SOAH DOCKET NO. 582-24-21738
TCEQ DOCKET NO. 2023-1566-MWD

APPLICATION BY PRESERVE HUTTO, LLC FOR NEW TPDES PERMIT NO. WQ0016145001	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARING**

APPLICANT PRESERVE HUTTO'S REPLY TO EXECUTIVE DIRECTOR'S EXCEPTIONS TO PROPOSAL FOR DECISION

COMES NOW Applicant Preserve Hutto, LLC ("Preserve Hutto") and files this Reply to Executive Director's Exceptions to Proposal for Decision ("Reply"). In support of its Reply, Preserve Hutto respectfully shows the Commission as follows:

I. INTRODUCTION

Preserve Hutto and the Executive Director are in agreement that the Proposal for Decision ("PFD") issued in this case should be rejected and the draft permit issued. Preserve Hutto submits this Reply to the Executive Director's Exceptions to clarify one particular area of agreement between Preserve Hutto and the Executive Director, which Preserve Hutto believes is particularly pertinent to the Commission's decision in this matter and therefore warrants clarification: the lack of available facilities able to serve Preserve Hutto's property.[1] The PFD's treatment of this issue—in particular its reliance on the possible availability of facilities ***years*** after Preserve Hutto submitted its Application—a decision that would conflict with Commission precedent, would allow and even encourage a host of dramatic adverse outcomes both in the water and sewer utility and the development industries, as discussed below.

II. ARGUMENT AND AUTHORITIES

In excepting to the PFD's conclusions regarding regionalization, the Executive Director points out that "there are no wastewater treatment facilities within three miles of the Preserve Hutto

[1] Executive Director's Exceptions at 3, n8.

site that are able to serve the proposed development."[2] That fact is both (1) undisputed, and (2) critical to resolving the regionalization issue the Commission referred to SOAH for hearing. The evidence admitted at the hearing shows that, at the time Preserve Hutto submitted its Application, the District's wastewater treatment plant did not have capacity to serve Preserve Hutto's property (and still does not have capacity even today).

As stated in a feasibility study prepared by the District's engineer, the plant "would need to be expanded to 1.7 mgd before capacity would be available to receive flows from [Preserve Hutto's property] and other future development within the service area."[3] The engineer goes on to make clear that "wastewater service to the project would not be available until after the [plant] is expanded."[4] Even today—nearly four years after that feasibility study was prepared—the District's facilities still are not able to provide service, as the contemplated expansion is still in progress.[5] Moreover, there is reason to expect that the District's new anticipated completion date is unreliable, as the District has already exceeded the previous anticipated completion date by at least nine months. The District's engineers previously stated that they expected the expansion to be completed "during 2024,"[6] and although the end of 2025 is now approaching the expansion still is not complete, nearly four years after Preserve Hutto submitted its application to build its own plant to ensure that capacity is available in a timely manner relative to the development of the associated property.

Critically, as Preserve Hutto's regionalization expert David Tuckfield testified, the question of available capacity is analyzed based not on "what may or may not exist as of today,

[2] Executive Director's Exceptions at 3.
[3] Exh. JB-7 at PRESERVE 0064.
[4] *Id.* at PRESERVE 0066.
[5] Exh. JB-0 at 10:26-11:1.
[6] Ex. JB-7 at PRESERVE 0065.

but what existed at the time the application was made or the service request was made."[7] That is because the Commission generally looks to the facts as they were at the time of application when deciding whether to grant an application. *Cf. Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County,* SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Final Order at § III.3 (November 6, 2023). Indeed, throughout the 2021 Web Page Guidance[8] that was in place at the time the Application was submitted,[9] TCEQ repeatedly refers to "existing facilit[ies]."[10]

There is good reason for this. As laid out in more detail below, making permitting decisions based on speculation about the occurrence and/or timing of future events creates great uncertainty around the ability to obtain utility service, an area in which uncertainty should be particularly eschewed. Crucially, it also gives existing utility owners and operators—who, under this PFD, could protest a permit based on contemplated facilities to be built in the future—leverage over real estate development by allowing them to use regionalization as a weapon to prevent developers

[7] App. Ex. 2 at 30:9-10.
[8] App. Ex. 2-04.
[9] App. Ex. 2 at 14:22-15:13 (RG-632 was issued in August 2023, after the Application was submitted).
[10] "The presence of a wastewater treatment facility or wastewater collection system within three miles of a proposed new wastewater treatment facility or the expansion of an ***existing facility*** is not an automatic basis to deny an application or to compel an applicant to connect to an ***existing facility***." Exhibit APP EX 2-04 (APP EX-2 116) (emphasis added). "The applicant has obtained a Certificate of Convenience and Necessity (CCN) for the service area of the proposed new facility or the proposed expansion of the ***existing facility***." Exhibit APP EX-2-04 (APP EX-2 117) (emphasis added). "[T]he agency supports new applicants and ***existing facilities*** productively working together . . . ." Exhibit APP EX-2-04 (APP EX-2 117) (emphasis added). "[L]ack of thorough communication with ***existing facilities*** within a three-mile radius." Exhibit APP EX-2-04 (APP EX-2 117) (emphasis added). "If an ***existing facility*** does have the capacity to accept the proposed wastewater, submit an analysis of expenditures required to connect to the ***existing facility*** or collection system versus the cost of constructing and operating the proposed new facility or expansion." Exhibit APP EX-2-04 (APP EX-2 118) (emphasis added). Provide copies of all correspondence with the owners and/or operators of any ***existing*** permitted domestic wastewater treatment ***facilities*** and collection systems within a three-mile radius of the proposed facility." Exhibit APP EX-2-04 (APP EX-2 118) (emphasis added).

from building their own wastewater facilities. That is not something the Legislature could have intended in granting the Commission the discretion to consider regionalization in the context of discharge permit applications.

In arguing that the District's ongoing plant expansion should be considered, Protestants have pointed to the language of Texas Water Code § 26.0282 that refers to "the availability of existing or proposed areawide or regional waste collection." If the Commission is to look beyond the time of an application and to take into account "proposed" capacity, which Preserve Hutto asserts would be contrary to precedent and incorrect, there must be standards around when proposed capacity may be considered for purposes of regionalization. Allowing any "proposed" capacity, no matter how speculative or temporally removed from the application, to require a developer to connect is simply not workable economically. Among other things, Developers cannot receive construction loans and/or equity investment in the tens of millions of dollars to break ground on a development that may not have sewer capacity upon completion. In fact, having guaranteed capacity in advance of breaking ground is an absolute must-have for developers. As a result, forcing developers to postpone or delay their projects for multiple years while they wait to find out whether any "proposed" capacity may become reality would have drastic consequences for the residential real estate development industry in Texas.

Moreover, to impose such a requirement would represent a fundamental shift in a party's ability to control the development of its own property. As discussed in more detail below, it would effectively give nearby utility owners the ability to stop disfavored projects—such as a multifamily

project that may compete with projects affiliated with the nearby utility—for an indefinite amount of time.

But that is exactly what the PFD in this case does. In early 2022, Preserve Hutto was not able to obtain wastewater service from any area providers, so it submitted a discharge permit application to build its own facilities. Now, nearly four years later, after Preserve Hutto's prolonged defense against the Protestants' efforts to stymie the development related to this Application, the PFD tells Preserve Hutto it must continue to wait to find out when and for how much—**and if**—the District will provide service to Preserve Hutto. That outcome is devastating for Preserve Hutto specifically, and for any similarly situated developers.

As Preserve Hutto laid out in its Exceptions, the PFD erroneously concludes that wastewater service is "available" to Preserve Hutto,[11] when the undisputed evidence shows that (1) capacity is still, even today, not available to Preserve Hutto, and (2) the claim that it will be available in the future makes numerous assumptions, wholly unsupported by the record, about what will happen in the future. Perhaps most notable, it assumes that the District's plant expansion will be completed as anticipated, even as the evidence showed that prior anticipated completion dates have not been met, as discussed above. If Preserve Hutto had begun its development back in 2022 as it so desired, it would indeed have delivered a project with costs in the tens of millions of dollars that would not have had sewer service. The project would have been bankrupted immediately with the inability to have paying residents. But the PFD also ignores a host of other unresolved preconditions relating to the District's ability and willingness to provide service.

First, the District has made clear that it cannot provide service unless it successfully amends its wholesale agreement with Windermere Utility Company ("Windermere"),[12] something that is

[11] PFD at Conclusion of Law 19.
[12] District Ex. JB-5 at PRESERVE 0236.

outside of the District's control and has not happened to date. Again, if Preserve Hutto had begun its development in 2022, it would have a fully-completed residential development without sewer service for this independent reason as well. Second, the District's response to Preserve Hutto's request for service conspicuously declines to commit to providing service. On the contrary, the District's response concludes by stating that "[t]his letter does not constitute a commitment or guarantee of utility service."[13] Finally, the PFD's conclusion that Preserve Hutto can connect to the District's system assumes that Preserve Hutto will be able to obtain third-party easements necessary for such connection.[14] Landowners do not derive a benefit from a pipeline carrying untreated wastewater across their property, so there is good reason to think they could oppose the necessary easements.

Any one of the foregoing contingencies would, on its own, completely forestall Preserve Hutto's ability to obtain wastewater service and deny Preserve Hutto the ability to develop the property. Taken together, however, the degree of uncertainty they represent shows that, even if it were undisputed that the District's expansion was nearly complete, the PFD should not have concluded that service is available to Preserve Hutto. If the Commission is to consider availability of "proposed" capacity, as Protestants contend, these are far from the circumstances in which proposed capacity should bar an applicant from obtaining a permit to build its own facilities.

But it is not only the unknowns about the future that make the PFD problematic in this case, it is also what is known—what the District has stated unequivocally that it will require as a condition of providing service to Preserve Hutto—that shows that Preserve Hutto would be unable

[13] District Ex. JB-5 at PRESERVE 0236.
[14] District Ex. JB-10 at PRESERVE 0019, 0020.

to obtain service from the District. Specifically, the District has stated that it will require annexation before it will provide service.

The evidence shows that annexation would subject Preserve Hutto to both property taxes and more stringent requirements for infrastructure unrelated to provision of wastewater services that would substantially increase the cost of the development.[15] Indeed, one of the District's own exhibits—an engineering study commissioned by the District relating to annexation of Preserve Hutto's property—confirms that annexation would result in imposition of property taxes on Preserve Hutto. That study states that annexation of Preserve Hutto's property into the District "could increase the District's total assessed value by as much as $50,000,000" and then states that "annexation of the tract into the District…will increase the assessed value of the property subject to taxation…."[16] The magnitude of the economic effects of those property taxes and the increased infrastructure costs is substantial. Preserve Hutto's evidence shows that those effects represent an existential threat to the solvency of Preserve Hutto's development, and that the planned development would be economically unworkable if subjected to those property taxes and more stringent infrastructure requirements.[17]

At the end of the day, the PFD ignores all of the foregoing uncertainty surrounding whether Preserve Hutto will ever be able to obtain service from the District, and, even more problematic, it makes no attempt to articulate any standards around when "proposed" capacity may be considered for purposes of regionalization. As a result, the PFD, if adopted, would lay the groundwork for a number of bad outcomes and would be ripe for abuse by competing actors, as has happened in this case. Whereas the Commission has previously adopted a PFD that makes

[15] App. Ex. 2-06 at ¶ 5.
[16] District Ex. JB-7 at PRESERVE 0066.
[17] App. Ex. 2-06 at ¶ 5.

clear that "the purpose of the regionalization review is to encourage Applicants to explore and give serious consideration to connection to such utilities,"[18] the PFD here uses regionalization to put Preserve Hutto in a position where it may ultimately be unable to obtain wastewater service. That is only in part due to all of the contingencies discussed above. It is also because it gives the District enormous leverage over Preserve Hutto and its development.

The PFD cedes to the Protestants the ability to control whether Preserve Hutto is ever able to develop its property. At a minimum, the PFD puts Preserve Hutto completely at the mercy of the District's whims with regard to the cost of obtaining service. If the PFD is adopted, the District could impose any connection fees it wanted, as Preserve Hutto would have no recourse other than to acquiesce to the fees demanded. The District could also effectively bring Preserve Hutto's development to a complete halt by simply taking advantage of the loopholes it included in its response to Preserve Hutto's request for service and denying service to Preserve Hutto altogether.[19] The District has refused to remove these loopholes despite multiple requests from Preserve Hutto to do so.

As a result, adoption of the PFD's framework for analyzing and conclusions regarding regionalization would create a precedent that opportunistic actors could use to stifle competitive development. Any developer with connections or control in relation to an existing utility owner or operator (including, particularly, a developer-controlled district) could use those connections and control to require a competitive developer to connect to the proposed system and then later deny service, or impose financial terms that would have the effect of denying service (an outcome that could very well occur here due to the substantive conditions on service, like LUE fees, that

[18] App. Ex. 2-05 at 140-141.
[19] The enormous leverage the PFD would give to Protestants here is made even more problematic because the Protestants include one entity closely aligned with an existing real estate developer.

have not yet been determined). That outcome is fundamentally at odds with the policy that regionalization is to be used to encourage discussion, not to give existing utility owners leverage over prospective utility owners. It is also at odds with prior Commission precedent, which treats regionalization as highly discretionary. *See Order Granting the Application by Crystal Clear Special Utility District and MCLB Land, LLC for TPDES Permit No. WQ0015266002 in Hays County, Texas*; TCEQ Docket No. 2020-0411-MWD; SOAH Docket No. 582-20-4141 ("Texas Water Code §26.0282 does not require…the Commission to deny the permit even if the Commission concludes that an alternative system is available in the region").[20]

IV. CONCLUSION

For the reasons above, Preserve Hutto respectfully requests that the Commission sustain its exceptions and enter an order granting Preserve Hutto's Application for Texas Pollutant Discharge Elimination System No. WQ0016145001. To the extent it is procedurally appropriate, and to the extent the Commission is inclined to consider them, Preserve Hutto attaches to this Reply as **Exhibit A** proposed findings of fact and conclusions of law that illustrate the errors in the PFD discussed herein and in Preserve Hutto's exceptions to the PFD.

Dated: September 29, 2025.

Respectfully submitted,

Gregg Law PC

[20] App. Ex. 2-02 at 070, Conclusion of Law 13.

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ATTORNEYS FOR PRESERVE HUTTO, LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2025 a true and correct copy of the foregoing was sent electronically to all parties of record.

_____
Peter T. Gregg

EXHIBIT A

I. PROPOSED FINDINGS OF FACT

The Application

1. Preserve Hutto, LLC (Applicant) filed its application (Application) for a new Texas Pollutant Discharge Elimination System (TPDES) permit with the Texas Commission on Environmental Quality (TCEQ or Commission) on April 8, 2022.

2. The Application requested authorization to discharge treated domestic wastewater from the Preserve at Star Ranch Wastewater Treatment Facility (Facility), to be located at 4428 Priem Lane, in Pflugerville, in Travis County, Texas 78660, via pipe to an unnamed tributary, then to Wilbarger Creek, then to the Colorado River above La Grange in Segment No. 1434 of the Colorado River Basin.

3. The Application requested authorization to discharge treated domestic wastewater from the Facility at a daily average flow not to exceed 48,000 gallons per day (GPD).

4. Applicant proposes to build the Facility to serve Preserve at Star Ranch, a multifamily residential housing community that will be comprised of 480 bedrooms, in 310 townhome units (the Development).

5. The Executive Director (ED) declared the Application administratively complete on June 14, 2022.

The Draft Permit

6. The ED completed the technical review of the Application, notified Applicant on October 6, 2022, that it had prepared a preliminary decision and draft permit (Draft Permit), and made the Draft Permit available for public review and comment.

7. The Commission determined the Application to be technically complete on October 18, 2022.

8. The Facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units would include a bar screen, two aeration basins, a final clarifier, two sludge digesters, a tertiary filter, alum addition, and a chlorine contact chamber. The Facility has not yet been constructed.

9. Sludge generated from the Facility would be hauled by a registered transporter and disposed of at a TCEQ-permitted solid wastewater treatment facility, Mount Houston Road Municipal Utility District Wastewater Treatment Facility. The Draft Permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

10. The daily average effluent limitations in the Draft Permit, based on a thirty-day arithmetic average of all effluent samples, are as follows:

Five-Day Carbonaceous Biochemical Oxygen Demand	Total Suspended Solids	Ammonia Nitrogen	E. Coli	Total Phosphorous
5 milligrams per liter (mg/L) (2.0 lbs/day)	5 mg/L (2.0 lbs/day)	2 mg/L (0.81 lbs/day)	126 colony forming units or most probable number per 100-milliliters	1.0 mg/L (0.40 lbs/day)

11. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/L and a chlorine residual of at least 1.0 mg/L, and shall not exceed a chlorine residual of 4.0 mg/L, after a detention time of at least 20 minutes based on peak flow.

12. The treated effluent will be discharged via pipe to an unnamed tributary, then to Wilbarger Creek, then to the Colorado River above La Grange in Segment No. 1434 of the Colorado River Basin.

13. For the unnamed tributary, the unclassified receiving water use is limited aquatic life use. For Segment 1434, the designated uses are primary contact recreation, public water supply, and exceptional aquatic life use. TCEQ issued the Draft Permit with effluent limitations intended to maintain and protect the existing instream uses.

14. TCEQ found that the end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance with the Texas Surface Water Quality Standards (TSWQS) for pH when the discharge authorized is from a minor facility.

15. TCEQ's Tier 1 antidegradation review determined that existing water quality uses will not be impaired by the Draft Permit, as numerical and narrative criteria to protect existing uses will be maintained.

16. TCEQ found that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed, so no Tier 2 degradation determination was required.

17. TCEQ further found that the discharge from the Facility is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species, or their critical habitat. Segment 1434 is not currently listed in Texas's inventory of impaired and threatened waters.

Notice and Jurisdiction

18. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit was published on June 24, 2022, in the Austin Chronicle in English, and on June 28, 2022, in La Prensa Comunidad in Spanish.

19. The Notice of Application and Preliminary Decision was published on June 24, 2022, in the Austin Chronicle in English, and on June 28, 2022, in La Prensa Comunidad in Spanish.

20. On September 14, 2022, the ED completed the technical review of the Application.

21. On May 11, 2023, a public meeting was held in Pflugerville, at the conclusion of which the public comment period ended.

22. On September 14, 2023, TCEQ's Chief Clerk mailed the ED's Response to Comments, and on October 19, 2023 the Hearing Request/Request for Reconsideration period ended.

23. After a February 21, 2024 open meeting, the Commission issued an Interim Order on February 27, 2024. The Interim Order found that Karen Blakey, Mohammed Hallak, the City of Hutto (City) and Williamson County Water, Sewer, Irrigation, and Drainage District No. 3 (District) were affected persons, and it directed that the following four issues (Referred Issues) be referred to the State Office of Administrative Hearings (SOAH):

Issue 1: Whether the Commission should deny or alter the terms and conditions of the Draft Permit based on consideration of need under Texas Water Code § 26.0282 and the general policy to promote regional or area-wide systems under Texas Water Code § 26.081 (Regionalization);

Issue 2: Whether the Draft Permit complies with applicable requirements to abate and control nuisance odors, as set forth in 30 Texas Administrative Code (TAC) § 309.13;

Issue 3: Whether the Draft Permit is protective of water quality, including the protection of the health of the requesters and requesters' families and the existing uses of the receiving waters in accordance with applicable regulations including the Texas Surface Water Quality Standards in 30 TAC Chapter 307; and

Issue 4: Whether Applicant substantially complied with TCEQ's public notice requirements in 30 TAC § 39.405.

24. The matter was docketed with SOAH on July 12, 2024.

25. At its February 21, 2024 open meeting, the Commission also denied all remaining hearing requests and requests for reconsideration, and set the maximum duration of the hearing at 180 days from the date of the preliminary hearing until the date the Proposal for Decision (PFD) is issued by SOAH. The parties later agreed to extend the applicable deadline past 180 days.

26. The notice of the preliminary hearing was published on September 13, 2024, in the Austin Chronicle in English, and on September 17, 2024, in La Prensa Comunidad in Spanish. The notice included the time, date, and place of the hearing, as well as the matters asserted, in accordance with the applicable statutes and rules.

Proceedings at SOAH

27. On October 21, 2024, a preliminary hearing was convened in this case via videoconference by SOAH Administrative Law Judge (ALJ) Heather D. Hunziker. The following appeared and were admitted as parties: attorney Peter Gregg for Applicant; attorney Joe Freeland for the City; attorney Stephen Dickman for the District; attorneys Kathy Humphreys and Ryan Rakowitz for the ED; and attorney Josiah Mercer for the Office of Public Interest Counsel (OPIC).

28. At the preliminary hearing, the administrative record was admitted into evidence as Applicant's Exhibits A-D, and jurisdiction was noted by the ALJ.

29. On January 10, 2025, and after the SOAH preliminary hearing, TCEQ permitting staff (Staff) requested additional information from Applicant on the Application, and Applicant provided Staff additional information on January 14, 2025, and March 10, 2025.

30. On March 13, 2025, after additional Staff review of the Application and Applicant's newly added information, Staff recommended no changes to the Draft Permit, but changed the Statement of Basis to add the tertiary filter and alum addition to the treatment units, and updated Staff's contact information, signature, and revision date.

31. On May 5, 2025, SOAH ALJs Hunziker and Andrew Lutostanski co-presided at the hearing on the merits held at SOAH's Austin Office and all parties appeared through their respective representatives. At the opening of the hearing, the ALJs held a prehearing conference, wherein the ALJs ruled on all timely filed motions and objections.

32. At the May 5, 2025 merits hearing, the Third and Fourth Supplements to the Administrative Record (Tabs F and G) were admitted as Applicant Exhibits C and D.

33. Regionalization was the sole disputed issue.

Issue No. 1: Whether the Commission should deny or alter the terms and conditions of the Draft Permit based on considerations of need under Texas Water Code § 26.0282 and the general policy to promote regional or area-wide systems under Texas Water Code § 26.081

34. It is Texas state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to prevent pollution and maintain and enhance the quality of the water in the state.

35. To effectuate the policy of encouraging regionalization of wastewater services, TCEQ has issued regulatory guidance on the steps an applicant should take with respect to regionalization. The guidance in place at the time Applicant submitted its Application was that posted on TCEQ's website in 2021 (2021 Web Page Guidance), which was admitted at the hearing as Applicant's Exhibit 2-04.

36. The 2021 Web Page Guidance provides that applicants should do the following with respect to need and regionalization: (1) provide a justification of permit need, (2)

determine whether there are any permitted domestic wastewater treatment facilities or collections systems within a three-mile radius of the proposed facility, (3) contact any existing permitted domestic wastewater treatment facilities within a three-mile radius to inquire if they currently have the capacity to accept or are willing to expand to accept the volume of wastewater proposed, (4) if an existing facility does have the capacity to accept the proposed wastewater, submit an analysis of expenditures required to connect to the existing facility or collection system versus the cost of constructing and operating the proposed new facility or expansion, and (5) provide copies of all correspondence with the owners and/or operators of any existing permitted domestic wastewater treatment facilities and collection systems within a three-mile radius of the proposed facility.

37. Domestic Technical Report 1.1, Section 1.A of the Application provides a justification of permit need. In particular, the Development will require the provision of sewer service to accommodate the planned construction of 310 townhome units and associated wastewater needs for the inhabitants of those residences. Applicant also addressed need in two letters, dated January 14, 2025 and March 10, 2025, from Jerry Ince to Jose Alfonso Martinez III at TCEQ.

38. The Facility is within a three-mile radius of the Forest Creek Wastewater Treatment Plant.

39. The District has a wholesale wastewater contract with Windermere utility company to manage the Forest Creek Wastewater Treatment Plant, which handles service in this area.

40. The City provides service in this area through a partnership with the District.

41. Applicant contacted both the District and the City to inquire whether they have capacity to accept wastewater from the Development.

42. The City informed Applicant that it does not have any facilities in the area.

43. The District informed Applicant that the Forest Creek Wastewater Treatment Plant would have to be expanded in order to provide service to the Development.

44. As of the date of the hearing, in May of 2025, the expansion of the Forest Creek Wastewater Treatment Plant was not complete and the plant did not have capacity to provide service to the Development.

45. The District told Applicant that Applicant's property would have to been annexed into the District for the District to provide service to the Development. Annexation would have property tax and other non-wastewater related financial impacts on the Development.

46. In its letter responding to Applicant's request for service, the District stated that the letter "does not constitute a commitment or guarantee of utility service."

47. In order to provide service to the Development, the District would have to amend its wholesale contract with Windermere utility company.

48. The parties submitted analyses of the cost of connecting to the District's system versus the cost to construct and operate the proposed Facility. Applicant's expert estimated that it would cost $4,528,700 to connect to the District's system and $1,500,00 to construct the proposed Facility. The District's expert estimated that it would cost $3,056,600 to connect to the District's system and around $2,600,000 to construct and operate the proposed Facility.

49. The cost to connect to the District's system materially exceeds the cost of constructing and operating the proposed Facility.

50. The Draft Permit satisfies the 2021 Web Page Guidance.

51. Although not applicable, the Draft Permit also satisfies TCEQ's guidance in RG-632.

Issue No. 2: Whether the Draft Permit complies with the applicable requirements to abate and control nuisance odors, as set forth in 30 TAC § 309.13

52. No party presented evidence rebutting the prima facie demonstration that the Draft Permit complies with applicable requirements to abate and control nuisance odors, as set forth in 30 TAC § 309.13.

53. Applicant has agreed that there will not be residential structures within the 150-foot buffer zone from any standalone plant on the property.

54. The Draft Permit complies with the applicable requirements to abate and control nuisance odors.

Issue Nos. 3: Whether the Draft Permit is protective of water quality, including the protection of health of the requesters and requesters' families and the existing uses of the receiving waters in accordance with applicable regulations including the TSWQS in 30 TAC Chapter 307

55. No party presented evidence rebutting the prima facie demonstration that the Draft Permit is protective of water quality and the existing uses in the receiving waters under the applicable TSWQS in 30 TAC Chapter 307.

56. The Draft Permit is protective of water quality.

Issue No. 4: Whether Applicant substantially complied with TCEQ's public notice requirements in 30 TAC § 39.405

57. No party presented evidence rebutting the prima facie demonstration that Applicant substantially complied with TCEQ's public notice requirements in 30 TAC § 39.405.

58. Applicant substantially complied with TCEQ's public notice requirements in 30 TAC § 39.405.

Transcript Costs

59. Reporting and transcription of the hearing on the merits was warranted.

60. All parties fully participated in the hearing by presenting witnesses and cross-examining witnesses.

61. All parties benefited from the preparation of a transcript, including citing to the transcript in closing arguments.

62. There was no evidence that any party subject to allocation of costs is financially unable to pay a share of the costs.

63. Transcript costs cannot be assessed against the ED or OPIC because they are statutory parties who are precluded from appealing the decision of the Commission.

64. Protestants and Applicant participated roughly equally in the hearing.

65. The cost or recording and transcribing the hearing on the merits was $3,918.75, which was paid entirely by Preserve Hutto.

66. Protestants and Applicant should each pay on half of the foregoing amount, with Protestants half split between the City and the District.

II. PROPOSED CONCLUSIONS OF LAW

67. TCEQ has jurisdiction over this matter. Tex. Water Code chs. 5, 26.

68. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by the Commission under Texas Government Code § 2003.047.

69. Notice was provided in accordance with Texas Water Code §§ 5.115 and 26.028; Texas Government Code §§ 2001.051 and .052; and 30 TAC §§ 39.405 and .551.

70. The Application is subject to Texas Government Code § 2003.047(i-1)-(i-3).

71. Applicant's filing of the administrative record established a prima facie case that: (1) the Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code §§ 80.17(c)(1), .127(h).

72. To rebut the prima facie demonstration established by the administrative record, a party must present evidence that (1) relates to one of the Referred Issues; and (2) demonstrates that one or more provisions in the Draft Permit violates a specifically applicable state or federal requirement. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).

73. If a party rebuts the prima facie demonstration, the applicant and the ED may present

additional evidence to support the Draft Permit. Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code §§ 80.17(c)(3), .117(c)(3).

74. The burden of proof is by preponderance of the evidence. 30 Tex. Admin. Code § 80.17(a).

75. The Draft Permit is protective of water quality and the existing uses in the receiving waters under the applicable surface water quality standards in 30 TAC chapter 307.

76. The Draft Permit complies with applicable requirements to abate and control nuisance odors, as set forth in 30 TAC § 309.13(e).

77. The Draft Permit is protective of water quality, including the protection of health and the existing uses of the receiving waters in accordance with applicable regulations including the TSWQS in 30 TAC chapter 307.

78. Applicant substantially complied with TCEQ's public notice requirements in 30 TAC § 39.405.

79. Considerations of need and the general policy to promote regional or area-wide systems do not warrant alteration or denial of the Draft Permit.

80. The Commission should grant the Draft Permit.

81. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).

82. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 TAC § 80.23(d)(1).

83. Considering the factors in 30 TAC § 80.23(d)(1), a reasonable assessment of hearing transcript costs against parties to the contested case proceeding is one-half to Applicant, one-quarter to the City, and one-quarter to the District.

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