

TCEQ DOCKET NO. 2023-1566-MWD

**APPLICATION BY
PRESERVE HUTTO LLC
FOR NEW TPDES PERMIT
NO. WQ0016145001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS AND REQUESTS FOR
RECONSIDERATION**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the application by Preserve Hutto, LLC (Applicant or Preserve Hutto), for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016145001. Attached for Commission consideration is the Executive Director's Satellite Map.

I. Executive Summary

The TCEQ received 15 Hearing Requests and three Requests for Reconsideration.¹ After evaluating the hearing requests, the Executive Director has determined that City of Hutto (Hutto); Williamson County Water, Sewer, Irrigation and Drainage District No. 3 (WSIDD3); Karen Blakey; Megan McMillin; Mohammed Hallak, and Judy Scogin have demonstrated that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public, and therefore, recommends that the Commission find Hutto, WSIDD3, Karen Blakey, Megan McMillin, Mohammed Hallak, and Judy Scogin are affected persons because they meet the criteria set out in 30 TAC § 55.203.

The Executive Director recommends the Commission deny all other hearing requests, and deny all Requests for Reconsideration. The Executive Director also recommends referring the following issues to the State Office of Administrative Hearings:

1. Whether the Applicant provided sufficient justification of the need for the proposed facility.
2. Whether the applicant complied with TCEQ's regionalization policy.

¹ Several persons filed multiple hearing requests; thus the number of hearing requestors does not match the number of hearing requests.

3. Whether the draft permit contains adequate provisions to address nuisance odors in accordance with TCEQ rules.
4. Whether the application provided sufficient information regarding the cost of connecting to an existing facility.
5. Whether the draft permit is protective of human health.
6. Whether the draft permit was available for public viewing as required by 30 TAC § 39.405, and whether the comment period should have been extended because the draft permit was not available.

II. Description of the Proposed Wastewater Treatment Facility

Preserve Hutto applied to the TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.048 million gallons per day (MGD). If the permit is issued, the facility will be located at 4428 Priem Lane, in the City of Pflugerville, Travis County, Texas 78660. The proposed wastewater treatment facility will serve the Preserve at Star Ranch development.

The Preserve at Star Ranch Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units will include a bar screen, two aeration basins, a final clarifier, two sludge digesters, and a chlorine contact chamber. The facility has not been constructed.

The effluent limitations in the draft permit, based on a 30-day average, are 5 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH₃-N), 1.0 mg/l total phosphorus, 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent will be discharged via pipe to an unnamed tributary, thence to Wilbarger Creek, thence to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 1434 are primary contact recreation, public water supply, and exceptional aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ's Procedure to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The Houston Toad (*Bufo houstonensis* Sanders), an endangered aquatic-dependent species of critical concern, occurs within the Segment 1434 watershed as well as the United States Geological Survey hydrologic unit code 12090301. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment 1434 watershed is provided by the United States Fish and Wildlife Service and documents the Houston toad's presence solely in the vicinity of Alum Creek, Copperas Creek, Gills Branch, Piney Creek, Price Creek, and Puss Hollow in Bastrop County, which are located in separate sub-watersheds from the facility associated with this permit action. Based upon this information, it is determined that the facility's discharge is not expected to impact the Houston Toad. Additionally, the Barton Springs salamander (*Eurycea sosorum*), an endangered, aquatic species, is known to occur in Travis County, but its distribution is limited to Barton Springs and adjacent springs and their outflows in Zilker Park, Austin, Texas. The draft permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment No. 1434 is not currently listed in the State's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list).

III. Procedural Background

The permit application was received on April 8, 2022, and declared administratively complete on June 14, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Austin Chronicle* on June 24, 2022, and in Spanish in *La Prensa Comunidad* on June 28, 2022. The Executive Director completed the technical review of the application on September 14, 2022. The Notice of Application and Preliminary Decision (NAPD) was published in English in the *Austin Chronicle* on November 4, 2022, and in Spanish in *La Prensa Comunidad* on October 28, 2022. The Notice of the Public Meeting was published in the *Austin Chronicle* on April 07, 2023. A public meeting was held in Pflugerville on May 11, 2023. The public comment period ended at the conclusion of the public meeting. The Executive Director's Response to Comments was mailed on September 19, 2023. The Hearing Request/Request for Reconsideration period ended on October 19, 2023.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. Senate Bill 709 amended the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

1. whether the requestor is an affected person;
2. which issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or of law;
4. whether the issues were raised during the public comment period;
5. whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
6. whether the issues are relevant and material to the decision on the application; and
7. a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

1. give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
2. identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

3. request a contested case hearing;
 4. for applications filed on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
 5. provide any other information specified in the public notice of application.
- 30 TAC § 55.201(d).

Requirement that Requestor be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. Section 55.203 sets out who may be considered an affected person.

- a. For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- b. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application, may be considered affected persons.
- c. In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 1. whether the interest claimed is one protected by the law under which the application will be considered;
 2. distance restrictions or other limitations imposed by law on the affected interest;
 3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
 4. likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

5. likely impact of the regulated activity on use of the impacted natural resource by the person;
6. whether the requestor timely submitted comments on the application which were not withdrawn; and
7. for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

In making affected person determinations, the commission may also consider to the extent consistent with case law:

1. the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2. the analysis and opinions of the executive director; and
3. any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Referral to the State Office of Administrative Hearings

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

1. involves a disputed question of fact or a mixed question of law and fact;
2. was raised during the public comment period by an affected person whose hearing request is granted; and
3. is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of the Requests

A. Analysis of the Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

B. Whether the Entities Meet the Affected Person Requirements

1. City of Hutto (Hutto).

Hutto submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of its hearing request in its timely comments. According to Hutto, the proposed facility and service area is located entirely inside Hutto's Extra-Territorial Jurisdiction (ETJ) and partially inside Hutto's certified sewer service area. Additionally, pursuant to Texas Water Code § 13.242(a), only Hutto has the legal right to be the exclusive provider of retail sewer utility service to most of the area sought to be served by Preserve Hutto, and Hutto has an economic interest in providing such service. TCEQ has the legal authority to consider the need for the proposed facility pursuant to Texas Water Code § 26.0282 by denying or conditioning the issuance of this permit.

Hutto raised the following referable issues: whether the applicant provided sufficient justification for the need for the proposed facility; whether the draft permit would comply with TCEQ's regionalization policy; whether the facility will cause odors; and whether the draft permit was available for public viewing as required by 30 TAC §39.405 and if comment period should have been extended because the draft permit was not available.

Because Hutto has statutory authority over or interest in issues relevant to the application, the Executive Director has determined that that Hutto demonstrated that it is an affected person pursuant to 30 TAC § 55.203(c)(7) and recommends that the Commission find that Hutto is an affected person.

2. Williamson County Water, Sewer, Irrigation and Drainage District No. 3 (WSIDD3).

According to its hearing request, WSIDD3 is adjacent to the facility site and is available to provide retail wastewater serve to the Preserve Hutto property. WSIDD3 also notes that its wholesale service provider has the capacity to provide service. 30 TAC § 55.203(c)(7) requires that for a governmental entity to be an affected person, the entity must have statutory authority over or interest in the issues relevant to the application. WSIDD3's hearing request claims that it is a wholesale wastewater provider and has capacity to provide wastewater service to the applicant. WSIDD3 was created by the Legislature and its enabling act is codified in Chapter 8486 of the Special District Local Laws Code. The district has the powers of a MUD, which include

the power to provide wastewater service.² WSIDD3 has demonstrated that it may be affected by the application in a manner different from the general public.

WSIDD3 raised the following referable issues: whether the applicant provided sufficient justification for the need for the proposed facility; whether the applicant complied with TCEQ's regionalization policy; whether the application provided sufficient information regarding the cost of connecting to an existing facility; and whether the facility will cause odors.

Because WSIDD3 has statutory authority over or interest in issues relevant to the application, the Executive Director has determined that that WSIDD3 demonstrated that it is an affected person pursuant to 30 TAC § 55.203(c)(7) and recommends that the Commission find that WSIDD3 is an affected person.

C. Whether the Individual Requesters Meet the Affected Person Requirements

1. **Karen Blakey.** Ms. Blakey submitted a timely hearing request in writing, provided her contact information and raised issues that are the basis of her hearing request in her timely comments. Specifically, Ms. Blakey raised the following referable issue: whether the proposed facility will cause nuisance odors.

According to the location Ms. Blakey provided, it appears that she resides approximately one-half mile from the proposed outfall location. Based on her location relative to the proposed facility and the issue she raised Ms. Blakey has demonstrated that she has a personal justiciable interest in the application related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to the general public. As a result, Ms. Blakey has shown that she meets the criteria in 30 TAC § 55.203, and the Executive Director recommends the Commission find that she is an affected person.

2. **Megan McMillin.** Ms. McMillin submitted a timely hearing request in writing, provided her contact information, and raised issues that are the basis of her hearing request in her timely comments. Specifically, Ms. McMillin raised referable issues regarding whether the proposed facility will cause nuisance odors and whether the draft permit was available for public viewing as required by 30 TAC § 39.405 and if the

² See SDLLC § 8486.101 and TWC § 54.201.

comment period should have been extended if the draft permit was not available for viewing.

According to the location Ms. McMillin provided, it appears that she resides approximately one-quarter of a mile from the proposed outfall location. Based on her location relative to the proposed facility and the issue she raised, Ms. McMillin has demonstrated that she has a personal justiciable interest in the application related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to the general public. As a result, Ms. McMillin has shown that she meets the criteria in 30 TAC § 55.203, and the Executive Director recommends the Commission find that she is an affected person.

3. **Mohammed Hallak.** Mr. Hallak submitted a timely hearing request in writing, provided his contact information and raised issues that are the basis of his hearing request in his timely comments. Specifically, Mr. Hallak raised the following referable issue: whether the facility will negatively impact human health.

According to the location Mr. Hallak provided, it appears that he resides approximately three quarters of a mile from the proposed outfall location. Based on his location relative to the proposed facility and the issue he raised Mr. Hallak has demonstrated that he has a personal justiciable interest in the application related to a legal right, duty, privilege, power or economic interest affected by the application that is not common to the general public. As a result, Mr. Hallak has shown that he meets the criteria in 30 TAC § 55.203 and the Executive Director recommends the Commission find that he is an affected person.

4. **Judy Scogin.** Ms. Scogin submitted a timely hearing request in writing, provided her contact information and raised issues that are the basis of her hearing request in her timely comments. Specially, Ms. Scogin raised the following referable issues: whether the proposed facility will cause nuisance odors; whether the draft permit is protective of human health; and whether the draft permit was available for public viewing as required by 30 TAC § 39.405 and if the comment period should have been extended if the draft permit was not available for viewing.

According to the location Ms. Scogin provided, it appears that she resides approximately one quarter of a mile from the proposed outfall location. Based on her location relative to the proposed facility and the issues she raised Ms. Scogin demonstrated that she has a personal justiciable interest in the application related to a

legal right, duty, privilege, power or economic interest affected by the application that is not common to the general public. As a result, Ms. Scogin has shown that she meets the criteria in 30 TAC § 55.203, and the Executive Director recommends the Commission find that she is an affected person.

5. **Charlie Alder.** Mr. Alder submitted a timely hearing request in writing and provided his contact information. According to the location Mr. Alder provided, it appears that he resides approximately one-half mile from the proposed outfall location. However, the only issue he raised was a request for a “hearing.” Therefore, Mr. Alder did not demonstrate that he has a personal justiciable interest in the application related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to the general public. As a result, Mr. Alder has not shown that he meets the criteria in 30 TAC § 55.203, and the Executive Director recommends the Commission find that he is **not** an affected person.

6. **Travis Scogin.** Mr. Scogin submitted a timely hearing request in writing and provided his contact information. According to the location Mr. Scogin provided, it appears that he resides approximately one-half mile from the proposed outfall location. However, the only issues he raised was a request for a “public hearing” and to be added to the mailing list. Therefore, Mr. Scogin did not demonstrate that he has a personal justiciable interest in the application related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to the general public.

As a result, Mr. Scogin has not shown that he meets the criteria in 30 TAC § 55.203, and the Executive Director recommends the Commission find that he is **not** an affected person.

C. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred.³ The issues raised for this

³ Tx. Govt. Code § 2003.047(e-1); 30 TAC § 55.211(c)(2)(A)(ii).

application and the Executive Director's analysis and recommendations follow.

Issue 1. Whether the Applicant provided sufficient justification of the need for the proposed facility. (RTC No. 25)

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Hutto and WSIDD3, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 2. Whether the draft permit complies with TCEQ's regionalization policy. (RTC No. 25)

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Hutto and WSIDD3, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 3. Whether the draft permit contains adequate provisions to address nuisance odors in accordance with TCEQ rules. (RTC No. 16)

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by WSIDD3, Hutto, Karen Blakey, Megan McMillin, and Judy Scogin, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 4. Whether the application provided sufficient information regarding the cost of connecting to an existing facility. (RTC 25)

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by WSIDD3, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 5. Whether the draft permit is protective of human health. (RTC Comment 18)

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Mohammed Hallak and Judy Scogin, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 6. Whether the draft permit was available for public viewing as required by 30 TAC § 39.405, and whether the comment period should have been extended because the draft permit was not available. (RTC Comment 29)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn and is relevant and material to the issuance of the draft permit. The issue was raised by Hutto, Megan McMillin, and Judy Scogin, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 7. Whether the disinfection process is appropriate. (RTC Comment 5)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn; however it is not relevant and material to the issuance of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH

Issue 8. Whether Hutto's sewer CCN No. 20122 provides Hutto with the exclusive right to provide retail sewer service in Preserve Hutto's proposed service area. (RTC Comment 38)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Hutto, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 9. Whether Preserve Hutto's provision of wastewater treatment to the residential development planned to serve is the provision of retail sewer utility service. (RTC Comment 38)

The issue involves a disputed question of fact, was raised during the comment

period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Hutto, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 10. Whether the facility will be privately or publicly funded. (RTC Comment 12)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 11. Whether the facility received any economic development grants. (RTC Comment 12)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 12. Whether the draft permit authorizes the discharge of 48,000 gallons per day initially or permanently. (RTC Comment 4)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 13. Whether ecological or environmental studies have been performed to ensure there are no wetlands or springs. (RTC Comment 7)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 14. Whether the draft permit will impact the power grid. (RTC Comment 34)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 15. Whether the Applicant considered other potential locations for the wastewater treatment plant. (RTC Comments 15 and 30)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Karen Blakey and Judy Scogin, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 16. Whether the facility will decrease property values. (RTC Comment 20)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Mohammed Hallak and Megan McMillin, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 17. Whether the applicant will be transparent with its plans. (RTC Comment 35)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Megan McMillin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 18. Whether the applicant should do studies to determine the potential impacts to the elementary school and neighbors. (RTC Comment 36)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Megan McMillin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 19. Whether the facility will negatively affect traffic. (RTC Comment 32)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Karen Blakey, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 20. Whether the location of the proposed facility is appropriate. (RTC Comment 15)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Karen Blakey and Mohammed Hallak, who the Executive Director recommends the Commission find are affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 21. Whether the Applicant has obtained all necessary easements. (RTC Comment 28)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Hutto, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 22. Whether the application correctly identified the neighborhoods that will be served by the wastewater treatment facility. (RTC Comment 11)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 23. Whether other governmental entities were involved. (RTC Comment 13)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance

of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 24. Whether Preserve Hutto should have considered other locations. (RTC Comment 15)

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. The issue was raised by Judy Scogin, who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH

VI. Requests For Reconsideration

TCEQ's rules provides that the request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision and provide reasons why the decision should be reconsidered. 30 TAC § 55.201(e). None of the Requests For Reconsideration meet this standard.

The Commission received three timely Request for Reconsideration from Mohammed Hallak. After reviewing the Requests for Reconsideration, the Executive Director did not see any cause for changing the draft permit. The issues raised in the Request for Reconsideration, to the extent they are relevant and material to the application, were addressed in the RTC and considered by the Executive Director. The Executive Director recommends the Commission deny all Requests for Reconsideration.

VII. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission deny all Requests for Reconsideration.
2. The Executive Director recommends that the Commission find the City of Hutto, Williamson County Water, Sewer, Irrigation and Drainage District No.3, Karen Blakey, Megan McMillin, Mohammed Hallak, and Judy Scogin are affected persons.
3. The Executive Director recommends that the Commission find that all other requestors are not affected persons and deny their hearing requests.
4. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.
5. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
6. If referred to SOAH, refer the following issues as raised by an affected person identified by the Executive Director:

Issue 1. Whether the Applicant provided sufficient justification of the need for the proposed facility.

Issue 2. Whether the applicant complied with TCEQ's regionalization policy.

Issue 3. Whether the draft permit contains adequate provisions to address nuisance odors in accordance with TCEQ rules.

Issue 4. Whether the application provided sufficient information regarding the cost of connecting to an existing facility.

Issue 5. Whether the draft permit is protective of human health.

Issue 6. Whether the draft permit was available for public viewing as required by 30 TAC § 39.405 and whether the comment period should have been extended because the draft permit was not available.

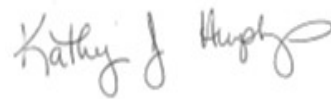
Respectfully submitted,

Texas Commission on Environmental
Quality

Kelly Keel
Executive Director

Erin E. Chancellor, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division

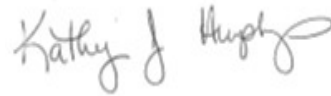


Kathy Humphreys Staff Attorney
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Phone: (512) 239-3417

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on January 29, 2024, the “Executive Director’s Response to Hearing Requests” for Preserve Hutto, LLC, WQ0016145001, was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the mailing list provided by the Office of the Chief Clerk via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Kathy Humphreys Staff Attorney
Environmental Law Division

Attachment A

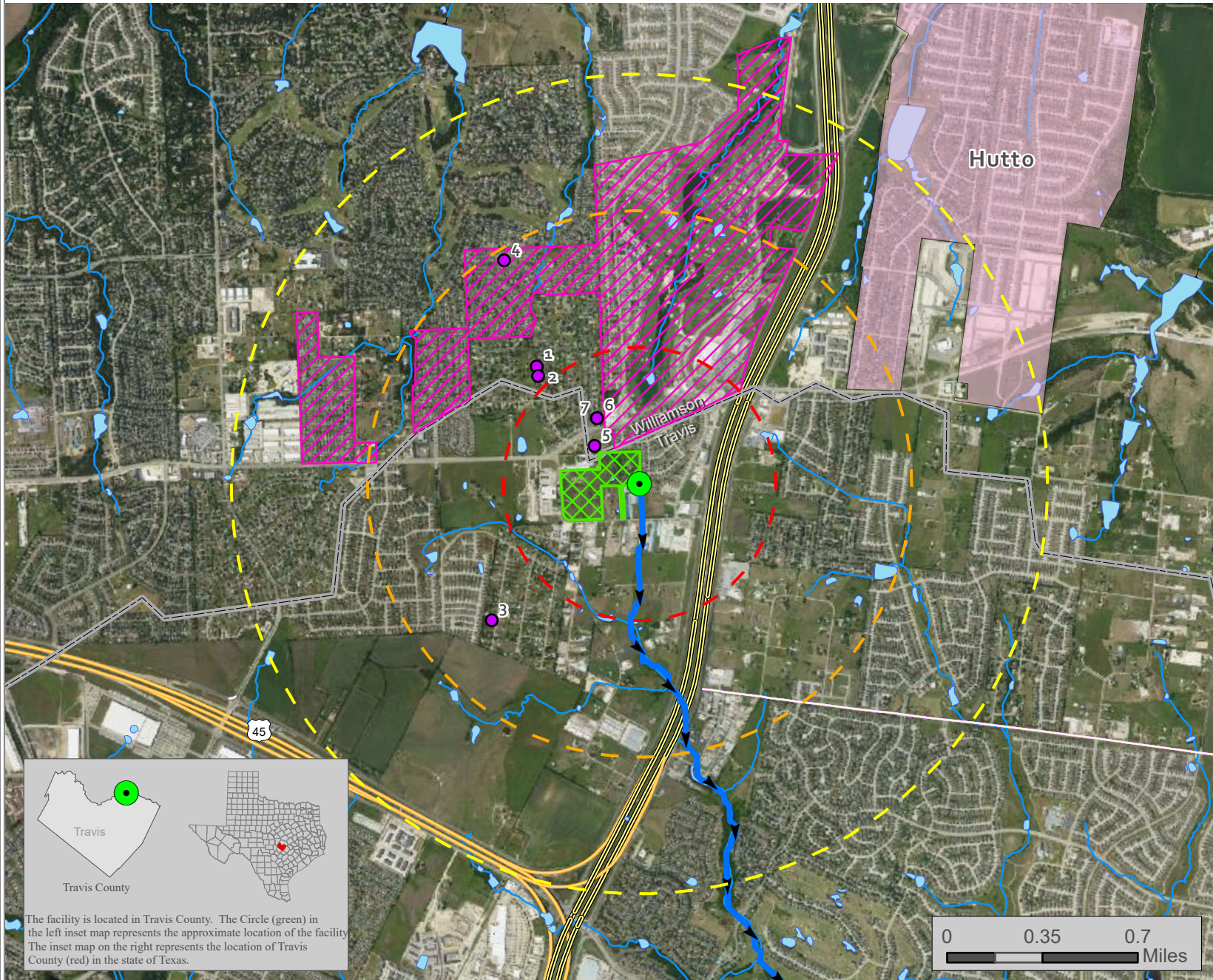
Preserve Hutto, LLC WQ0016145001

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 11/2/2023
CRF 0096638
Cartographer: jbartlin



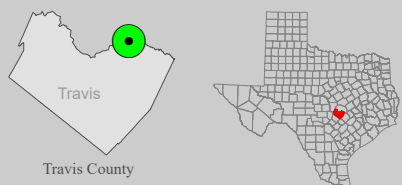
- Requestors
- Facility Outfall
- Facility Boundary
- Discharge Route
- WMSN Co WSID #3
- Hutto City Boundary
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius

Distance from Outfall

| Id Name | | Miles |
|---------|-----------------|-------|
| 1 | Charlie Alder | 0.57 |
| 2 | Karen Blakey | 0.54 |
| 3 | Mohanned Hallak | 0.74 |
| 4 | Megan McMillin | 0.96 |
| 5 | Megan McMillin | 0.22 |
| 6 | Judy Scogin | 0.29 |
| 7 | Travis Scogin | 0.29 |

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Travis County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Travis County (red) in the state of Texas.

MAILING LIST/LISTA DE CORREO
Preserve Hutto, LLC
TCEQ Docket No./TCEQ Expediente N.º 2023-1566-MWD
Permit No./Permiso N.º WQ0016145001

FOR THE APPLICANT/PARA EL
SOLICITANTE:

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DIRECTOR EJECUTIVO
via electronic mail:

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SECRETARIO OFICIAL
via eFilings:

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www.tceq.texas.gov/goto/efilings

REQUESTER(S)/INTERESTED
PERSON(S)/SOLICITANTE(S)/PERSONA
(S) INTERESADA(S):

See attached list/Ver lista adjunta.

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Dimego, Vicky
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Van Dyke, Rosita A
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Young, Susy
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