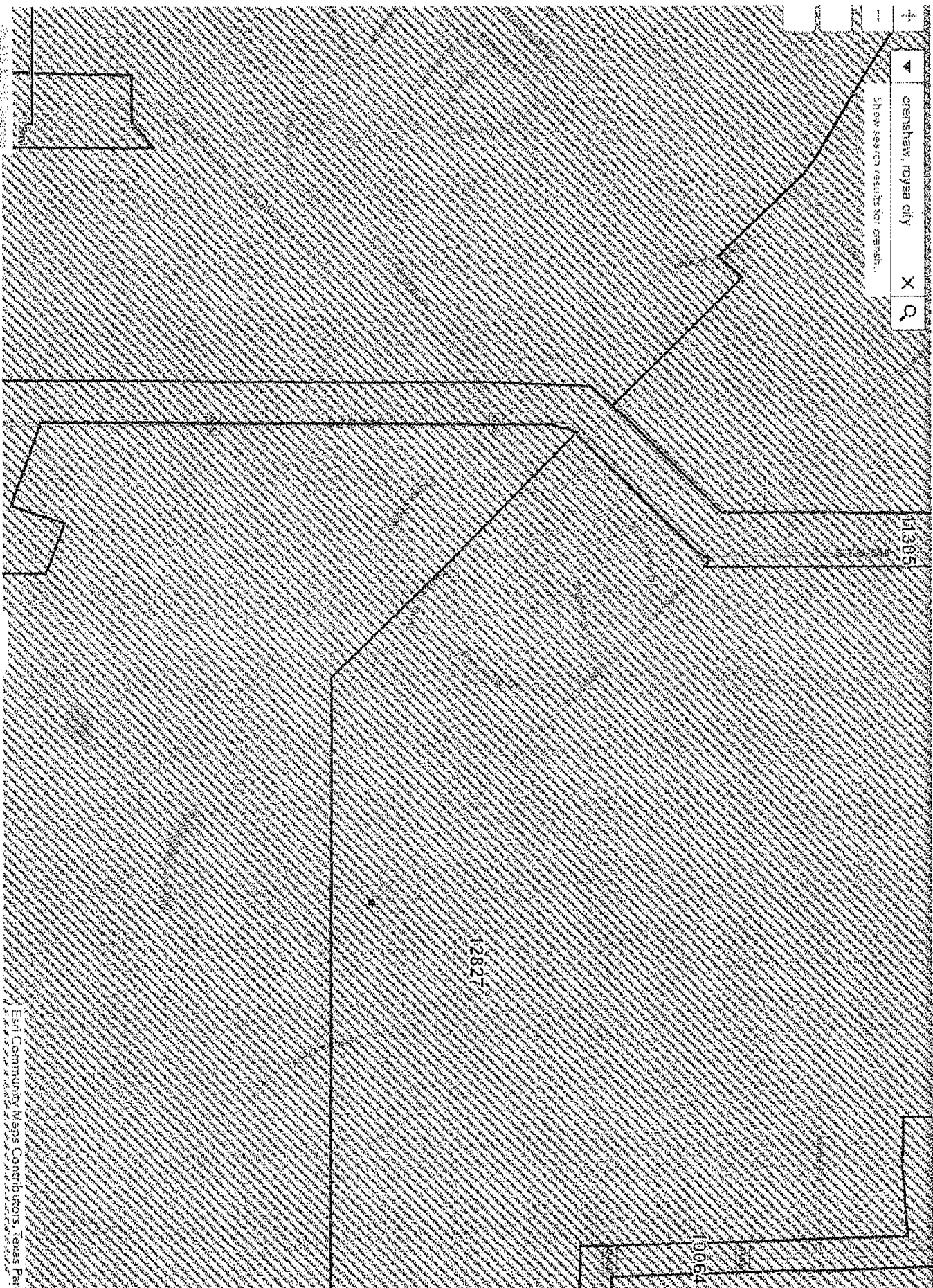
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Public Utility Commission

Water and Sewer CCN Viewer

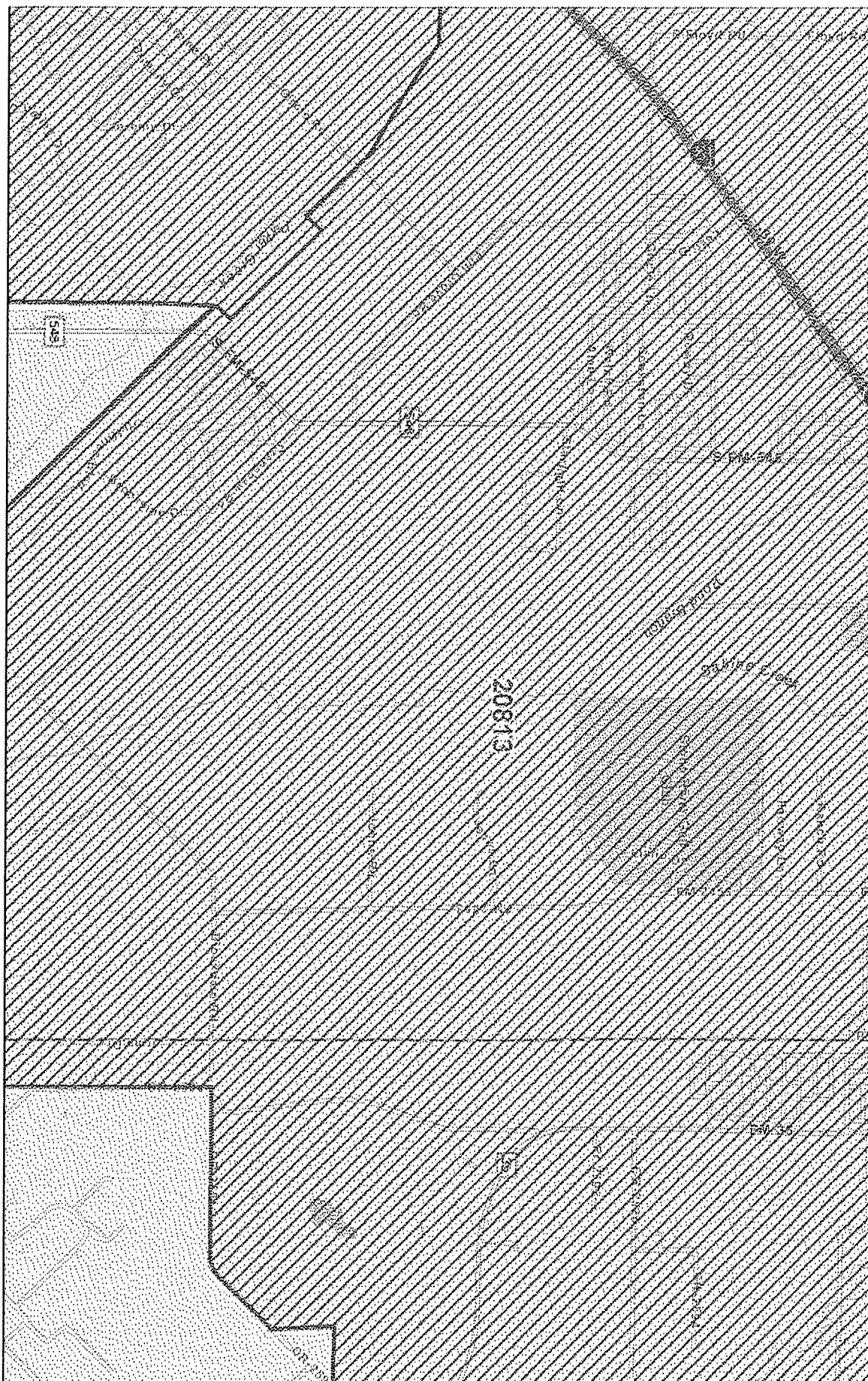
Search results for orenshaw, roysa city

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City of Royse City Sewer CCN No. 20813

3/9/2023, 9:54:59 AM



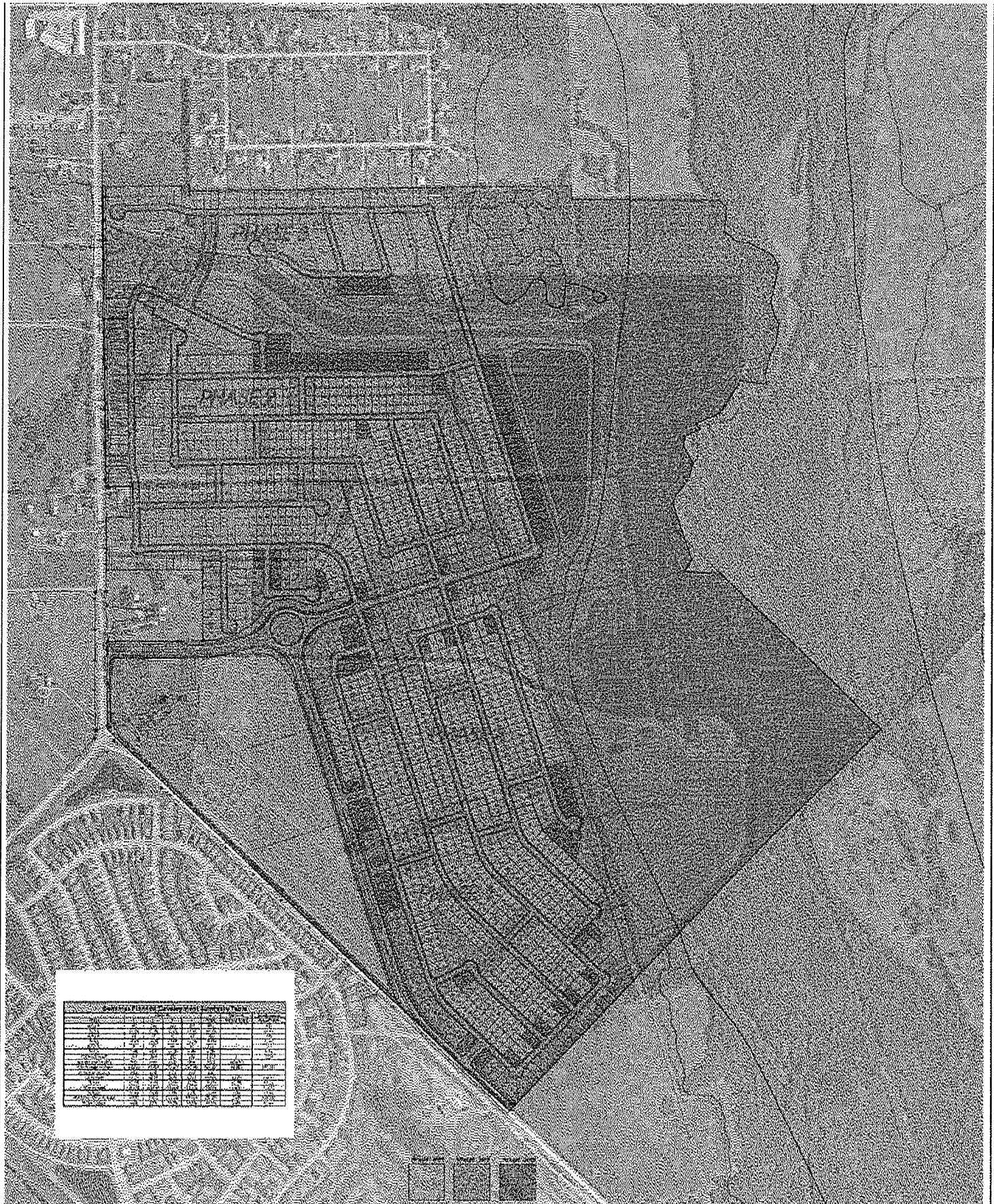
Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METANASCA, USGS, EPA, NPS, US Census Bureau, USDA

Avec Miet Appellides

**Attachment B**

October Concept Plan for the proposed District





Submittal Planned Development Submittal Table

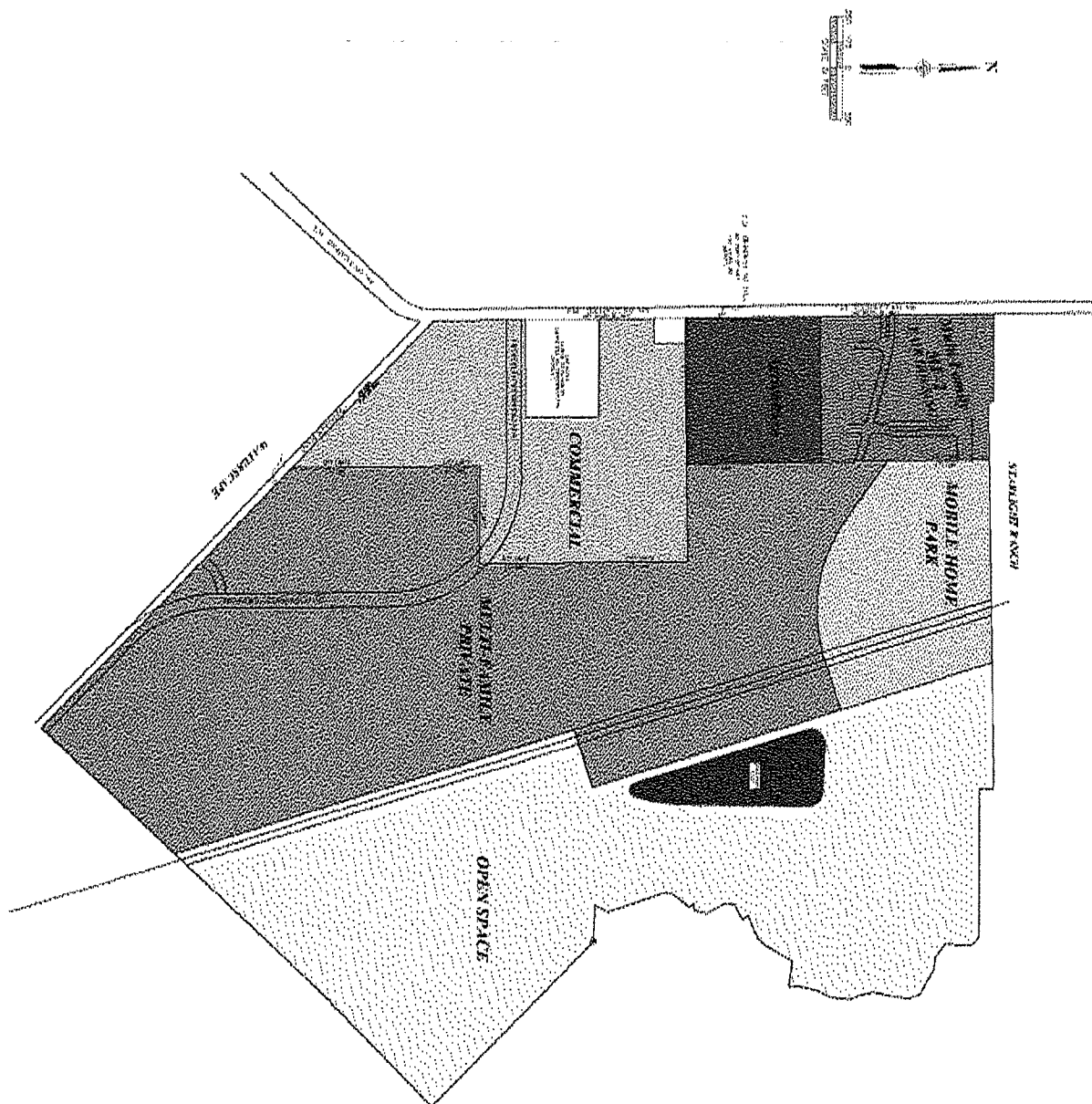
Submittal	Planned Development	Submittal Table
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DETAILED CONCEPT PLAN
PLANNED DEVELOPMENT
BENJAMIN
ROVSE CITY
ROCKWALL COUNTY, TEXAS
Rockwall County Planning Department
10000 Rockwall Parkway, Suite 100
Rockwall, Texas 75087
202-1065-30

**Attachment C**

December Concept Plan for the proposed District



CONCEPT PLANS BATHING

CP 1304-1

82465 STREET ADDRESS OF L4463  
CITY, STATE, ZIP CODE

E. A. ALEXANDER SURVEY, ABSTRACT NO. 4  
 E. J. HUGHES CRITCHEN SURVEY, ABSTRACT NO. 59  
 E. J. JOHNS & DUFFIN SURVEY, ABSTRACT NO. 66  
 E. W. A. LONE SURVEY, ABSTRACT NO. 74 & 75  
 JAMES MCELLEN SURVEY, ABSTRACT NO. 184  
 HUNT COUNTY, TEXAS



ONE PROFESSIONAL SERVICES GROUP, INC.  
2025 VICTORY DRIVE, TOLSON, TX 75226  
214-634-3311 PHONE 214-634-3336 FAX  
REGISTRATION NUMBER 75004 F-2445

DATE	TIME	LOCATION	REMARKS
10-10-1966	10:00	10000'	10000'

**Attachment D**

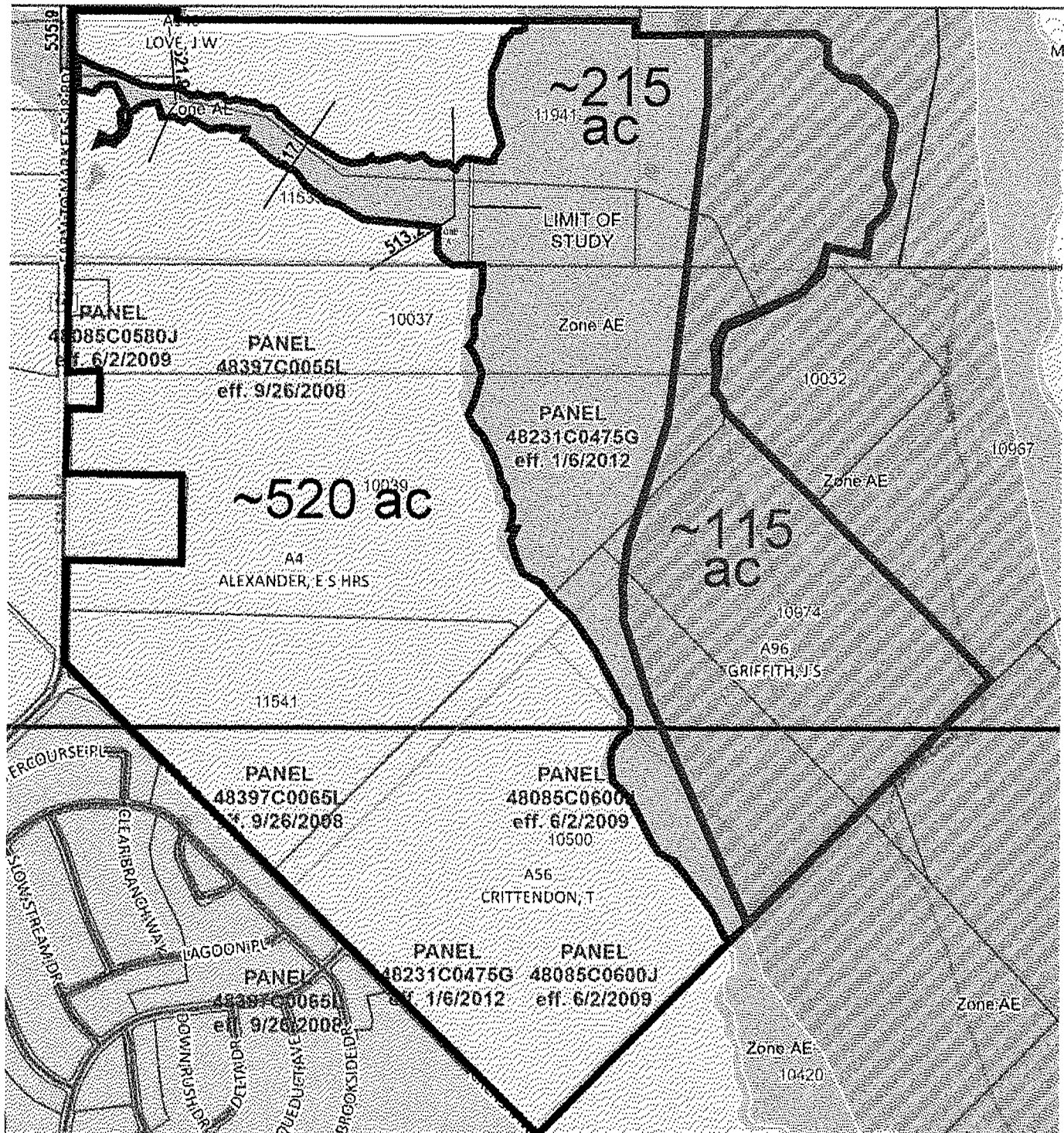
Floodplain Map of the proposed District boundaries



Property area

Floodplain

Floodway



Royse City - Bahama's floodplain areas

## Ellie Guerra

---

**From:** Fax3311  
**Sent:** Friday, March 17, 2023 3:17 PM  
**To:** Ellie Guerra  
**Subject:** FW: Corporate eFax message from "5123225800" - 21 page(s)  
**Attachments:** FAX\_20230310\_1678485480\_484.pdf

**From:** eFax Corporate <message@inbound.efax.com>  
**Sent:** Friday, March 10, 2023 3:58 PM  
**To:** Fax3311 <fax3311@tceq.texas.gov>  
**Subject:** Corporate eFax message from "5123225800" - 21 page(s)

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Mr. Klein's Direct Line: (512) 322-5818  
Email: [dklein@lglawfirm.com](mailto:dklein@lglawfirm.com)

RECEIVED  
MAR 14 2023  
D/GCW H

TCEQ OCC

March 10, 2023

10MAR '23 16:58

Ms. Laurie Gharis, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087 (MC-105)  
Austin, TX 78711-3087

**VIA HAND-DELIVERY, FAX  
AND TCEQ E-FILE**

Re: Petition by Bahamas Laguna Azure, LLC to the Texas Commission on Environmental Quality for the creation of Rockwall County Municipal Utility District No. 11; TCEQ Internal Control No. D-09222022-043

Dear Chief Clerk Gharis:

The City of Royse City (the "**City**") submits the following public comments and request for a contested case hearing on the petition of Bahamas Laguna Azure, LLC for the creation of Rockwall County Municipal Utility District No. 11 (the "**Petition**"). Please direct all future correspondence on this Petition to the following representative of the City:

**City of Royse City:**

Lloyd Gosselink Rochelle & Townsend, P.C.:  
Attn: David Klein, Attorney for the City  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
[dklein@lglawfirm.com](mailto:dklein@lglawfirm.com)  
Daytime Phone: (512) 322-5800  
Fax: (512) 472-0532

**I. PROCEDURAL HISTORY CONCERNING THE PETITION**

On September 21, 2022, Bahamas Laguna Azure, LLC (the "**Petitioner**") filed its Petition for the creation of Rockwall County Municipal Utility District No. 11 (the "**District**") with the Texas Commission on Environmental Quality (the "**TCEQ**").<sup>1</sup> The TCEQ found the Petition

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<sup>1</sup> Petitioner originally petitioned the City for consent to the creation of Rockwall County Municipal Utility District No. 10. However, an application to create such district over a different tract of land was already pending at the TCEQ. Petitioner subsequently changed the name of its proposed District to Rockwall County Municipal Utility District No. 11.

administratively complete on September 22, 2022. On December 13, 2022, the Petitioner filed a revised petition correcting language that the Petition was filed with the City of Greenville rather than the City of Royse City. On January 18, 2023, the Chief Clerk of the TCEQ sent a letter to Ross Martin, attorney for the Petitioner, with a copy of the draft Notice of District Creation (the "*Notice*"). The Notice specified that the deadline to request a hearing is 30 days after newspaper publication of the Notice. The Petitioner filed an Affidavit of Publication of the Notice of District Creation, indicating that notice was published on February 2, 2023 and February 9, 2023, and a Certificate of Posting Notice evidencing that the Notice was posted at the Rockwall County Courthouse on January 24, 2023. Therefore, based on these dates of posting and publication notice, the deadline to submit public comments and/or request a hearing regarding the Petition is March 13, 2023. Thus, these public comments and request for a contested case hearing are timely filed.

## **II. PUBLIC COMMENT**

With this filing, the City submits the following comments regarding the Petition. First, the jurisdictional boundaries of the proposed District, consisting of approximately 430.45 acres of land, are located entirely within the City's water and sewer Certificate of Convenience and Necessity ("*CCN*") Nos. 12827 and 20813, respectively. Given the overlap of the proposed District boundaries with the City's water and sewer CCNs, the City asks the TCEQ to explain how the District can provide retail water and wastewater service or build water and wastewater infrastructure within the proposed District's boundaries if the City has the exclusive right to provide retail water and wastewater over such land.

Second, the City asks for the Executive Director's Staff to explain the extent of its review to determine that the Petitioner met its obligation under Texas Water Code ("*TWC*") § 54.016(b) and (c). In short, with respect to the Petition, the City believes that a mutually agreeable contract for water and sewer service with the Petitioner was not reached because Petitioner would not provide the City with a reliable, consistent quantity of water and sewer service needed for the land within the proposed District.

## **III. REQUEST FOR A CONTESTED CASE HEARING**

The Petition requesting the creation of the District under TWC § 54.021 should be denied because (i) the Petitioner failed to meet its procedural requirements under TWC § 54.016 before filing the Petition at the TCEQ and (ii) the proposed District is not feasible or practicable, not necessary, and would not be a benefit to the land to be included in the District. Specifically, the Petition contemplates creating a municipal utility district over land within the City's water CCN No. 12827 and sewer CCN No. 20813, and the District would not be capable of meeting the requirements of the City's Subdivision Ordinances due to low estimated costs. The Petition has also been filed without sufficiently meeting the requirement to negotiate and execute a mutually agreeable contract with the City for water and wastewater services. For such reasons, which are explained in more detail herein, the City believes that it is an affected person with justiciable interests with respect to the Petition, and it requests a contested case regarding the Petition, pursuant to 30 TAC § 55.251.

**A. Applicable Law**

Substantively, the legal standard that the TCEQ considers when processing an application to create a municipal utility district is set forth in TWC § 54.021. In relevant part, TWC § 54.021(a) and (b) state:

- (a) If the commission finds...that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.
- (b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider: (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities...<sup>2</sup>

Such rubric is applicable only after the landowner/petitioner completes the two procedural prerequisites provided in TWC § 54.016. Said another way, a landowner/petitioner cannot file an application to create a district at the TCEQ until it completes such procedural steps. As to the first step, TWC § 54.016(a) requires a petitioner to obtain consent from the city to the creation of the district, as follows:

- (a) No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section. The request to a city for its written consent to the creation of a district, shall be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls. A petition for the written consent of a city to the inclusion of land within a district shall describe the boundaries of the land to be included in the district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, and state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition.<sup>3</sup>

Second, if the city is unwilling to consent to the creation of the district, then the landowner/petitioner and the city must attempt to reach a mutually agreeable contract for the provision of water and sewer service to the land within the proposed district. Such requirement is provided in TWC § 54.016, as provided below:

- (b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district, including a

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<sup>2</sup> Tex. Water Code § 54.021 (a) and (b).

<sup>3</sup> Tex. Water Code § 54.016 (a).

district created by a special act of the legislature, within 90 days after receipt of a written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

- (c) If the governing body of the city and a majority of the electors or the owner or owners of 50 percent or more of the land to be included in the district 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 under the provisions of this section.<sup>4</sup>

If such agreement is not reached, then, and only then, may the landowner/petitioner submit an application at the TCEQ to create the desired district.

**B. Bases for a Contested Case Hearing**

The City is entitled to a contested case hearing on the Petition for both substantive and procedural reasons, as provided in more detail, herein.

**1. The City possesses a water and sewer CCN over the boundaries of the proposed District**

The creation of the District is not feasible or practicable, not necessary, and would not be a benefit to the land within the proposed District because the City possesses both a water and sewer CCN over the entire jurisdictional boundary of the proposed District. Maps of the City's water and sewer CCN boundaries are attached hereto as **Attachment A** and are incorporated herein for all purposes. The City, as the holder of water and sewer CCNs over the proposed District's jurisdictional boundaries, is the only entity that legally can provide water and sewer service to that land. The District, if created, would not be able to provide such services. Said another way, the availability of water and sewer (comparable) services from the City is not just available, but the City is the only entity authorized by the State of Texas to provide such services to that geographic area. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(1), and these facts render the District useless.

**2. The City regulates roadways of new development under its Subdivision Ordinances**

The creation of the District is not feasible or practicable, not necessary, and would not be a benefit to the land within the proposed District because the Petitioner has failed to prepare a sufficient financial plan for the construction of roads and to conduct a traffic study contemplating the road work that would be necessary to develop the land within the City's extra-territorial

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<sup>4</sup> *Id.* at § 54.016 (b) and (c).

jurisdiction (“*ETJ*”). The City has adopted roadway ordinances that the Petitioner must comply with to develop the land within the proposed District, and the Petitioner has failed to estimate sufficient funds in the Petition to fund such costs.<sup>5</sup> It is an established procedure of the City to require a plat in instances where land in its ETJ will be developed, in which case, the City’s Subdivision Ordinances will apply. These ordinances require proportionality between the traffic impacts created by a new development and requirements placed on the property owner to dedicate and improve off-site, abutting, and internal thoroughfare rights-of-way to City standards.<sup>6</sup> It is the view of the City that the proposed District will require significantly more funding to comply with such ordinances and, therefore, the projected construction costs are not reasonable and would render the creation of the District infeasible, impractical, and unnecessary. Additionally, granting road powers to the proposed District is not feasible or practicable under TWC § 54.234(d) because the Petitioner has not completed a traffic study for the proposed District. These facts should also be considered in the TCEQ’s determination of whether the Petition is feasible and practicable under TWC § 54.021(b)(2).

**3. The City regulates drainage facilities of new development under its Subdivision Ordinances**

Likewise, the City’s Subdivision Ordinances will apply to any drainage facilities the proposed District may construct. Under these ordinances, a developer is responsible for constructing off-site drainage improvements necessary to serve the subdivision or development and the surrounding area.<sup>7</sup> As mentioned above, the City disagrees with the Petitioner’s estimated cost of the proposed District in light of the improvements needed for the surrounding area to reasonably support new development. Consequently, the City contends that there will be negative drainage issues resulting from the creation of the proposed District. The TCEQ should consider this when determining the feasibility and practicability of the Petition under TWC § 54.021(b)(2).

**4. The Petitioner has failed to attempt to negotiate a mutually agreeable agreement for water and/or sewer service.**

The filing of the Petition is premature and it should be denied because the Petitioner has failed to attempt to negotiate a mutually agreeable agreement for water and/or sewer service as required under TWC § 54.016 (c). The City has met with Petitioner on many occasions in the past to negotiate a contract for the provision of water and sewer services to the proposed District. However, such negotiations were unsuccessful due to Petitioner’s failure to provide the City with a reliable, consistent quantity of living unit equivalents of water and sewer service needed for the land within the proposed District. Two such plans provided to the City by Petitioner are attached hereto, as **Attachment B**, received in October 2022, and **Attachment C**, received in December 2022, both of which differ from the plan submitted with the Petition. As such, the City contends that the Petitioner has not, in good faith, attempted to negotiate a mutually agreeable contract as required by TWC § 54.016(c) and consequently filed the Petition prematurely.

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<sup>5</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(206).

<sup>6</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(a)(4) (2006).

<sup>7</sup> See CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-4(c) (2006).



**C. The City is an Affected Person with Justiciable Interests**

With respect to the Petition, the City is an affected person under 30 Texas Administrative Code (“**TAC**”) § 55.256 with justiciable interests unique from the general public, and, thus, it is entitled to a contested case hearing regarding the Petition. As (i) the holder of water CCN No. 12827 and sewer CCN No. 20813 with a water and sewer service area over the entire jurisdictional boundaries of the proposed District, (ii) the entity regulating roadways and drainage in its ETJ where the proposed District would be located, and (iii) the entity with whom the Petitioner must first attempt to negotiate a mutually agreeable contract of water and sewer services, the City is uniquely impacted by the Petition and by the creation of the potential District.

**1. Affected Person Prerequisites under 30 TAC §§ 55.251 and 55.256**

In accordance with the prerequisites for requesting a contested case hearing in 30 TAC § 55.251(b), the contact information of the person filing this request for the City is provided in the initial paragraph of this letter, and the City hereby requests a contested case hearing on the Petition.<sup>8</sup> Next, for an entity other than the Commissioners, Executive Director, or Petitioner to have standing to request a contested case hearing, it must demonstrate that it is an “affected person” under the standards set forth in 30 TAC § 55.256.<sup>9</sup> Under such rule, an affected person is one who has a personal justiciable interest not common to members of the general public that is related to a legal right, duty, privilege, power, or economic interest affected by the petition.<sup>10</sup> Governmental entities, such as the City, with authority under state law over issues contemplated by the petition, may be considered affected persons.<sup>11</sup> All relevant factors must be considered by the TCEQ in determining affected person status, including: (1) whether the interest claimed is one protected by the law under which the petition 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 activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on the 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.<sup>12</sup>

**2. The City’s Justiciable Interests**

*a. The City’s Water and Sewer CCNs*

First, the jurisdictional boundaries of the proposed District are entirely within the City’s water CCN No. 12827 and sewer CCN No. 20813 service areas, and such overlapping boundaries constitute a personal justiciable interest of the City that is uniquely and negatively affected by the Petition. To be clear, with respect to 30 TAC § 55.251(c)(2), the City’s water and sewer CCNs

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<sup>8</sup> Addressing the factors in 30 TAC § 55.251(c)(1) and (3).

<sup>9</sup> 30 TAC § 55.251(b).

<sup>10</sup> 30 TAC § 55.256(a).

<sup>11</sup> 30 TAC § 55.256(b).

<sup>12</sup> 30 TAC § 55.256(c).

service areas are at the same location as the jurisdictional boundaries of the proposed District. A map of the City's water and sewer CCN boundaries is attached hereto as **Attachment A**.

Under Texas law, a water and/or sewer CCN provides its holder with the exclusive right to provide retail water and/or sewer service to the service area designated in such certificate.<sup>13</sup> As to the City's right, privilege, and power under its CCNs, TWC § 13.242(a) states that:

...except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.<sup>14</sup>

Additionally, the City's obligation as a CCN holder to provide retail water and sewer service is established under TWC § 13.250(a), which provides that:

Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.<sup>15</sup>

In other words, such statutes grant the City, as a CCN holder, a legal right, duty, privilege, power, and economic interest in providing retail water and sewer service within the service areas of those CCNs and such interests are statutorily protected.<sup>16</sup> Here, the Petition contemplates creating a municipal utility district within those water and sewer CCN service areas.

The City is also an affected person by the Petition when evaluating its personal justiciable interests under the TCEQ's "other relevant factors" in 30 TAC § 55.256(c). As to 30 TAC § 55.256(c)(1) and (6), the City's interest in being the exclusive retail water and sewer service provider in its water and sewer CCN service areas is protected by law under TWC §§ 13.242 and 13.250. Such statutory protections are directly related to the analysis of whether to approve or deny the Petition under TWC § 54.021(a) and (b). As noted in TWC § 54.021(b)(1), when the TCEQ considers the feasibility and practicality of a petition to create a district, it must look to whether there are comparable services from other systems, such as municipalities. Clearly, with its water and sewer CCNs, the City is not just a comparable service provider, but rather is the mandatory water and sewer service provider within the jurisdictional boundaries of the proposed District.

As 30 TAC § 55.256(c)(2), there are no express distance restrictions or other limitations imposed by law on the City's affected interest in providing retail water and sewer service within the proposed District's boundaries. That being said, it is reasonable to assume that the applicable distance requirement should be based upon whether the proposed District's boundaries are inside

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<sup>13</sup> Tex. Water Code § 13.002(20).

<sup>14</sup> Tex. Water Code § 13.242(a).

<sup>15</sup> Tex. Water Code § 13.250(a).

<sup>16</sup> Tex. Water Code § 13.242(a).

or outside the City's water and sewer CCN service areas. Here, such District boundaries would be entirely within the City's water and sewer CCN service areas.

Next, a reasonable relationship exists between the City's interest as the water and sewer CCN holder and the creation of the District, as contemplated under 30 TAC § 55.256(c)(3). The City, as the sole water and sewer CCN holder over the proposed District's jurisdictional boundaries, is uniquely impacted because the District would be a new political subdivision of the State attempting to provide retail water and sewer service within the City's CCNs. Plus, the Petition proposes the construction of waterworks and sanitary sewer infrastructure within the requested District, which with the drainage, storm sewer, and roadway infrastructure improvements, is estimated to cost \$55,440,000. So, such infrastructure would also be within the service areas of the City's water and sewer CCNs. The construction, installation, and operation of such infrastructure will also negatively affect the City's ability to provide retail service and economic interest in developing its water and sewer systems in the service area of the City's CCNs. From the District's perspective, it would be unable to provide water and sewer service within its boundaries. Otherwise, the District would be infringing not only on the City's statutory right to exclusively provide retail water and sewer service within its CCNs – namely, within the proposed District – but also its obligation to provide continuous and adequate service within such area.<sup>17</sup> For these reasons, creating the proposed District with jurisdictional boundaries within the City's sewer CCN service area uniquely impacts the City and constitutes a justiciable interest. Thus, the City is an affected person with the right to a contested case hearing on the Petition.

*b. The City's Ability to Regulate Roads and Drainage*

Second, the creation of the District under TWC § 54.021 would impact the City's ability to regulate its roads and traffic, and drainage. With respect to 30 TAC §§ 55.251(c)(2) and 55.256(c)(2), the distance between the location of the District and the roads leading to the District are nearly the same, as the roads in question directly lead to the District. As to the TCEQ's affected person factors in § 55.256(b) and (c)(1), (3), and (6), the City has the ability under its Subdivision Ordinances to regulate roads in its ETJ and a reasonable relationship exists as to such authority and the Petition's proposed plan for roads, given that the Petition requests road powers from the TCEQ.

As the municipal authority over the entire jurisdictional boundaries of the proposed District, the Petition's failure to adequately plan for roadway improvements is a personal and justiciable interest of the City that is negatively affected by the Petition. Under the City's Subdivision Ordinances, new development is required to offset its traffic impacts by improving internal and off-site rights of way.<sup>18</sup> Here, the Petition fails to reasonably take into consideration the full extent of roadway improvements that will be needed, as evidenced by the inadequate cost estimate. The proposed District has also failed to conduct a traffic study needed to assess traffic impacts. The proposed District's Preliminary Engineering Report is not sufficient enough for this purpose due to the missing traffic study and inadequate funding for necessary road improvements. Thus, as the regulating entity of subdivisions within its ETJ, this interest is unique to the City.

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<sup>17</sup> See Tex. Water Code § 13.250 (setting forth a CCN holder's obligation to serve).

<sup>18</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(a)(4) (2006).

Further, such unique fact negatively affects the City as it impairs the City's legal right, duty, privilege, and power in maintaining the roadways within its ETJ. Thus, the City is an affected person with a unique and affected interest in the management and maintenance of its public roadways.

Specifically, the City contends that the necessary roadway improvements have not been correctly accounted for by the Petition. Therefore, such District would not be a benefit to the land to be included in the District. In relevant part, TWC § 54.021 (b) states:

- (b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider: ... (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates...<sup>19</sup>

Here, of the total \$55,440,000 total estimated costs, the proposed District, in its Preliminary Engineering Report submitted with its Petition, estimates the cost of roadway improvements to be only \$2,250,000. The City disagrees that this is a reasonable projected cost in light of the current state of roadways in and near the proposed District's boundaries. FM-548 must be taken to access the proposed District's property. This is a two-lane, unimproved roadway that already suffers congestion due to other surrounding development. In its current state, FM-548 will require significant improvement to support increased traffic due to the proposed District. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(2).

As to drainage, the City has the authority under its Building Regulations<sup>20</sup> to regulate new development in floodplains within its ETJ. Thus, the City, by virtue of such Ordinances, has the unique ability and interest in regulating such matters, which address the factors in 30 TAC §§ 55.256(a), (b), and (c) (1), (3), (5) and (6). Specifically, with respect to the proposed District, a floodplain runs through the requested jurisdictional boundaries. A floodplain map is attached hereto as **Attachment D**. The City contends that the proposed District would require a flood study to determine the feasibility of developing that portion of the proposed District, and given that no study has been performed, the City believes that it would be impacted by flooding and drainage originating from the District. Thus, the City requests a contested case hearing to address this issue as well as to determine whether the proposed District would result in flooding and drainage issues.

*c. Failure of the Petitioner to Negotiate with the City for Water and Sewer Service*

Although the City has not finalized an agreement to provide service to the proposed District per Texas Local Government Code § 42.042, it is not for lack of willingness or ability of the City to do so. The reason for the City's inability to contractually agree to provide water and sewer service to the Petitioner, per their Petition for Services, was due to the lack of consistent specificity from the Petitioner as to its level of water and sewer service needed. Said another way, the Petitioner was unwilling to provide the City with the terms for which an agreement could be made.

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<sup>19</sup> Tex. Water Code § 54.021(b).

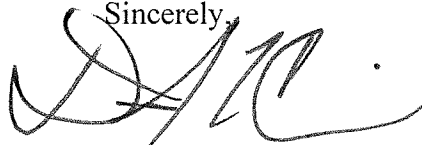
<sup>20</sup> CITY OF ROYSE CITY, TEX., BUILDING REGULATIONS art. 3 § 3.07 (2008).

March 10, 2023

Page 10

The City and Petitioner have met on many occasions in the past to discuss the potential provision of water and sewer service by the City to Petitioner's property; however, negotiations have been unsuccessful due to Petitioner being unable to provide the City with a final, consistent number of living unit equivalents of water/sewer service needed. The Petitioner has proposed various plans and has submitted multiple, varying plans to the City during agreement negotiations. The City's typical procedure is, upon receiving a service request, to (i) require a CCN check to ensure that the property to be served is within the City's CCN service area; (ii) engage in pre-application meetings with the applicant to discuss what utility infrastructure will be needed in order to connect to the City's existing facilities, in accordance with the City's subdivision regulations; and then (iii) negotiate and enter into a service agreement. Then, and only then, service capacity may be reserved by the applicant. The Petitioner was unable to satisfy these steps for failure to provide the needed level and manner of service to the City in order for it to determine the capacity the Petitioner will need. Thus, per 30 TAC §§ 55.256(a), (b), and (c)(1) and (6) the City's interest and statutory authority in negotiating an agreement with the Petitioner is protected under TWC § 54.016, and with respect to 30 TAC § 55.256(c)(3), the requirement for the Petitioner to negotiate with the City is directly related to the ability of the Petitioner to request TCEQ approval of a district creation application. Accordingly, the City has justiciable interests that are unique from the rest of the general public, and it is entitled to a contested case hearing as an affected person in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'DJK', with a stylized flourish extending from the end.

David J. Klein

DJK/dsr

Enclosures

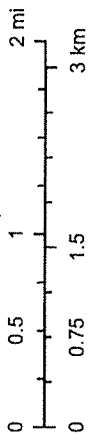
**Attachment A**

Maps of Water Certificate of Convenience and Necessity No. 12827 and Sewer Certificate of Convenience and Necessity No. 20813.

The map displays the following details:

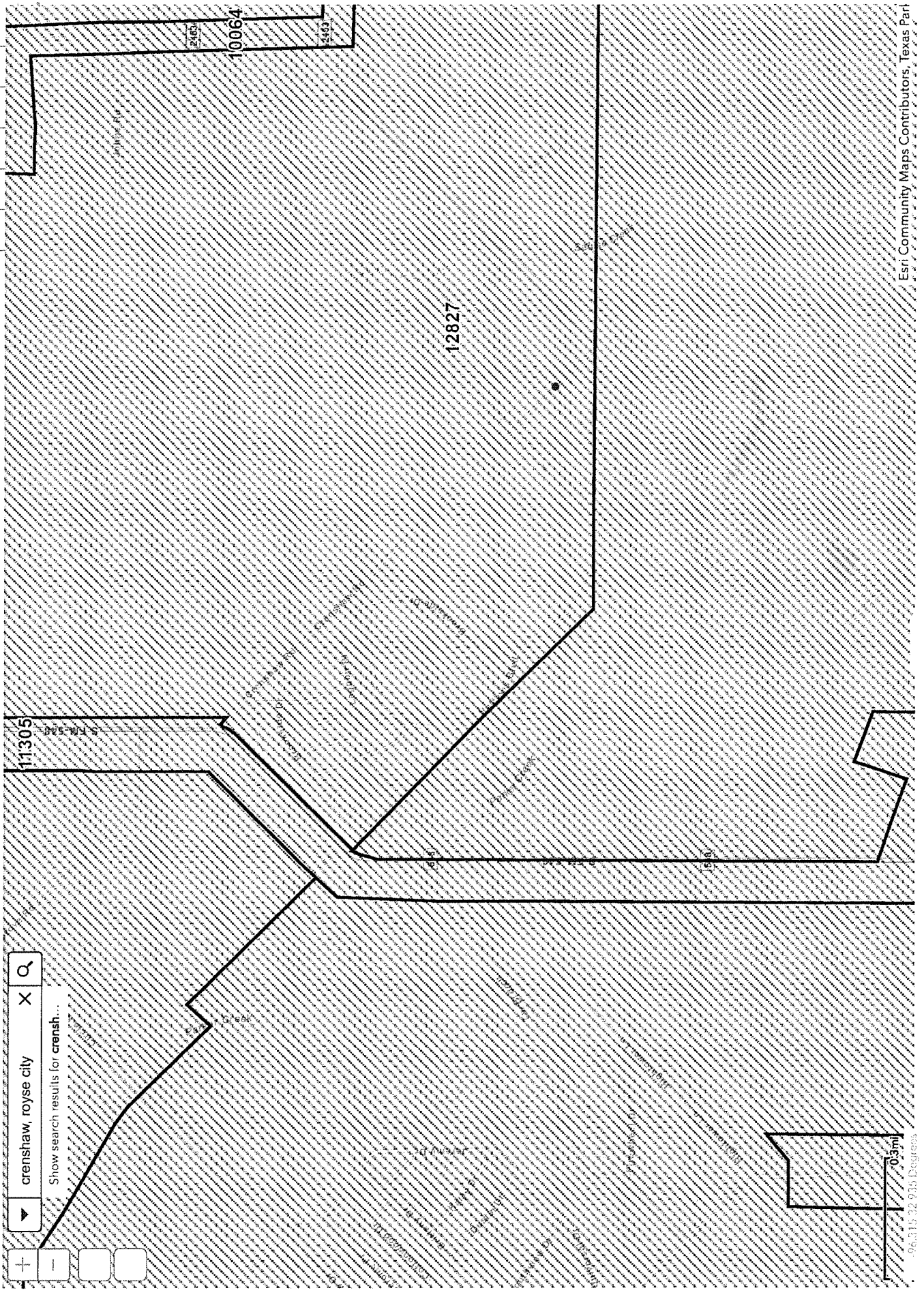
- Large Land Parcels:**
  - 12175 (top left)
  - 12827 (center left, with sub-parcel 2642)
  - 10064 (center right)
  - 11305 (bottom center)
  - 12889 (bottom right)
- Other Land Parcels:** 1565, 1551, 1552.
- Roads:** E. Edwards Rd, E. County Line Rd, E. 500s Rd, Cemetery Rd, E. 1000s Rd, E. 1500s Rd, E. 2000s Rd, E. 2500s Rd, E. 3000s Rd, E. 3500s Rd, E. 4000s Rd, E. 4500s Rd, E. 5000s Rd, E. 5500s Rd, E. 6000s Rd, E. 6500s Rd, E. 7000s Rd, E. 7500s Rd, E. 8000s Rd, E. 8500s Rd, E. 9000s Rd, E. 9500s Rd, E. 10000s Rd.
- Water Features:** Parker Creek, Sabina Creek, Red River.
- Landmarks:** Stone River Golf Club, Royse City Cemetery.
- Other Labels:** Royse City, Union Valley, Fate, E. Edwards Rd, E. County Line Rd, E. 500s Rd, Cemetery Rd, E. 1000s Rd, E. 1500s Rd, E. 2000s Rd, E. 2500s Rd, E. 3000s Rd, E. 3500s Rd, E. 4000s Rd, E. 4500s Rd, E. 5000s Rd, E. 5500s Rd, E. 6000s Rd, E. 6500s Rd, E. 7000s Rd, E. 7500s Rd, E. 8000s Rd, E. 8500s Rd, E. 9000s Rd, E. 9500s Rd, E. 10000s Rd.

1:72,224



Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, MET/NASA, USGS, EPA, NPS, USDA

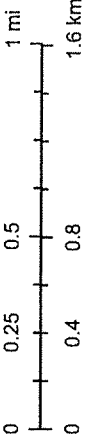
Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPS, USDA | The 83rd Legislature, 1st Called Session, enacted S.B. 4 (PLAN C235). The districts are identical to the interim plan, ordered by the U.S. District





[illegible]

1:36,112



Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc. METINASA, USGS, EPA, NPS, US Census Bureau, USDA | The 83rd Legislature, 1st Called Session, enacted S.B. 4 (PLAN C235). The districts are identical to the interim plan, ordered

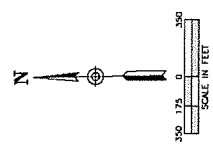
**Attachment B**

October Concept Plan for the proposed District



**Attachment C**

December Concept Plan for the proposed District



**CONCEPT PLAN BAHAMAS  
OPTION-1**

BEING 508.59 ACRES OF LAND  
 E.S. ALEXANDER SURVEY, ABSTRACT NO. 4  
 E.T. THOMAS CRITTENDEN SURVEY, ABSTRACT NO. 56  
 E.U. JOHN S. CRITTEY SURVEY, ABSTRACT NO. 96  
 E.A. JAMES MULLOAN SURVEY, ABSTRACT NO. 182  
 JAMES MULLOAN SURVEY, ABSTRACT NO. 182  
**BLUNT COUNTY, TEXAS**



USA PROFESSIONAL SERVICES GROUP, INC.  
 1325 VICKERY DRIVE, DALLAS, TX 75223  
 214-752-1325  
 REGISTERED ENGINEERING FIRM F-1845  
 REGISTERED SURVEYING FIRM 10074-00

DATE	BY	CHKD	DATE	SCALE	PROJECT NO.	SHEET NO.
			12-15-2008	1" = 300'		1 of 1

**Attachment D**

Floodplain Map of the proposed District boundaries





**Ellie Guerra**

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, March 10, 2023 4:04 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; Pubcomment-Dis  
**Subject:** FW: Public comment on Permit Number D-09222022-043  
**Attachments:** 2023.03.10 Public Comment and Request for Contested Case Hearing for Rockwall MUD 11.pdf 9.pdf

H

**From:** sbilliot@lglawfirm.com <sbilliot@lglawfirm.com>  
**Sent:** Friday, March 10, 2023 3:51 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number D-09222022-043

**REGULATED ENTY NAME** ROCKWALL COUNTY MUNICIPAL UTILITY DISTRICT 11

**RN NUMBER:** RN111574679

**PERMIT NUMBER:** D-09222022-043

**DOCKET NUMBER:**

**COUNTY:** ROCKWALL

**PRINCIPAL NAME:** ROCKWALL COUNTY MUNICIPAL UTILITY DISTRICT 11

**CN NUMBER:** CN606061422

**FROM**

**NAME:** David Klein

**EMAIL:** [sbilliot@lglawfirm.com](mailto:sbilliot@lglawfirm.com)

**COMPANY:** Lloyd Gosselink Rochelle & Townsend, P.C.

**ADDRESS:** 816 CONGRESS AVE 1900  
AUSTIN TX 78701-2442

**PHONE:** 5123225800

**FAX:**

**COMMENTS:** Please see the attached public comment for Royse City.



Mr. Klein's Direct Line: (512) 322-5818  
Email: dklein@lglawfirm.com

March 10, 2023

Ms. Laurie Gharis, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087 (MC-105)  
Austin, TX 78711-3087

**VIA HAND-DELIVERY, FAX  
AND TCEQ E-FILE**

Re: Petition by Bahamas Laguna Azure, LLC to the Texas Commission on Environmental Quality for the creation of Rockwall County Municipal Utility District No. 11; TCEQ Internal Control No. D-09222022-043

Dear Chief Clerk Gharis:

The City of Royse City (the "**City**") submits the following public comments and request for a contested case hearing on the petition of Bahamas Laguna Azure, LLC for the creation of Rockwall County Municipal Utility District No. 11 (the "**Petition**"). Please direct all future correspondence on this Petition to the following representative of the City:

**City of Royse City:**

Lloyd Gosselink Rochelle & Townsend, P.C.:  
Attn: David Klein, Attorney for the City  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
dklein@lglawfirm.com  
Daytime Phone: (512) 322-5800  
Fax: (512) 472-0532

**I. PROCEDURAL HISTORY CONCERNING THE PETITION**

On September 21, 2022, Bahamas Laguna Azure, LLC (the "**Petitioner**") filed its Petition for the creation of Rockwall County Municipal Utility District No. 11 (the "**District**") with the Texas Commission on Environmental Quality (the "**TCEQ**").<sup>1</sup> The TCEQ found the Petition

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<sup>1</sup> Petitioner originally petitioned the City for consent to the creation of Rockwall County Municipal Utility District No. 10. However, an application to create such district over a different tract of land was already pending at the TCEQ. Petitioner subsequently changed the name of its proposed District to Rockwall County Municipal Utility District No. 11.

administratively complete on September 22, 2022. On December 13, 2022, the Petitioner filed a revised petition correcting language that the Petition was filed with the City of Greenville rather than the City of Royse City. On January 18, 2023, the Chief Clerk of the TCEQ sent a letter to Ross Martin, attorney for the Petitioner, with a copy of the draft Notice of District Creation (the “*Notice*”). The Notice specified that the deadline to request a hearing is 30 days after newspaper publication of the Notice. The Petitioner filed an Affidavit of Publication of the Notice of District Creation, indicating that notice was published on February 2, 2023 and February 9, 2023, and a Certificate of Posting Notice evidencing that the Notice was posted at the Rockwall County Courthouse on January 24, 2023. Therefore, based on these dates of posting and publication notice, the deadline to submit public comments and/or request a hearing regarding the Petition is March 13, 2023. Thus, these public comments and request for a contested case hearing are timely filed.

## **II. PUBLIC COMMENT**

With this filing, the City submits the following comments regarding the Petition. First, the jurisdictional boundaries of the proposed District, consisting of approximately 430.45 acres of land, are located entirely within the City’s water and sewer Certificate of Convenience and Necessity (“*CCN*”) Nos. 12827 and 20813, respectively. Given the overlap of the proposed District boundaries with the City’s water and sewer CCNs, the City asks the TCEQ to explain how the District can provide retail water and wastewater service or build water and wastewater infrastructure within the proposed District’s boundaries if the City has the exclusive right to provide retail water and wastewater over such land.

Second, the City asks for the Executive Director’s Staff to explain the extent of its review to determine that the Petitioner met its obligation under Texas Water Code (“*TWC*”) § 54.016(b) and (c). In short, with respect to the Petition, the City believes that a mutually agreeable contract for water and sewer service with the Petitioner was not reached because Petitioner would not provide the City with a reliable, consistent quantity of water and sewer service needed for the land within the proposed District.

## **III. REQUEST FOR A CONTESTED CASE HEARING**

The Petition requesting the creation of the District under TWC § 54.021 should be denied because (i) the Petitioner failed to meet its procedural requirements under TWC § 54.016 before filing the Petition at the TCEQ and (ii) the proposed District is not feasible or practicable, not necessary, and would not be a benefit to the land to be included in the District. Specifically, the Petition contemplates creating a municipal utility district over land within the City’s water CCN No. 12827 and sewer CCN No. 20813, and the District would not be capable of meeting the requirements of the City’s Subdivision Ordinances due to low estimated costs. The Petition has also been filed without sufficiently meeting the requirement to negotiate and execute a mutually agreeable contract with the City for water and wastewater services. For such reasons, which are explained in more detail herein, the City believes that it is an affected person with justiciable interests with respect to the Petition, and it requests a contested case regarding the Petition, pursuant to 30 TAC § 55.251.

**A. Applicable Law**

Substantively, the legal standard that the TCEQ considers when processing an application to create a municipal utility district is set forth in TWC § 54.021. In relevant part, TWC § 54.021(a) and (b) state:

- (a) If the commission finds...that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.
- (b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider: (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities...<sup>2</sup>

Such rubric is applicable only after the landowner/petitioner completes the two procedural prerequisites provided in TWC § 54.016. Said another way, a landowner/petitioner cannot file an application to create a district at the TCEQ until it completes such procedural steps. As to the first step, TWC § 54.016(a) requires a petitioner to obtain consent from the city to the creation of the district, as follows:

- (a) No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section. The request to a city for its written consent to the creation of a district, shall be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls. A petition for the written consent of a city to the inclusion of land within a district shall describe the boundaries of the land to be included in the district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, and state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition.<sup>3</sup>

Second, if the city is unwilling to consent to the creation of the district, then the landowner/petitioner and the city must attempt to reach a mutually agreeable contract for the provision of water and sewer service to the land within the proposed district. Such requirement is provided in TWC § 54.016, as provided below:

- (b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district, including a

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<sup>2</sup> Tex. Water Code § 54.021 (a) and (b).

<sup>3</sup> Tex. Water Code § 54.016 (a).

district created by a special act of the legislature, within 90 days after receipt of a written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

- (c) If the governing body of the city and a majority of the electors or the owner or owners of 50 percent or more of the land to be included in the district 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 under the provisions of this section.<sup>4</sup>

If such agreement is not reached, then, and only then, may the landowner/petitioner submit an application at the TCEQ to create the desired district.

**B. Bases for a Contested Case Hearing**

The City is entitled to a contested case hearing on the Petition for both substantive and procedural reasons, as provided in more detail, herein.

**1. The City possesses a water and sewer CCN over the boundaries of the proposed District**

The creation of the District is not feasible or practicable, not necessary, and would not be a benefit to the land within the proposed District because the City possesses both a water and sewer CCN over the entire jurisdictional boundary of the proposed District. Maps of the City's water and sewer CCN boundaries are attached hereto as **Attachment A** and are incorporated herein for all purposes. The City, as the holder of water and sewer CCNs over the proposed District's jurisdictional boundaries, is the only entity that legally can provide water and sewer service to that land. The District, if created, would not be able to provide such services. Said another way, the availability of water and sewer (comparable) services from the City is not just available, but the City is the only entity authorized by the State of Texas to provide such services to that geographic area. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(1), and these facts render the District useless.

**2. The City regulates roadways of new development under its Subdivision Ordinances**

The creation of the District is not feasible or practicable, not necessary, and would not be a benefit to the land within the proposed District because the Petitioner has failed to prepare a sufficient financial plan for the construction of roads and to conduct a traffic study contemplating the road work that would be necessary to develop the land within the City's extra-territorial

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<sup>4</sup> *Id.* at § 54.016 (b) and (c).

jurisdiction ("*ETJ*"). The City has adopted roadway ordinances that the Petitioner must comply with to develop the land within the proposed District, and the Petitioner has failed to estimate sufficient funds in the Petition to fund such costs.<sup>5</sup> It is an established procedure of the City to require a plat in instances where land in its ETJ will be developed, in which case, the City's Subdivision Ordinances will apply. These ordinances require proportionality between the traffic impacts created by a new development and requirements placed on the property owner to dedicate and improve off-site, abutting, and internal thoroughfare rights-of-way to City standards.<sup>6</sup> It is the view of the City that the proposed District will require significantly more funding to comply with such ordinances and, therefore, the projected construction costs are not reasonable and would render the creation of the District infeasible, impractical, and unnecessary. Additionally, granting road powers to the proposed District is not feasible or practicable under TWC § 54.234(d) because the Petitioner has not completed a traffic study for the proposed District. These facts should also be considered in the TCEQ's determination of whether the Petition is feasible and practicable under TWC § 54.021(b)(2).

**3. The City regulates drainage facilities of new development under its Subdivision Ordinances**

Likewise, the City's Subdivision Ordinances will apply to any drainage facilities the proposed District may construct. Under these ordinances, a developer is responsible for constructing off-site drainage improvements necessary to serve the subdivision or development and the surrounding area.<sup>7</sup> As mentioned above, the City disagrees with the Petitioner's estimated cost of the proposed District in light of the improvements needed for the surrounding area to reasonably support new development. Consequently, the City contends that there will be negative drainage issues resulting from the creation of the proposed District. The TCEQ should consider this when determining the feasibility and practicability of the Petition under TWC § 54.021(b)(2).

**4. The Petitioner has failed to attempt to negotiate a mutually agreeable agreement for water and/or sewer service.**

The filing of the Petition is premature and it should be denied because the Petitioner has failed to attempt to negotiate a mutually agreeable agreement for water and/or sewer service as required under TWC § 54.016 (c). The City has met with Petitioner on many occasions in the past to negotiate a contract for the provision of water and sewer services to the proposed District. However, such negotiations were unsuccessful due to Petitioner's failure to provide the City with a reliable, consistent quantity of living unit equivalents of water and sewer service needed for the land within the proposed District. Two such plans provided to the City by Petitioner are attached hereto, as **Attachment B**, received in October 2022, and **Attachment C**, received in December 2022, both of which differ from the plan submitted with the Petition. As such, the City contends that the Petitioner has not, in good faith, attempted to negotiate a mutually agreeable contract as required by TWC § 54.016(c) and consequently filed the Petition prematurely.

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<sup>5</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(206).

<sup>6</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(a)(4) (2006).

<sup>7</sup> See CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-4(c) (2006).

**C. The City is an Affected Person with Justiciable Interests**

With respect to the Petition, the City is an affected person under 30 Texas Administrative Code (“TAC”) § 55.256 with justiciable interests unique from the general public, and, thus, it is entitled to a contested case hearing regarding the Petition. As (i) the holder of water CCN No. 12827 and sewer CCN No. 20813 with a water and sewer service area over the entire jurisdictional boundaries of the proposed District, (ii) the entity regulating roadways and drainage in its ETJ where the proposed District would be located, and (iii) the entity with whom the Petitioner must first attempt to negotiate a mutually agreeable contract of water and sewer services, the City is uniquely impacted by the Petition and by the creation of the potential District.

**1. Affected Person Prerequisites under 30 TAC §§ 55.251 and 55.256**

In accordance with the prerequisites for requesting a contested case hearing in 30 TAC § 55.251(b), the contact information of the person filing this request for the City is provided in the initial paragraph of this letter, and the City hereby requests a contested case hearing on the Petition.<sup>8</sup> Next, for an entity other than the Commissioners, Executive Director, or Petitioner to have standing to request a contested case hearing, it must demonstrate that it is an “affected person” under the standards set forth in 30 TAC § 55.256.<sup>9</sup> Under such rule, an affected person is one who has a personal justiciable interest not common to members of the general public that is related to a legal right, duty, privilege, power, or economic interest affected by the petition.<sup>10</sup> Governmental entities, such as the City, with authority under state law over issues contemplated by the petition, may be considered affected persons.<sup>11</sup> All relevant factors must be considered by the TCEQ in determining affected person status, including: (1) whether the interest claimed is one protected by the law under which the petition 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 activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on the 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.<sup>12</sup>

**2. The City’s Justiciable Interests**

*a. The City’s Water and Sewer CCNs*

First, the jurisdictional boundaries of the proposed District are entirely within the City’s water CCN No. 12827 and sewer CCN No. 20813 service areas, and such overlapping boundaries constitute a personal justiciable interest of the City that is uniquely and negatively affected by the Petition. To be clear, with respect to 30 TAC § 55.251(c)(2), the City’s water and sewer CCNs

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<sup>8</sup> Addressing the factors in 30 TAC § 55.251(c)(1) and (3).

<sup>9</sup> 30 TAC § 55.251(b).

<sup>10</sup> 30 TAC § 55.256(a).

<sup>11</sup> 30 TAC § 55.256(b).

<sup>12</sup> 30 TAC § 55.256(c).

service areas are at the same location as the jurisdictional boundaries of the proposed District. A map of the City's water and sewer CCN boundaries is attached hereto as **Attachment A**.

Under Texas law, a water and/or sewer CCN provides its holder with the exclusive right to provide retail water and/or sewer service to the service area designated in such certificate.<sup>13</sup> As to the City's right, privilege, and power under its CCNs, TWC § 13.242(a) states that:

...except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.<sup>14</sup>

Additionally, the City's obligation as a CCN holder to provide retail water and sewer service is established under TWC § 13.250(a), which provides that:

Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.<sup>15</sup>

In other words, such statutes grant the City, as a CCN holder, a legal right, duty, privilege, power, and economic interest in providing retail water and sewer service within the service areas of those CCNs and such interests are statutorily protected.<sup>16</sup> Here, the Petition contemplates creating a municipal utility district within those water and sewer CCN service areas.

The City is also an affected person by the Petition when evaluating its personal justiciable interests under the TCEQ's "other relevant factors" in 30 TAC § 55.256(c). As to 30 TAC § 55.256(c)(1) and (6), the City's interest in being the exclusive retail water and sewer service provider in its water and sewer CCN service areas is protected by law under TWC §§ 13.242 and 13.250. Such statutory protections are directly related to the analysis of whether to approve or deny the Petition under TWC § 54.021(a) and (b). As noted in TWC § 54.021(b)(1), when the TCEQ considers the feasibility and practicality of a petition to create a district, it must look to whether there are comparable services from other systems, such as municipalities. Clearly, with its water and sewer CCNs, the City is not just a comparable service provider, but rather is the mandatory water and sewer service provider within the jurisdictional boundaries of the proposed District.

As 30 TAC § 55.256(c)(2), there are no express distance restrictions or other limitations imposed by law on the City's affected interest in providing retail water and sewer service within the proposed District's boundaries. That being said, it is reasonable to assume that the applicable distance requirement should be based upon whether the proposed District's boundaries are inside

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<sup>13</sup> Tex. Water Code § 13.002(20).

<sup>14</sup> Tex. Water Code § 13.242(a).

<sup>15</sup> Tex. Water Code § 13.250(a).

<sup>16</sup> Tex. Water Code § 13.242(a).

or outside the City's water and sewer CCN service areas. Here, such District boundaries would be entirely within the City's water and sewer CCN service areas.

Next, a reasonable relationship exists between the City's interest as the water and sewer CCN holder and the creation of the District, as contemplated under 30 TAC § 55.256(c)(3). The City, as the sole water and sewer CCN holder over the proposed District's jurisdictional boundaries, is uniquely impacted because the District would be a new political subdivision of the State attempting to provide retail water and sewer service within the City's CCNs. Plus, the Petition proposes the construction of waterworks and sanitary sewer infrastructure within the requested District, which with the drainage, storm sewer, and roadway infrastructure improvements, is estimated to cost \$55,440,000. So, such infrastructure would also be within the service areas of the City's water and sewer CCNs. The construction, installation, and operation of such infrastructure will also negatively affect the City's ability to provide retail service and economic interest in developing its water and sewer systems in the service area of the City's CCNs. From the District's perspective, it would be unable to provide water and sewer service within its boundaries. Otherwise, the District would be infringing not only on the City's statutory right to exclusively provide retail water and sewer service within its CCNs – namely, within the proposed District – but also its obligation to provide continuous and adequate service within such area.<sup>17</sup> For these reasons, creating the proposed District with jurisdictional boundaries within the City's sewer CCN service area uniquely impacts the City and constitutes a justiciable interest. Thus, the City is an affected person with the right to a contested case hearing on the Petition.

*b. The City's Ability to Regulate Roads and Drainage*

Second, the creation of the District under TWC § 54.021 would impact the City's ability to regulate its roads and traffic, and drainage. With respect to 30 TAC §§ 55.251(c)(2) and 55.256(c)(2), the distance between the location of the District and the roads leading to the District are nearly the same, as the roads in question directly lead to the District. As to the TCEQ's affected person factors in § 55.256(b) and (c)(1), (3), and (6), the City has the ability under its Subdivision Ordinances to regulate roads in its ETJ and a reasonable relationship exists as to such authority and the Petition's proposed plan for roads, given that the Petition requests road powers from the TCEQ.

As the municipal authority over the entire jurisdictional boundaries of the proposed District, the Petition's failure to adequately plan for roadway improvements is a personal and justiciable interest of the City that is negatively affected by the Petition. Under the City's Subdivision Ordinances, new development is required to offset its traffic impacts by improving internal and off-site rights of way.<sup>18</sup> Here, the Petition fails to reasonably take into consideration the full extent of roadway improvements that will be needed, as evidenced by the inadequate cost estimate. The proposed District has also failed to conduct a traffic study needed to assess traffic impacts. The proposed District's Preliminary Engineering Report is not sufficient enough for this purpose due to the missing traffic study and inadequate funding for necessary road improvements. Thus, as the regulating entity of subdivisions within its ETJ, this interest is unique to the City.

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<sup>17</sup> See Tex. Water Code § 13.250 (setting forth a CCN holder's obligation to serve).

<sup>18</sup> CITY OF ROYSE CITY, TEX., SUBDIVISION ORDINANCE art. 3 § 3-3(a)(4) (2006).



Further, such unique fact negatively affects the City as it impairs the City's legal right, duty, privilege, and power in maintaining the roadways within its ETJ. Thus, the City is an affected person with a unique and affected interest in the management and maintenance of its public roadways.

Specifically, the City contends that the necessary roadway improvements have not been correctly accounted for by the Petition. Therefore, such District would not be a benefit to the land to be included in the District. In relevant part, TWC § 54.021 (b) states:

- (b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider: ... (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates...<sup>19</sup>

Here, of the total \$55,440,000 total estimated costs, the proposed District, in its Preliminary Engineering Report submitted with its Petition, estimates the cost of roadway improvements to be only \$2,250,000. The City disagrees that this is a reasonable projected cost in light of the current state of roadways in and near the proposed District's boundaries. FM-548 must be taken to access the proposed District's property. This is a two-lane, unimproved roadway that already suffers congestion due to other surrounding development. In its current state, FM-548 will require significant improvement to support increased traffic due to the proposed District. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(2).

As to drainage, the City has the authority under its Building Regulations<sup>20</sup> to regulate new development in floodplains within its ETJ. Thus, the City, by virtue of such Ordinances, has the unique ability and interest in regulating such matters, which address the factors in 30 TAC §§ 55.256(a), (b), and (c) (1), (3), (5) and (6). Specifically, with respect to the proposed District, a floodplain runs through the requested jurisdictional boundaries. A floodplain map is attached hereto as **Attachment D**. The City contends that the proposed District would require a flood study to determine the feasibility of developing that portion of the proposed District, and given that no study has been performed, the City believes that it would be impacted by flooding and drainage originating from the District. Thus, the City requests a contested case hearing to address this issue as well as to determine whether the proposed District would result in flooding and drainage issues.

*c. Failure of the Petitioner to Negotiate with the City for Water and Sewer Service*

Although the City has not finalized an agreement to provide service to the proposed District per Texas Local Government Code § 42.042, it is not for lack of willingness or ability of the City to do so. The reason for the City's inability to contractually agree to provide water and sewer service to the Petitioner, per their Petition for Services, was due to the lack of consistent specificity from the Petitioner as to its level of water and sewer service needed. Said another way, the Petitioner was unwilling to provide the City with the terms for which an agreement could be made.

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<sup>19</sup> Tex. Water Code § 54.021(b).

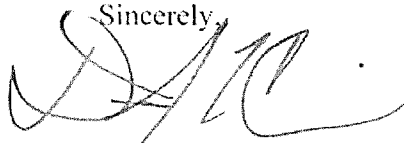
<sup>20</sup> CITY OF ROYSE CITY, TEX., BUILDING REGULATIONS art. 3 § 3.07 (2008).

March 10, 2023

Page 10

The City and Petitioner have met on many occasions in the past to discuss the potential provision of water and sewer service by the City to Petitioner's property; however, negotiations have been unsuccessful due to Petitioner being unable to provide the City with a final, consistent number of living unit equivalents of water/sewer service needed. The Petitioner has proposed various plans and has submitted multiple, varying plans to the City during agreement negotiations. The City's typical procedure is, upon receiving a service request, to (i) require a CCN check to ensure that the property to be served is within the City's CCN service area; (ii) engage in pre-application meetings with the applicant to discuss what utility infrastructure will be needed in order to connect to the City's existing facilities, in accordance with the City's subdivision regulations; and then (iii) negotiate and enter into a service agreement. Then, and only then, service capacity may be reserved by the applicant. The Petitioner was unable to satisfy these steps for failure to provide the needed level and manner of service to the City in order for it to determine the capacity the Petitioner will need. Thus, per 30 TAC §§ 55.256(a), (b), and (c)(1) and (6) the City's interest and statutory authority in negotiating an agreement with the Petitioner is protected under TWC § 54.016, and with respect to 30 TAC § 55.256(c)(3), the requirement for the Petitioner to negotiate with the City is directly related to the ability of the Petitioner to request TCEQ approval of a district creation application. Accordingly, the City has justiciable interests that are unique from the rest of the general public, and it is entitled to a contested case hearing as an affected person in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'DJK', with a stylized flourish extending from the end.

David J. Klein

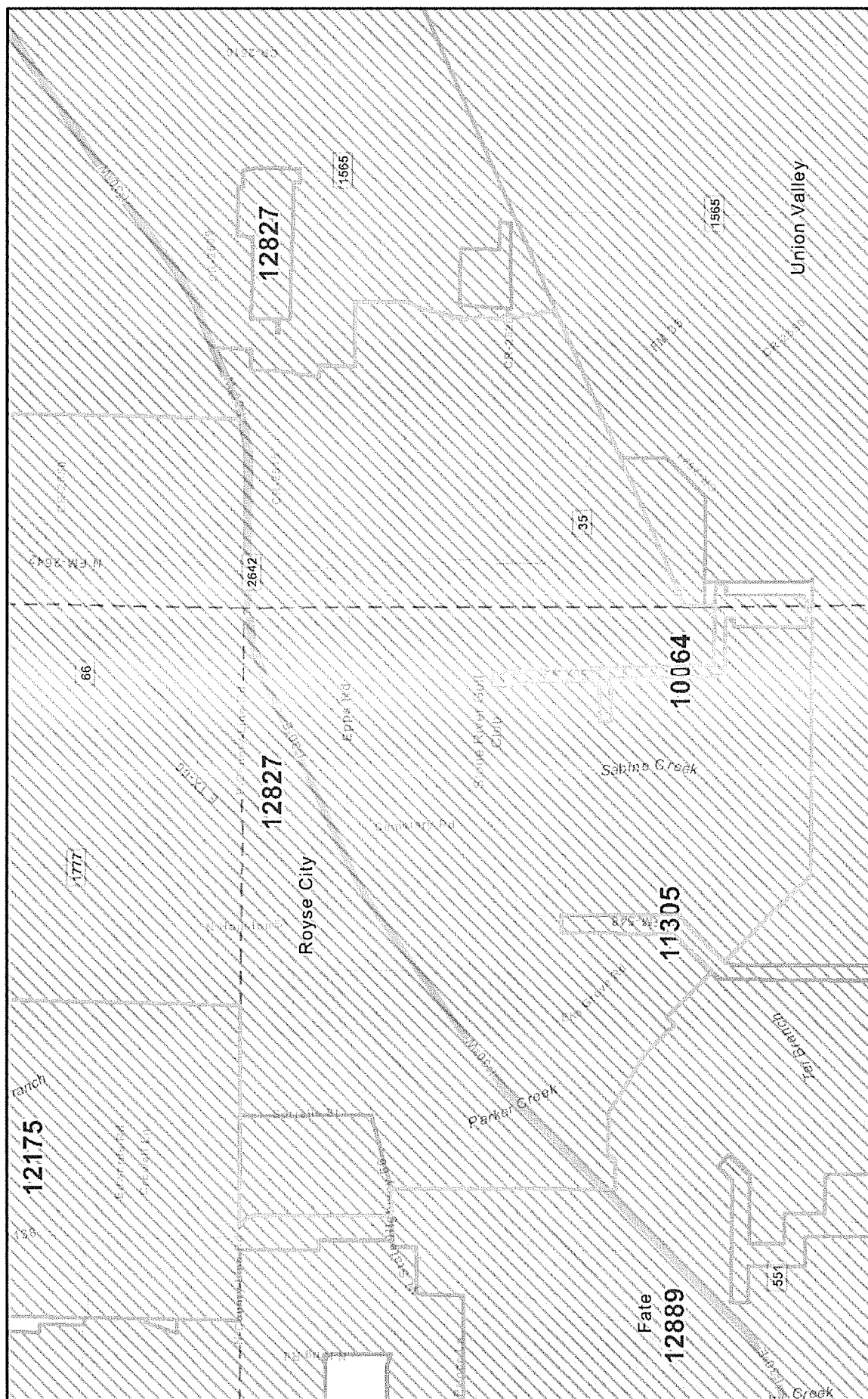
DJK/dsr

Enclosures

**Attachment A**

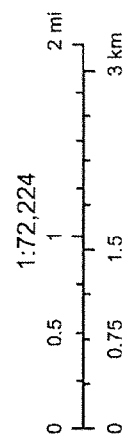
Maps of Water Certificate of Convenience and Necessity No. 12827 and Sewer Certificate of Convenience and Necessity No. 20813.

## City of Royse City Water CCN No. 12827



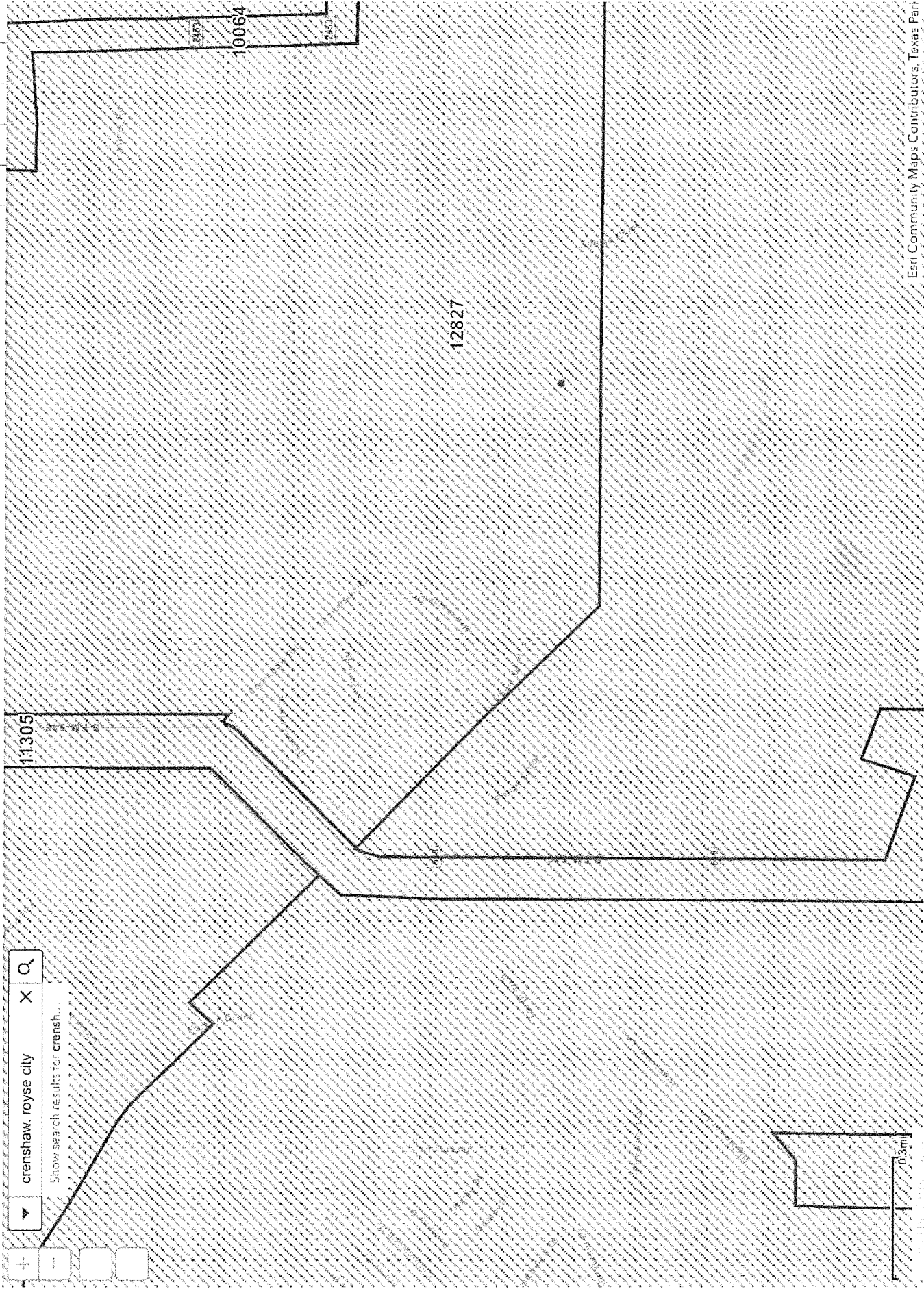
3/8/2023, 10:27:15 AM

## Water CCN Service Areas



Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, MET/NASA, USGS, EPA, NPS, USDA

ArcGIS Web AppBuilder  
Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METINASA, USGS, EPA, USDA | The 83rd Legislature, 1st Called Session, enacted S.B. 4 (PLAN C235). The districts are identical to the interim plan, ordered by the U.S. District



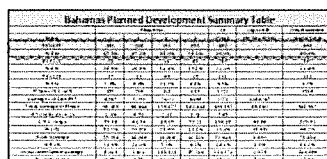
[illegible]

Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, MET/NASA, USGS, EPA, NPS, US Census Bureau, USDA

**Attachment B**

October Concept Plan for the proposed District





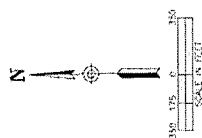
<b>DETAILED CONCEPT PLAN</b> <b>PLANNED DEVELOPMENT</b> BAHAMAS ROYBE CITY ROCKWALL COUNTY, TEXAS		U.S. 02 10 2021003.0
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2021003.0



**Attachment C**


December Concept Plan for the proposed District



**OPTION-1**

BEING 506.56 ACRES OF LAND  
SITUATED IN THE  
E.S. ALEXANDER SURVEY, ABSTRACT NO. 4  
E.T. THOMAS CRITCHFIELD SURVEY, ABSTRACT NO. 56  
E.U. JOHN S. CRITCHFIELD SURVEY, ABSTRACT NO. 96  
E.V. J.M. LOVE SURVEY, ABSTRACT NO. 140 & THE  
JAMES WELDON SURVEY, ABSTRACT NO. 162  
**HUNT COUNTY, TEXAS**

HUNT COUNTY, TEXAS



USA PROFESSIONAL SERVICES GROUP, INC.  
1025 VICEROY DRIVE, DALLAS, TX 75205  
214-634-3300 PHONE 214-634-3338 FAX  
REGISTERED ENGINEERING FIRM F-1945  
REGISTERED SURVEYING FIRM 100374-00

DRUM #1	CH-3-002	DATE	SCALE	PROJECT NO.	SHEET NO.
AS	AS			T = 307	1 of 1
RESOURCES SURVEILLANCE PROJECT					

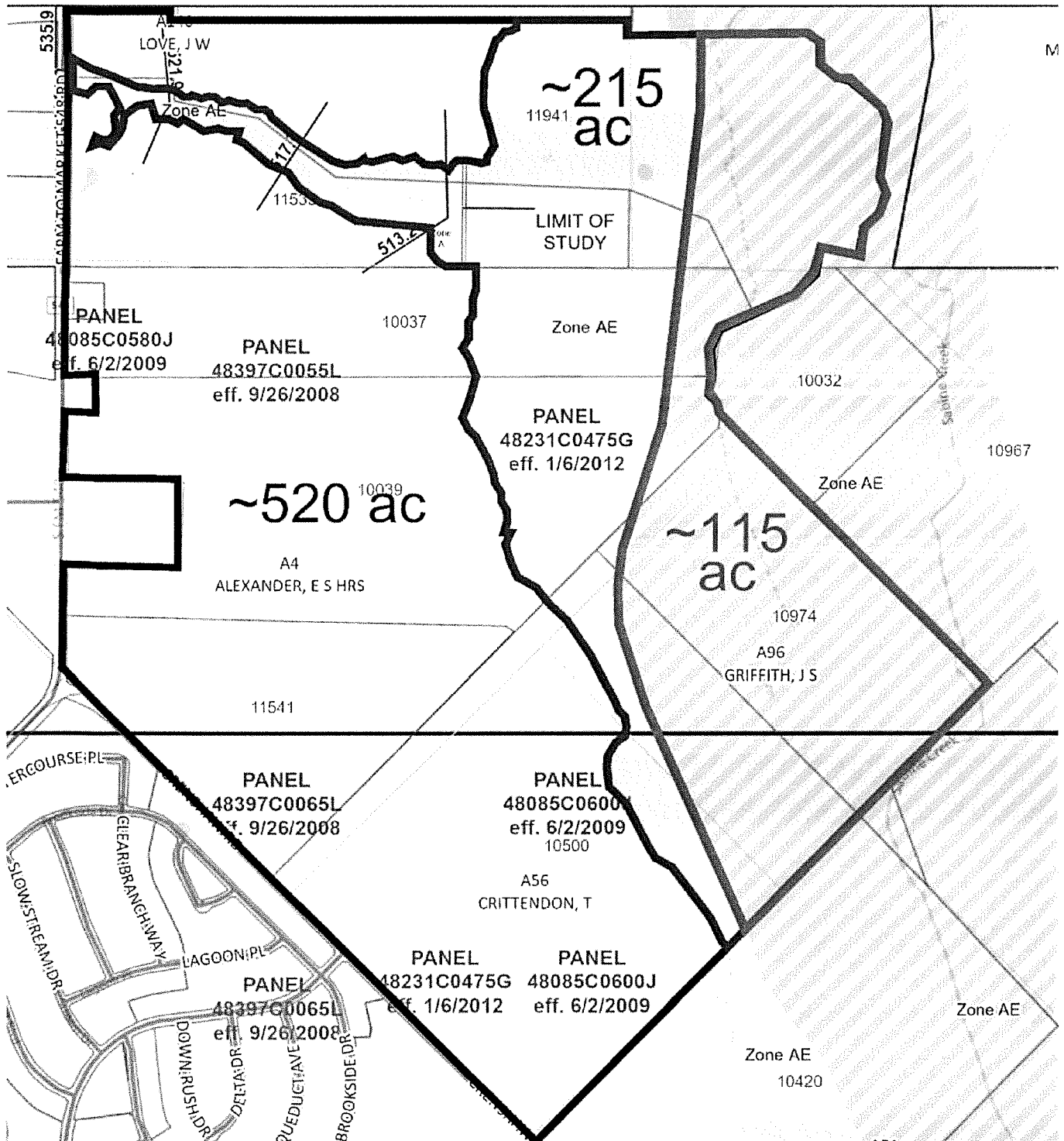
**Attachment D**

Floodplain Map of the proposed District boundaries

Property area

Floodplain

Floodway



Royse City - Bahama's floodplain areas

Office of  
KENDA CULPEPPER  
Criminal District Attorney



1111 Yellowjacket Ln., Suite 201  
Rockwall, Texas 75087  
Office 972.204.6800  
Fax 972.204.6809

**REVIEWED**

**FEB 21 2023**

**By** GCW

February 14, 2023

TCEQ OCC  
21 FEB '23 9:59

Laurie Gharis, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
MC 105  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Application by Bahamas Laguna Azure, LLC, to the Texas Commission on Environmental Quality for creation of Rockwall County Municipal Utility District No. 11, TCEQ CN-D-09222022-043

Dear Chief Clerk:

Rockwall County (the "County") hereby formally requests a contested case hearing on the above-referenced application to provide the Texas Commissioner on Environmental Quality ("TCEQ") with information and evidence it believes will assist TCEQ in its consideration of the application. Please direct all future correspondence on this application to:

Frank New  
Rockwall County Judge  
101 E Rusk Street, Suite 202  
Rockwall, TX 75087

Phone No: (972) 204-6000  
Fax: (972) 2046009

Bahamas Laguna Azure, LLC, is applying to the Texas Commission on Environmental Quality for creation of Rockwall County Municipal District No. 11, TCEQ Internal Control Number D-09222022-043 (the "District").

As contemplated by Texas Administrative Code, Title 30, sections 55.251 and 55.256, Rockwall County is an "affected person" entitled to request a contested hearing because it has interests related to the legal rights, duties, privileges, or economic interests potentially affected by the proposed District which are "not common to the general public." Section 55.256(b) specifically provides that "local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons." Similarly, since the proposed District is located entirely outside the corporate limits of any municipality, although within the ETJ of Royse City, Texas, section 54.0161(b)(2) of the Texas Water Code allows a

commissioners court to submit to TCEQ its "findings, conclusions, and other information that the commissioners court thinks would assist the commission in making a final determination of the petition."

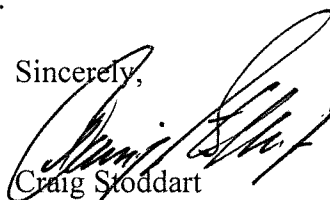
Additionally, the County is vested with both statutory and constitutional authority over various public functions such as transportation, emergency services, and the health and safety of its citizens, which will be directly affected by creation of the proposed District. *See, e.g.*, Texas Constitution Article 11, Section. 2 (layout, construction, and repair of county roads); Texas Local Government Code, Chapter 232 (county authority to regulate subdivisions, including the construction of roads, water availability, on site sewage facilities as well as other subdivision regulations); Texas Transportation Code §251.016 (general authority over roads, highways, and bridges located in the county); Texas Transportation Code §251.003 (county rulemaking authority over construction and maintenance of public roads); Texas Local Government Code Chapter 352 (fire protection for county residents and adoption of fire code); Texas Government Code, Chapter 418 (county authority over emergency management); Texas Health and Safety Code §121.003 (county enforcement of laws reasonably necessary to protect public health); Texas Health and Safety Code, Chapter 366 (licensing procedures for private sewage facilities); Texas Water Code §26.171 (enforcement of water quality controls and inspection of public waters).

Attached to this letter is a statement from Rockwall County Judge, Frank New, providing further comment into how Rockwall County will be affected by the proposed District and why a contested hearing is being sought. See Exhibit A, attached hereto.

The County has both constitutional and statutory authority over multiple issues raised by the current application and is therefore an "affected person," as contemplated by the Texas Administrative Code. The proposed District is located entirely outside the corporate limits of a municipality (albeit within the ETJ of Royse City), affording the County express authority to review the application and provide TCEQ with such other evidence and information related to the proposed District that the commissioners court considers necessary. TEX. WATER CODE §54.016 (a-2) and (b).

For these reasons, the County requests TCEQ find that the County is an affected person and grant its request for a contested hearing.

Sincerely,



Craig Stoddart  
Asst. Criminal District Attorney  
Rockwall County, Texas

enclosure

## EXHIBIT A

My name is Frank New, and I am currently the County Judge of Rockwall County, Texas. Rockwall County, being the smallest geographic county in the state of Texas and covering only 12 miles by 12 miles has no room for error and overdevelopment. The county has utilities available from one end of the county to the other and are readily available for developers to access. Some developers choose not to access the already existing utilities, because that is a limiting factor on how many homes our infrastructure can support and how many homes can reasonably be put in a subdivision. These developers over-develop their subdivisions, resulting in stress to our state electric and gas grid, a strain on our schools, fire fighters, police, water, and jails. This has a detrimental effect on existing and soon to be citizens of Rockwall County, as the developers do not pay for the infrastructure that they have overwhelmed, save of course water and sewer, they leave the existing citizens paying for this infrastructure cost just to maintain the quality of life they enjoyed prior to the development coming in. Rockwall county is known for low crime, high quality of life, great schools, and wide-open spaces - all are under attack by overdevelopment. Rockwall County is an affected party with a duty to represent the citizens that chose and continue to choose this county as their home. We are the proverbial canary in the coal mine, with our limited size, one overdeveloped parcel of land destroys the way of life we all enjoy. I am asking for a contested hearing for Rockwall MUD 11.

Sincerely,



Frank New  
Rockwall County Judge

**REVIEWED**

FEB 28 2023

By df

H



Office of  
KENDA CULPEPPER  
Criminal District Attorney  
1111 E. Yellowjacket Lane, Ste. 201  
Rockwall, Texas 75087

2016 02 03 12

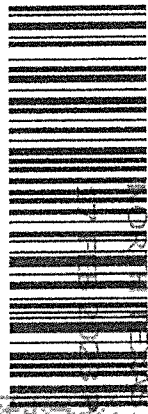
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FEB 21 2023

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Laurie Gharris, Chief Clerk

Office of the Chief Clerk

Texas Commission on Environmental Quality

MC 105

P.O. Box 13087

Austin, TX 78711-3087

78711-308787