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 HEARINGS**

PROTESTANT WSIDD3'S REPLY TO EXCEPTIONS OF APPLICANT AND EXECUTIVE DIRECTOR

Protestant Williamson County Water, Sewer, Irrigation, and Drainage District No. 3 (the "District" or "WSIDD3") files this reply to the exceptions filed by the Applicant Preserve Hutto LLC ("Applicant" or "Preserve Hutto") and the TCEQ Executive Director ("E.D.").

I. INTRODUCTION.

The Texas Water Code ("TWC") allows TCEQ to deny or modify a wastewater discharge permit if the wastewater plant is not needed or if there is an existing regional wastewater system (whether or not specifically designated as a regional plant under TWC 26.081) that can accept the wastewater. Exh. CR-0 at 8:16 – 22. In addition to TWC Secs. 26.003, 26.0282 and 26.081, the Texas legislature has unmistakenly expressed its strong policy preference for regionalization of wastewater service in numerous statutes. Exh. CR-0 at 11:3 – 13:2. TCEQ's Regionalization Policy has five goals: minimizing the number of new wastewater outfalls; ensuring wastewater systems have adequate financial, managerial and technical ("FMT") resources; promoting reasonable wastewater service rates to customers due to cost savings from economies of scale; promoting compliant wastewater plants that are protective of human health and the environment; and protection of state and local investment in water infrastructure improvements. Exh. CR-0 at 14:7 – 17.

Even if TCEQ's Regionalization Policy does not create a legal obligation for TCEQ to deny a permit, TCEQ has the clear authority to deny a permit based on the Regionalization Policy, as well as the clearly expressed policy directive from the legislature that TCEQ should deny a permit when the conditions for regionalization have been met. In this case, there can be no clearer case for the application of the Regionalization Policy to justify denial of the permit.

- First, the City of Hutto and the District have clearly and repeatedly expressed their desire and ability to serve the Applicant's proposed development. Exh. JB-9; Exh. RR-0 at 9:1 – 15.
- Second, the Forest Creek WWTP is located only about 3,500 feet downgradient from the Applicant's proposed new package plant and with a suitable connection point on the Forest Creek plant's collection system located only 315 feet from the edge of the proposed development. Exh. JB-0 at 13:5 – 7.
- Third, the Forest Creek WWTP has had its treatment capacity expanded for the express purpose of serving the Applicant's proposed development and other nearby developments in this rapidly developing area near the intersection of Gattis School Road and State Highway 130 in Round Rock, Texas. Exhibits JB-6 and JB-7.
- Fourth, the Parties have had extensive discussions about having the Forest Creek WWTP plant serve the proposed development and even went so far as obtaining the consent of Hutto and the District to the annexation of the development into the District for that very purpose. Exhibits JB-3, JB-4, JB-5, JB-7, JB-8 and JB-9. See ALJ's discussion at PFD pgs. 23 – 30.
- Fifth, the costs of connecting to the Forest Creek WWTP are roughly equivalent to, if not less than, the costs of the Applicant constructing a standalone wastewater package plant. See ALJ's discussion of the cost comparison issue at PFD pgs. 37 – 44.

Therefore, the preponderance of evidence in this case is clear and convincing in demonstrating the need to apply TCEQ's Regionalization Policy which fully justifies denial of the permit. As stated in the PFD, if TCEQ's Regionalization Policy is not applied in a case like this one, where there is an existing area-wide wastewater treatment plant nearby that can be used at an equivalent cost to a standalone plant, *"then the Regionalization Policy truly has no meaning."* PFD at pg. 42. The above factors will easily distinguish this case from any future wastewater permitting case and mitigate any concerns TCEQ may have about this case serving as a precedent for other permit cases since few if any other cases will have the kind of facts favoring permit denial as exist in this case.

II. REPLY TO SPECIFIC EXCEPTIONS OF APPLICANT AND E.D.

A. The Requirement for Annexation Into the District.

In its exceptions to the PFD, the Applicant argues that the District's requirement for the proposed development to be annexed into the District constitutes a special condition that equates to denial of service. However, the PFD is correct in stating that whether annexation is a special condition justifying construction of a new standalone package plant "depends on the facts". PFD at 35. First, as acknowledged by the Applicant, TCEQ's Regionalization Policy is embodied in guidance documents, not rules. Therefore, TCEQ is free to interpret and apply its guidance documents in whatever way it sees fit according to the specific facts of a case.

Although having the Applicant's development annexed into the District would subject it to property taxes, such property taxes are very much "wastewater related" as property taxes are the means by which the District raises revenue to pay for ongoing operation and maintenance costs of its wastewater system. As discussed in the PFD, the Applicant originally applied for annexation into the District and such annexation was consented to by the City of Hutto. It was only after learning that the Applicant would be required to pay updated impact fees to cover its costs of the Forest Creek plant expansion that the Applicant decided to apply to TCEQ for a package plant permit. PFD at 36.

As explained in the testimony of Carlos Rubinstein, requiring a development to be annexed into a water district in order to obtain water or sewer service is not a denial of service, it is merely a condition of service. While TCEQ may have found in the *Crystal Clear* case that a municipal annexation requirement was tantamount to a denial of served, the present case does not involve a municipal annexation requirement but rather a requirement for annexation into a special purpose water district which is similar to the typical requirement that an applicant for service from a water supply corporation become a member of the WSC. Exh. CR-0 at 27:19 – 28:4. Mr. Rubinstein explained that there are significant differences between municipal annexation and annexation into a water district as municipal annexation typically involves land use restrictions such as zoning and population restrictions and other municipal services obligations such as fire, ambulance and EMS services. Exh. CR-0 at 27:24 – 28:4; Tr. 96:21 – 97:5. Moreover, the fact that annexation would subject the land in the development to a 2% sales and use tax is irrelevant since the proposed development is entirely residential and not commercial, and so no sales and use tax would be imposed within the development.

Finally, the 455th District Court of Travis County in the *City of Georgetown v. TCEQ* case (the *AIRW* case) very recently determined that, for purposes of the TCEQ's Regionalization Policy, it was erroneous to equate an annexation requirement as a denial of service. The Court reasoned that under its Regionalization Policy, TCEQ should not have determined both that (1) Plaintiff (City of Georgetown) denied Intervenor AIRW service; and (2) connection to Plaintiff's system would cost Intervenor AIRW $20 million. See the court's ruling at Exh. CR-7. Similarly, it is entirely inconsistent for the Applicant to argue in this case that the District both (1) denied wastewater service, and (2) approved wastewater service so long as the Applicant paid wastewater related costs of connection. Therefore, there are no clear legal precedents in this case for considering the District's annexation requirement as constituting a denial of service. Such position simply does not square with the District's repeated affirmations that it is ready, willing and able to provide wastewater service.

B. Whether Service From the District is Available.

The Applicant argues that wastewater service from the District is not available because the Forest Creek WWTP needed to be expanded in order to serve the Applicant's proposed development. However, the Applicant was well aware of the fact that the Forest Creek plant was being expanded as described in the various correspondence between the Applicant and the District during the time period when the Applicant was affirmatively seeking wastewater service from the District. See the various engineering reports at Exhibits JB-4, JB-5, JB-6 and JB-7 all of which discussed the plans for the Forest Creek WWTP expansion. Indeed, as of the date of the filing of its permit application, the Applicant was keeping its options open and was still considering that it might obtain wastewater service from the District. See testimony of Jerry Ince at Tr. 144:8 – 18 attempting to explain the discrepancy between the 60,000 gpd of capacity stated in the Applicant's service inquiry letters to nearby wastewater facilities and the 48,000 gpd capacity figure for which the Applicant was seeking a permit. Moreover, the Applicant never disagreed that the plant expansion is almost complete and will be complete by the end of 2025 (Tr. 193:15 – 19; Exh. JB-0 at 9:9 – 12) which is well before the Applicant will commence construction of its development. The Applicant's fears of permitting delays for the Forest Creek WWTP expansion cited by Mr. Tuckfield are groundless as the permit for the plant expansion was approved by TCEQ on February 28, 2024. Exh. RR-7; Exh. JB-0 at 9: 12 – 14. Even more significantly, the TCEQ's Web Page

Guidance on Regionalization (July 30, 2021) expressly states that a permit applicant's request for service must inquire whether nearby (within three miles) WWTPs currently have the needed capacity, *"or are willing to expand to accept the volume of wastewater proposed."* App. Exh. No. 2-04 at 118. Therefore, the fact that the expansion of the Forest Creek WWTP was needed to serve the Applicant's proposed development does not mean that wastewater service is not available under TCEQ's Regionalization Policy.

C. Applicant's Request for Wastewater Service and the District's Response Agreeing to Provide Service.

The PFD does a good job of summarizing the facts and arguments regarding whether the Applicant's Email exchange starting in March 2021 with the City of Hutto's engineer complied with TCEQ's Regionalization Policy. See PFD at pgs. 18 – 23. For the reasons stated in the PFD, the Applicant's two cursory Emails in March 2021 did not constitute a proper request for service under TCEQ's Regionalization Policy because they did not contain the required information about the volume of needed wastewater nor an inquiry about the existing or expandable capacity of the District's wastewater plant to accept a specific volume of wastewater. Moreover, the City of Hutto engineer's responsive Email of April 2021 did not constitute a denial of service because the Applicant and the District continued to have extensive discussions concerning obtaining wastewater service from the District. Finally the District timely responded to the request for service contained in the application specifically affirming that it was ready, willing and able to provide wastewater service subject to typical conditions such as amending the District's wholesale wastewater contract and payment of impact fees.

D. Comparative Cost Evaluation of Obtaining Service From the District or Constructing a New Package Plant.

The third criterion of the TCEQ's Web Page Guidance on the Regionalization Policy states that an exception to applying regionalization can be recognized if a wastewater permit applicant successfully justifies the exception based on an evaluation of "costs, affordable rates, and/or other relevant factors". App. Exh. 2-04. Although the District provided such an evaluation in the testimony of Jason Baze filed on December 13, 2025, the Applicant did not submit a cost analysis with its application and it was not until January 14, 2025 that the Applicant provided its cost

analysis to TCEQ in response to a direct request from the E.D. See App. Exh. D at D0016 – D0017 and D0031 – D0071. As described in the testimony of Jason Baze, when all relevant costs are considered, the Applicant's cost of connecting to the District's wastewater system is generally equivalent to, or even less than, the costs of constructing and operating a standalone wastewater plant. See the PFD's discussion of the evaluation of comparative costs at pages 37 – 44.

As described in the PFD and as discussed in the District's closing arguments, the Applicant's costs of $3,132,100 for connecting to the District's wastewater system is very close to the District's cost estimate of $3,056,600 and demonstrates the reasonableness of the District's cost estimate of connecting to its wastewater system. Moreover, if the Applicant's originally estimated costs of $2,884,911 of constructing and operating a standalone plant for the first five years is increased to account for the $200,000 in underestimated salary and benefits for a qualified plant operator and for the $650,000 in underestimated design and construction costs, the real costs of a standalone plant are about $3,734,911. This cost is about **$600,000 greater** than the $3,132,100 cost of connecting to the District's wastewater system. Moreover, the Applicant's cost estimates of constructing a standalone plant do not consider the more frequent plant breakdowns and operational mishaps associated with a standalone package plant, nor do they include costs associated with the discharge route which is problematic because it crosses privately owned land containing a stormwater detention pond which will create ponding and erosive conditions and potential public health hazards. Exh. JB-0 at 17:28 – 18:15.

The Applicant introduced a March 25, 2025 affidavit by Richard Owen (APP. EX. 2-06) stating that the Applicant Preserve Hutto LLC is a joint venture between Ascendant Development LLC (of which Mr. Owen is a co-founder) and an unidentified special purpose entity established by Ascendant. Mr. Owen further stated in his affidavit that the consequences of annexation into the District would be so significant *"that they would render the development of the Preserve at Star Ranch economically unworkable"*. He further stated in his affidavit that either paying District property taxes or requiring the development to be built to more exacting specifications for publicly financed infrastructure would each be *"cost prohibitive for the economics"* of the Applicant's proposed development. However, these statements of Mr. Owens are merely conclusory as Mr. Owens never appeared at the hearing to support the statements in his affidavit or to be cross-examined on them, and no witness for the Applicant could answer any questions about why Mr. Owen reached those conclusions. See, e.g., Tr. 186: 20 – 188:5. Similarly, the TCEQ staff witness

Jose A. Martinez had no knowledge about Richard Owen nor had Mr. Martinez even seen the Owen affidavit. Tr. 254:4 – 14. Accordingly, there is no credible evidence in the record as to whether or not obtaining wastewater service from the District is economically prohibitive for the Applicant.

E. The Numerous Permit Application Errors and Omissions Necessitating Supplementation of the Application Following Submittal of the District's and the City's Prefiled Testimony.

The administrative record of this case shows that the Applicant's original permit application contained numerous errors and omissions that were identified by the Protestants in their prefiled testimony and that necessitated a continuance in the hearing proceedings to allow time for the Applicant to respond to the E.D.'s request for corrective information. See APP EX D (fourth supplement to administrative record). Allowing the Applicant to go back and fix errors and omissions pointed out by the Protestants unfairly penalizes the Protestants as they were required to expend time and resources identifying Application deficiencies which should never have existed in a properly prepared application and which should have been caught by the E.D. during technical review. These Application deficiencies included the following:

1. In the application, the Applicant erroneously stated that the service area was not within a sewer CCN area (Exh. CR-0 at 24:14 – 21) despite the fact that RG-632 and the application instructions specifically require a permit applicant to check the PUC's CCN viewer to determine whether the service area is within a sewer CCN area. Exh. CR-0 at 19:15 – 20: 8.
2. The Applicant failed to provide an analysis of the cost of connecting to the District's wastewater system as compared to the cost of the proposed standalone wastewater plant. Exh. CR-0 at 25:3 – 6. Therefore the E.D. had to specifically request the Applicant to submit this information after the Protestants had filed their direct testimony.
3. The Applicant failed to provide population, growth estimates and other information required by the application instructions to demonstrate a need for the proposed wastewater plant. Exh. CR-0 at 22:16 – 23:3.
4. The Applicant erroneously answered "No" to the Application question about whether there was a WWTP within three miles and provided no information about the Forest Creek WWTP used by the District. Exh. CR-0 at 27:6 – 16. The Applicant's failure to provide

information about the Forest Creek WWTP is even more egregious in view of the fact that it is located within only about one-half mile from the Applicant's proposed development and the Applicant had a lengthy history of negotiating with the District concerning obtaining wastewater service from the District. Exh. RR-0 at 6:15 – 7:13; Exh. JB-0 at 6:21 – 11:4.

5. The Applicant's eight ability-to-serve inquiry letters sent to nearby WWTPs dated March 30 and March 31, 2022 were sent out following the March 28, 2022 filing of the Application so the E.D. had no opportunity to consider whether there was a nearby alternative regional wastewater service provider. Exh. CR-0 at 26:2 – 6.
6. The Applicant did not provide responses of the eight facilities to which it sent the ability-to-serve inquiry letters until specifically asked to do so by the E.D. APP EX D0016 – D0017; APP EX D0021 – D0030.
7. The Applicant's ability-to-serve inquiry letters inaccurately and misleadingly stated that the volume of wastewater service needed was 60,000 gpd rather than 48,000 gpd as set forth in the draft permit. This same design flow error is contained in other parts of the Application. Exh. CR-0 at 26:13 – 18.

These application deficiencies are significant and not trivial. Exh. CR-0 at 29:7 – 18. They are so significant that the E.D.'s witness Jose Martinez even admitted that if he were reviewing the application as originally filed, he would not have determined it to be technically complete. Tr. 283:21 – 284:1.

II. CONCLUSION

Under TCEQ's Regionalization Policy the Preserve Hutto LLC permit application should be denied since the District is ready, willing and able to provide the wastewater service needed. Simply because the District is requiring that the development be annexed into the District does not negate the express invitation of the District to the Applicant to obtain wastewater service from the District, and in light of the *City of Georgetown v. TCEQ* case (Exh. CR-7), there is no clear legal principle equating required annexation with a denial of service. Applicant's economic analysis excluded various costs attributable to obtaining service from a standalone wastewater plant and if such costs had been included, the costs of constructing and operating a standalone plant would be substantially equivalent to or greater than the costs of connecting to the District's wastewater

system. If the TCEQ's Regionalization Policy has any meaning, this is the case where it should be applied given the virtually adjacent location of the District's wastewater plant and collection system to the Applicant's proposed development, and in light of the long history of discussions between the Applicant and the District concerning the District providing service to the Applicant. Accordingly, for the reasons stated herein, TCEQ should accept the ALJ's Proposal for Decision and deny the permit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by electronic mail on this 29th day of September 2025.

/s/ Stephen C. Dickman
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