

## Vincent Redondo

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**From:** PUBCOMMENT-OCC  
**Sent:** Monday, March 4, 2024 5:35 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001  
**Attachments:** TCEQ Request for Contested Hearing 3-04-241.pdf

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Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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**From:** doublefile@aol.com <doublefile@aol.com>  
**Sent:** Monday, March 4, 2024 5:01 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** MR David Bost

**EMAIL:** [doublefile@aol.com](mailto:doublefile@aol.com)

**COMPANY:** M&RBFF,LLC

**ADDRESS:** 1903 ASTER WAY  
ROUND ROCK TX 78665-3523

**PHONE:** 5129242955

**FAX:**

**COMMENTS:** Please see attached letter with comments and request for contested case hearing.

March 4, 2024

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

Re: M&RBFF, LLC's (the "Bost Family"), Comments and Request for Contested Case Hearing on the Application for proposed TPDES Permit No. WQ0016257001 in Williamson County, Texas.

Dear Ms. Gharis:

On behalf of M&RBFF, LLC (the "Bost Family"), please accept this letter as the Bost Family's comments and request for a contested case hearing in opposition to the permit application mentioned above (the "Application") submitted by New Horizons Utility, LLC and Optin Holdings 1, LLC (collectively referred to as the "Applicants"). The Bost Family submits these comments and request for contested case hearing along with Hillwood Enterprises, LP ("Hillwood"). The Bost Family joins in Hillwood's letter of even date and adopts the content therein as their own.

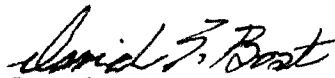
The Bost Family property (the "Bost Tract") is immediately adjacent to the Applicants' property. The Bost Family has entered into a contract to sell the Bost Tract to Hillwood so that Hillwood can develop the Bost Tract into a single-family home residential community and create a municipal utility district to serve the community. Hillwood, with support of the Bost Family, applied for a TPDES permit (WQ0016395001) to support the anticipated development on the Bost Tract and the needs of a future MUD.

According to the Application, the Applicants' proposed wastewater treatment plant location is within 50 feet of the Bost Tract property line. The Application has an effect on the Bost Family that is not common to the general public. The Bost Family objects to the proposed placement of the wastewater treatment plant. Wastewater treatment plants produce noise and odors and are typically unsightly. The plant will greatly interfere with the Bost Family's ability to use and enjoy the Bost Tract. It will also frustrate the development plans of Hillwood for the property. The plant will interfere with the ability of future residents to fully use and enjoy their property. The Applicants' proposed plant affects not only the property rights of everyone mentioned above, but also will affect the Bost Family and Hillwood's economic interests related to its development project for the Bost Tract. The Bost Family, together with Hillwood, is requesting a contested case hearing on these and other points.

The Bost Family also has concerns about the Applicant's ability and plans to serve the Bost Tract. In the Application, the Bost Tract is included in the Service Area for the Applicants' proposed facilities. The Bost Family has not and does not request service from the Applicants.

The Bost Family offers these comments and joins in Hillwood's comments. The Bost Family requests a contested case hearing and joins in Hillwood's request for the same. Please include the Bost Family on the official mailing list for the Application. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Bost". The signature is fluid and cursive, with the first name "David" and last name "Bost" being the most prominent parts.

David E. Bost

Manager of M&RBFF, LLC's  
*Representing the Bost Family*



## Jennifer Cox

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**From:** PUBCOMMENT-OCC  
**Sent:** Monday, June 17, 2024 4:27 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001  
**Attachments:** 2024.06.14 Comments re App. by New Horizons and OptiN Holdings for Proposed TPDES Permit No. WQ.pdf

PM  
H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** mchambers@spencerfane.com <mchambers@spencerfane.com>  
**Sent:** Friday, June 14, 2024 4:52 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Maris Chambers

**EMAIL:** [mchambers@spencerfane.com](mailto:mchambers@spencerfane.com)

**COMPANY:** Spencer Fane LLP

**ADDRESS:** 816 CONGRESS AVE Suite 1200  
AUSTIN TX 78701-2442

**PHONE:** 2146636792

**FAX:**

**COMMENTS:** Public Comments and Requests for a Public Meeting and Contested Case Hearing Application by New Horizons Utility, LLC (CN606081594) and OptiN Holdings 1 LLC (CN606081602) for Proposed New Texas Pollutant Discharge Elimination System Permit No. WQ0016257001 (EPA I.D. No. TX0143804)



SpencerFane

MARIS M. CHAMBERS  
DIRECT DIAL: (214) 663-6792  
mchambers@spencerfane.com

June 14, 2024

Ms. Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Via e-Comment to <https://www14.tceq.texas.gov/epic/eComment/>

Re: **Public Comments and Requests for a Public Meeting and Contested Case Hearing**  
Application by New Horizons Utility, LLC (CN606081594) and OptiN Holdings 1 LLC  
(CN606081602) for Proposed New Texas Pollutant Discharge Elimination System Permit  
No. WQ0016257001 (EPA I.D. No. TX0143804)

Dear Ms. Gharis:

On behalf of the City of Georgetown, Texas (“**City**”), please accept these timely filed public comments (“**Public Comments**”) and requests for a public meeting and contested case hearing (respectively, the “**Meeting Request**” and “**Hearing Request**”) regarding the application (“**Application**”) by New Horizons Utility, LLC and OptiN Holdings 1 LLC (“**Applicants**”) for new Texas Pollutant Discharge Elimination System (“**TPDES**”) Permit No. WQ0016257001 (the “**Draft Permit**”) for the proposed New Horizons WWTP (RN111609582) (the “**Proposed Plant**”). As I represent the City with respect to this matter, please include me on the mailing list for all filings related to the above-referenced Application. My mailing/contact information is as follows:

Ms. Maris M. Chambers  
Spencer Fane LLP  
816 Congress Avenue, Suite 1200  
Austin, TX 78701  
[mchambers@spencerfane.com](mailto:mchambers@spencerfane.com)  
Telephone: (214) 663-6792  
Facsimile: (512) 840-4551

## I. EXECUTIVE SUMMARY

The City respectfully requests that the Texas Commission on Environmental Quality (“**TCEQ**”) deny the Application based on the relevant and material public comments presented herein. If the Application is not denied or, at least, remanded back to TCEQ staff for further technical review, the City alternatively requests a public meeting and contested case hearing regarding the Application, Draft Permit, and each and every issue raised herein and in any and all supplements and/or amendments hereto.

## II. BACKGROUND

### A. Description of the Proposed Plant

The Application requests authorization to discharge wastewater effluent from the Proposed Plant at an annual average flow not to exceed 1.34 million gallons per day (“**MGD**”). The Proposed Plant is intended to serve areas within the City’s extraterritorial jurisdiction (“**ETJ**”) from a plant site (“**Plant Site**”) located approximately one-half mile northeast of the intersection of County Road 107 and County Road 110 in Williamson County, Texas 78626. The Plant Site is less than one (1) mile from the City’s nearest corporate boundary and less than three (3) miles from the City’s nearest wastewater treatment plant. According to the Notice of Application and Preliminary Decision (“**NAPD**”), the proposed discharge route for the wastewater effluent is to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. As an unclassified freshwater stream, the presumed uses for the unnamed tributary of Huddleston Branch are primary contact recreation 1 and limited aquatic life use. As perennial freshwater streams, the presumed uses of Huddleston Branch, Mankins Branch, and San Gabriel/North Fork San Gabriel River are primary contact recreation 1 and high aquatic life use. Mankins Branch is included in the 2022 Integrated Report—Texas 303(d) List (“**303(d) List**”) of impaired and threatened waters for bacteria in the water. Other site-specific uses for San Gabriel/North Fork San Gabriel River are public water supply and aquifer protection use, applying to the contributing, recharge, and transition zones of the Edwards Aquifer.

### B. Procedural History

The Application was received by TCEQ on November 22, 2022, and TCEQ’s Executive Director (“**ED**”) declared it administratively complete on February 14, 2023. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (“**NORF**”) was issued that same day and then published in English and Spanish in *The Williamson County Sun* on March 1, 2023. The NAPD was issued on January 12, 2024, and according to TCEQ’s Commissioners’ Integrated Database, the NAPD was published on May 15, 2024. As such, 30 Texas Administrative Code (“**TAC**”) § 55.152 dictates that the current deadline to submit public comments and request a public meeting about the Application is June 14, 2024. Therefore, these combined Public Comments, Meeting Request, and Hearing Request are timely filed.

## III. PUBLIC COMMENTS

The Application should be denied because it is inaccurate, incomplete, and fails to comply with all applicable regulatory and statutory requirements. Specifically: (1) issuance of the Draft Permit would contravene the regionalization policy codified in Chapter 26 of the Texas Water Code (“**TWC**”); and (2) the Application contains numerous significant deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

**A. Approval of the Application and issuance of the Draft Permit would violate Texas' legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems.**

The Application should be denied because issuance of the Draft Permit would contravene TCEQ's statutory mandate to encourage and promote the regionalization of wastewater infrastructure. Texas's regionalization policy is clearly and expressly set forth in TWC § 26.003 as follows:

It is the policy of this state . . . to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

The regionalization policy is also codified in TWC § 26.081, which plainly and unambiguously states that the Texas legislature has found and declared "that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." In addition, the TWC contains numerous other provisions relating to or facilitating the implementation of the regionalization policy. Such provisions include, but are not limited to, the following:

- TWC § 26.0282, which states that it "is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater," authorizes TCEQ, "[i]n considering the issuance, amendment, or renewal of a permit to discharge waste," to "deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems" without regard to whether a given system has been "designated as such by [TCEQ] order."
- TWC § 13.183(c), which provides that the Public Utility Commission ("**PUC**") or the governing body of a municipality may use alternative ratemaking methodologies to fix the rates for sewer services "to encourage regionalization."
- TWC § 13.241(d), which requires an applicant to "demonstrate to the [PUC] that regionalization or consolidation with another retail public utility is not economically feasible" in order for PUC to grant "a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system."<sup>1</sup>

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<sup>1</sup> *Accord* Tex. Water Code § 13.245(c-4)(2)(B) (providing that the PUC may not grant a certificate of convenience and necessity within the corporate boundaries or ETJ of a municipality with a population of 500,000 or more unless it determines that "regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under Section 13.241(d).").

- TWC § 26.0135(a), which requires TCEQ to conduct periodic assessments of water quality, also dictates that such an “assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.”

TCEQ is charged with implementing the regionalization policy and, pursuant to TWC § 5.013(a)(10), has general jurisdiction over “the state’s responsibilities relating to regional waste disposal.” This mandate is clearly acknowledged in TCEQ form TCEQ-10053ins (October 31, 2022) Instructions for Completing the Domestic Wastewater Permit Application (the “*Instructions*”), in effect at the time the Application was submitted, which state “TCEQ is required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”<sup>2</sup> For purposes of “implementing regionalization,” the Instructions also indicate that TCEQ “will” require TPDES permit applicants to justify the need for such a permit.<sup>3</sup> As part of its commitment to do so, TCEQ’s TPDES permit application form includes Domestic Technical Report 1.1, the first section of which contains questions related to the potential for regionalization.<sup>4</sup> Of such questions, those included in Section 1.B.3 are most relevant to these Public Comments, and Applicants’ responses thereto are shown by the following excerpt from the Application:

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<sup>2</sup> Instructions at 67.

<sup>3</sup> *Id.* at 54 – 55.

<sup>4</sup> TCEQ-10054 (June 1, 2017) Domestic Wastewater Permit Application, Technical Reports at 21–22.

### 3. Nearby WWTPs or collection systems

Are there any domestic permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility?

Yes ☒ No ☐

If yes, attach a list of these facilities that includes the permittee's name and permit number, and an area map showing the location of these facilities.

Attachment: Georgetown - Dove Springs WWTP Exhibit

If yes, attach copies of your certified letters to these facilities and their response letters concerning connection with their system.

Attachment: Will Serve letters to Georgetown, Round Rock and Jonah SUD.

Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity to accept or is willing to expand to accept the volume of wastewater proposed in this application?

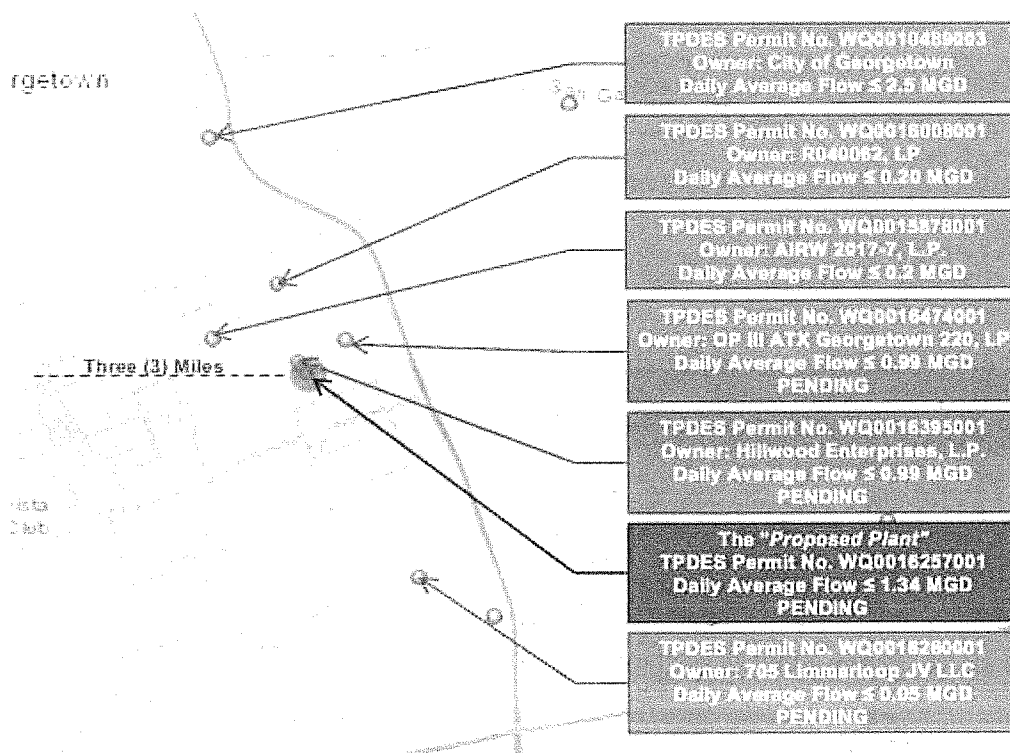
Yes ☐ No ☒

If yes, attach an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion.

Attachment:

The Applicants' foregoing responses are not fully accurate and incomplete.

First, the Application materials identify three (3) domestic permitted wastewater treatment facilities located within a three-mile radius of the Proposed Plant despite the fact that there may soon be six (6) such facilities, meaning there would be a total of seven (7) permitted domestic wastewater facilities within the three-mile radius surrounding the Proposed Plant. The nearby facilities identified in the Application are (1) the City's Dove Springs Wastewater Treatment Facility (WQ0010489003); (2) the Rockride Lane Water Resource Reclamation Facility (WQ0015878001), owned by AIRW 2017-7, L.P.; and (3) the Indigo Water Resource Recovery Facility (WQ0016008001), owned by R040062, LP. TCEQ should be aware, however, that after the Application was filed, the agency received three (3) additional applications for authorization to discharge wastewater effluent from additional facilities also intended to be located within a three-mile radius of the Proposed Plant. Those facilities are (1) the proposed Limmer Loop WWTF (WQ0016260001), owned by 705 Limmerloop JV LLC; (2) the proposed H4 East GT WWTP (WQ0016395001), owned by Hillwood Enterprises, L.P.; and (3) the proposed OP III ATX Georgetown Wastewater Treatment Plant (WQ0016474001), owned by OP III ATX Georgetown 220, LP. Further, the proposed H4 East GT WWTP facility is anticipated to be situated less than 1,000 feet from the Proposed Plant. For reference, the following annotated screenshot from TCEQ's online Wastewater Outfalls map shows the very close proximity of these seven (7) permitted and proposed domestic wastewater treatment facilities (as well as two other nearby facilities).



The proliferation of so many wastewater treatment facilities within such a small geographic area is unnecessary and completely at odds with Texas' regionalization policy; and, therefore, should not be authorized by TCEQ. Rather, both this Application and those related to the proposed facilities identified above should be denied in accordance with Texas' legislatively mandated regionalization policy and the requirement that Applicants demonstrate a need for the Proposed Plant.

Second, the Application materials do not include all the requisite responses concerning the possibility of connection with the aforementioned neighboring wastewater facilities. In fact, the only such response indicates that the City of "Round Rock cannot provide wastewater service to [Applicants'] property," but the City of Round Rock does not even own a permitted domestic wastewater treatment facility located within three (3) miles of the Proposed Plant. The Application materials contain no such correspondence from the owners of the six (6) nearby wastewater treatment facilities identified above. Instead, a cover letter to the Application states that "the City of Georgetown, the City of Round Rock, and Jonah [Water Special Utility District] . . . have verbally agreed to th[e] [A]pplication in principle but have been unable to provide written confirmation," and an email included with the Application further states that Applicants "had two verbal denials from the cities." To be clear, Jonah Water Special Utility District also does not have a permitted domestic wastewater treatment facility located within three (3) miles of the Proposed Plant. More importantly, Applicants' statements regarding the City are patently false. **The City has never indicated—either verbally or otherwise—that it "agreed" to the Application or did not have capacity to accept the volume of wastewater contemplated by the Application.**



The Application falsely indicates that no permitted wastewater treatment facility located within three (3) miles of the Proposed Plant currently has the capacity to accept or is willing to expand to accept the volume of wastewater contemplated by the Application. In fact, the aforementioned lack of communication between Applicant and the six (6) neighboring wastewater utility service providers means Applicants have no basis to make such an assertion, which is also not supported by any other documentation included with the Application. Likely because of such lack of communication, and in further contravention of the instructions in Section 1.B.3, Applicants also failed to provide the requisite analysis of related expenditures. Without such information, the Application fails to demonstrate that no permitted domestic wastewater treatment facility or collection system located within three miles of the Proposed Plant currently has the capacity or willingness to accept the volume of wastewater proposed in the Application. Consequently, the Application cannot reasonably be relied upon to assess the feasibility, either economic or logistical, of regionalization, so there is no adequate basis to conclude that approval of the Application and issuance of the Draft Permit complies with Texas's statutorily mandated regionalization policy. Rather, the foregoing map of domestic wastewater treatment facilities demonstrates that there is already an over-proliferation of such facilities in the area.

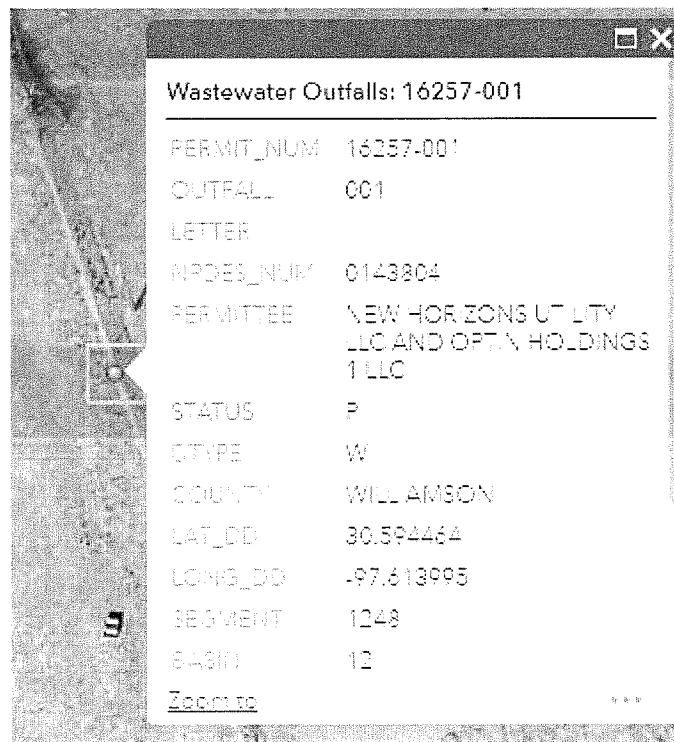
**B. The Application contains numerous deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.**

The Application should be denied, or at a minimum, remanded to technical review as a result of the following significant deficiencies that call into question whether issuance of the Draft Permit would comply with all applicable requirements:

- **The Application contains varying inconsistent descriptions of the proposed discharge route.** According to the Draft Permit, the discharge route is "to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin." This is consistent with the NORI, NAPD, and the notice to state legislators in accordance with TWC § 5.5553. However, the Supplemental Permit Information Form ("*SPIF*") describes the discharge route differently, as follows: "From the [Proposed P]lant to an unnamed tributary of Huddleston Branch, to Huddleston Branch, Segment 1248B." The discharge route described in Section 10.B. of Administrative Report 1.0 also varies from that described in the aforementioned notices. There, Applicants described the discharge route as follows: "From the [Proposed P]lant, W to an unnamed tributary of Huddleston Branch, to Huddleston Branch, Segment 1248B." The two foregoing descriptions are not compliant with the Instructions, which state that "[t]he discharge route must follow the flow of effluent from the point of discharge to the nearest major watercourse (from the point of discharge to a classified segment as defined in *30 TAC Chapter 307*) . . . . Classified segments can be found in *30 TAC § 307.10 Appendix A*" (emphasis in original). "Segment 1248B" is not listed in *30 TAC § 307.10 Appendix A*. Further, while Section 13 of Administrative Report 1.0 requires TPDES permit applicants to submit an

“[o]riginal full-size USGS Topographic Map” showing “3 miles downstream information,” and the Instructions clarify that such map must depict “the highlighted discharge route for a distance of three stream miles or until the effluent reaches a classified segment,” none of the maps included with the Application do so. Instead, the maps titled “Domestic Technical Report: SPIF Attachment 1f: USGS Map” and “Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map” (collectively, the “*USGS Maps*”) arbitrarily depict the discharge route for a distance of only one (1) stream mile, which does not coincide with the point at which the effluent reaches a classified segment. Given all of these discrepancies in the characterization of the proposed receiving waters and discharge route, the effluent set in the Draft Permit may be inconsistent with applicable statutory and regulatory requirements. This is especially troubling given that the site-specific uses for the San Gabriel/North Fork San Gabriel River include public water supply and aquifer protection.

- **Based on the outfall location, the Proposed Plant would discharge to dry land, which is inconsistent with the TPDES permitting scheme.** According to the Fact Sheet and Executive Director’s Preliminary Decision document, the location of the proposed outfall is Latitude 30.594348 N, Longitude 97.613857 W. This is consistent with the location shown on TCEQ’s online Wastewater Outfalls map, Latitude 30.594464, Longitude -97.613995. As shown by the following screenshot of such map, the proposed outfall is located on dry land (onto what appears to be a neighbor’s private road) and would not discharge to an unnamed tributary of Huddleston Branch, as stated in the Draft Permit and Application.



Rather, as shown by the following screenshot from Google Earth, there are no waterbodies located at or near the location of the proposed outfall.



**The proposed discharge of wastewater effluent directly to dry land would be entirely inconsistent with the TPDES permitting scheme and should not be authorized by TCEQ.**

- **Applicants do not own the land on which the proposed outfall/effluent disposal site is to be located, and the Application lacks the requisite lease agreement authorizing the use of such land for effluent disposal.** Again, according to the Fact Sheet and Executive Director's Preliminary Decision document, the location of the proposed outfall is Latitude 30.594348 N, Longitude 97.613857 W. According to the Williamson Central Appraisal District, however, that location corresponds to land owned by Mr. Greg Zunker. The TPDES application form states "[i]f landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement." This is consistent with the Instructions, which provide the following clear directions: "If the owner of the land is not the same as the applicant, a long-term lease agreement must be provided. The lease agreement must give the facility owner uses of the land for effluent disposal." The Application lacks any such lease agreement between Applicants and Mr. Zunker, and, as such, is deficient.
- **The Application fails to demonstrate that Applicants have the technical, managerial, or financial capabilities to own and operate the Proposed Plant.** According to *Application of New Horizons Utility, LLC for a Certificate of*

*Convenience and Necessity in Williamson County*, Public Utility Commission of Texas Docket No. 54520 (Dec. 28, 2022), Applicants, through their affiliates and/or subsidiaries, “currently operate[] 25 public utility systems in Texas that serve a population of over 15,000.” The Application, however, lacks the requisite evidence regarding the compliance history of these related entities. This is contrary to 30 TAC § 60.1(c), which requires an evaluation of the compliance history of “other sites which are owned or operated by the same person.”

- In addition to lacking the requisite “3 miles downstream information,” as described in more detail above, **the USGS Maps submitted with the Application otherwise fail to comply with the Instructions.** Specifically, “[f]or all USGS Map submittals,” the Instructions state that “the maps must contain,” among other things, the following information **“clearly outlined and labeled on the map:”** (1) “one mile in all directions from the [Proposed Plant]. If more than one map is required to show one mile in all directions from the facility, provide each individual map. Do not splice together;” (2) “[Applicants’] property boundary;” (3) “all ponds including storage, evaporation, and holding ponds;” and (4) “all new and future commercial developments, housing developments, industrial sites, parks, schools, and recreational areas” (emphasis in original). First, the USGS Maps do not depict the entire one-mile radius surrounding the Proposed Plant. Instead, as shown by the USGS Maps attached hereto and incorporated herein for all purposes as **Attachment A**, given the scope and 1:24,000 scale of the 7.5 Minute USGS Topographic Quadrangle Map(s) required to be used, “more than one map is required to show one mile in all directions from the [Proposed Plant],” but Applicants failed to “provide each individual map,” as required. Second, as demonstrated by **Attachment A**, the USGS Map titled “Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map” does not depict the Applicants’ property boundary. Further, the USGS Map titled “Domestic Technical Report: SPIF Attachment 1f: USGS Map” inaccurately depicts the Applicants’ property boundary.<sup>5</sup> Finally, the USGS Maps also do not depict “all ponds” or “all new and future commercial developments, housing developments, industrial sites, parks, schools, and recreational areas.”
- **The Affected Landowner Map is similarly deficient in that it fails to depict and/or identify Applicants’ property boundary and the buffer zone surrounding the Proposed Plant, both of which are required by the Instructions.**
- **The required buffer zone map is also deficient.** Pursuant to Section 3 of Domestic Administrative Report 1.1, TPDES permit applicants are required to provide a buffer zone map showing, among other things, the applicant’s property boundary and the distance from each treatment unit to the property boundary. The map titled “Domestic Technical Report 1.0 Attachment 2e: Buffer Zone Map,” however, fails to depict either such item.

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<sup>5</sup> Compare the USGS Maps in **Attachment A** with the Williamson Central Appraisal District information and maps of Applicants’ property attached hereto and incorporated herein for all purposes as **Attachment B**.

- **The Application lacks certain required photographs.** Section 2 of Domestic Administrative Report 1.1 instructs TPDES permit applicants to provide “[a]t least two photographs of the existing/proposed point of discharge and as much area downstream (photo 1) and upstream (photo 2) as can be captured.” As demonstrated by the “Aerial Photo with Photograph Location and Direction,” however, the Application fails to include the required upstream photo or any photos of the point of discharge.
- **The SPIF is likely inaccurate.** Section 5 of the SPIF requires TPDES permit applicants to indicate, among other things, whether their project involves “[p]roposed access roads, utility lines, construction easements” or “[d]isturbance of vegetation or wetlands.” According to Section 1.A. of Domestic Technical Report 1.1, Applicants’ “plans for development include building multiple housing subdivisions and a commercial area on approximately 2,100 acres.” That being the case, it would be impossible to complete such a project without disturbing vegetation or requiring access roads, utility lines, and construction easements. As such, Applicants should have so indicated on the Application, but they failed to do so.
- **The Plain Language Summary provided in Section 15 of Administrative Report 1.0 is inaccurate and deficient.** According to the Plain Language Summary (“*PLS*”), “[t]his is a modification of a previously authorized permit.” However, according to numerous other Application materials, Applicants have applied to TCEQ for “new” or “proposed” TPDES Permit No. WQ0016257001. Such Application materials include, but are not limited to, the “Permit Application Routing and Summary Sheet,” which states the “Application Type” is “New;” the NORI, NAPD, and notice to state legislators in accordance with TWC § 5.5553; multiple TCEQ interoffice memorandums; the “EPA – Region 6 NPDES Permit Certification Checklist;” the “Check List for Admin Review of Municipal Application for Permit;” and the “Fact Sheet and Executive Director’s Preliminary Decision” document. As such, contrary to the statement in the *PLS*, it is unlikely that Applicants are seeking “modification of previously authorized permit.” The *PLS* further indicates that the Proposed Plant will have “an initial rated treatment capacity of 0.411 MGD.” That is also inconsistent with the Draft Permit and numerous other Application materials, including Domestic Technical Report 1.0, all of which indicate that the daily average flow of effluent in the Interim I Phase shall not exceed 0.10 MGD, the daily average flow of effluent in the Interim II Phase shall not exceed 0.30 MGD, and the daily average flow of effluent in the Final Phase shall not exceed 1.34 MGD.
- **The Application lacks the requisite stormwater management information.** Section 6.E.1. of Domestic Technical Report 1.0 requires TPDES applicants to indicate whether their proposed wastewater treatment facility has a design flow of 1.0 MGD or greater in any phase. According to the NORI, NAPD, Draft Permit, and numerous other Application materials, the Final Phase design flow of the Proposed Plant is 1.34 MGD. Nevertheless, the Application incorrectly indicates that the Proposed Plant does not have a design flow of 1.0 MGD or greater in any phase. By so indicating, Applicants were able to avoid completing the remainder of Section 6.E., which pertains to stormwater management. In other words, because the Final Phase design flow of the

Proposed Plant is 1.34 MGD, Applicants should have completed Section 6.E.2 – 6, but they did not. As such, the Application is not only inaccurate but is also incomplete.

- **The Application lacks required information regarding the facility operator.** Section 8 of Domestic Technical Report 1.0 requires TPDES applicants to provide the name and license classification, level, and number of the operator of the proposed wastewater treatment facility, and the Instructions state “[p]rovide the name, operator certification number, and class for the facility operator as listed in the Central Registry.” Nevertheless, no such information is included in the Application. Instead, Applicants indicated that the “Facility Operator Name” was “TBD.”
- **The Application lacks required documentation related to sludge disposal.** Section 9 of Domestic Technical Report 1.0 requires TPDES permit applicants to “identify the current or anticipated sludge disposal method,” and Applicants indicated that sludge from the Proposed Plant would be “[t]ransported to another permitted wastewater treatment plant or permitted sludge processing facility.” For TPDES permit applicants that select such method of sludge disposal, the instructions in Section 9 further provide that “a written statement or contractual agreement from the wastewater treatment plant or permitted sludge processing facility accepting the sludge must be included with the[e] application.” Nevertheless, no such written statement or contractual agreement is included with the Application, which is, therefore, deficient.
- In Section 10.B. of Administrative Report 1.0, **the Application misrepresents that the “[c]ity nearest the outfall(s)” is “Round Rock.”** That is inaccurate. Based on TCEQ’s online “Wastewater Outfalls” map, version 3.0, the proposed outfall is roughly five (5) miles from the approximate center of the City of Georgetown and roughly seven (7) miles from the approximate center of the City of Round Rock. Indicating that Round Rock is the city nearest the outfall for the Proposed Plant is also inconsistent with the Core Data Forms submitted by Applicants, all of which correctly identify Georgetown as the “Nearest City” to the Proposed Plant.
- **Applicants used outdated forms to complete the Application.** Applicants completed and submitted the TCEQ form titled “TCEQ-10053 (06/28/2022) Municipal Wastewater Application Administrative Report.” However, because the Application was submitted to TCEQ on November 22, 2022, Applicants should have used the version of that form dated October 31, 2022. Similarly, all of the TCEQ Core Data Forms submitted by Applicants use the version of the form dated February 2021 despite the fact that the most current version of the TCEQ Core Data Form at the time the Application was submitted was dated November 2022.
- **Applicants failed to complete all required portions of the TPDES permit application form.** Specifically, the Application lacks Worksheet 2.1: Stream Physical Characteristics. According to the Instructions, applicants should “[c]omplete and submit [Worksheet 2.1] if the application is for a new permit . . . with an existing or proposed phase of 1.0 MGD or greater.” Because the Draft Permit authorizes a new

daily average discharge of effluent not to exceed 1.34 MGD in the Final Phase, the Application should include Worksheet 2.1. Applicants, however, failed to complete and submit such worksheet, thereby rendering the Application incomplete.

- **Application materials incorrectly indicate that the Proposed Plant is a minor facility.** Per the TPDES permit application form, a major domestic wastewater discharge facility has a permitted flow of 1.0 MGD or greater. Because the Draft Permit authorizes a daily average flow of effluent not to exceed 1.34 MGD in the Final Phase, the Proposed Plant is a major facility. Nevertheless, certain Application materials fail to so indicate. The “Permit Application Routing and Summary Sheet,” for example, states that the “EPA Classification” of the Proposed Plant is “Minor.” The “Check List for Admin Review of Municipal Application for Permit” also incorrectly indicates that the Proposed Plant is a “Minor” facility, as does the “Central Registry Internal Reporting” sheet, which states that the “Site Classification” is “Domestic Minor.” This is inconsistent with the truth and other Application materials.
  - **The Application incorrectly indicates that the Proposed Plant would not discharge to a 303(d) listed waterbody segment.** As noted above, the proposed discharge route for the wastewater effluent is to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. Mankins Branch is included in the 303(d) List of impaired and threatened waters for bacteria in the water. Nevertheless, the “EPA – Region 6 NPDES Permit Certification Checklist” indicates that the Proposed Plant does not discharge to a 303(d) listed waterbody segment. Similarly, the “Municipal EPA Review Checklist” indicates that the Draft permit does not authorize a discharge to an impaired 303(d) listed segment. These inaccuracies deprived the EPA of the opportunity to meaningfully review whether the Proposed Plant has the potential to discharge any pollutant that is causing or contributing to the impairment of Mankins Branch.
- C. **The Draft Permit is not protective of water quality and existing uses of the receiving waters in accordance with Texas Surface Water Quality Standards, including protection of public health and enjoyment of waters in the state and aquatic and terrestrial life.**

The City is concerned that the proposed discharge of treated effluent will adversely affect the supposed receiving water, which is within the City’s extraterritorial jurisdiction and its City limits, and existing and future uses thereof. The Statement of Basis for the Draft Permit indicates that TCEQ’s evaluation of the Application did not investigate or duly consider all existing uses (for example, agricultural uses like livestock watering and irrigation) or water quality standards protective of all existing uses (for example, aesthetic parameters related to recreational uses that are implicated in public health and enjoyment of waters in the state, criteria protective of livestock and other terrestrial and aquatic life). And although TCEQ’s review included an evaluation of the aquatic life use, this review was based on general assumptions the accuracy of which has not been confirmed as appropriate in this specific circumstance. For example, it is unclear if the pond to which the proposed discharge would flow (from a private road on a neighbor’s agricultural land

west of the proposed plant) is fed by one or more springs or well water. If fed by spring water, the pond and unnamed tributary fed by the overflow from the pond may contain aquatic life that is dependent on the water quality of such spring water or groundwater and would be particularly sensitive to changes in water quality resulting from the proposed discharge; however, the TCEQ's review does not appear to have considered either the hydrology<sup>6</sup> or the aquatic life in the pond to which the proposed discharge would flow. In the absence of an investigation into and evaluation of existing uses and relevant water quality standards, the City is concerned that the Draft Permit does not contain conditions that will be protective of water quality and all existing uses in accordance with Texas law.

Given that the slightest plant upset would adversely affect the water quality in the receiving streams and rivers, the City is further concerned that the proposed discharge poses risks to the receiving water quality and may create unsanitary or unsafe water quality conditions in the receiving waters and the health and safety of its citizens.

In addition, the Draft Permit does not contain measures to protect against discharges of untreated or partially untreated effluent. Because this creates an unnecessary risk of contamination of the receiving waters, the Application should be denied.

**D. The Draft Permit is not protective of the public health and safety of nearby residents.**

The City is also concerned about the public health risk posed by the Proposed Plant to nearby residents. The City is concerned that the very close distance of the Proposed Plant to adjacent residences poses health risks, including the potential exposure of residents to harmful pathogens via vectors (e.g., flies), aerosols (e.g., bacteria containing mists), and the receiving water (e.g., bacteria and viruses in the treated wastewater).

**E. The Draft Permit does not protect the health and safety of landowners' livestock and the habitats of endangered species.**

The area surrounding the Proposed Plant and discharge route is agricultural in nature and contains livestock. Also, the surrounding area and the San Gabriel River are home to several endangered species including the Texas Shiner and Guadalupe Bass as well as a number of endangered salamanders.<sup>7</sup> Granting the Application would expose these animals to adverse effects

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<sup>6</sup> To the extent that the pond to which the proposed discharge will flow is fed by shallow groundwater or spring water, the issuance of the Draft Permit for the proposed plant is concerning as it is inconsistent with Texas' regionalization policy, which includes the promotion of use of existing area-wide waste collection, treatment, and disposal systems to prevent pollution. If the Proposed Plant discharges treated effluent in an area of shallow groundwater, the TCEQ should have considered the potential contamination of shallow groundwater in this area. The failure to consider shallow groundwater and how it may be contaminated by the proposed discharge is troubling.

<sup>7</sup> These endangered species can be found by using the Texas Parks and Wildlife Endangered Species by Counties search available at [tpwd.texas.gov/gis/test](http://tpwd.texas.gov/gis/test) and cross-referencing using the United States Geological Survey species list available at [nas.er.usgs.gov/queries](http://nas.er.usgs.gov/queries).



from growth of algae<sup>8</sup>, high nitrogen content, toxic substances that are not subject to effluent limitations<sup>9</sup>, and bacterial contamination from the proposed discharge.

**F. The Application failed to show the proposed discharge satisfied TCEQ's antidegradation policy.**

As noted above, the Statement of Basis for the Draft Permit indicates that TCEQ did not consider all existing uses and water quality protective thereof. Without this information, it is not clear how TCEQ could have conducted its Tier 1 and Tier 2 antidegradation review consistent with the Texas antidegradation policy and procedures implementing the same.

Nothing in TCEQ's materials indicate that TCEQ conducted a site visit to the unnamed tributary of Huddleston Branch to determine whether it has been appropriately classified. Also, no information from TCEQ shows a site visit to unnamed tributary of Huddleston Branch or Huddleston Branch to confirm the actual conditions, such as the hydraulics, of these receiving waters to determine what the impact of the proposed discharge will be.

Therefore, TCEQ's analysis of the discharge relied on an uncalibrated model based on default values that do not reflect the actual conditions of the unnamed tributary of Huddleston Branch or Huddleston Branch. Due to the potential of accidental releases from the Proposed Plant, untreated or partially treated discharges may adversely impact the receiving waters. The use of site-specific data of the receiving waters is necessary to ensure the proper antidegradation analysis is conducted and that improper degradation of water quality is avoided.

In addition, the City is also concerned about elevated nitrogen levels in the receiving watercourses and its effect on water quality in the immediate receiving unnamed intermittent tributary and in downstream segments of this receiving water body.

Finally, the City is concerned that TCEQ is using an incorrect standard in conducting its Tier 2 antidegradation review. The Statement of Basis for the Draft Permit indicates TCEQ used a "no significant degradation" standard in conducting its Tier 2 evaluation. Such a standard is inconsistent with Texas antidegradation policy, which provides that no degradation is allowed unless it can be shown that the lowering of water quality is necessary for important economic or social development. Here, there is no indication that such economic or social development considerations were contemplated or that such a determination was made.

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<sup>8</sup> The Draft permit includes a limit of 0.15 mg/L for total phosphorus, which concentration limit was determined by the TCEQ to not be adequately protective against algal blooms in the recently issued permit for the City of Liberty Hill's wastewater treatment plant. Because algal blooms are known to present health hazards to livestock, the 0.15 mg/L total phosphorus limit does not appear to be protective of agricultural uses (e.g., livestock watering).

<sup>9</sup> The Draft permit does not include effluent limits that are protective of livestock watering uses and irrigation of crops – for example, limits on arsenic, copper, salinity, sulfates, etc. that may affect crop production, palatability or growth and development of livestock, and other agricultural uses.

#### **IV. REQUEST FOR PUBLIC MEETING**

In light of relevant and material concerns raised herein, the City requests a public meeting regarding the Application. TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the [ED] or the . . . Chief Clerk may hold public meetings," and that "[t]he [ED] or the . . . Chief Clerk shall hold a public meeting if: (1) the [ED] determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. The City, for the benefit of its citizens, has a substantial and significant degree of interest in the Application. Moreover, besides these Public Comments, Meeting Request, and Hearing Request, TCEQ has already received four (4) other requests for a contested case hearing and another set of public comments regarding the Application to date. As such, there is a demonstrated substantial and significant degree of public interest in the Application, and the ED or Chief Clerk should hold a public meeting thereon.

#### **V. REQUEST FOR CONTESTED CASE HEARING**

The City also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, the City is an affected person, as defined by 30 TAC § 55.203. The City has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be issued. In determining whether a person is an affected person, TCEQ may consider, among other factors, "(1) whether the interest claimed is one protected by the law under which the application will be considered; (2) distance restrictions or other limitations imposed by law on the affected interest; (3) whether a reasonable relationship exists between the interest claimed and the activity regulated; . . . and (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application."<sup>10</sup> TCEQ may also consider "the merits of the underlying application and supporting documentation . . . including whether the application meets the requirements for permit issuance."<sup>11</sup> All such considerations are applicable to the City, and, as noted in its foregoing Public Comments, the City has a particular interest in the issues relevant to the Application because the Application indicates that the service area for the Proposed Plant is located within its ETJ.

#### **VI. CONCLUSION**

Based on the foregoing, sufficient grounds exist for TCEQ to deny the Application. If the Application is not denied or, at least, remanded back to TCEQ staff for further technical review, a public meeting and contested case hearing regarding the Application, Draft Permit, and each and every issue raised herein and in any and all supplements and/or amendments hereto should be ordered.

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<sup>10</sup> 30 TAC § 55.203(c).

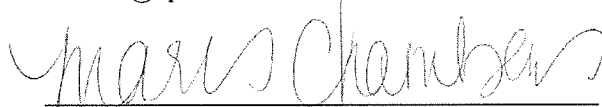
<sup>11</sup> *Id.* § 55.203(d).

Given that additional information may become apparent through a public meeting, the City reserves its right to supplement these Public Comments and its Hearing Request as it learns more about the Application and/or Draft Permit.

Thank you for your consideration of this important matter, and please do not hesitate to contact me if you or your staff have any questions regarding the City's Public Comments, Meeting Request, and/or Hearing Request.

Respectfully submitted,

William A. Faulk, III  
State Bar No. 24075674  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
Coty Hopinks-Baul  
State Bar No. 24094039  
[chbaul@spencerfane.com](mailto:chbaul@spencerfane.com)

A handwritten signature in cursive script, reading "Maris Chambers", written over a horizontal line.

Maris M. Chambers  
State Bar No. 24101607  
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816 Congress Avenue, Suite 1200  
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Facsimile: (512) 840-4551

**ATTORNEYS FOR CITY OF GEORGETOWN**

**Attachment A**



U.S. DEPARTMENT OF THE INTERIOR  
U.S. GEOLOGICAL SURVEY

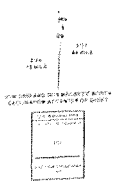


HUTTO QUADRANGLE  
TEXAS  
7.5-MINUTE SERIES



## Domestic Technical Report: SPIF Attachment 1f: USGS Map

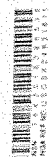
Produced by the United States Geological Survey  
North arrow is located at the top of the map.  
Scale bar is located at the bottom of the map.  
Legend is located at the bottom right of the map.  
Map title is located at the top center of the map.

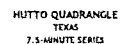


Legend	Symbol	Feature
Topography	Contour line	Contour line
Topography	Spot elevation	Spot elevation
Topography	Water body	Water body
Topography	Water body	Water body
Topography	Water body	Water body

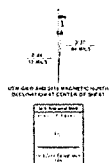
Legend	Symbol	Feature
Topography	Contour line	Contour line
Topography	Spot elevation	Spot elevation
Topography	Water body	Water body
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Topography	Water body	Water body

HUTTO, TX  
7027





**Produced by the United States Geological Survey**  
 under contract to the United States Geological Survey  
 from the Department of the Interior, Geological Survey  
 1000 National Center, Reston, Virginia 20192  
 This report was prepared by the United States Geological Survey  
 under contract to the United States Geological Survey  
 from the Department of the Interior, Geological Survey  
 1000 National Center, Reston, Virginia 20192





1	2	3
4	5	6
7	8	9


1. Germination
2. Root
3. Shoot
4. Root & Shoot
5. Tiller
6. Proliferation
7. Proliferation
8. Compound


ROAD CLASSIFICATION


Free Flow	Intermittent Flow	Level of Control	_____
Separate Ways	_____	Signal Phase	_____
Ramp	_____	_____	_____


 Interchange Route \_\_\_\_\_


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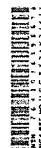
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HUTTO, TX  
7012



[illegible]

Property	Owner	Property Address	Tax Year	2024 Market Value
R040056	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	301 CR 107, GEORGETOWN, TX 78626	2024 ▾	\$501,263

Page: Property Details ▾

## 2024 GENERAL INFORMATION

Property Status	Active
Property Type	LTRR-Land Transitional Residential
Legal Description	AW0426 AW0426 - Mcqueen, J. Sur., ACRES 5.07
Neighborhood	G305M50H - E Gtown ISD Abstracts
Account	R-20-0426-0000-0023
Map Number	3-2743

## 2024 OWNER INFORMATION

Owner Name	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES
Owner ID	
Exemptions	
Percent Ownership	100%
Mailing Address	7801 N CAPITAL OF TEXAS HWY #UNIT 390 AUSTIN, TX 78731
Agent	-

## 2024 VALUE INFORMATION

## MARKET VALUE

Improvement Homesite Value	\$170,762
Improvement Non-Homesite Value	\$0
Total Improvement Market Value	\$170,762

Land Homesite Value \$330,501

Land Non-Homesite Value \$0

Land Agricultural Market Value \$0

Total Land Market Value \$330,501

Total Market Value \$501,263

## ASSESSED VALUE

Total Improvement Market Value \$170,762

Land Homesite Value \$330,501

Land Non-Homesite Value \$0

Agricultural Use \$0

Timber Use \$0





Total Appraised Value \$501,263

Homestead Cap Loss ⓘ -\$0

Total Assessed Value \$501,263



## 2024 ENTITIES &amp; EXEMPTIONS

TAXING ENTITY	EXEMPTIONS	EXEMPTIONS AMOUNT	TAXABLE VALUE	TAX RATE PER 100	TAX CEILING
CAD- Williamson CAD		-	\$501,263	0	0
 <a href="#">F08- Wmsn ESD #8</a>		-	\$501,263	0.094073	0
 <a href="#">GWI- Williamson CO</a>		-	\$501,263	0.333116	0
 <a href="#">RFM- Wmsn CO FM/RD</a>		-	\$501,263	0.044329	0
 <a href="#">SGT- Georgetown ISD</a>		-	\$501,263	1.0467	0
<b>TOTALS</b>				<b>1.518218</b>	

## 2024 IMPROVEMENTS

✖ Expand/Collapse All

Improvement #1	State Code	Homesite	Total Main Area (Exterior Measured)	Market Value
-	A1 - Residential Single Family	Yes	1,656 Sq. Ft	\$170,762

RECORD	TYPE	YEAR BUILT	SQ. FT	VALUE	ADD'L INFO
1	Main Area	1955	1,656	\$119,635	✖ Details
2	Open Porch	1955	90	\$1,560	✖ Details
3	Open Porch	1955	170	\$2,916	✖ Details
4	Garage	1955	500	\$16,955	✖ Details
5	Utility/storage	1955	100	\$3,391	✖ Details
6	Site Improvement	-	1	\$12,000	✖ Details
7	Out Bldg	2015	144	\$1,030	✖ Details
8	Carport	2015	360	\$2,060	✖ Details
9	Canopy	2015	360	\$2,060	✖ Details
10	Canopy	2015	1,600	\$9,155	✖ Details

## 2024 LAND SEGMENTS

LAND SEGMENT TYPE	STATE CODE	HOMESITE	MARKET VALUE	AG USE	TIM USE	LAND SIZE
1 - Residential	A1 - Residential Single Family	Yes	\$330,501	\$0	\$0	5.070000 acres
<b>TOTALS</b>						<b>220,849 Sq. ft / 5.070000 acres</b>

## VALUE HISTORY

YEAR	IMPROVEMENT	LAND	MARKET	AG MARKET	AG USE	APPRAISED	HS CAP LOSS	ASSESSED
2023	\$164,095	\$330,501	\$494,596	\$0	\$0	\$494,596	\$0	\$494,596
2022	\$222,476	\$298,813	\$521,289	\$0	\$0	\$521,289	\$225,121	\$296,168
2021	\$163,450	\$138,273	\$301,723	\$0	\$0	\$301,723	\$32,479	\$269,244
2020	\$138,425	\$129,223	\$267,648	\$0	\$0	\$267,648	\$22,881	\$244,767
2019	\$164,210	\$58,305	\$222,515	\$0	\$0	\$222,515	\$0	\$222,515

## SALES HISTORY

DEED DATE	SELLER	BUYER	INSTR #	VOLUME/PAGE
1/18/2023	PETRERE, EDWARD R & EVELYN O	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	2023005095	
1/30/2013	HYDEN, LENA R	PETRERE, EDWARD R & EVELYN O	2013009338	
10/2/2003	HYDEN SR, R D, Sr	HYDEN, LENA R	-	

Property	Owner	Property Address	Tax Year	2024 Market Value
R091466	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	CR 107, GEORGETOWN, TX 78626	2024 ▼	\$1,019,381

Page: Property Details

## 2024 GENERAL INFORMATION

Property Status	Active
Property Type	LTRR-Land Transitional Residential
Legal Description	AW0426 AW0426 - Mcqueen, J. Sur., ACRES 15.63
Neighborhood	G305M50H - E Gtown ISD Abstracts
Account	R-20-0426-0000-0023A
Map Number	3-2743

## 2024 OWNER INFORMATION

Owner Name	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES
Owner ID	
Exemptions	Circuit Breaker Limitation (Active)
Percent Ownership	100%
Mailing Address	7801 N CAPITAL OF TEXAS HWY #UNIT 390 AUSTIN, TX 78731
Agent	-

## 2024 VALUE INFORMATION

## MARKET VALUE

Improvement Homesite Value	\$0
Improvement Non-Homesite Value	\$500
Total Improvement Market Value	\$500

Land Homesite Value \$0

Land Non-Homesite Value \$1,018,881

Land Agricultural Market Value \$0

Total Land Market Value \$1,018,881

Total Market Value \$1,019,381

## ASSESSED VALUE

Total Improvement Market Value \$500

Land Homesite Value \$0

Land Non-Homesite Value \$1,018,881

Agricultural Use \$0

Timber Use \$0

Total Appraised Value \$1,019,381

Homestead Cap Loss ⓘ -\$0

Total Assessed Value \$1,019,381

## 2024 ENTITIES & EXEMPTIONS

### Special Exemptions CBL - Circuit Breaker Limitation

TAXING ENTITY	EXEMPTIONS	EXEMPTIONS AMOUNT	TAXABLE VALUE	TAX RATE PER 100	TAX CEILING
CAD- Williamson CAD		-	\$1,019,381	0	0
 F08- Wmsn ESD #8		-	\$1,019,381	0.094073	0
 GWL- Williamson CO		-	\$1,019,381	0.333116	0
 RFM- Wmsn CO FM/RD		-	\$1,019,381	0.044329	0
 SGT- Georgetown ISD		-	\$1,019,381	1.0467	0
TOTALS			1.518218		

## 2024 IMPROVEMENTS

⌵ Expand/Collapse All

Improvement #1	State Code	Homesite	Total Main Area (Exterior Measured)	Market Value
-	E1 - Farm And Ranch Improvements-residence	No	-	\$500

RECORD	TYPE	YEAR BUILT	SQ. FT	VALUE	ADD'L INFO
1	Barn	-	-	-	⌵ Details

## 2024 LAND SEGMENTS

LAND SEGMENT TYPE	STATE CODE	HOMESITE	MARKET VALUE	AG USE	TIM USE	LAND SIZE
1 - Vacant Land	E1 - Farm And Ranch Improvements- residence	No	\$1,018,881	\$0	\$0	15.630000 acres
TOTALS						680,843 Sq. ft / 15.630000 acres

## VALUE HISTORY

YEAR	IMPROVEMENT	LAND	MARKET	AG MARKET	AG USE	APPRAISED	HS CAP LOSS	ASSESSED
2023	\$500	\$0	\$500	\$1,018,881	\$625	\$1,125	\$0	\$1,125
2022	\$500	\$0	\$500	\$921,193	\$485	\$985	\$0	\$985
2021	\$500	\$0	\$500	\$426,272	\$531	\$1,031	\$0	\$1,031
2020	\$475	\$0	\$475	\$398,376	\$1,235	\$1,710	\$0	\$1,710
2019	\$500	\$0	\$500	\$179,745	\$1,188	\$1,688	\$0	\$1,688

## SALES HISTORY

DEED DATE	SELLER	BUYER	INSTR #	VOLUME/PAGE
10/26/2022	PETRERE, EDWARD R & EVELYN O	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	2022122434	
1/30/2013	HYDEN, LENA R	PETRERE, EDWARD R & EVELYN O	2013009340	
10/2/2003	HYDEN R D ETUX	HYDEN, LENA R	-	
8/1/1986	HYDEN, RONALD D	HYDEN R D ETUX	-	1405/0041
1/1/1985	VETERANS LAND BOARD OF TEXAS	HYDEN, RONALD D	-	1130/0291

January 2, 2025

Via e-File to: [www.tceq.texas.gov/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html)

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

Re: **The City of Georgetown, Texas' Request for Contested Case Hearing**

Applicant Names: New Horizons Utility LLC (CN 606081594) and  
OptiN Holdings 1 LLC (CN606081602)  
Regulated Entity Name: New Horizons WWTP (RN111609582)  
Application: TPDES Permit No. WQ0016257001  
Location: Williamson County, Texas  
EPA I.D.: TX0143804

Dear Ms. Gharis:

On behalf of the City of Georgetown (the "**City**"), please accept this request ("**Request**") for a contested case hearing and/or reconsideration of the Executive Director's decision regarding the application by New Horizons Utility LLC and OptiN Holdings 1 LLC (the "**Applicants**") for proposed new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016257001, to authorize a domestic wastewater treatment facility in Williamson County, Texas (the "**Application**"). The City's contact persons for this matter are below:

Cody Faulk, Partner  
Carlota Hopinks-Baul, Attorney  
Spencer Fane LLP  
816 Congress Avenue, Suite 1200  
Austin, TX 78701  
(512) 840-4550  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
[chbaul@spencerfane.com](mailto:chbaul@spencerfane.com)

Reviewed By fg H  
RFR

JAN 06 2025

## I. INTRODUCTION

### A. Description of the Proposed Package Plant

If approved, draft TPDES Permit No. WQ0016257001 (the “**Draft Permit**”) would authorize the discharge of effluent from a pre-fabricated domestic wastewater treatment facility (the “**Proposed Package Plant**”) at a daily average flow not to exceed 0.10 million gallons per day (“**MGD**”) in the Interim I Phase, 0.30 MGD in the Interim II Phase, and a daily average flow not to exceed 1.340 MGD in the Final Phase. The Proposed Package Plant would be located approximately 0.5 of a mile northeast of the intersection of County Road 107 and County Road 110, in Williamson County, Texas 78626. The property on which the Proposed Package Plant has been removed from the City’s extraterritorial jurisdiction (“**ETJ**”); however, the proposed outfall is within 5,000 feet of the City’s corporate limits, is within three miles of the City’s nearest wastewater treatment plant and approximately 1 mile from the nearest City wastewater main, and the course of the proposed discharge will flow through the City’s ETJ. If the Draft Permit is issued, the Proposed Package Plant will be a membrane bioreactor (“**MBR**”) based-plant operated as a suspended growth activated sludge process in a single-stage nitrification mode.

The proposed discharge route for the effluent is described as to an unnamed tributary of Huddleston Branch (identified as San Gabriel River Tributary T17.06 in the Williamson County Atlas 14 Flood Study and referred to hereafter as “Tributary T17.06”),<sup>1</sup> thence to Huddleston Branch, thence to Mankins Branch, thence to the San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. As an unclassified freshwater stream, the presumed uses for Tributary T17.06 are primary contact recreation and limited aquatic life use. As perennial streams, the presumed uses of Huddleston Branch, Mankins Branch, and San Gabriel / North Fork San Gabriel River are primary contact recreation 1 and high aquatic life use. Mankins Branch, which is identified as Classified Segment No. 1248C, is included in the 2022 Integrated Report – Texas 303(d) List (Category 5) of impaired and threatened waters (the “**303(d) List**”) for bacteria in the water. Other site-specific uses for San Gabriel / North Fork San Gabriel River are public water supply and aquifer protection use, which apply to the contributing, recharge, and transition zones of the Edwards Aquifer. Finally, in addition to all of the above, aerial photographs, property tax records, and the rural setting of the land through which the course of the discharge flows indicate that other existing uses of Tributary T17.06, Huddleston Branch, Mankins Branch, and San Gabriel / North Fork San Gabriel River include livestock watering, agricultural irrigation, and terrestrial wildlife uses.

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<sup>1</sup> The U.S. Fish and Wildlife Service’s National Wetlands Inventory “Wetland Mapper,” an online interactive wetland mapping database, maps the uppermost extent of Tributary T17.06, an intermittent stream, at a point approximately 820 to 1050 feet southeast of the proposed outfall (this range reflects the three sets of coordinates provided by the Co-Applicants for the outfall at various places in the application and supplemental information).

## B. Procedural History

The permit application for the instant Draft Permit (the “Application”) was received by the Texas Commission on Environmental Quality (the “TCEQ”) on November 22, 2022, and the Executive Director (“ED”) declared it administratively complete on February 14, 2023. The Notice of Application and Preliminary Decision—that the ED had completed technical review of the Application and prepared the Draft Permit—was issued on January 12, 2024, and published on May 15, 2024 (in English) and May 23, 2024 (in Spanish)<sup>2</sup>. The public comment period on the Application and Draft Permit ended on June 24, 2024. On June 14, 2024, the City timely filed public comments, none of which have been withdrawn. The ED filed its Response to Public Comments (“RTC”) on November 22, 2024. In the RTC, the ED identifies a total of 15 public comments, recommending that no changes to the Draft Permit be made in response thereto. Notice of the ED’s final decision that the Application meets the requirements of applicable law was provided via letter dated December 3, 2024, which indicated that the deadline for submitting a request for a contested case hearing and/or reconsideration of the ED’s decision on the Application and Draft Permit is January 2, 2025. Therefore, this Request is timely filed.

## II. REQUEST FOR A CONTESTED CASE HEARING

Given the significant City interests affected by the Application and Draft Permit, the City hereby respectfully requests a contested case hearing based on the relevant and material disputed issues raised herein, all of which were originally raised by the City during the public comment period, which have not been withdrawn. In support thereof, the City’s June 14, 2024 comment letter, addressing 6 primary issues of concern and several sub-issues, is attached hereto as **EXHIBIT 1** and incorporated into this Request in full by this reference (the “**City Comment Letter**”).<sup>3</sup>

In brief, the City is requesting a contested case hearing based on its Legislatively-mandated interest in promoting and protecting the general health, safety, and welfare of persons residing inside its city limits and ETJ from the deleterious effects of a new source of potential contamination: the Proposed Package Plant. Among other things, that unique and justiciable

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<sup>2</sup> Both the English and Spanish notices for the Notice of Receipt of Application and Intent to Obtain Permit (and, presumably, the Notice of Application and Preliminary Decision) were published only in the Williamson County Sun, an English-language newspaper. The Co-Applicants submitted an affidavit attesting to their having conducted a diligent search and not finding a Spanish-language newspaper or publication in general circulation in the municipality and county in which the proposed facility will be located. However, El Mundo, a newspaper serving Spanish-speaking communities in the San Antonio-Austin metropolplex (including Williamson County), is frequently used by permit applicants to publish notifications regarding TPDES and TLAP permits for facilities to be located in Williamson County. Because the Co-Applicants in this case did not publish the requisite notices in Spanish in El Mundo or any other Spanish language newspaper in accordance with the alternative language public notice requirements in 30 TAC Chapter 39 and TCEQ’s express instructions regarding the same (noting, in relevant part, that “[p]ublication in an alternative language section or insert within a large publication which is not printed primarily in that alternative language does not satisfy these requirements”), the ED should suspend the processing of the subject permit application – that is, deny the permit – consistent with 30 TAC 39.405(a).

<sup>3</sup> Letter dated June 14, 2024 from Marish Chambers on behalf of the City of Georgetown to TCEQ Chief Clerk [hereinafter *City Comment Letter*].



interest is affected by the Application and Draft Permit because the proposed discharge from the Proposed Package Plant is within 5,000 feet of the City's corporate limits, the Proposed Package Plant and outfall are in close proximity to the City's ETJ, and the proposed discharge route runs through the City's ETJ. Under such circumstances, the TCEQ's rules in 30 Texas Administrative Code ("TAC") § 55.203(b) expressly deem local governmental entities in the City's position to be "affected persons" with standing to request a contested case hearing on the Application at issue.

#### **A. Legal Standards and Requirements for Hearing Requests**

In order to be granted, a contested case hearing request must: (1) comply with the applicable form and filing requirements set forth in the Texas Water Code ("TWC") and TAC; and (2) be filed by an affected person. Specifically, a contested case hearing request must satisfy the conditions prescribed by TCEQ rules set forth in Title 30 TAC, Chapter 55,<sup>4</sup> and the TCEQ "may not grant a request for a contested case hearing unless [it] determines that the request was filed by an affected person as defined by Section 5.115" of the TWC.<sup>5</sup>

##### **1. This Request fully satisfies the form and filing requirements for hearing requests.**

The TCEQ's procedural requirements for contested case hearing requests are set forth in 30 TAC § 55.201. Pursuant to that rule, a contested case hearing request must be: (1) submitted in writing; (2) timely filed "no later than 30 days after the chief clerk mails (or otherwise transmits) the [ED]'s decision and [RTC];" and (3) based on an issue or issues raised in the requestor's own timely filed, and not later withdrawn, public comments. A procedurally sufficient hearing request must also do the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (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) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request, specifying, to the extent possible, any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and any disputed issues of law; and

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<sup>4</sup> 30 TAC §§ 55.101, .201.

<sup>5</sup> TWC § 5.556.

(5) provide any other information specified in the public notice of application.<sup>6</sup>

As demonstrated in Section I.B, above, this request is timely filed. Further, this Request is based on the City's timely-filed and not later withdrawn City Comment Letter. The required contact information for the City is provided on the first page of this Request. The introduction to this Section II, identifies the City's personal justiciable interest affected by the Application, and specifically explains, both the City's proximity to the Proposed Package Plant and discharge route, and how and why the City will be adversely affected by the Proposed Package Plant in a manner not common to members of the general public. An explicit request for a contested case hearing is contained, among other places, in the introductory paragraph of this Section II. Finally, Section III, below, lists the relevant and material disputed issues of fact raised by the City during the public comment period and specifies those of the ED's responses to public comment that the City disputes. Thus, the City has satisfied all of the procedural requirements for a contested case hearing request.

**2. The City is an "affected person" with unique justiciable interests in and authority over matters affected by the Application and Draft Permit.**

For the purpose of an administrative hearing involving a contested matter, TWC § 5.115 defines an "affected person" as one "who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing."<sup>7</sup> Section 5.115 further clarifies that "[a]n interest common to members of the general public does not qualify as a personal justiciable interest."<sup>8</sup> Further, as directed by the TWC, TCEQ has adopted rules specifying factors to be considered in determining whether a person is an affected person entitled to standing in a contested case hearing.<sup>9</sup> Specifically, in determining who is an "affected person," the relevant TCEQ rule provides as follows:

RULE § 55.203 Determination of 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 § 55.103 of this title (relating to Definitions)<sup>10</sup>, 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:*

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<sup>6</sup> 30 TAC § 55.201.

<sup>7</sup> TWC § 5.115; accord 30 TAC § 55.203.

<sup>8</sup> *Id.*

<sup>9</sup> TWC § 5.115; 30 TAC § 55.203.

<sup>10</sup> Barring participation by non-river authority state agencies in contested case hearings unless the state agency is the applicant. See 30 TAC § 55.103.

- (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) *for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and*
  - (7) *for governmental entities, their statutory authority over or interest in the issues relevant to the application.*
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, *the commission may also consider the following:*
- (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.*
- (e) *In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.<sup>11</sup>*

As discussed in more detail below, the City not only has interests related to legal rights, duties, privileges, powers, or economic interests affected by the Application that are not common to the general public, as required under 30 TAC § 55.203(a), but also has “statutory authority over” and “interest in” the issues relevant to the Application within the meaning of 30 TAC §§ 55.203(b) and (c)(7). In addition, this Request (and the City Comment Letter) provide information relevant to the “affected person” considerations enumerated in 30 TAC § 55.203(d). Simply put, as a governmental entity providing wastewater treatment services to areas both inside and outside of its corporate limits, and because wastewater from the Proposed Package Plant will be discharged into waterways coursing through the City’s ETJ, the City has a unique interest in the effects the Proposed Package Plant will have on the environment and on public health, safety, and welfare within its jurisdiction. Therefore, considering the factors enumerated above, and as addressed in more detail below, the City is an “affected person” entitled to a contested case hearing on the issues raised in its timely-filed City Comment Letter and reiterated herein.

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<sup>11</sup> 30 TAC § 55.203 (emphasis added).

- a. As a home-rule municipality operating its own regional wastewater treatment and collection system, the City's Legislatively-mandated interest in and statutory authority over the general health, safety, and welfare of persons residing within its corporate limits and ETJ is affected by the Application and Draft Permit.**

According to the Application, the Proposed Package Plant, an MBR process plant operated as a suspended growth activated sludge process in a single-stage nitrification mode, would serve multiple housing subdivisions and a commercial area on approximately 2,100 acres (the "**Proposed Service Area**"). The Proposed Package Plant's proposed outfall is within 5,000 feet of the City's corporate limits; the proposed outfall is immediately adjacent to the City's ETJ; the Proposed Service Area includes areas within the City's ETJ; and the discharge will flow through water bodies within the City's ETJ.

The City is a home-rule municipality, having the full powers of self-governance, and is authorized to exercise all authority incident to local self-government.<sup>12</sup> In addition to having the powers granted to it as a home-rule city via the Texas Constitution, the Legislature has also expressly granted home-rule cities regulatory authority within the ETJ over issues raised by or relevant to the Application. The Legislature created municipal ETJ areas for all cities in order "to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities."<sup>13</sup> Thus, the City has a Legislatively-mandated interest in promoting and protecting the general health, safety, and welfare of persons residing inside its city limits and ETJ. In the context of the Application, the City's interests are to promote and protect the general health, safety, and welfare of persons residing both in the ETJ and inside the city limits from the potentially harmful effects of an unnecessary package plant.

The Legislature has also granted cities statutory authority over or interest in issues relative to the Application via specific statutes, including, among others, the following:

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<sup>12</sup> See Tex. Const. art. XI, § 5; Tex. Loc. Gov't Code § 51.072(a) and (b) ("(a) The [home-rule] municipality has full power of local self-government. (b) The grant of powers to the municipality by this code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government."); *Lower Colo. Riv. Auth. v. City of San Marcos*, 523 S.W.2d 641, 643 (Tex. 1975), *Quick v. City of Austin*, 7 S.W.3d 109, 122 (Tex. 1999), *Dallas Merch. & Concessionaires Ass'n v. City of Dallas*, 852 S.W.2d 489, 490-91 (Tex. 1993) (Home-rule cities do not depend on the Legislature for specific grants of authority but, instead, have a constitutional right of self-government and, look to the Legislature only for specific limitations on their power). See also, *In re Sanchez*, 81 S.W.3d 794, 796 (Tex. 2002); *Proctor v. Andrews*, 972 S.W.2d 729, 733 (Tex. 1998) (For the Legislature to divest home-rule cities of their Constitutional authority, the Legislature's intent to do so must be expressed with "unmistakable clarity.")

<sup>13</sup> Tex. Loc. Gov't Code § 42.001 ("PURPOSE OF EXTRATERRITORIAL JURISDICTION. The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.").

- TWC Ch. 26, Subchapter E (relating to disposal system rules and water pollution control duties of cities);<sup>14</sup>
- TWC Ch. 7, Subchapter H (relating to water quality enforcement);<sup>15</sup>
- Tex. Health and Safety Code § 121.003(a) (“The governing body of a municipality . . . may enforce any law that is reasonably necessary to protect the public health.”);
- Tex. Loc. Gov’t Code § 551.002 (“A home-rule municipality may prohibit the pollution or degradation of and may police a stream, drain, recharge feature, recharge area, or tributary that may constitute or recharge the source of water supply of any municipality” and “may provide for the protection of and may police any watersheds . . . inside the municipality’s boundaries or inside the municipality’s [ETJ].”);
- Tex. Loc. Gov’t Code § 212.003(a) (relating to the ability of a municipality to adopt rules governing plats and subdivisions of land within its corporate boundaries and ETJ, including rules related to the provision of water and sewer service to platted areas, in order to promote the healthful development of the city and public health, safety, and general welfare);<sup>16</sup>
- Tex. Loc. Gov’t Code § 217.042 (A home-rule municipality, like the City, “may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits” and “enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.”);
- Tex. Loc. Gov’t Code § 552.001 (“A municipality may [(1)]purchase, construct, or operate a utility system,” including a sewer system, “inside or outside the municipal boundaries;” (2) “regulate the system in a manner that protects the interests of the municipality;” (3) “extend the lines of its utility systems outside the municipal boundaries;” (4) “sell water [or] sewer . . . service to any person outside its boundaries;” (5) “prescribe the kind of water . . . mains [and] sewer pipes . . . that may be used inside or outside the municipality;” and (6) “inspect those facilities and appliances, require that they be kept in good condition at

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<sup>14</sup> See e.g., TWC § 26.177 (“A city may establish a water pollution control and abatement program for the city,” which “shall encompass the entire city and . . . may include areas within its [ETJ] which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city . . . will provide effective water pollution control and abatement for the city.”).

<sup>15</sup> The enforcement authority and rights granted to cities via TWC § 7.351(a) are different from those of the general public, and having been granted special statutory enforcement rights over water quality matters, the City has authority under state law over issues raised by the Application and Draft Permit. TWC § 7.351(a) authorizes local governments to bring an action against a person for a violation or threatened violation of Chapter 26 of the TWC occurring in the jurisdiction of that local government in the same manner as the TCEQ may do so—that is, for injunctive relief, a civil penalty, or both.

<sup>16</sup> Accord Tex. Loc. Gov’t Code § 214.013 (“A municipality may . . . require property owners to connect to [its] sewer system.”).

all times, and prescribe the necessary rules, which may include penalties, concerning them.”);

- Tex. Loc. Gov’t Code Ch. 552, Subchapter C (relating to municipal drainage systems); and
- Tex. Loc. Gov’t Code § 552.002(b) (“A home-rule municipality may buy, own, construct inside or outside the municipal limits, and maintain and operate a . . . sewage plant.”).

In addition to the statutory interests enumerated above, regionalization and need in wastewater permitting cases are issues on which cities that operate wastewater collection and treatment systems, like the City, are uniquely poised to offer evidence. This is recognized by TWC § 26.003, which states that:

It is the policy of this state and the purpose of this subchapter to . . . encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of this state; and to require the use of all reasonable methods to implement this policy.

This guiding principle of regionalization and need is enshrined in the introductory provisions of Chapter 26, listed second only to the recognition of private ownership rights of groundwater. Two other pieces of legislation were adopted to underscore this policy—TWC §§ 26.081<sup>17</sup> and 26.0282<sup>18</sup>—both relating to the TCEQ’s consideration of the regionalization policy, need, and the availability of existing or proposed areawide or regional wastewater collection, treatment, and disposal systems in the issuance of TPDES permits.

The state regionalization policy articulated three times in the TWC is entirely consistent with the Legislature’s creation of ETJs via the Texas Local Government Code. The issues of wastewater treatment regionalization and need cannot be evaluated or implemented without the ability to look “regionally” and “areawide”—i.e., beyond a city’s corporate boundaries. The Legislature has adopted statutes that underscore a city’s status as an affected person in cases such as the one at hand by creating ETJs; acknowledging cities’ interest in the environment, and issues affecting the health, safety, and welfare in those areas; granting cities authority over issues such as those raised in wastewater permitting applications; and adopting policies relating to regionalization and need in wastewater permitting cases. As recognized by 30 TAC §§ 55.203(b)

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<sup>17</sup> TWC § 26.081(a) (“The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”).

<sup>18</sup> TWC § 26.0282 (“In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.”).

and 55.203(c)(7)—which establish “affected person” status for governmental entities that have authority under state law over issues raised in an application—this statutory framework means that it is entirely consistent with state law to allow a city’s participation in wastewater permitting cases such as this, in which the proposed wastewater treatment plant, outfall, and/or outfall are in close proximity to (and within 5,000 feet of) such city’s corporate boundaries and/or within its ETJ.

Further, pre-manufactured treatment facilities, like the Proposed Package Plant, are designed to serve areas that could not be easily connected to an existing sewage treatment plant, which is not the case here. On the contrary, the City owns and operates—again, under legislative mandate—an extensive wastewater treatment and collection system that eliminates the need for package plants such as one described in the Application. The City owns and operates five existing wastewater treatment plants and has a permit for a sixth to be constructed in the near future.<sup>19</sup> The City employs approximately 15 licensed wastewater treatment plant operators and 38 licensed wastewater collection system operators. The City currently provides wastewater service to approximately 39,756 customers. One of the City’s wastewater treatment plants, the Dove Springs Wastewater Treatment Facility (“WWTF”), is located within three miles of the Proposed Package Plant (see **EXHIBIT 1** (City Comment Letter, **Attachment A**)). Moreover, the Dove Springs WWTF is interconnected with the two largest City owned wastewater treatment plants, the Pecan Branch WWTF and the San Gabriel WWTF. Collectively, just these three City owned wastewater treatment facilities can currently treat up to 8.0 MGD of wastewater, giving the City capacity to meet the service needs of approximately 80,000 people (at 100 gallons per day (“GPD”) per person).<sup>20</sup> The City’s two other wastewater treatment facilities—the Cimarron Hills WWTF and the Berry Creek WWTF—can treat up to 0.2 MGD and 0.3 MGD, respectively, providing the capacity for the City to serve approximately 5,000 more people (at 100 GPD/person). All in all, the City’s five existing wastewater treatment facilities have the capacity to provide service to about 85,000 customers. Based on information from the US Census Bureau, the City population as of the April 1, 2020 census was 67,176.<sup>21</sup> Thus, the City has more than enough capacity to provide wastewater treatment service to customers within its city limits and ETJ, including those within the Proposed Service Area.

In addition to its treatment facilities, the City has existing wastewater collection systems located within three miles of the Proposed Service Area. The City also has additional collection system infrastructure under construction that would be even closer to the Proposed Service Area. The City’s collection system is located less than 1 mile from the Proposed Service Area.

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<sup>19</sup> The City owns and operates the following wastewater treatment facilities: (1) the Cimarron Hills WWTF (TPDES Permit No. WQ0014232001); (2) the San Gabriel WWTF (TPDES Permit No. WQ0010489002); (3) the Dove Springs Plant (TPDES Permit No. WQ0010489003); (4) the Pecan Branch WWTF (TPDES Permit No. WQ0010489005); and (5) the Berry Creek WWTF (TPDES Permit No. WQ0010489006). In addition, the City holds TPDES Permit No. WQ0010489007 for the Northlands WWTF, which is not yet under construction.

<sup>20</sup> The city is working on increasing its treatment capacity by: expanding the capacity of its Dove Springs WWTF by an additional 1.0 MGD in March 2025; an additional 2.0 MGD at its Pecan Branch WWTF in the next two years; and adding two new WWTFs in the next five to six years (i.e., the 10 MGD Three Forks WWTP and 3.0 MGD Northlands WWTP).

<sup>21</sup> U.S. Census Bureau, *Quick Facts, Georgetown [C]ity, Texas*, <https://www.census.gov/quickfacts/fact/table/georgetowncitytexas/PST045221>.

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In summary, the City is an "affected person," with significant interests in issues relevant to the Application, because the Proposed Package Plant, Proposed Service Area, and proposed outfall would all be located in close proximity to the City's wastewater collection system, corporate limits, and/or ETJ, and the planned discharge route flows through the City's ETJ. That proximity directly affects the people and environment the City has a Legislative mandate to protect. Moreover, because the City owns and operates an extensive wastewater treatment and



inaccurate and false nature of the information in the Application and supplemental information, the absence of justification of the need for the Draft Permit, and the clear balkanizing effect of the ED's profligate issuance of permits to package plants.

The ED's RTC No. 14 notes that the Co-Applicants provided evidence that they mailed a certified letter, dated December 29, 2022, to the City requesting service and concluded that "[b]ased on the information the Applicant [sic] provided in its [sic] application, the Executive Director has determined that the Applicant has complied with the regionalization policy and has demonstrated a need for the proposed WWTF." The City disputes the ED's RTC No. 14 in that the ED's acceptance of proof of the mailing of a request for denial of service as sufficient efforts *by the Applicant* to implement Texas' Regionalization Policy is not only wrong on the law (it is the ED who is responsible for implementing the Regionalization Policy), it is also wrong on the facts. That is, the ED's decision willfully disregards the following information that was presented to the ED in the City's comment letter: 1) the inaccuracy of the Co-Applicants' representation that no existing wastewater utility within three miles of the Proposed Package Plant has the capacity or willingness to expand to accept the volume of wastewater to be treated by the Proposed Package Plant (in Section 1.B.3 of Domestic Technical Report 1.1); 2) the falsity of the Co-Applicants' representations that the City supports and agrees in principle with the Application; 3) the Co-Applicants failure to provide any of the requisite financial analysis to justify the need for the permit; and 4) the absence of need for the Proposed Package Plant given the existence of three facilities and the pending applications for three new package plants, all of which are within three miles the Proposed Package Plant. This information not only shows that the information presented by the Co-Applicants is not reliable, it also demonstrates that the Proposed Package Plant is not needed and the issuance of permit to operate the same is flatly inconsistent with Texas' Regionalization Policy – indeed, the profligate permitting of so many wastewater treatment plants and sources of pollution in this three-mile area represents a preference for balkanization and a complete disregard for the Regionalization Policy and the statutory requirement to "use all reasonable methods to implement this policy." TWC § 26.003. Thus, the ED's decision to issue the requested permit in light of these facts is manifest legal error, is unreasonable, arbitrary and capricious, and not supported by substantial evidence.

Furthermore, the City's interconnected wastewater treatment and collection system has sufficient capacity to accept the Phase I and Phase II interim volumes of wastewater that will be generated as residential and commercial development unfolds in the area southeast of the City in the immediate future. In addition, the City is in the process of significantly expanding its treatment capacity for longer-term growth as well – sufficient to accept the final wastewater production volume (1.34 MGD) that would be treated by the Proposed Package Plant. The issuance of a permit to the Co-Applicants for the Proposed Package Plant fails to implement the Legislature's policy directives regarding wastewater regionalization in Texas; and fails to respond to any of City's very specific comments regarding whether the Application and Draft Permit are consistent with those Legislative policy directives.

Therefore, the City reasserts the comments it made in the City Comment Letter on the issues of justification and need for the permit and regionalization, and requests a contested case hearing and the ED's reconsideration of the following issue: whether the Application and Draft

Permit comply with the Legislature's statutory directives regarding wastewater need and regionalization codified in TWC §§ 26.003 and 26.081-26.086.

**B. Application is Materially Deficient, Incomplete, and Inaccurate and is Insufficient to Constitute Substantial Evidence Supporting the TCEQ's Decision to Issue the Requested Permit**

The City Comment Letter identified many instances of inaccurate and incomplete information and omissions in the Co-Applicants' Draft Permit Application. Even taken individually, these errors and omissions materially affect the ED's understanding of the underlying facts and its analysis (as explained more fully below); but when taken together, the result is an Application that is so rife with information that is not reliable, complete, and accurate, that the ED should have refused to issue the permit or, at a minimum, should have issued a notice of deficiency to elucidate a clear, consistent, and reliable set of facts (i.e., substantial evidence) upon which the ED could render a reasonable, well-informed decision. Yet rather than evaluating the import of the individual and cumulative errors and omissions highlighted in the City Comment Letter, the ED's RTCs respond in piecemeal to minutia to avoid the sum and substance of the City's comments. The ED's approach in its RTCs is shortsighted and effectively abdicates its duty to protect water quality (including the implementation of Texas' Regionalization Policy) by ignoring relevant facts and the absence of relevant information, treating as reliable information that is not, and requiring individual property owners to undertake costly litigation (that they will likely lose) so as to attempt to abate nuisance conditions created by the ED's granting of permits where they should be denied.

For the reasons set forth below, the City disputes the ED's RTCs Nos. 5, 6, 7, 10, 11, 12, 13, 14, and 15. As noted in these RTCs, the City Comment Letter indicates that the Application is materially incomplete in that it fails to provide correct, complete, and relevant information that is necessary for the TCEQ to conduct a full analysis of the possible effects of the Proposed Package Plant on water quality and surrounding existing uses.

**1. RTCs No. 5 & No. 15 – Incorrect Outfall and Discharge Route Information**

The City Comment Letter highlighted to the ED that the Application contains conflicting descriptions of the discharge route and that the Co-Applicants have proposed to discharge treated effluent to a dirt road on land that is not owned by the Co-Applicants. See Exhibit 1 at 7-9. The City Comment Letter included snips of aerial photographs from Google Earth that show the proposed outfall would be located in an area that is obviously a private farm road. In addition, the collection of "Original Photographs" in the Co-Applicant's Application also clearly and unambiguously show that the first leg of the discharge route (some 400 feet) is a dirt or gravel road on an adjacent parcel of agricultural land. In addition, publicly available USGS topographic maps

contradict the Co-Applicant's assertion that a stream exists at the point of the proposed outfall as there is neither a blue line (indicating a stream) nor elevation consistent with a drainageway.

In RTC No. 5, the ED simply restates the description of the discharge route, suggesting that the ED has accepted, as true and accurate, the Co-Applicants' assertion that treated effluent will be discharge to a surface water body. Similarly, in RTC No. 15, the ED seems to assume the veracity of that assertion in noting that "[t]he State is authorized to use the bed and banks to transport water, and TCEQ has the authority to authorize a discharge of treated domestic wastewater into water in the state through a TPDES permit" and that "TCEQ has been delegated the authority to issue TPDES permits for the discharge of waste or pollutant into or adjacent to water in the state." The ED's failure to appreciate the obvious factual proof of the absence of a water body at the proposed outfall location that was provided in the City Comment Letter and the Co-Applicant's own site photographs is clear error. Given that the Draft Permit would authorize the discharge of up to 1.34 MGD of treated effluent onto the private dirt or gravel road used by a neighbor to cross their land, the ED should, at a minimum, reconsider its decision to grant the permit and return the Application to staff for additional investigation as to whether the features described by the Co-Applicants as a stream and bordering "swale" in its collection of "Original Photographs" are, in fact, a stream with discernable bed and banks or a depression created by a private farm road and the surrounding farmland.<sup>22</sup>

RTC No. 15 also notes that, if issued, the permit would not "grant the permittee the right to use private or public property for the conveyance of wastewater along the discharge route" and that "[i]t is the responsibility of the permittee to acquire all property rights necessary to use the discharge route." This RTC also notes that issuance of the permit "does not limit the ability of nearby landowners to seek legal remedies in a judicial court for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on . . . property, or that may or actually do interfere with the normal use and enjoyment of . . . property." Sections 9(D) and 9(E) of the Administrative Report 1.0 that forms part of the TPDES permit application provides a measure of protection against such unlawful trespass by requiring applicants to identify the owner of land where the treatment facility is or will be located and ownership information for the effluent disposal site; both sections require Applicants to "attach a lease agreement or deed recorded easement" where the land is not owned by the Applicants. As noted in the City Comment Letter, the Co-Applicants' Application does not include a lease agreement or deed recorded easement for the outfall pipe that will transport treated effluent to the outfall location; despite this glaring omission, the ED has decided to grant the permit. Assurances to landowners that they may seek to prevent the discharge onto their land an issued permit expressly authorizes ignores the reality that such suits impose an unnecessary and costly expense on landowners that can be easily avoided by the ED's exercising a minimal effort at due diligence by requiring Applicants to provide the information already required by the Draft Permit Application

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<sup>22</sup> The Co-Applicants should be required to address inconsistencies in the description of the receiving stream in Worksheet 2.0 and to complete Worksheet 2.1, which was omitted in its entirety in the Co-Applicant's Draft Permit Application as noted on page 12 of the City Comment Letter. This receiving stream information will make clear that there is neither a pond nor a receiving stream at the proposed outfall location.

and confirming the existence of a water body (i.e., a water feature that has discernable bed and banks).

Even if the Co-Applicants were to acquire the land on which the outfall is proposed to be located prior to commencing discharges, the ownership of that land would not authorize the discharge as the farm road would nonetheless not constitute a stream or other water in the State. Although the TCEQ is authorized to grant TPDES permits for the discharge of pollutants to waters in the State and to use the bed and banks of a stream to transport water (including wastewater), it does not have the authority to grant TPDES permits to authorize such discharges to dry land. Because the TPDES permit here would authorize the discharge of pollutants to dry land (a farm road) not owned by the Co-Applicants, the ED's decision to grant the permit exceeds its statutory authority.

Because the ED's RTCs No. 5 and No. 15 do not respond to the facts and legal issues raised in the City Comment Letter relating to the outfall location and discharge route, the City requests a contested case hearing regarding this issue or, in the alternative, the ED's reconsideration of its decision to issue the permit.

## **2. RTCs Nos. 6 – Inaccurate and Incomplete Description of Receiving Waters and Activities in Proximity to Proposed Outfall**

The City Comment Letter highlighted to the ED that the Application inaccurately describes the receiving waters for the proposed discharge and fails to identify those activities in proximity to the proposed outfall that are required by the Draft Permit Application. See Exhibit 1 at The City Comment Letter notes that the discharge route is inaccurately described by the Co-Applicants as, in various portions of the Application, a water-quality impaired stream (i.e., Mankins Branch) is omitted from the description of the discharge route. In addition, USGS map information provided by the Co-Applicants was substantially incomplete – USGS maps covering a full one-mile radius were not provided and the following were not shown: the three-mile discharge route; the Co-Applicants' property boundary; and the on-site and off-site features and activities (parks, schools, recreational areas, all new and future commercial and housing developments) explicitly required to be identified by the Draft Permit Application form instructions. Taken together, the required information would allow the TCEQ to correctly identify existing uses and derive conditions protective of those uses and necessary to address existing impairments to the full use and enjoyment of receiving waters that would be affected by the proposed discharge.

The ED's response RTC No. 6 acknowledges that the discharge route includes an impaired stream and identifies a single permit condition related to that impairment. Nowhere else does the ED's RTCs address the City's comments on the inaccurate and incomplete information of the receiving waters and the activities in proximity to the proposed outfall. Because the permitting decision relied on insufficient and inaccurate information, the requisite technical analyses would necessary be flawed and permit conditions protective of existing water uses and users would not have been derived.

The ED's RTCs in no way allay the concern about the material data gaps, errors, and omissions highlighted by the City Comment Letter and their consequential implications on the decision to issue a permit, the conditions included in the permit, and the adequacy of the water quality, public health, and environmental protections afforded by the permit. Therefore, the material incompleteness and inaccuracy of the receiving waters and activities near the outfall and the effect of such information failures on the ED's permitting decision should be considered in a contested case hearing; in the alternative, the ED should reconsider its decision and should deny the permit based on the materially incorrect, incomplete, and inaccurate information provided by the Co-Applicants.

### **3. RTC No. 7, No. 11, and No. 12 – Incorrect and Incomplete Facility Information and Inadequate Nuisance Odor Control**

The City Comment Letter highlighted to the ED that the Application contains incorrect and incomplete facility information regarding the Proposed Package Plant. The faulty information includes failing to identify the Co-Applicant's property boundary on the USGS map, the Affected Landowner Map, and Buffer Zone Map. Buffer zone requirements were also deficient in the Affected Landowner Map and the Buffer Zone Map. The Application does not include information about proposed access roads, utility lines, construction easements, or disturbance of vegetation or wetlands. Public notices regarding this permitting action have contained inconsistent and incorrect information about the nature of the facility (minor or major), the permitting action (modification of issuance of a new permit), and the size / treatment capacity of the facility (0.411 MGD vs. 0.1 MGD for the initial operational phase). In addition, the original application did not include sludge disposal information (a written statement or contractual agreement from the sludge processing facility). And the Application and Core Data Forms submitted by the Co-Applicants had inconsistent information about which city was nearest the proposed outfall (it is, in fact, the City). Each of these errors and omissions may cause TCEQ staff to misapprehend the factual setting and potential impacts to water quality, public and environmental health, and use and enjoyment of waters in the State, and to err in making recommendations regarding permit issuance and permit conditions. In addition, taken together, the inconsistencies and information gaps throughout the permit application and supplemental information about all aspects of the Proposed Package Plant's design and operations does not constitute reliable information upon which decisions to grant a permit or to devise permit conditions may be made.<sup>23</sup>

The ED's RTC No. 7 provides general information about odor control options open to applicants, identifies the option selected by the Co-Applicants, and notes that odor problems are not expected given the enclosed nature of the facility and assuming that the plant is properly operated. Nowhere does the ED identify how the many instances of incorrect and incomplete information were addressed and why such a faulty Application nonetheless constitutes reliable evidence upon which appropriate, well-informed, and protective permitting decisions may be

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<sup>23</sup> The City Comment Letter also noted that the Co-Applicants used outdated versions of the TPDES permit application forms. To the extent that the newer versions of the application forms requested additional or different information not required by the earlier versions used by the Co-Applicants, such information would also not have been available to inform the TCEQ's decision-making.

made. In light of the ED's failure to address these substantive concerns in its RTCs, this issue should be taken up in a contested case hearing or, in the alternative, the ED should reconsider its decision and deny the permit in light of the indicia of unreliability of the information in the Draft Permit Application.

#### **4. RTC No. 10 – Facility Operator Information Not Provided**

The City Comment Letter highlighted to the ED that the Application does not contain information regarding the facility operator. Notably, the website of New Horizons Utility LLC,<sup>24</sup> one of the Co-Applicants, notes the following under "What We Do": private financing, design, implementation, and operation management. In addition, the website notes that it "offer[s] turn-key wastewater and water solutions to developers and utility companies . . . eliminating the wait for traditional infrastructure" and that its "water recovery services take an environment-first approach." These statements indicate that New Horizons Utility will be the operator and should have a compliance history for the operational activities it touts on its website; however, the compliance history for New Horizons Utility did not include an evaluation of its wastewater operation activities at any other facility.

The ED's RTC No. 10 notes that the facility must be operated by an operator holding a Class C license or higher during the interim phases and a Class B license or higher in the final phase. In addition, the ED notes that the facility must be operated a minimum of 5 days per week. Nowhere else does the ED address the absence of operator information, which would have allowed TCEQ to evaluate the suitability of New Horizons Utility LLC and qualifications of its operators to operate the Proposed Package Plant. Because the absence of this information is an important factor in deciding whether to issue or deny a permit, this issue should be taken up in a contested case hearing or, in the alternative, the ED should reconsider its decision and deny the permit in light of the failure to provide true, complete, and accurate operator information in the Draft Permit Application.

#### **5. RTC No. 13 – Permit is Not Needed and New Package Plant is Not Needed or Justified**

As noted in the regionalization discussion above, the City Comment Letter shows that there will be three to six wastewater treatment facilities in the area in which the Proposed Package Plant would be located. Also, the City's wastewater treatment system currently has capacity to treat the volume of wastewater to be treated by the Proposed Package Plant during interim phases I and II; and the City has already undertaken efforts to add new wastewater treatment plants and expand treatment capacity at existing plants, which will provide sufficient capacity to treat the volume to be treated at the Proposed Package Plant's final phase (1.34 MGD). In addition, the City Comment Letter highlighted to the ED that the Co-Applicants incorrectly answered the regionalization related questions in Section 1.B.3 of the Domestic Technical Report 1.1 portion of the permit

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<sup>24</sup> The website, <https://newhorizonsutility.com/>, was determined to be that of New Horizons Utility LLC by matching the office address on the website with the Co-Applicant's address on the Draft Permit Application.

application, indicating that no permitted domestic wastewater treatment facility or collection systems were located within three miles of the Proposed Package Plant that currently have capacity or are willing to expand to accept the volume of water proposed in the application. The inaccurate manner in which the Co-Applicants answered the question about those treatment or collections systems allowed them to avoid providing the financial information to compare the cost to connect with an existing system with the cost of building the Proposed Package Plant. Without true, accurate, and complete information about currently available and anticipated future wastewater treatment capacity, as well treatment cost comparisons, the Application cannot reasonably be relied upon to assess the economic or logistical feasibility of regionalization. And in the absence of such information, the ED cannot reasonably conclude that the issuance of the permit complies with Texas' Regionalization Policy.

The ED's RTC No. 13 notes that other commented on the failure of the Co-Applicants to demonstrate a need for the permit but does not acknowledge the City's comments regarding the absence of information to support a conclusion that the permit is needed or that the Proposed Package Plant is justified. In addition, the ED's baldly asserts that the Co-Applicants "provided justification for the requested flows" and that it "has determined that the Applicant has sufficiently demonstrated the need for the requested flow." The ED does not explain how the Co-Applicants proved the need for the permit or justified the Proposed Package Plant, or how the issuance of the permit is consistent with the Regionalization Policy's directive all reasonable methods be used to implement this policy. Because the City disputes that the ED's response provides a meaningful, substantive response to the concerns raised about the lack of justification and need for the Proposed Package Plant, this issue should be taken up in a contested case hearing; or, the alternative, the ED should reconsider its decision and deny the permit.

### **C. Permit Does not Adequately Protect Water Quality, Uses and Users Thereof**

The ED RTC notes that the City's comments raised "concerns about the negative impacts on water quality and the failure of the proposed discharge to show satisfactory compliance with the antidegradation policy of TCEQ." Relatedly, the City Comment Letter also raised concerns about the whether the permit would be protective of existing uses and users of the receiving water bodies – i.e., agricultural, terrestrial and other wildlife (including endangered species), and other uses. The City disputes that the ED's RTCs are responsive to and allay the concerns raised by the City.

#### **1. RTC No. 1 – Adverse Water Quality Impacts and Failure to Comply with TCEQ' Antidegradation Policy**

The ED's RTC No.1 notes that the City expressed concerns about negative impacts on water quality. More specifically, the City Comment Letter noted that the TCEQ's evaluation of the Application did not investigate or duly consider all existing uses (for example, agricultural uses like livestock watering and irrigation) or water quality standards protective of all uses (for example, aesthetic parameters related to recreational and passive use and enjoyment of waters in the State, which also implicate public and environmental health). In addition, the City Comment

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Letter noted that the TCEQ's water quality evaluations and analyses were based on general assumptions, the accuracy and relevance of which were never confirmed for this particular setting. The City Comment Letter also noted that the slightest plant upset would adversely affect water quality in the receiving streams and would create unsanitary conditions affecting neighbors (who reside in the City's ETJ) and the environment. The City also objected to the paucity of conditions in the permit to protect against the discharge of untreated or partially untreated wastes.

The ED's RTC No. 1 notes that its standards and procedures<sup>25</sup> are intended to derive permit conditions that protect against discharges that result in instream aquatic toxicity, violate Texas surface water quality standards (WQS) (including narrative WQS), endanger drinking water, or result in aquatic bioaccumulation that threatens human health. The ED notes that TCEQ staff "determined the uses of the receiving waters and set effluent limits that are protective of those uses" and performed an antidegradation review of the receiving waters. In addition, the ED identifies certain effluent limitations that are based on stream standards and waste load allocations for impaired streams. However, the ED's response does not address the specific concerns raised



The ED's RTC No. 2 notes that the City raised concerns about "elevated nutrient levels resulting in excessive algal growth and blooms." The ED notes that the Draft Permit includes phosphorus limits to reduce the likelihood of stimulating algal blooms or the growth of other aquatic vegetation; however, the ED does not explain how the phosphorus limits during the interim phases will be adequately protective given the significant increase in flow that these discharges will cause in the receiving water bodies, which includes livestock watering ponds along and upstream of Tributary T17.06.

The ED's RTC does not acknowledge or respond to the City's concern about nitrogen discharges, which create nuisance algal growth and blooms that affect aquatic life and adversely effects water palatability that affect livestock watering and may affect sensitive species (e.g., endangered species whose presence or absence has not been ascertained). The RTC also does not acknowledge or respond to the City's comments regarding the discharge of other unregulated constituents, including toxic substances and microbiological contaminants, that may also affect livestock and wildlife watering and health.

The ED's RTC also notes that the IPs require that the concentration and relative ratios of dissolved minerals such as chloride and sulfate that comprise total dissolved solids (TDS) be maintained to protect existing and attainable uses. However, the ED notes that TDS screening cannot be performed until effluent water quality becomes available for the Proposed Package Plant and the ED's chloride and sulfate concerns seem to be limited to the San Gabriel River segment. And although the RTC indicates that the Proposed Package Plant's discharges would need to be below 158 mg/L for TDS for the final operational phase of 1.34 MGD, the Draft Permit does not include a TDS limit. Also, there is no indication that a TDS limit will be derived to protect existing and attainable uses of other upstream water bodies along the course of the discharge.

Therefore, the City disputes the ED's contention in RTC No. 2 that the aforementioned uses and users should be protected by imposing a total phosphorus limit, without more. The ED's RTC does not address or allay the concern that, in light of the significant volume of treated effluent discharges (up to 1.34 MGD) and agricultural nature of the land use in the area surrounding the Proposed Package Plant and discharge route, issuing a Draft Permit based on a potentially incomplete and inaccurate Application would expose these livestock and other environmental receptors animals to adverse effects from growth of algae, high nitrogen content, and bacterial contamination from the proposed discharge (particularly in the event of a plant upset or bypass that is not detected during periods of time that the facility is not being monitored, sampled, or staffed). Therefore, this issue should be take up at a contested case hearing; or, in the alternative, the ED should reconsider its permitting decision and direct TCEQ staff to undertake the requisite analyses and either derive such permit conditions as are needed to protect livestock, terrestrial and aquatic species (including endangered species) or recommend denial of the permit, as appropriate.

### **3. RTC No. 3 (City Comments C and E) – Protection of Aquatic Life and Stream Uses**

The ED's RTC No. 3 notes that the City expressed concerns about the aquatic life and stream uses. The RTC notes that designated uses of Segment No. 1248 should be protected "if the [Proposed Package Plant] is operated and maintained as required by the [Draft Permit] and regulations." The RTC notably does not include any such assurance about the protection of existing uses of any other water body along the discharge route. In addition, the RTC does not acknowledge the City's concern that the proposed discharge of treated effluent will adversely affect all existing uses of the receiving waters that flow through the City's ETJ. Because the proposed discharge may create nuisance conditions in the receiving waters and within 5,000 feet of the City's corporate limits, the discharge activity subject to regulation by the City pursuant to numerous mandates of the Texas Legislature (*see* Section II.A.2.a, above).

The discharge route and uses of the various constituent water bodies are described above. Among these uses, the aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer; portions of the discharge route are within the transition zone. TCEQ's own rules express a policy to protect such higher uses when it is possible to do so.<sup>26</sup> In this circumstance, these higher uses could be maintained simply by denying the Application and upholding the state's regionalization policy. Failing to do so by issuing the Draft Permit for an unnecessary package plant risks the creation of unsanitary or unsafe water quality conditions in the receiving waters that would threaten the health and safety of any wildlife, livestock, or people using them. This is especially true given that such risks could be avoided, or at least substantially diminished, if wastewater from the Proposed Service Area was collected, treated, and discharged by the City in accordance with the state's regionalization policy.

The ED's RTC attempts to disclaim any duty to protect water quality for the protection of wildlife, noting that "[t]he Texas Parks and Wildlife Department [(\"TPWD\")]" is the state agency that oversees and protects wildlife and their habitat." However, the TPWD has no authority to regulate discharges to ensure protection of aquatic or terrestrial wildlife while the TCEQ does under Sections 26.003 and 26.011 of the Texas Water Code.

Because the City disputes that the ED has appropriately identified the existing uses and users of each of the water bodies along the discharge route, has identified water quality standards protective of terrestrial and aquatic life, and has derived permit conditions protective of existing and attainable uses, and that the ED's RTC has addressed and allayed these concerns, the City requests that these issues be taken up in a contested case hearing; in the alternative, the City requests the ED to reconsider its decision and direct its staff to conduct such fact finding, research, and analyses as are necessary to determine the conditions that must be maintained in the receiving waters to ensure protection of existing and attainable uses by livestock and other wildlife receptors.

#### **4. RTC No. 4 (City Comment E) – Protection of Endangered Species**

The ED's RTC No. 4 confirms the City's concerns that the Application was approved without the proper authorities having conducted the requisite endangered species review.

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<sup>26</sup> *See* 30 TAC § 307.4(h).

As noted in the City Comment Letter, because the area surrounding the Proposed Package Plant, including the San Gabriel River, is home to several endangered species—including the Texas Shiner and Guadalupe Bass as well as several endangered salamanders—issuing the Draft Permit would expose these animals to adverse effects from growth of algae, high nitrogen content, and bacterial contamination from the proposed discharge. These concerns are compounded by the fact that portions of the receiving water for the proposed discharge are already listed on TCEQ's 303(d) List of waters impaired by high levels of bacteria.

The ED's RTC No. 4 notes that the TCEQ has determined that permit action is not expected to have an adverse effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. However, this determination was based on and limited to species and habitat listed or designated prior to October 21, 1998. Finally, the ED's RTC notes that neither the US Fish and Wildlife Service nor TPWD expressed concern about the discharge effects on wildlife in the area. This RTC demonstrates that the TCEQ is not evaluating permit applications, making permitting decisions, or deriving permit conditions to ensure the protection of water quality necessary to support endangered species. Indeed, the TCEQ seems to suggest that it is under no obligation to protect species not identified in the outdated Appendix A to its 1998 TPDES memorandum of agreement (MOA) with the US EPA. However, as noted above, under Sections 26.011 and 26.003 of the Texas Water Code, the TCEQ is responsible for controlling of the quality of water in the state, which are to be protected to maintain water quality that is consistent with the propagation and protection of (all) terrestrial and aquatic life, including threatened and endangered species (even those not listed in Appendix A to the EPA-TCEQ MOA authorizing the TPDES program). The RTC makes clear that TCEQ failed to complete the requisite endangered species review prior to issuing the permit and did not determine water quality standards or derive permit conditions appropriate to their protection.

Because the City disputes that the ED's RTC No. 4 has responded to and allayed the concerns raised by the City regarding the protectiveness of the Draft Permit as to endangered or otherwise threatened, rare, or sensitive species (all of which are within the ambit of aquatic or terrestrial wildlife), this issue should be taken up in a contested case hearing; or, in the alternative, the ED should direct TCEQ staff to undertake the requisite analyses and either derive such permit conditions as are needed to protect the aforementioned species or recommend denial of the permit, as appropriate.

#### **IV. SUMMARY OF DISPUTED ISSUES FOR REFERRAL**

The City has identified critical issues that the Commission should explore through an open and public contested case hearing. At a minimum, the City requests that the following issues be referred to SOAH for a contested case hearing:

1. Whether the Application and Draft Permit are consistent with the Legislature's statutory directives regarding wastewater regionalization as expressed in TWC §§ 26.003 and

26.081–26.086, including whether issuance of the Draft Permit is contrary to the state’s regionalization policy;

2. Whether the Application is substantially and materially complete and accurate;
3. Whether the issuance of the Draft Permit impermissibly authorizes a discharge of pollutants to dry land rather than waters in the State (with a discernable bed and banks);
4. Whether the discharge route and receiving waters have been properly characterized and their uses correctly identified;
5. Whether the Draft Permit is adequately protective of water quality;
6. Whether the Draft Permit is adequately protective of the existing uses of the receiving waters in accordance with the Texas Surface Water Quality Standards, including applicable antidegradation review requirements;
7. Whether there is a need for the Proposed Package Plant;
8. Whether the Draft Permit includes adequate provisions to protect the health of nearby residents<sup>27</sup> and aquatic and terrestrial wildlife;
9. Whether the Draft Permit includes adequate provisions to protect endangered, threatened, rare, or otherwise sensitive species;
10. Whether the Draft Permit complies with applicable requirements to abate and control nuisances;
11. Whether the Applicant has substantially complied with all applicable notice requirements; and
12. Whether the draft permit contains adequate provisions to protect the use and enjoyment of property.

The City reserves the right to raise and pursue any and all issues that may be relevant to its interest in the event of a contested case hearing.

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<sup>27</sup> The ED’s RTCs did not respond to the City’s comments regarding the public health and safety concerns raised by the close proximity of the proposed discharge to residents living in the City’s ETJ.

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Respectfully submitted,

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**ATTORNEYS FOR CITY OF  
GEORGETOWN**

# EXHIBIT 1



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June 14, 2024

Ms. Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Via e-Comment to <https://www14.tceq.texas.gov/epic/eComment/>

Re: **Public Comments and Requests for a Public Meeting and Contested Case Hearing**  
Application by New Horizons Utility, LLC (CN606081594) and OptiN Holdings 1 LLC  
(CN606081602) for Proposed New Texas Pollutant Discharge Elimination System Permit  
No. WQ0016257001 (EPA I.D. No. TX0143804)

Dear Ms. Gharis:

On behalf of the City of Georgetown, Texas ("**City**"), please accept these timely filed public comments ("**Public Comments**") and requests for a public meeting and contested case hearing (respectively, the "**Meeting Request**" and "**Hearing Request**") regarding the application ("**Application**") by New Horizons Utility, LLC and OptiN Holdings 1 LLC ("**Applicants**") for new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016257001 (the "**Draft Permit**") for the proposed New Horizons WWTP (RN111609582) (the "**Proposed Plant**"). As I represent the City with respect to this matter, please include me on the mailing list for all filings related to the above-referenced Application. My mailing/contact information is as follows:

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## I. EXECUTIVE SUMMARY

The City respectfully requests that the Texas Commission on Environmental Quality ("**TCEQ**") deny the Application based on the relevant and material public comments presented herein. If the Application is not denied or, at least, remanded back to TCEQ staff for further technical review, the City alternatively requests a public meeting and contested case hearing regarding the Application, Draft Permit, and each and every issue raised herein and in any and all supplements and/or amendments hereto.

## II. BACKGROUND

### A. Description of the Proposed Plant

The Application requests authorization to discharge wastewater effluent from the Proposed Plant at an annual average flow not to exceed 1.34 million gallons per day (“*MGD*”). The Proposed Plant is intended to serve areas within the City’s extraterritorial jurisdiction (“*ETJ*”) from a plant site (“*Plant Site*”) located approximately one-half mile northeast of the intersection of County Road 107 and County Road 110 in Williamson County, Texas 78626. The Plant Site is less than one (1) mile from the City’s nearest corporate boundary and less than three (3) miles from the City’s nearest wastewater treatment plant. According to the Notice of Application and Preliminary Decision (“*NAPD*”), the proposed discharge route for the wastewater effluent is to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. As an unclassified freshwater stream, the presumed uses for the unnamed tributary of Huddleston Branch are primary contact recreation 1 and limited aquatic life use. As perennial freshwater streams, the presumed uses of Huddleston Branch, Mankins Branch, and San Gabriel/North Fork San Gabriel River are primary contact recreation 1 and high aquatic life use. Mankins Branch is included in the 2022 Integrated Report—Texas 303(d) List (“*303(d) List*”) of impaired and threatened waters for bacteria in the water. Other site-specific uses for San Gabriel/North Fork San Gabriel River are public water supply and aquifer protection use, applying to the contributing, recharge, and transition zones of the Edwards Aquifer.

### B. Procedural History

The Application was received by TCEQ on November 22, 2022, and TCEQ’s Executive Director (“*ED*”) declared it administratively complete on February 14, 2023. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (“*NORI*”) was issued that same day and then published in English and Spanish in *The Williamson County Sun* on March 1, 2023. The NAPD was issued on January 12, 2024, and according to TCEQ’s Commissioners’ Integrated Database, the NAPD was published on May 15, 2024. As such, 30 Texas Administrative Code (“*TAC*”) § 55.152 dictates that the current deadline to submit public comments and request a public meeting about the Application is June 14, 2024. Therefore, these combined Public Comments, Meeting Request, and Hearing Request are timely filed.

## III. PUBLIC COMMENTS

The Application should be denied because it is inaccurate, incomplete, and fails to comply with all applicable regulatory and statutory requirements. Specifically: (1) issuance of the Draft Permit would contravene the regionalization policy codified in Chapter 26 of the Texas Water Code (“*TWC*”); and (2) the Application contains numerous significant deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.



**A. Approval of the Application and issuance of the Draft Permit would violate Texas' legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems.**

The Application should be denied because issuance of the Draft Permit would contravene TCEQ's statutory mandate to encourage and promote the regionalization of wastewater infrastructure. Texas's regionalization policy is clearly and expressly set forth in TWC § 26.003 as follows:

It is the policy of this state . . . to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

The regionalization policy is also codified in TWC § 26.081, which plainly and unambiguously states that the Texas legislature has found and declared "that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." In addition, the TWC contains numerous other provisions relating to or facilitating the implementation of the regionalization policy. Such provisions include, but are not limited to, the following:

- TWC § 26.0282, which states that it "is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater," authorizes TCEQ, "[i]n considering the issuance, amendment, or renewal of a permit to discharge waste," to "deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems" without regard to whether a given system has been "designated as such by [TCEQ] order."
- TWC § 13.183(c), which provides that the Public Utility Commission ("*PUC*") or the governing body of a municipality may use alternative ratemaking methodologies to fix the rates for sewer services "to encourage regionalization."
- TWC § 13.241(d), which requires an applicant to "demonstrate to the [PUC] that regionalization or consolidation with another retail public utility is not economically feasible" in order for PUC to grant "a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system."<sup>1</sup>

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<sup>1</sup> *Accord* Tex. Water Code § 13.245(c-4)(2)(B) (providing that the PUC may not grant a certificate of convenience and necessity within the corporate boundaries or ETJ of a municipality with a population of 500,000 or more unless it determines that "regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under Section 13.241(d).").

- TWC § 26.0135(a), which requires TCEQ to conduct periodic assessments of water quality, also dictates that such an “assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.”

TCEQ is charged with implementing the regionalization policy and, pursuant to TWC § 5.013(a)(10), has general jurisdiction over “the state’s responsibilities relating to regional waste disposal.” This mandate is clearly acknowledged in TCEQ form TCEQ-10053ins (October 31, 2022) Instructions for Completing the Domestic Wastewater Permit Application (the “*Instructions*”), in effect at the time the Application was submitted, which state “TCEQ is required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”<sup>2</sup> For purposes of “implementing regionalization,” the Instructions also indicate that TCEQ “will” require TPDES permit applicants to justify the need for such a permit.<sup>3</sup> As part of its commitment to do so, TCEQ’s TPDES permit application form includes Domestic Technical Report 1.1, the first section of which contains questions related to the potential for regionalization.<sup>4</sup> Of such questions, those included in Section 1.B.3 are most relevant to these Public Comments, and Applicants’ responses thereto are shown by the following excerpt from the Application:

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<sup>2</sup> Instructions at 67.

<sup>3</sup> *Id.* at 54 – 55.

<sup>4</sup> TCEQ-10054 (June 1, 2017) Domestic Wastewater Permit Application, Technical Reports at 21–22.

### 3. *Nearby WWTPs or collection systems*

Are there any domestic permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility?

Yes ☒ No ☐

If yes, attach a list of these facilities that includes the permittee's name and permit number, and an area map showing the location of these facilities.

Attachment: Georgetown - Dove Springs WWTP Exhibit

If yes, attach copies of your certified letters to these facilities and their response letters concerning connection with their system.

Attachment: Will Serve letters to Georgetown, Round Rock and  
Jonah SUD.

Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity to accept or is willing to expand to accept the volume of wastewater proposed in this application?

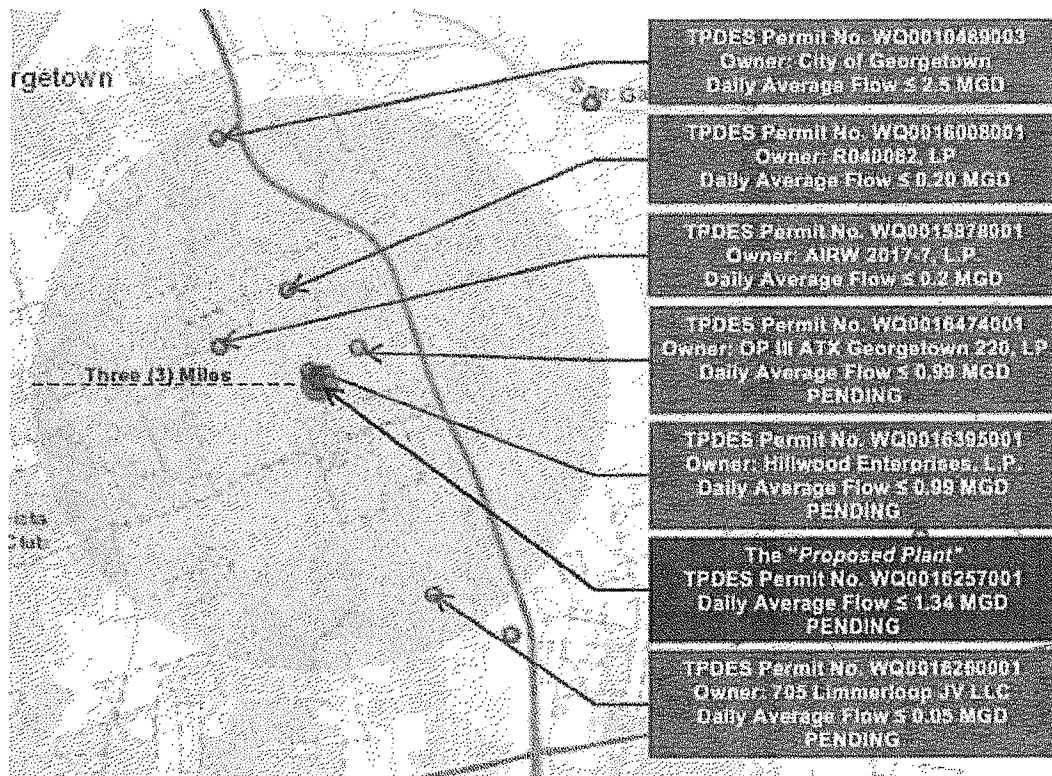
Yes ☐ No ☒

If yes, attach an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion.

Attachment: [REDACTED]

The Applicants' foregoing responses are not fully accurate and incomplete.

First, the Application materials identify three (3) domestic permitted wastewater treatment facilities located within a three-mile radius of the Proposed Plant despite the fact that there may soon be six (6) such facilities, meaning there would be a total of seven (7) permitted domestic wastewater facilities within the three-mile radius surrounding the Proposed Plant. The nearby facilities identified in the Application are (1) the City's Dove Springs Wastewater Treatment Facility (WQ0010489003); (2) the Rockride Lane Water Resource Reclamation Facility (WQ0015878001), owned by AIRW 2017-7, L.P.; and (3) the Indigo Water Resource Recovery Facility (WQ0016008001), owned by R040062, LP. TCEQ should be aware, however, that after the Application was filed, the agency received three (3) additional applications for authorization to discharge wastewater effluent from additional facilities also intended to be located within a three-mile radius of the Proposed Plant. Those facilities are (1) the proposed Limmer Loop WWTF (WQ0016260001), owned by 705 Limmerloop JV LLC; (2) the proposed H4 East GT WWTP (WQ0016395001), owned by Hillwood Enterprises, L.P.; and (3) the proposed OP III ATX Georgetown Wastewater Treatment Plant (WQ0016474001), owned by OP III ATX Georgetown 220, LP. Further, the proposed H4 East GT WWTP facility is anticipated to be situated less than 1,000 feet from the Proposed Plant. For reference, the following annotated screenshot from TCEQ's online Wastewater Outfalls map shows the very close proximity of these seven (7) permitted and proposed domestic wastewater treatment facilities (as well as two other nearby facilities).



The proliferation of so many wastewater treatment facilities within such a small geographic area is unnecessary and completely at odds with Texas' regionalization policy; and, therefore, should not be authorized by TCEQ. Rather, both this Application and those related to the proposed facilities identified above should be denied in accordance with Texas' legislatively mandated regionalization policy and the requirement that Applicants demonstrate a need for the Proposed Plant.

Second, the Application materials do not include all the requisite responses concerning the possibility of connection with the aforementioned neighboring wastewater facilities. In fact, the only such response indicates that the City of "Round Rock cannot provide wastewater service to [Applicants'] property," but the City of Round Rock does not even own a permitted domestic wastewater treatment facility located within three (3) miles of the Proposed Plant. The Application materials contain no such correspondence from the owners of the six (6) nearby wastewater treatment facilities identified above. Instead, a cover letter to the Application states that "the City of Georgetown, the City of Round Rock, and Jonah [Water Special Utility District] . . . have verbally agreed to th[e] [A]pplication in principle but have been unable to provide written confirmation," and an email included with the Application further states that Applicants "had two verbal denials from the cities." To be clear, Jonah Water Special Utility District also does not have a permitted domestic wastewater treatment facility located within three (3) miles of the Proposed Plant. More importantly, Applicants' statements regarding the City are patently false. The City has never indicated—either verbally or otherwise—that it "agreed" to the Application or did not have capacity to accept the volume of wastewater contemplated by the Application.

The Application falsely indicates that no permitted wastewater treatment facility located within three (3) miles of the Proposed Plant currently has the capacity to accept or is willing to expand to accept the volume of wastewater contemplated by the Application. In fact, the aforementioned lack of communication between Applicant and the six (6) neighboring wastewater utility service providers means Applicants have no basis to make such an assertion, which is also not supported by any other documentation included with the Application. Likely because of such lack of communication, and in further contravention of the instructions in Section 1.B.3, Applicants also failed to provide the requisite analysis of related expenditures. Without such information, the Application fails to demonstrate that no permitted domestic wastewater treatment facility or collection system located within three miles of the Proposed Plant currently has the capacity or willingness to accept the volume of wastewater proposed in the Application. Consequently, the Application cannot reasonably be relied upon to assess the feasibility, either economic or logistical, of regionalization, so there is no adequate basis to conclude that approval of the Application and issuance of the Draft Permit complies with Texas's statutorily mandated regionalization policy. Rather, the foregoing map of domestic wastewater treatment facilities demonstrates that there is already an over-proliferation of such facilities in the area.

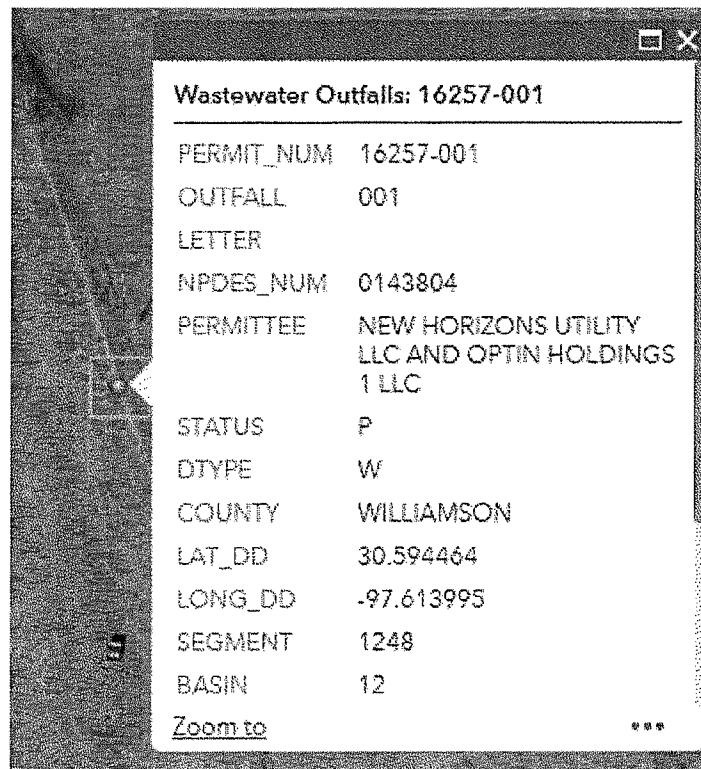
**B. The Application contains numerous deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.**

The Application should be denied, or at a minimum, remanded to technical review as a result of the following significant deficiencies that call into question whether issuance of the Draft Permit would comply with all applicable requirements:

- **The Application contains varying inconsistent descriptions of the proposed discharge route.** According to the Draft Permit, the discharge route is "to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin." This is consistent with the NORI, NAPD, and the notice to state legislators in accordance with TWC § 5.5553. However, the Supplemental Permit Information Form ("*SPIF*") describes the discharge route differently, as follows: "From the [Proposed P]lant to an unnamed tributary of Huddleston Branch, to Huddleston Branch, Segment 1248B." The discharge route described in Section 10.B. of Administrative Report 1.0 also varies from that described in the aforementioned notices. There, Applicants described the discharge route as follows: "From the [Proposed P]lant, W to an unnamed tributary of Huddleston Branch, to Huddleston Branch, Segment 1248B." The two foregoing descriptions are not compliant with the Instructions, which state that "[t]he discharge route must follow the flow of effluent from the point of discharge to the nearest major watercourse (from the point of discharge to a classified segment as defined in 30 TAC Chapter 307) . . . . Classified segments can be found in 30 TAC § 307.10 Appendix A" (emphasis in original). "Segment 1248B" is not listed in 30 TAC § 307.10 Appendix A. Further, while Section 13 of Administrative Report 1.0 requires TPDES permit applicants to submit an

"[o]riginal full-size USGS Topographic Map" showing "3 miles downstream information," and the Instructions clarify that such map must depict "the highlighted discharge route for a distance of three stream miles or until the effluent reaches a classified segment," none of the maps included with the Application do so. Instead, the maps titled "Domestic Technical Report: SPIF Attachment 1f: USGS Map" and "Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map" (collectively, the "*USGS Maps*") arbitrarily depict the discharge route for a distance of only one (1) stream mile, which does not coincide with the point at which the effluent reaches a classified segment. Given all of these discrepancies in the characterization of the proposed receiving waters and discharge route, the effluent set in the Draft Permit may be inconsistent with applicable statutory and regulatory requirements. This is especially troubling given that the site-specific uses for the San Gabriel/North Fork San Gabriel River include public water supply and aquifer protection.

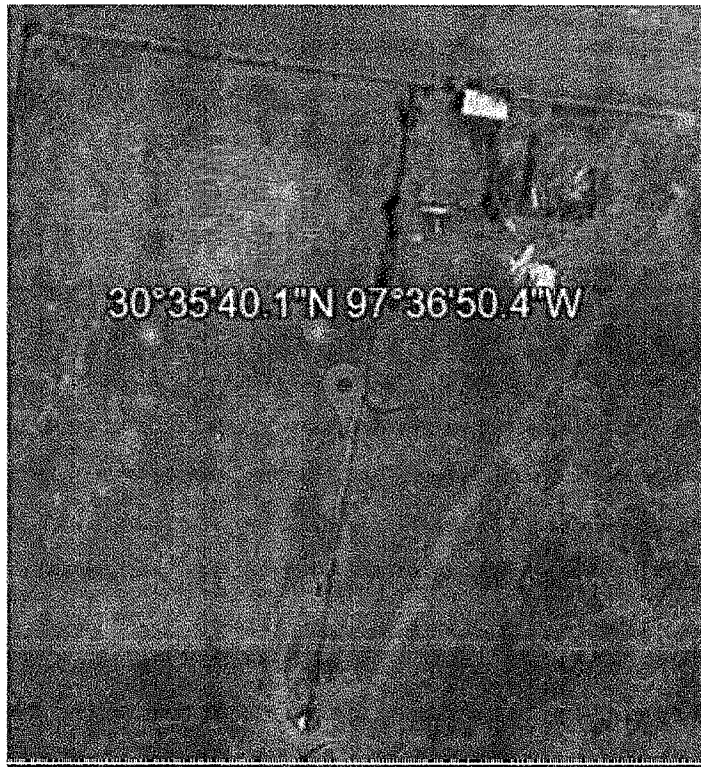
- **Based on the outfall location, the Proposed Plant would discharge to dry land, which is inconsistent with the TPDES permitting scheme.** According to the Fact Sheet and Executive Director's Preliminary Decision document, the location of the proposed outfall is Latitude 30.594348 N, Longitude 97.613857 W. This is consistent with the location shown on TCEQ's online Wastewater Outfalls map, Latitude 30.594464, Longitude -97.613995. As shown by the following screenshot of such map, the proposed outfall is located on dry land (onto what appears to be a neighbor's private road) and would not discharge to an unnamed tributary of Huddleston Branch, as stated in the Draft Permit and Application.



The screenshot shows a window titled "Wastewater Outfalls: 16257-001". Inside the window is a table of permit details. The details include: PERMIT\_NUM 16257-001, OUTFALL 001, LETTER (blank), NPDES\_NUM 0143804, PERMITTEE NEW HORIZONS UTILITY LLC AND OPTIN HOLDINGS 1 LLC, STATUS P, DTYPE W, COUNTY WILLIAMSON, LAT\_DD 30.594464, LONG\_DD -97.613995, SEGMENT 1248, and BASIN 12. At the bottom left is a "Zoom to" link, and at the bottom right are three asterisks "\*\*\*".

Wastewater Outfalls: 16257-001	
PERMIT_NUM	16257-001
OUTFALL	001
LETTER	
NPDES_NUM	0143804
PERMITTEE	NEW HORIZONS UTILITY LLC AND OPTIN HOLDINGS 1 LLC
STATUS	P
DTYPE	W
COUNTY	WILLIAMSON
LAT_DD	30.594464
LONG_DD	-97.613995
SEGMENT	1248
BASIN	12
<a href="#">Zoom to</a> ***	

Rather, as shown by the following screenshot from Google Earth, there are no waterbodies located at or near the location of the proposed outfall.



The proposed discharge of wastewater effluent directly to dry land would be entirely inconsistent with the TPDES permitting scheme and should not be authorized by TCEQ.

- **Applicants do not own the land on which the proposed outfall/effluent disposal site is to be located, and the Application lacks the requisite lease agreement authorizing the use of such land for effluent disposal.** Again, according to the Fact Sheet and Executive Director's Preliminary Decision document, the location of the proposed outfall is Latitude 30.594348 N, Longitude 97.613857 W. According to the Williamson Central Appraisal District, however, that location corresponds to land owned by Mr. Greg Zunker. The TPDES application form states "[i]f landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement." This is consistent with the Instructions, which provide the following clear directions: "If the owner of the land is not the same as the applicant, a long-term lease agreement must be provided. The lease agreement must give the facility owner uses of the land for effluent disposal." The Application lacks any such lease agreement between Applicants and Mr. Zunker, and, as such, is deficient.
- **The Application fails to demonstrate that Applicants have the technical, managerial, or financial capabilities to own and operate the Proposed Plant.** According to *Application of New Horizons Utility, LLC for a Certificate of*

*Convenience and Necessity in Williamson County*, Public Utility Commission of Texas Docket No. 54520 (Dec. 28, 2022), Applicants, through their affiliates and/or subsidiaries, “currently operate[] 25 public utility systems in Texas that serve a population of over 15,000.” The Application, however, lacks the requisite evidence regarding the compliance history of these related entities. This is contrary to 30 TAC § 60.1(c), which requires an evaluation of the compliance history of “other sites which are owned or operated by the same person.”

- In addition to lacking the requisite “3 miles downstream information,” as described in more detail above, **the USGS Maps submitted with the Application otherwise fail to comply with the Instructions.** Specifically, “[f]or all USGS Map submittals,” the Instructions state that “the maps must contain,” among other things, the following information **“clearly outlined and labeled on the map:”** (1) “one mile in all directions from the [Proposed Plant]. If more than one map is required to show one mile in all directions from the facility, provide each individual map. Do not splice together;” (2) “[Applicants’] property boundary;” (3) “all ponds including storage, evaporation, and holding ponds;” and (4) “all new and future commercial developments, housing developments, industrial sites, parks, schools, and recreational areas” (emphasis in original). First, the USGS Maps do not depict the entire one-mile radius surrounding the Proposed Plant. Instead, as shown by the USGS Maps attached hereto and incorporated herein for all purposes as **Attachment A**, given the scope and 1:24,000 scale of the 7.5 Minute USGS Topographic Quadrangle Map(s) required to be used, “more than one map is required to show one mile in all directions from the [Proposed Plant],” but Applicants failed to “provide each individual map,” as required. Second, as demonstrated by **Attachment A**, the USGS Map titled “Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map” does not depict the Applicants’ property boundary. Further, the USGS Map titled “Domestic Technical Report: SPIF Attachment 1f: USGS Map” inaccurately depicts the Applicants’ property boundary.<sup>5</sup> Finally, the USGS Maps also do not depict “all ponds” or “all new and future commercial developments, housing developments, industrial sites, parks, schools, and recreational areas.”
- **The Affected Landowner Map is similarly deficient in that it fails to depict and/or identify Applicants’ property boundary and the buffer zone surrounding the Proposed Plant, both of which are required by the Instructions.**
- **The required buffer zone map is also deficient.** Pursuant to Section 3 of Domestic Administrative Report 1.1, TPDES permit applicants are required to provide a buffer zone map showing, among other things, the applicant’s property boundary and the distance from each treatment unit to the property boundary. The map titled “Domestic Technical Report 1.0 Attachment 2e: Buffer Zone Map,” however, fails to depict either such item.

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<sup>5</sup> Compare the USGS Maps in **Attachment A** with the Williamson Central Appraisal District information and maps of Applicants’ property attached hereto and incorporated herein for all purposes as **Attachment B**.



- **The Application lacks certain required photographs.** Section 2 of Domestic Administrative Report 1.1 instructs TPDES permit applicants to provide “[a]t least two photographs of the existing/proposed point of discharge and as much area downstream (photo 1) and upstream (photo 2) as can be captured.” As demonstrated by the “Aerial Photo with Photograph Location and Direction,” however, the Application fails to include the required upstream photo or any photos of the point of discharge.
- **The SPIF is likely inaccurate.** Section 5 of the SPIF requires TPDES permit applicants to indicate, among other things, whether their project involves “[p]roposed access roads, utility lines, construction easements” or “[d]isturbance of vegetation or wetlands.” According to Section 1.A. of Domestic Technical Report 1.1, Applicants’ “plans for development include building multiple housing subdivisions and a commercial area on approximately 2,100 acres.” That being the case, it would be impossible to complete such a project without disturbing vegetation or requiring access roads, utility lines, and construction easements. As such, Applicants should have so indicated on the Application, but they failed to do so.
- **The Plain Language Summary provided in Section 15 of Administrative Report 1.0 is inaccurate and deficient.** According to the Plain Language Summary (“*PLS*”), “[t]his is a modification of a previously authorized permit.” However, according to numerous other Application materials, Applicants have applied to TCEQ for “new” or “proposed” TPDES Permit No. WQ0016257001. Such Application materials include, but are not limited to, the “Permit Application Routing and Summary Sheet,” which states the “Application Type” is “New;” the NORI, NAPD, and notice to state legislators in accordance with TWC § 5.5553; multiple TCEQ interoffice memorandums; the “EPA – Region 6 NPDES Permit Certification Checklist;” the “Check List for Admin Review of Municipal Application for Permit;” and the “Fact Sheet and Executive Director’s Preliminary Decision” document. As such, contrary to the statement in the PLS, it is unlikely that Applicants are seeking “modification of previously authorized permit.” The PLS further indicates that the Proposed Plant will have “an initial rated treatment capacity of 0.411 MGD.” That is also inconsistent with the Draft Permit and numerous other Application materials, including Domestic Technical Report 1.0, all of which indicate that the daily average flow of effluent in the Interim I Phase shall not exceed 0.10 MGD, the daily average flow of effluent in the Interim II Phase shall not exceed 0.30 MGD, and the daily average flow of effluent in the Final Phase shall not exceed 1.34 MGD.
- **The Application lacks the requisite stormwater management information.** Section 6.E.1. of Domestic Technical Report 1.0 requires TPDES applicants to indicate whether their proposed wastewater treatment facility has a design flow of 1.0 MGD or greater in any phase. According to the NORI, NAPD, Draft Permit, and numerous other Application materials, the Final Phase design flow of the Proposed Plant is 1.34 MGD. Nevertheless, the Application incorrectly indicates that the Proposed Plant does not have a design flow of 1.0 MGD or greater in any phase. By so indicating, Applicants were able to avoid completing the remainder of Section 6.E., which pertains to stormwater management. In other words, because the Final Phase design flow of the

Proposed Plant is 1.34 MGD, Applicants should have completed Section 6.E.2 – 6, but they did not. As such, the Application is not only inaccurate but is also incomplete.

- **The Application lacks required information regarding the facility operator.** Section 8 of Domestic Technical Report 1.0 requires TPDES applicants to provide the name and license classification, level, and number of the operator of the proposed wastewater treatment facility, and the Instructions state “[p]rovide the name, operator certification number, and class for the facility operator as listed in the Central Registry.” Nevertheless, no such information is included in the Application. Instead, Applicants indicated that the “Facility Operator Name” was “TBD.”
- **The Application lacks required documentation related to sludge disposal.** Section 9 of Domestic Technical Report 1.0 requires TPDES permit applicants to “identify the current or anticipated sludge disposal method,” and Applicants indicated that sludge from the Proposed Plant would be “[t]ransported to another permitted wastewater treatment plant or permitted sludge processing facility.” For TPDES permit applicants that select such method of sludge disposal, the instructions in Section 9 further provide that “a written statement or contractual agreement from the wastewater treatment plant or permitted sludge processing facility accepting the sludge must be included with the[e] application.” Nevertheless, no such written statement or contractual agreement is included with the Application, which is, therefore, deficient.
- In Section 10.B. of Administrative Report 1.0, **the Application misrepresents that the “[c]ity nearest the outfall(s)” is “Round Rock.”** That is inaccurate. Based on TCEQ’s online “Wastewater Outfalls” map, version 3.0, the proposed outfall is roughly five (5) miles from the approximate center of the City of Georgetown and roughly seven (7) miles from the approximate center of the City of Round Rock. Indicating that Round Rock is the city nearest the outfall for the Proposed Plant is also inconsistent with the Core Data Forms submitted by Applicants, all of which correctly identify Georgetown as the “Nearest City” to the Proposed Plant.
- **Applicants used outdated forms to complete the Application.** Applicants completed and submitted the TCEQ form titled “TCEQ-10053 (06/28/2022) Municipal Wastewater Application Administrative Report.” However, because the Application was submitted to TCEQ on November 22, 2022, Applicants should have used the version of that form dated October 31, 2022. Similarly, all of the TCEQ Core Data Forms submitted by Applicants use the version of the form dated February 2021 despite the fact that the most current version of the TCEQ Core Data Form at the time the Application was submitted was dated November 2022.
- **Applicants failed to complete all required portions of the TPDES permit application form.** Specifically, the Application lacks Worksheet 2.1: Stream Physical Characteristics. According to the Instructions, applicants should “[c]omplete and submit [Worksheet 2.1] if the application is for a new permit . . . with an existing or proposed phase of 1.0 MGD or greater.” Because the Draft Permit authorizes a new

daily average discharge of effluent not to exceed 1.34 MGD in the Final Phase, the Application should include Worksheet 2.1. Applicants, however, failed to complete and submit such worksheet, thereby rendering the Application incomplete.

- **Application materials incorrectly indicate that the Proposed Plant is a minor facility.** Per the TPDES permit application form, a major domestic wastewater discharge facility has a permitted flow of 1.0 MGD or greater. Because the Draft Permit authorizes a daily average flow of effluent not to exceed 1.34 MGD in the Final Phase, the Proposed Plant is a major facility. Nevertheless, certain Application materials fail to so indicate. The “Permit Application Routing and Summary Sheet,” for example, states that the “EPA Classification” of the Proposed Plant is “Minor.” The “Check List for Admin Review of Municipal Application for Permit” also incorrectly indicates that the Proposed Plant is a “Minor” facility, as does the “Central Registry Internal Reporting” sheet, which states that the “Site Classification” is “Domestic Minor.” This is inconsistent with the truth and other Application materials.
  - **The Application incorrectly indicates that the Proposed Plant would not discharge to a 303(d) listed waterbody segment.** As noted above, the proposed discharge route for the wastewater effluent is to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. Mankins Branch is included in the 303(d) List of impaired and threatened waters for bacteria in the water. Nevertheless, the “EPA – Region 6 NPDES Permit Certification Checklist” indicates that the Proposed Plant does not discharge to a 303(d) listed waterbody segment. Similarly, the “Municipal EPA Review Checklist” indicates that the Draft permit does not authorize a discharge to an impaired 303(d) listed segment. These inaccuracies deprived the EPA of the opportunity to meaningfully review whether the Proposed Plant has the potential to discharge any pollutant that is causing or contributing to the impairment of Mankins Branch.
- C. **The Draft Permit is not protective of water quality and existing uses of the receiving waters in accordance with Texas Surface Water Quality Standards, including protection of public health and enjoyment of waters in the state and aquatic and terrestrial life.**

The City is concerned that the proposed discharge of treated effluent will adversely affect the supposed receiving water, which is within the City’s extraterritorial jurisdiction and its City limits, and existing and future uses thereof. The Statement of Basis for the Draft Permit indicates that TCEQ’s evaluation of the Application did not investigate or duly consider all existing uses (for example, agricultural uses like livestock watering and irrigation) or water quality standards protective of all existing uses (for example, aesthetic parameters related to recreational uses that are implicated in public health and enjoyment of waters in the state, criteria protective of livestock and other terrestrial and aquatic life). And although TCEQ’s review included an evaluation of the aquatic life use, this review was based on general assumptions the accuracy of which has not been confirmed as appropriate in this specific circumstance. For example, it is unclear if the pond to which the proposed discharge would flow (from a private road on a neighbor’s agricultural land

west of the proposed plant) is fed by one or more springs or well water. If fed by spring water, the pond and unnamed tributary fed by the overflow from the pond may contain aquatic life that is dependent on the water quality of such spring water or groundwater and would be particularly sensitive to changes in water quality resulting from the proposed discharge; however, the TCEQ's review does not appear to have considered either the hydrology<sup>6</sup> or the aquatic life in the pond to which the proposed discharge would flow. In the absence of an investigation into and evaluation of existing uses and relevant water quality standards, the City is concerned that the Draft Permit does not contain conditions that will be protective of water quality and all existing uses in accordance with Texas law.

Given that the slightest plant upset would adversely affect the water quality in the receiving streams and rivers, the City is further concerned that the proposed discharge poses risks to the receiving water quality and may create unsanitary or unsafe water quality conditions in the receiving waters and the health and safety of its citizens.

In addition, the Draft Permit does not contain measures to protect against discharges of untreated or partially untreated effluent. Because this creates an unnecessary risk of contamination of the receiving waters, the Application should be denied.

**D. The Draft Permit is not protective of the public health and safety of nearby residents.**

The City is also concerned about the public health risk posed by the Proposed Plant to nearby residents. The City is concerned that the very close distance of the Proposed Plant to adjacent residences poses health risks, including the potential exposure of residents to harmful pathogens via vectors (e.g., flies), aerosols (e.g., bacteria containing mists), and the receiving water (e.g., bacteria and viruses in the treated wastewater).

**E. The Draft Permit does not protect the health and safety of landowners' livestock and the habitats of endangered species.**

The area surrounding the Proposed Plant and discharge route is agricultural in nature and contains livestock. Also, the surrounding area and the San Gabriel River are home to several endangered species including the Texas Shiner and Guadalupe Bass as well as a number of endangered salamanders.<sup>7</sup> Granting the Application would expose these animals to adverse effects

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<sup>6</sup> To the extent that the pond to which the proposed discharge will flow is fed by shallow groundwater or spring water, the issuance of the Draft Permit for the proposed plant is concerning as it is inconsistent with Texas' regionalization policy, which includes the promotion of use of existing area-wide waste collection, treatment, and disposal systems to prevent pollution. If the Proposed Plant discharges treated effluent in an area of shallow groundwater, the TCEQ should have considered the potential contamination of shallow groundwater in this area. The failure to consider shallow groundwater and how it may be contaminated by the proposed discharge is troubling.

<sup>7</sup> These endangered species can be found by using the Texas Parks and Wildlife Endangered Species by Counties search available at [tpwd.texas.gov/gis/test](http://tpwd.texas.gov/gis/test) and cross-referencing using the United States Geological Survey species list available at [nas.er.usgs.gov/queries](http://nas.er.usgs.gov/queries).

from growth of algae<sup>8</sup>, high nitrogen content, toxic substances that are not subject to effluent limitations<sup>9</sup>, and bacterial contamination from the proposed discharge.

**F. The Application failed to show the proposed discharge satisfied TCEQ's antidegradation policy.**

As noted above, the Statement of Basis for the Draft Permit indicates that TCEQ did not consider all existing uses and water quality protective thereof. Without this information, it is not clear how TCEQ could have conducted its Tier 1 and Tier 2 antidegradation review consistent with the Texas antidegradation policy and procedures implementing the same.

Nothing in TCEQ's materials indicate that TCEQ conducted a site visit to the unnamed tributary of Huddleston Branch to determine whether it has been appropriately classified. Also, no information from TCEQ shows a site visit to unnamed tributary of Huddleston Branch or Huddleston Branch to confirm the actual conditions, such as the hydraulics, of these receiving waters to determine what the impact of the proposed discharge will be.

Therefore, TCEQ's analysis of the discharge relied on an uncalibrated model based on default values that do not reflect the actual conditions of the unnamed tributary of Huddleston Branch or Huddleston Branch. Due to the potential of accidental releases from the Proposed Plant, untreated or partially treated discharges may adversely impact the receiving waters. The use of site-specific data of the receiving waters is necessary to ensure the proper antidegradation analysis is conducted and that improper degradation of water quality is avoided.

In addition, the City is also concerned about elevated nitrogen levels in the receiving watercourses and its effect on water quality in the immediate receiving unnamed intermittent tributary and in downstream segments of this receiving water body.

Finally, the City is concerned that TCEQ is using an incorrect standard in conducting its Tier 2 antidegradation review. The Statement of Basis for the Draft Permit indicates TCEQ used a "no significant degradation" standard in conducting its Tier 2 evaluation. Such a standard is inconsistent with Texas antidegradation policy, which provides that no degradation is allowed unless it can be shown that the lowering of water quality is necessary for important economic or social development. Here, there is no indication that such economic or social development considerations were contemplated or that such a determination was made.

---

<sup>8</sup> The Draft permit includes a limit of 0.15 mg/L for total phosphorus, which concentration limit was determined by the TCEQ to not be adequately protective against algal blooms in the recently issued permit for the City of Liberty Hill's wastewater treatment plant. Because algal blooms are known to present health hazards to livestock, the 0.15 mg/L total phosphorus limit does not appear to be protective of agricultural uses (e.g., livestock watering).

<sup>9</sup> The Draft permit does not include effluent limits that are protective of livestock watering uses and irrigation of crops – for example, limits on arsenic, copper, salinity, sulfates, etc. that may affect crop production, palatability or growth and development of livestock, and other agricultural uses.

#### **IV. REQUEST FOR PUBLIC MEETING**

In light of relevant and material concerns raised herein, the City requests a public meeting regarding the Application. TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the [ED] or the . . . Chief Clerk may hold public meetings," and that "[t]he [ED] or the . . . Chief Clerk shall hold a public meeting if: (1) the [ED] determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. The City, for the benefit of its citizens, has a substantial and significant degree of interest in the Application. Moreover, besides these Public Comments, Meeting Request, and Hearing Request, TCEQ has already received four (4) other requests for a contested case hearing and another set of public comments regarding the Application to date. As such, there is a demonstrated substantial and significant degree of public interest in the Application, and the ED or Chief Clerk should hold a public meeting thereon.

#### **V. REQUEST FOR CONTESTED CASE HEARING**

The City also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, the City is an affected person, as defined by 30 TAC § 55.203. The City has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be issued. In determining whether a person is an affected person, TCEQ may consider, among other factors, "(1) whether the interest claimed is one protected by the law under which the application will be considered; (2) distance restrictions or other limitations imposed by law on the affected interest; (3) whether a reasonable relationship exists between the interest claimed and the activity regulated; . . . and (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application."<sup>10</sup> TCEQ may also consider "the merits of the underlying application and supporting documentation . . . including whether the application meets the requirements for permit issuance."<sup>11</sup> All such considerations are applicable to the City, and, as noted in its foregoing Public Comments, the City has a particular interest in the issues relevant to the Application because the Application indicates that the service area for the Proposed Plant is located within its ETJ.

#### **VI. CONCLUSION**

Based on the foregoing, sufficient grounds exist for TCEQ to deny the Application. If the Application is not denied or, at least, remanded back to TCEQ staff for further technical review, a public meeting and contested case hearing regarding the Application, Draft Permit, and each and every issue raised herein and in any and all supplements and/or amendments hereto should be ordered.

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<sup>10</sup> 30 TAC § 55.203(c).

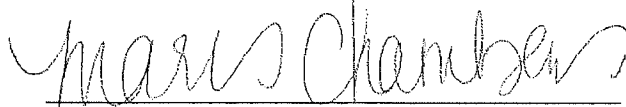
<sup>11</sup> *Id.* § 55.203(d).

Given that additional information may become apparent through a public meeting, the City reserves its right to supplement these Public Comments and its Hearing Request as it learns more about the Application and/or Draft Permit.

Thank you for your consideration of this important matter, and please do not hesitate to contact me if you or your staff have any questions regarding the City's Public Comments, Meeting Request, and/or Hearing Request.

Respectfully submitted,

William A. Faulk, III  
State Bar No. 24075674  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
Coty Hopinks-Baul  
State Bar No. 24094039  
[chbaul@spencerfane.com](mailto:chbaul@spencerfane.com)

A handwritten signature in cursive script, reading "Maris M. Chambers", written in dark ink over a horizontal line.

Maris M. Chambers  
State Bar No. 24101607  
[mchambers@spencerfane.com](mailto:mchambers@spencerfane.com)

SPENCER FANE, LLP  
816 Congress Avenue, Suite 1200  
Austin, TX 78701  
Telephone: (512) 575-6060  
Facsimile: (512) 840-4551

**ATTORNEYS FOR CITY OF GEORGETOWN**

## **Attachment A**



**Laurie Gharis**

**From:** eFax Corporate <message@inbound.efax.com>  
**Sent:** Thursday, January 2, 2025 6:17 PM  
**To:** Fax3311  
**Subject:** Corporate eFax message from "SpencerFane" - 43 page(s)  
**Attachments:** FAX\_20250103\_1735863397\_239.pdf

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## Service Notification

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this message or your service. You may also contact  
Corporate Support:

### US

Email: [corporatesupport@mail.efax.com](mailto:corporatesupport@mail.efax.com)  
Phone: 1 (323) 817-3202 or 1 (800) 810-2641

### EU

Email: [corporatesupporteu@mail.efax.com](mailto:corporatesupporteu@mail.efax.com)  
Phones:  
+44 2030055252  
+33 171025330  
+49 800 0003164  
+35 314380713

### Customer Service

Need help with your account?

Email:

[corporatesupport@mail.efax.com](mailto:corporatesupport@mail.efax.com)

Phone:

1(323) 817-3202  
1(800) 810-2641 (toll-free)

Thank you for using the eFax Corporate service!

January 2, 2025

Via e-File to: [www.tceq.texas.gov/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html)

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

Re: **The City of Georgetown, Texas' Request for Contested Case Hearing**

Applicant Names: New Horizons Utility LLC (CN 606081594) and

OptiN Holdings 1 LLC (CN606081602)

Regulated Entity Name: New Horizons WWTP (RN111609582)

Application: TPDES Permit No. WQ0016257001

Location: Williamson County, Texas

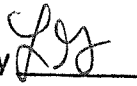
EPA I.D.: TX0143804

Dear Ms. Gharis:

On behalf of the City of Georgetown (the "**City**"), please accept this request ("**Request**") for a contested case hearing and/or reconsideration of the Executive Director's decision regarding the application by New Horizons Utility LLC and OptiN Holdings 1 LLC (the "**Applicants**") for proposed new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016257001, to authorize a domestic wastewater treatment facility in Williamson County, Texas (the "**Application**"). The City's contact persons for this matter are below:

Cody Faulk, Partner  
Carlota Hopinks-Baul, Attorney  
Spencer Fane LLP  
816 Congress Avenue, Suite 1200  
Austin, TX 78701  
(512) 840-4550  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
[chbaul@spencerfane.com](mailto:chbaul@spencerfane.com)

Reviewed By

 H  
RFR

JAN 06 2025

**Laurie Gharis**

**From:** eFax Corporate <message@inbound.efax.com>  
**Sent:** Thursday, January 2, 2025 6:39 PM  
**To:** Fax3311  
**Subject:** Corporate eFax message from "SpencerFane" - 1 page(s)  
**Attachments:** FAX\_20250103\_1735864738\_272.pdf

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## Service Notification

You have received a 1 page fax at 2025-01-02  
18:38:58.

\* The reference number for this fax is  
use1b.prod.afc\_did3-1735863547-15122335236-272.  
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this message or your service. You may also contact  
Corporate Support:

### US

Email: [corporatesupport@mail.efax.com](mailto:corporatesupport@mail.efax.com)  
Phone: 1 (323) 817-3202 or 1 (800) 810-2641

### EU

Email: [corporatesupporteu@mail.efax.com](mailto:corporatesupporteu@mail.efax.com)  
Phones:  
+44 2030055252  
+33 171025330  
+49 800 0003164  
+35 314380713

### Customer Service

Need help with your account?



Email:

[corporatesupport@mail.efax.com](mailto:corporatesupport@mail.efax.com)



Phone:

1(323) 817-3202  
1(800) 810-2641 (toll-free)

Thank you for using the eFax Corporate service!

January 2, 2025

Via e-File to: [www.tceq.texas.gov/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html)

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

Re: **The City of Georgetown, Texas' Request for Contested Case Hearing**

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OptiN Holdings 1 LLC (CN606081602)

Regulated Entity Name: New Horizons WWTP (RN111609582)

Application: TPDES Permit No. WQ0016257001

Location: Williamson County, Texas

EPA I.D.: TX0143804

Dear Ms. Gharis:

On behalf of the City of Georgetown (the "**City**"), please accept this request ("**Request**") for a contested case hearing and/or reconsideration of the Executive Director's decision regarding the application by New Horizons Utility LLC and OptiN Holdings 1 LLC (the "**Applicants**") for proposed new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016257001, to authorize a domestic wastewater treatment facility in Williamson County, Texas (the "**Application**"). The City's contact persons for this matter are below:

Cody Faulk, Partner  
Carlota Hopinks-Baul, Attorney  
Spencer Fane LLP  
816 Congress Avenue, Suite 1200  
Austin, TX 78701  
(512) 840-4550  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
[chbaul@spencerfane.com](mailto:chbaul@spencerfane.com)

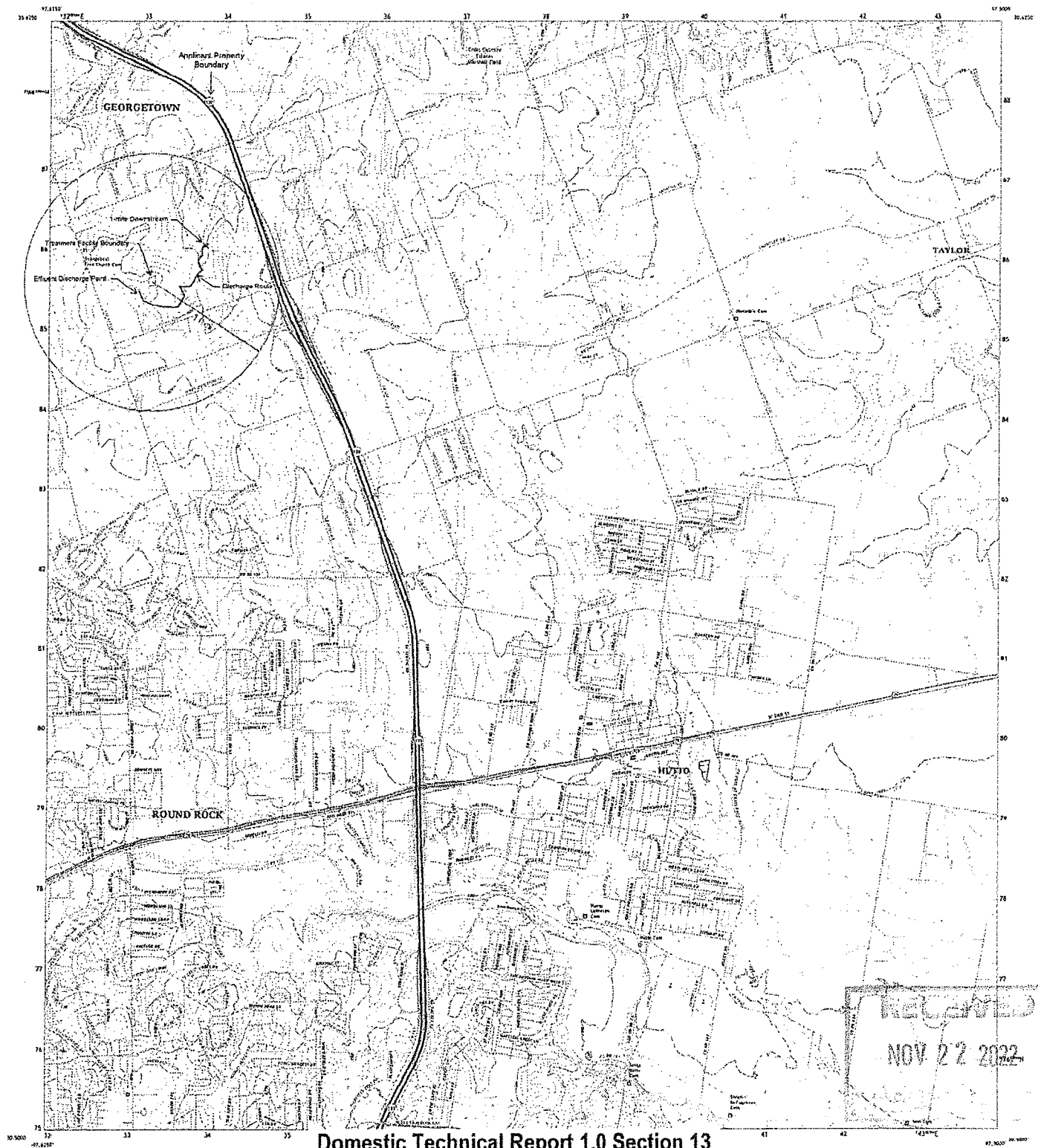
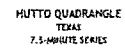
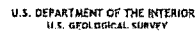
Reviewed By



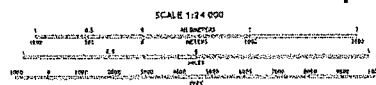
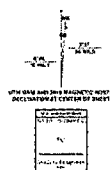
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RFK

JAN 06 2025





**Domestic Technical Report 1.0 Section 13**  
**Attachment 1c: USGS Map**

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CONFIDENTIALITY OF RECORDS  
MAY BE AFFECTED BY THIS DISCLOSURE



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6	7	8

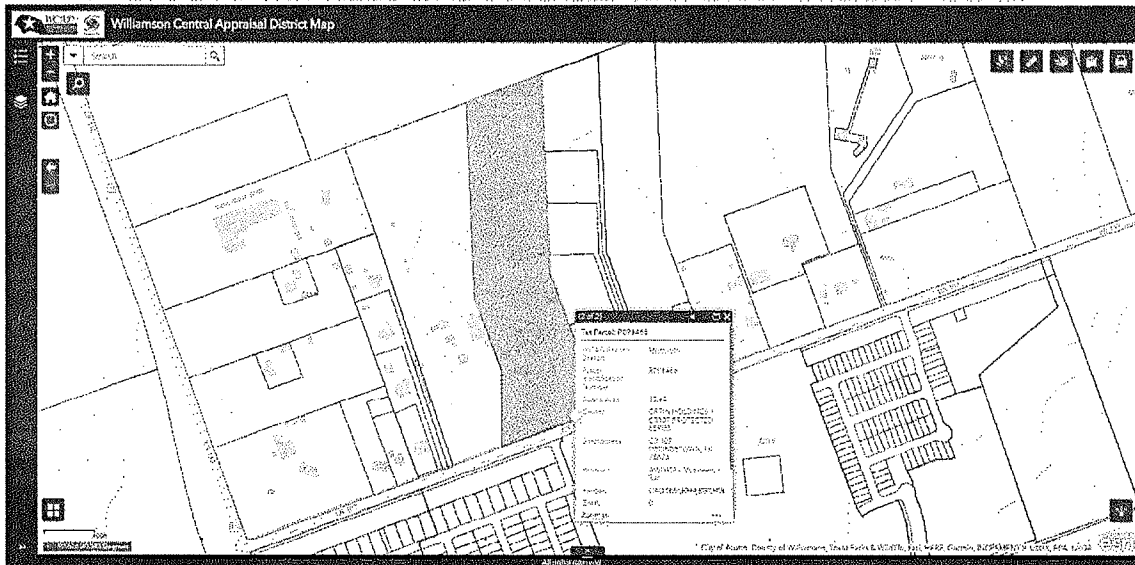
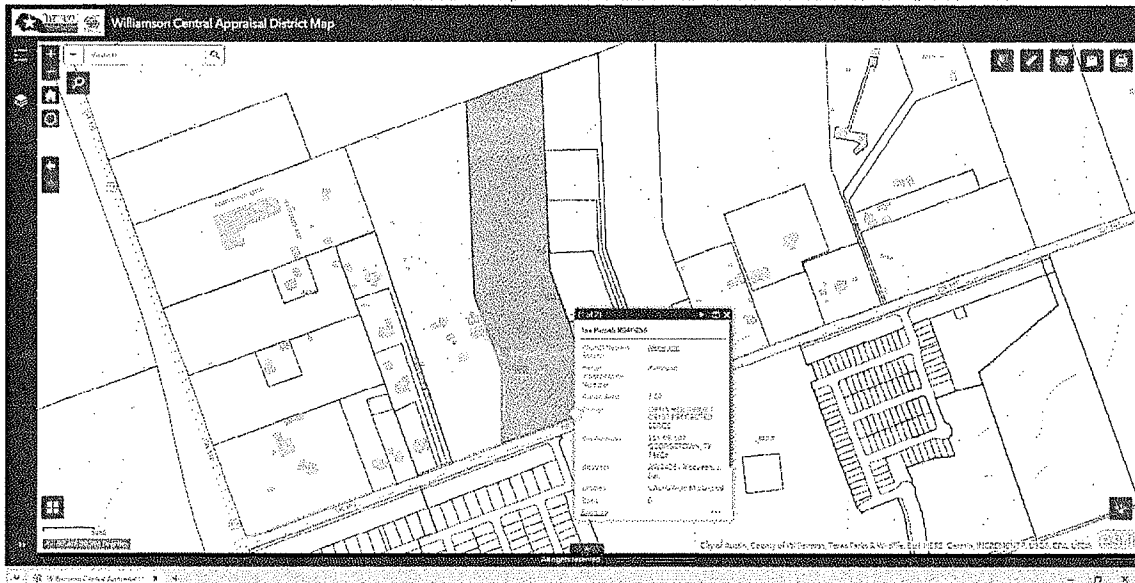
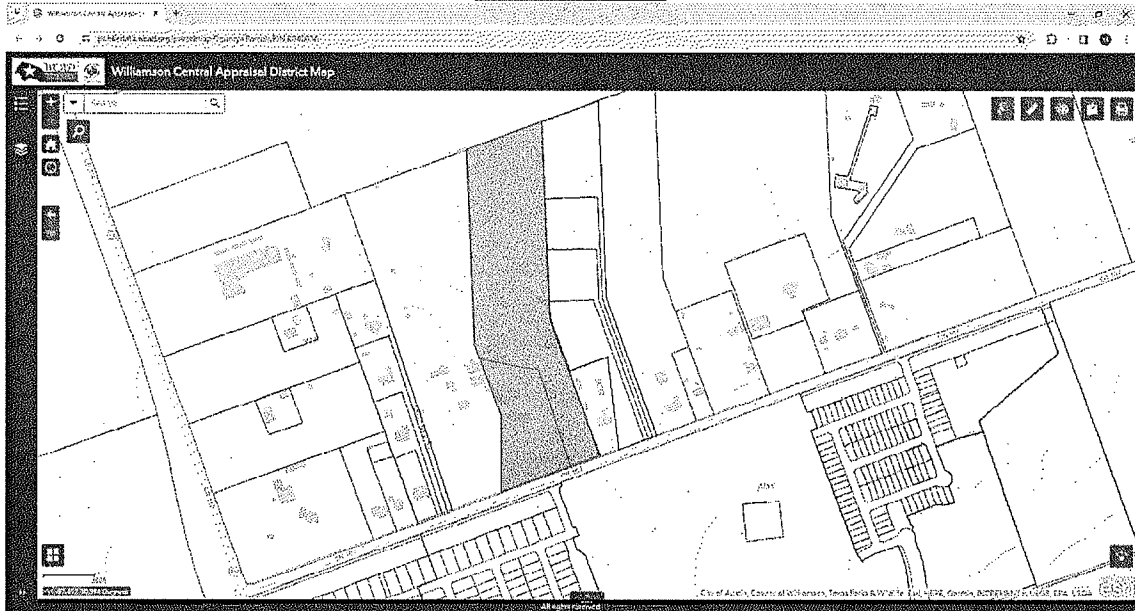
1 Kindergarten  
 2 First  
 3 Second  
 4 Third Grade  
 5 Teacher  
 6 Administrator  
 7 Principal  
 8 Superintendent

[illegible]

KUTTO, TX  
2012



# Attachment B





Property	Owner	Property Address	Tax Year	2024 Market Value
R040056	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	301 CR 107, GEORGETOWN, TX 78626	2024 ▾	\$501,263

Page: Property Details ▾

## 2024 GENERAL INFORMATION

Property Status	Active
Property Type	LTRR-Land Transitional Residential
Legal Description	AW0426 AW0426 - Mcqueen, J. Sur., ACRES 5.07
Neighborhood	G305M50H - E Gtown ISD Abstracts
Account	R-20-0426-0000-0023
Map Number	3-2743

## 2024 OWNER INFORMATION

Owner Name	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES
Owner ID	
Exemptions	
Percent Ownership	100%
Mailing Address	7801 N CAPITAL OF TEXAS HWY #UNIT 390 AUSTIN, TX 78731
Agent	-

## 2024 VALUE INFORMATION

## MARKET VALUE

Improvement Homesite Value	\$170,762
Improvement Non-Homesite Value	\$0
Total Improvement Market Value	\$170,762

Land Homesite Value \$330,501

Land Non-Homesite Value \$0

Land Agricultural Market Value \$0

Total Land Market Value \$330,501

Total Market Value \$501,263

## ASSESSED VALUE

Total Improvement Market Value \$170,762

Land Homesite Value \$330,501

Land Non-Homesite Value \$0

Agricultural Use \$0

Timber Use \$0





Total Appraised Value \$501,263

Homestead Cap Loss ⓘ -\$0

Total Assessed Value \$501,263



## 2024 ENTITIES &amp; EXEMPTIONS

TAXING ENTITY	EXEMPTIONS	EXEMPTIONS AMOUNT	TAXABLE VALUE	TAX RATE PER 100	TAX CEILING
CAD- Williamson CAD		-	\$501,263	0	0
 F08- Wmsn ESD #8		-	\$501,263	0.094073	0
 GWL- Williamson CO		-	\$501,263	0.333116	0
 REM- Wmsn CO FM/RD		-	\$501,263	0.044329	0
 SGT- Georgetown ISD		-	\$501,263	1.0467	0
<b>TOTALS</b>			<b>1.518218</b>		

## 2024 IMPROVEMENTS

✖ Expand/Collapse All

Improvement #1	State Code		Homesite	Total Main Area (Exterior Measured)		Market Value
-	A1 - Residential Single Family		Yes	1,656 Sq. Ft		\$170,762
RECORD	TYPE	YEAR BUILT	SQ. FT	VALUE	ADD'L INFO	
1	Main Area	1955	1,656	\$119,635	✖ Details	
2	Open Porch	1955	90	\$1,560	✖ Details	
3	Open Porch	1955	170	\$2,916	✖ Details	
4	Garage	1955	500	\$16,955	✖ Details	
5	Utility/storage	1955	100	\$3,391	✖ Details	
6	Site Improvement	-	1	\$12,000	✖ Details	
7	Out Bldg	2015	144	\$1,030	✖ Details	
8	Carport	2015	360	\$2,060	✖ Details	
9	Canopy	2015	360	\$2,060	✖ Details	
10	Canopy	2015	1,600	\$9,155	✖ Details	

## 2024 LAND SEGMENTS

LAND SEGMENT TYPE	STATE CODE	HOMESITE	MARKET VALUE	AG USE	TIM USE	LAND SIZE
1 - Residential	A1 - Residential Single Family	Yes	\$330,501	\$0	\$0	5.070000 acres
<b>TOTALS</b>						<b>220,849 Sq. ft / 5.070000 acres</b>

# VALUE HISTORY

YEAR	IMPROVEMENT	LAND	MARKET	AG MARKET	AG USE	APPRAISED	HS CAP LOSS	ASSESSED
2023	\$164,095	\$330,501	\$494,596	\$0	\$0	\$494,596	\$0	\$494,596
2022	\$222,476	\$298,813	\$521,289	\$0	\$0	\$521,289	\$225,121	\$296,168
2021	\$163,450	\$138,273	\$301,723	\$0	\$0	\$301,723	\$32,479	\$269,244
2020	\$138,425	\$129,223	\$267,648	\$0	\$0	\$267,648	\$22,881	\$244,767
2019	\$164,210	\$58,305	\$222,515	\$0	\$0	\$222,515	\$0	\$222,515

# SALES HISTORY

DEED DATE	SELLER	BUYER	INSTR #	VOLUME/PAGE
1/18/2023	PETRERE, EDWARD R & EVELYN O	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	2023005095	
1/30/2013	HYDEN, LENA R	PETRERE, EDWARD R & EVELYN O	2013009338	
10/2/2003	HYDEN SR, R D, Sr	HYDEN, LENA R	-	

Property	Owner	Property Address	Tax Year	2024 Market Value
R091466	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	CR 107, GEORGETOWN, TX 78626	2024 ▾	\$1,019,381

Page: Property Details ▾

## 2024 GENERAL INFORMATION

Property Status	Active
Property Type	LTRR-Land Transitional Residential
Legal Description	AW0426 AW0426 - Mcqueen, J. Sur., ACRES 15.63
Neighborhood	G305M50H - E Gtown ISD Abstracts
Account	R-20-0426-0000-0023A
Map Number	3-2743

## 2024 OWNER INFORMATION

Owner Name	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES
Owner ID	
Exemptions	Circuit Breaker Limitation (Active)
Percent Ownership	100%
Mailing Address	7801 N CAPITAL OF TEXAS HWY #UNIT 390 AUSTIN, TX 78731
Agent	-

## 2024 VALUE INFORMATION

## MARKET VALUE

Improvement Homesite Value	\$0
Improvement Non-Homesite Value	\$500
Total Improvement Market Value	\$500

Land Homesite Value \$0

Land Non-Homesite Value \$1,018,881

Land Agricultural Market Value \$0

Total Land Market Value \$1,018,881

Total Market Value \$1,019,381

## ASSESSED VALUE

Total Improvement Market Value \$500

Land Homesite Value \$0

Land Non-Homesite Value \$1,018,881

Agricultural Use \$0

Timber Use \$0

Total Appraised Value \$1,019,381

Homestead Cap Loss ⓘ -\$0

Total Assessed Value \$1,019,381

## 2024 ENTITIES &amp; EXEMPTIONS

## Special Exemptions CBL - Circuit Breaker Limitation

TAXING ENTITY	EXEMPTIONS	EXEMPTIONS AMOUNT	TAXABLE VALUE	TAX RATE PER 100	TAX CEILING
CAD- Williamson CAD		-	\$1,019,381	0	0
F08- Wmsn ESD #8		-	\$1,019,381	0.094073	0
GWI- Williamson CO		-	\$1,019,381	0.333116	0
RFM- Wmsn CO FM/RD		-	\$1,019,381	0.044329	0
SGT- Georgetown JSD		-	\$1,019,381	1.0467	0
TOTALS				1.518218	

## 2024 IMPROVEMENTS

⌵ Expand/Collapse All

Improvement #1	State Code	Homesite	Total Main Area (Exterior Measured)	Market Value
-	E1 - Farm And Ranch Improvements-residence	No	-	\$500

RECORD	TYPE	YEAR BUILT	SQ. FT	VALUE	ADD'L INFO
1	Barn	-	-	-	⌵ Details

## 2024 LAND SEGMENTS

LAND SEGMENT TYPE	STATE CODE	HOMESITE	MARKET VALUE	AG USE	TIM USE	LAND SIZE
1 - Vacant Land	E1 - Farm And Ranch Improvements-residence	No	\$1,018,881	\$0	\$0	15.630000 acres
TOTALS						680,843 Sq. ft / 15.630000 acres

## VALUE HISTORY

YEAR	IMPROVEMENT	LAND	MARKET	AG MARKET	AG USE	APPRAISED	HS CAP LOSS	ASSESSED
2023	\$500	\$0	\$500	\$1,018,881	\$625	\$1,125	\$0	\$1,125
2022	\$500	\$0	\$500	\$921,193	\$485	\$985	\$0	\$985
2021	\$500	\$0	\$500	\$426,272	\$531	\$1,031	\$0	\$1,031
2020	\$475	\$0	\$475	\$398,376	\$1,235	\$1,710	\$0	\$1,710
2019	\$500	\$0	\$500	\$179,745	\$1,188	\$1,688	\$0	\$1,688

## SALES HISTORY

DEED DATE	SELLER	BUYER	INSTR #	VOLUME/PAGE
10/26/2022	PETRERE, EDWARD R & EVELYN O	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	2022122434	
1/30/2013	HYDEN, LENA R	PETRERE, EDWARD R & EVELYN O	2013009340	
10/2/2003	HYDEN R D ETUX	HYDEN, LENA R	-	
8/1/1986	HYDEN, RONALD D	HYDEN R D ETUX	-	1405/0041
1/1/1985	VETERANS LAND BOARD OF TEXAS	HYDEN, RONALD D	-	1130/0291

**Laurie Gharis**

**From:** eFax Corporate <message@inbound.efax.com>  
**Sent:** Thursday, January 2, 2025 7:04 PM  
**To:** Fax3311  
**Subject:** Corporate eFax message from "SpencerFane" - 10 page(s)  
**Attachments:** FAX\_20250103\_1735866217\_833.pdf

Login

## Service Notification

You have received a 10 page fax at 2025-01-02 19:03:37.

\* The reference number for this fax is  
usw2a.prod.afc\_did11-1735864881-15122335236-833.  
Please [click here](#) if you have any questions regarding  
this message or your service. You may also contact  
Corporate Support:

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Email: [corporatesupport@mail.efax.com](mailto:corporatesupport@mail.efax.com)  
Phone: 1 (323) 817-3202 or 1 (800) 810-2641

### EU

Email: [corporatesupporteu@mail.efax.com](mailto:corporatesupporteu@mail.efax.com)  
Phones:  
+44 2030055252  
+33 171025330  
+49 800 0003164  
+35 314380713

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**Phone:**  
1(323) 817-3202  
1(800) 810-2641 (toll-free)

Thank you for using the eFax Corporate service!

**Mark Mendoza**

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, January 3, 2025 9:20 AM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0016257001

H  
RFR

**From:** tlovett@spencerfane.com <tlovett@spencerfane.com>  
**Sent:** Thursday, January 2, 2025 4:51 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC

**CN NUMBER:** CN606081594

**NAME:** Taryn Lovett

**EMAIL:** [tlovett@spencerfane.com](mailto:tlovett@spencerfane.com)

**COMPANY:** Spencer Fane LLP

**ADDRESS:** 816 Congress Ave. 1200  
Austin, TX 78701

**PHONE:** 5128404556

**FAX:**

**COMMENTS:** On behalf of the City of Georgetown, please accept this request for a contested case hearing and/or reconsideration of the Executive Director's decision regarding the application by New Horizons Utility LLC and OptiN Holdings 1 LLC for proposed new Texas Pollutant Discharge Elimination System, Permit No. WQ0016257001, to authorize a domestic wastewater treatment facility in Williamson County, Texas.

## Mark Mendoza

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, January 3, 2025 9:19 AM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: City of Georgetown - New Horizons WWTP/Permit No. WQ0016257001 - Comments and Request for Contested Case Hearing  
**Attachments:** 2025.1.2 New Horizons TPDES App. - City of Georgetown CCH Request January 2024 - Final(3191771.6)-c.pdf

H  
RFR

**From:** Lovett, Taryn <[tlovett@spencerfane.com](mailto:tlovett@spencerfane.com)>  
**Sent:** Thursday, January 2, 2025 4:51 PM  
**To:** Laurie Gharis <[Laurie.Gharis@tceq.texas.gov](mailto:Laurie.Gharis@tceq.texas.gov)>  
**Cc:** Campbell, Hanna <[hcampbell@spencerfane.com](mailto:hcampbell@spencerfane.com)>; Hopinks-Baul, Carlota <[chbaul@spencerfane.com](mailto:chbaul@spencerfane.com)>; Faulk, Cody <[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)>; Asher, Rashmin <[rasher@spencerfane.com](mailto:rasher@spencerfane.com)>  
**Subject:** City of Georgetown - New Horizons WWTP/Permit No. WQ0016257001 - Comments and Request for Contested Case Hearing

On behalf of the City of Georgetown, please accept this request for a contested case hearing and/or reconsideration of the Executive Director's decision regarding the application by New Horizons Utility LLC and OptiN Holdings 1 LLC for proposed new Texas Pollutant Discharge Elimination System, Permit No. WQ0016257001, to authorize a domestic wastewater treatment facility in Williamson County, Texas.

We have faxed this due to the file size exceeding the eComment site's limit, but wanted to make sure it was received before 5:00pm. We will also be forwarding a copy via First Class Mail, as required.

Thank you,

Taryn Lovett Legal Administrative Assistant  
Spencer Fane LLP

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816 Congress Avenue, Suite 1200 | Austin, TX 78701  
(O) 512.840.4556  
[tlovett@spencerfane.com](mailto:tlovett@spencerfane.com) | [spencerfane.com](http://spencerfane.com)



January 2, 2025

*Via e-File to: [www.tceq.texas.gov/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html)*

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

Re: **The City of Georgetown, Texas' Request for Contested Case Hearing**

Applicant Names: New Horizons Utility LLC (CN 606081594) and  
OptiN Holdings 1 LLC (CN606081602)

Regulated Entity Name: New Horizons WWTP (RN111609582)

Application: TPDES Permit No. WQ0016257001

Location: Williamson County, Texas

EPA I.D.: TX0143804

Dear Ms. Gharis:

On behalf of the City of Georgetown (the “**City**”), please accept this request (“**Request**”) for a contested case hearing and/or reconsideration of the Executive Director’s decision regarding the application by New Horizons Utility LLC and OptiN Holdings 1 LLC (the “**Applicants**”) for proposed new Texas Pollutant Discharge Elimination System (“**TPDES**”) Permit No. WQ0016257001, to authorize a domestic wastewater treatment facility in Williamson County, Texas (the “**Application**”). The City’s contact persons for this matter are below:

Cody Faulk, Partner  
Carlota Hopinks-Baul, Attorney  
Spencer Fane LLP  
816 Congress Avenue, Suite 1200  
Austin, TX 78701  
(512) 840-4550  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
[chbaul@spencerfane.com](mailto:chbaul@spencerfane.com)

## I. INTRODUCTION

### A. Description of the Proposed Package Plant

If approved, draft TPDES Permit No. WQ0016257001 (the “**Draft Permit**”) would authorize the discharge of effluent from a pre-fabricated domestic wastewater treatment facility (the “**Proposed Package Plant**”) at a daily average flow not to exceed 0.10 million gallons per day (“**MGD**”) in the Interim I Phase, 0.30 MGD in the Interim II Phase, and a daily average flow not to exceed 1.340 MGD in the Final Phase. The Proposed Package Plant would be located approximately 0.5 of a mile northeast of the intersection of County Road 107 and County Road 110, in Williamson County, Texas 78626. The property on which the Proposed Package Plant has been removed from the City’s extraterritorial jurisdiction (“**ETJ**”); however, the proposed outfall is within 5,000 feet of the City’s corporate limits, is within three miles of the City’s nearest wastewater treatment plant and approximately 1 mile from the nearest City wastewater main, and the course of the proposed discharge will flow through the City’s ETJ. If the Draft Permit is issued, the Proposed Package Plant will be a membrane bioreactor (“**MBR**”) based-plant operated as a suspended growth activated sludge process in a single-stage nitrification mode.

The proposed discharge route for the effluent is described as to an unnamed tributary of Huddleston Branch (identified as San Gabriel River Tributary T17.06 in the Williamson County Atlas 14 Flood Study and referred to hereafter as “Tributary T17.06”),<sup>1</sup> thence to Huddleston Branch, thence to Mankins Branch, thence to the San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. As an unclassified freshwater stream, the presumed uses for Tributary T17.06 are primary contact recreation and limited aquatic life use. As perennial streams, the presumed uses of Huddleston Branch, Mankins Branch, and San Gabriel / North Fork San Gabriel River are primary contact recreation 1 and high aquatic life use. Mankins Branch, which is identified as Classified Segment No. 1248C, is included in the 2022 Integrated Report – Texas 303(d) List (Category 5) of impaired and threatened waters (the “**303(d) List**”) for bacteria in the water. Other site-specific uses for San Gabriel / North Fork San Gabriel River are public water supply and aquifer protection use, which apply to the contributing, recharge, and transition zones of the Edwards Aquifer. Finally, in addition to all of the above, aerial photographs, property tax records, and the rural setting of the land through which the course of the discharge flows indicate that other existing uses of Tributary T17.06, Huddleston Branch, Mankins Branch, and San Gabriel / North Fork San Gabriel River include livestock watering, agricultural irrigation, and terrestrial wildlife uses.

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<sup>1</sup> The U.S. Fish and Wildlife Service’s National Wetlands Inventory “Wetland Mapper,” an online interactive wetland mapping database, maps the uppermost extent of Tributary T17.06, an intermittent stream, at a point approximately 820 to 1050 feet southeast of the proposed outfall (this range reflects the three sets of coordinates provided by the Co-Applicants for the outfall at various places in the application and supplemental information).

## B. Procedural History

The permit application for the instant Draft Permit (the “Application”) was received by the Texas Commission on Environmental Quality (the “TCEQ”) on November 22, 2022, and the Executive Director (“ED”) declared it administratively complete on February 14, 2023. The Notice of Application and Preliminary Decision—that the ED had completed technical review of the Application and prepared the Draft Permit—was issued on January 12, 2024, and published on May 15, 2024 (in English) and May 23, 2024 (in Spanish)<sup>2</sup>. The public comment period on the Application and Draft Permit ended on June 24, 2024. On June 14, 2024, the City timely filed public comments, none of which have been withdrawn. The ED filed its Response to Public Comments (“RTC”) on November 22, 2024. In the RTC, the ED identifies a total of 15 public comments, recommending that no changes to the Draft Permit be made in response thereto. Notice of the ED’s final decision that the Application meets the requirements of applicable law was provided via letter dated December 3, 2024, which indicated that the deadline for submitting a request for a contested case hearing and/or reconsideration of the ED’s decision on the Application and Draft Permit is January 2, 2025. Therefore, this Request is timely filed.

## II. REQUEST FOR A CONTESTED CASE HEARING

Given the significant City interests affected by the Application and Draft Permit, the City hereby respectfully requests a contested case hearing based on the relevant and material disputed issues raised herein, all of which were originally raised by the City during the public comment period, which have not been withdrawn. In support thereof, the City’s June 14, 2024 comment letter, addressing 6 primary issues of concern and several sub-issues, is attached hereto as **EXHIBIT 1** and incorporated into this Request in full by this reference (the “**City Comment Letter**”).<sup>3</sup>

In brief, the City is requesting a contested case hearing based on its Legislatively-mandated interest in promoting and protecting the general health, safety, and welfare of persons residing inside its city limits and ETJ from the deleterious effects of a new source of potential contamination: the Proposed Package Plant. Among other things, that unique and justiciable

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<sup>2</sup> Both the English and Spanish notices for the Notice of Receipt of Application and Intent to Obtain Permit (and, presumably, the Notice of Application and Preliminary Decision) were published only in the Williamson County Sun, an English-language newspaper. The Co-Applicants submitted an affidavit attesting to their having conducted a diligent search and not finding a Spanish-language newspaper or publication in general circulation in the municipality and county in which the proposed facility will be located. However, El Mundo, a newspaper serving Spanish-speaking communities in the San Antonio-Austin metroplex (including Williamson County), is frequently used by permit applicants to publish notifications regarding TPDES and TLAP permits for facilities to be located in Williamson County. Because the Co-Applicants in this case did not publish the requisite notices in Spanish in El Mundo or any other Spanish language newspaper in accordance with the alternative language public notice requirements in 30 TAC Chapter 39 and TCEQ’s express instructions regarding the same (noting, in relevant part, that “[p]ublication in an alternative language section or insert within a large publication which is not printed primarily in that alternative language does not satisfy these requirements”), the ED should suspend the processing of the subject permit application – that is, deny the permit – consistent with 30 TAC 39.405(a).

<sup>3</sup> Letter dated June 14, 2024 from Marish Chambers on behalf of the City of Georgetown to TCEQ Chief Clerk [hereinafter *City Comment Letter*].

interest is affected by the Application and Draft Permit because the proposed discharge from the Proposed Package Plant is within 5,000 feet of the City's corporate limits, the Proposed Package Plant and outfall are in close proximity to the City's ETJ, and the proposed discharge route runs through the City's ETJ. Under such circumstances, the TCEQ's rules in 30 Texas Administrative Code ("TAC") § 55.203(b) expressly deem local governmental entities in the City's position to be "affected persons" with standing to request a contested case hearing on the Application at issue.

#### **A. Legal Standards and Requirements for Hearing Requests**

In order to be granted, a contested case hearing request must: (1) comply with the applicable form and filing requirements set forth in the Texas Water Code ("TWC") and TAC; and (2) be filed by an affected person. Specifically, a contested case hearing request must satisfy the conditions prescribed by TCEQ rules set forth in Title 30 TAC, Chapter 55,<sup>4</sup> and the TCEQ "may not grant a request for a contested case hearing unless [it] determines that the request was filed by an affected person as defined by Section 5.115" of the TWC.<sup>5</sup>

##### **1. This Request fully satisfies the form and filing requirements for hearing requests.**

The TCEQ's procedural requirements for contested case hearing requests are set forth in 30 TAC § 55.201. Pursuant to that rule, a contested case hearing request must be: (1) submitted in writing; (2) timely filed "no later than 30 days after the chief clerk mails (or otherwise transmits) the [ED]'s decision and [RTC];" and (3) based on an issue or issues raised in the requestor's own timely filed, and not later withdrawn, public comments. A procedurally sufficient hearing request must also do the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (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) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request, specifying, to the extent possible, any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and any disputed issues of law; and

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<sup>4</sup> 30 TAC §§ 55.101, .201.

<sup>5</sup> TWC § 5.556.

(5) provide any other information specified in the public notice of application.<sup>6</sup>

As demonstrated in Section I.B, above, this request is timely filed. Further, this Request is based on the City's timely-filed and not later withdrawn City Comment Letter. The required contact information for the City is provided on the first page of this Request. The introduction to this Section II, identifies the City's personal justiciable interest affected by the Application, and specifically explains, both the City's proximity to the Proposed Package Plant and discharge route, and how and why the City will be adversely affected by the Proposed Package Plant in a manner not common to members of the general public. An explicit request for a contested case hearing is contained, among other places, in the introductory paragraph of this Section II. Finally, Section III, below, lists the relevant and material disputed issues of fact raised by the City during the public comment period and specifies those of the ED's responses to public comment that the City disputes. Thus, the City has satisfied all of the procedural requirements for a contested case hearing request.

**2. The City is an "affected person" with unique justiciable interests in and authority over matters affected by the Application and Draft Permit.**

For the purpose of an administrative hearing involving a contested matter, TWC § 5.115 defines an "affected person" as one "who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing."<sup>7</sup> Section 5.115 further clarifies that "[a]n interest common to members of the general public does not qualify as a personal justiciable interest."<sup>8</sup> Further, as directed by the TWC, TCEQ has adopted rules specifying factors to be considered in determining whether a person is an affected person entitled to standing in a contested case hearing.<sup>9</sup> Specifically, in determining who is an "affected person," the relevant TCEQ rule provides as follows:

RULE § 55.203 Determination of 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 § 55.103 of this title (relating to Definitions)<sup>10</sup>, 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:*

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<sup>6</sup> 30 TAC § 55.201.

<sup>7</sup> TWC § 5.115; accord 30 TAC § 55.203.

<sup>8</sup> *Id.*

<sup>9</sup> TWC § 5.115; 30 TAC § 55.203.

<sup>10</sup> Barring participation by non-river authority state agencies in contested case hearings unless the state agency is the applicant. See 30 TAC § 55.103.

- (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) *for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and*
  - (7) *for governmental entities, their statutory authority over or interest in the issues relevant to the application.*
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, *the commission may also consider the following:*
- (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.*
- (e) *In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.*<sup>11</sup>

As discussed in more detail below, the City not only has interests related to legal rights, duties, privileges, powers, or economic interests affected by the Application that are not common to the general public, as required under 30 TAC § 55.203(a), but also has “statutory authority over” and “interest in” the issues relevant to the Application within the meaning of 30 TAC §§ 55.203(b) and (c)(7). In addition, this Request (and the City Comment Letter) provide information relevant to the “affected person” considerations enumerated in 30 TAC § 55.203(d). Simply put, as a governmental entity providing wastewater treatment services to areas both inside and outside of its corporate limits, and because wastewater from the Proposed Package Plant will be discharged into waterways coursing through the City’s ETJ, the City has a unique interest in the effects the Proposed Package Plant will have on the environment and on public health, safety, and welfare within its jurisdiction. Therefore, considering the factors enumerated above, and as addressed in more detail below, the City is an “affected person” entitled to a contested case hearing on the issues raised in its timely-filed City Comment Letter and reiterated herein.

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<sup>11</sup> 30 TAC § 55.203 (emphasis added).

- a. **As a home-rule municipality operating its own regional wastewater treatment and collection system, the City's Legislatively-mandated interest in and statutory authority over the general health, safety, and welfare of persons residing within its corporate limits and ETJ is affected by the Application and Draft Permit.**

According to the Application, the Proposed Package Plant, an MBR process plant operated as a suspended growth activated sludge process in a single-stage nitrification mode, would serve multiple housing subdivisions and a commercial area on approximately 2,100 acres (the "**Proposed Service Area**"). The Proposed Package Plant's proposed outfall is within 5,000 feet of the City's corporate limits; the proposed outfall is immediately adjacent to the City's ETJ; the Proposed Service Area includes areas within the City's ETJ; and the discharge will flow through water bodies within the City's ETJ.

The City is a home-rule municipality, having the full powers of self-governance, and is authorized to exercise all authority incident to local self-government.<sup>12</sup> In addition to having the powers granted to it as a home-rule city via the Texas Constitution, the Legislature has also expressly granted home-rule cities regulatory authority within the ETJ over issues raised by or relevant to the Application. The Legislature created municipal ETJ areas for all cities in order "to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities."<sup>13</sup> Thus, the City has a Legislatively-mandated interest in promoting and protecting the general health, safety, and welfare of persons residing inside its city limits and ETJ. In the context of the Application, the City's interests are to promote and protect the general health, safety, and welfare of persons residing both in the ETJ and inside the city limits from the potentially harmful effects of an unnecessary package plant.

The Legislature has also granted cities statutory authority over or interest in issues relative to the Application via specific statutes, including, among others, the following:

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<sup>12</sup> See Tex. Const. art. XI, § 5; Tex. Loc. Gov't Code § 51.072(a) and (b) ("(a) The [home-rule] municipality has full power of local self-government. (b) The grant of powers to the municipality by this code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government."); *Lower Colo. Riv. Auth. v. City of San Marcos*, 523 S.W.2d 641, 643 (Tex. 1975), *Quick v. City of Austin*, 7 S.W.3d 109, 122 (Tex. 1999), *Dallas Merch. & Concessionaires Ass'n v. City of Dallas*, 852 S.W.2d 489, 490-91 (Tex. 1993) (Home-rule cities do not depend on the Legislature for specific grants of authority but, instead, have a constitutional right of self-government and, look to the Legislature only for specific limitations on their power). See also, *In re Sanchez*, 81 S.W.3d 794, 796 (Tex. 2002); *Proctor v. Andrews*, 972 S.W.2d 729, 733 (Tex. 1998) (For the Legislature to divest home-rule cities of their Constitutional authority, the Legislature's intent to do so must be expressed with "unmistakable clarity.")

<sup>13</sup> Tex. Loc. Gov't Code § 42.001 ("PURPOSE OF EXTRATERRITORIAL JURISDICTION. The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.").

- TWC Ch. 26, Subchapter E (relating to disposal system rules and water pollution control duties of cities);<sup>14</sup>
- TWC Ch. 7, Subchapter H (relating to water quality enforcement);<sup>15</sup>
- Tex. Health and Safety Code § 121.003(a) (“The governing body of a municipality . . . may enforce any law that is reasonably necessary to protect the public health.”);
- Tex. Loc. Gov’t Code § 551.002 (“A home-rule municipality may prohibit the pollution or degradation of and may police a stream, drain, recharge feature, recharge area, or tributary that may constitute or recharge the source of water supply of any municipality” and “may provide for the protection of and may police any watersheds . . . inside the municipality’s boundaries or inside the municipality’s [ETJ].”);
- Tex. Loc. Gov’t Code § 212.003(a) (relating to the ability of a municipality to adopt rules governing plats and subdivisions of land within its corporate boundaries and ETJ, including rules related to the provision of water and sewer service to platted areas, in order to promote the healthful development of the city and public health, safety, and general welfare);<sup>16</sup>
- Tex. Loc. Gov’t Code § 217.042 (A home-rule municipality, like the City, “may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits” and “enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.”);
- Tex. Loc. Gov’t Code § 552.001 (“A municipality may [(1)]purchase, construct, or operate a utility system,” including a sewer system, “inside or outside the municipal boundaries;” (2) “regulate the system in a manner that protects the interests of the municipality;” (3) “extend the lines of its utility systems outside the municipal boundaries;” (4) “sell water [or] sewer . . . service to any person outside its boundaries;” (5) “prescribe the kind of water . . . mains [and] sewer pipes . . . that may be used inside or outside the municipality;” and (6) “inspect those facilities and appliances, require that they be kept in good condition at

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<sup>14</sup> See e.g., TWC § 26.177 (“A city may establish a water pollution control and abatement program for the city,” which “shall encompass the entire city and . . . may include areas within its [ETJ] which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city . . . will provide effective water pollution control and abatement for the city.”).

<sup>15</sup> The enforcement authority and rights granted to cities via TWC § 7.351(a) are different from those of the general public, and having been granted special statutory enforcement rights over water quality matters, the City has authority under state law over issues raised by the Application and Draft Permit. TWC § 7.351(a) authorizes local governments to bring an action against a person for a violation or threatened violation of Chapter 26 of the TWC occurring in the jurisdiction of that local government in the same manner as the TCEQ may do so—that is, for injunctive relief, a civil penalty, or both.

<sup>16</sup> Accord Tex. Loc. Gov’t Code § 214.013 (“A municipality may . . . require property owners to connect to [its] sewer system.”).



all times, and prescribe the necessary rules, which may include penalties, concerning them.”);

- Tex. Loc. Gov’t Code Ch. 552, Subchapter C (relating to municipal drainage systems); and
- Tex. Loc. Gov’t Code § 552.002(b) (“A home-rule municipality may buy, own, construct inside or outside the municipal limits, and maintain and operate a . . . sewage plant.”).

In addition to the statutory interests enumerated above, regionalization and need in wastewater permitting cases are issues on which cities that operate wastewater collection and treatment systems, like the City, are uniquely poised to offer evidence. This is recognized by TWC § 26.003, which states that:

It is the policy of this state and the purpose of this subchapter to . . . encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of this state; and to require the use of all reasonable methods to implement this policy.

This guiding principle of regionalization and need is enshrined in the introductory provisions of Chapter 26, listed second only to the recognition of private ownership rights of groundwater. Two other pieces of legislation were adopted to underscore this policy—TWC §§ 26.081<sup>17</sup> and 26.0282<sup>18</sup>—both relating to the TCEQ’s consideration of the regionalization policy, need, and the availability of existing or proposed areawide or regional wastewater collection, treatment, and disposal systems in the issuance of TPDES permits.

The state regionalization policy articulated three times in the TWC is entirely consistent with the Legislature’s creation of ETJs via the Texas Local Government Code. The issues of wastewater treatment regionalization and need cannot be evaluated or implemented without the ability to look “regionally” and “areawide”—i.e., beyond a city’s corporate boundaries. The Legislature has adopted statutes that underscore a city’s status as an affected person in cases such as the one at hand by creating ETJs; acknowledging cities’ interest in the environment, and issues affecting the health, safety, and welfare in those areas; granting cities authority over issues such as those raised in wastewater permitting applications; and adopting policies relating to regionalization and need in wastewater permitting cases. As recognized by 30 TAC §§ 55.203(b)

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<sup>17</sup> TWC § 26.081(a) (“The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”).

<sup>18</sup> TWC § 26.0282 (“In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.”).

and 55.203(c)(7)—which establish “affected person” status for governmental entities that have authority under state law over issues raised in an application—this statutory framework means that it is entirely consistent with state law to allow a city’s participation in wastewater permitting cases such as this, in which the proposed wastewater treatment plant, outfall, and/or outfall are in close proximity to (and within 5,000 feet of) such city’s corporate boundaries and/or within its ETJ.

Further, pre-manufactured treatment facilities, like the Proposed Package Plant, are designed to serve areas that could not be easily connected to an existing sewage treatment plant, which is not the case here. On the contrary, the City owns and operates—again, under legislative mandate—an extensive wastewater treatment and collection system that eliminates the need for package plants such as one described in the Application. The City owns and operates five existing wastewater treatment plants and has a permit for a sixth to be constructed in the near future.<sup>19</sup> The City employs approximately 15 licensed wastewater treatment plant operators and 38 licensed wastewater collection system operators. The City currently provides wastewater service to approximately 39,756 customers. One of the City’s wastewater treatment plants, the Dove Springs Wastewater Treatment Facility (“WWTF”), is located within three miles of the Proposed Package Plant (see **EXHIBIT 1** (City Comment Letter, **Attachment A**)). Moreover, the Dove Springs WWTF is interconnected with the two largest City owned wastewater treatment plants, the Pecan Branch WWTF and the San Gabriel WWTF. Collectively, just these three City owned wastewater treatment facilities can currently treat up to 8.0 MGD of wastewater, giving the City capacity to meet the service needs of approximately 80,000 people (at 100 gallons per day (“GPD”) per person).<sup>20</sup> The City’s two other wastewater treatment facilities—the Cimarron Hills WWTF and the Berry Creek WWTF—can treat up to 0.2 MGD and 0.3 MGD, respectively, providing the capacity for the City to serve approximately 5,000 more people (at 100 GPD/person). All in all, the City’s five existing wastewater treatment facilities have the capacity to provide service to about 85,000 customers. Based on information from the US Census Bureau, the City population as of the April 1, 2020 census was 67,176.<sup>21</sup> Thus, the City has more than enough capacity to provide wastewater treatment service to customers within its city limits and ETJ, including those within the Proposed Service Area.

In addition to its treatment facilities, the City has existing wastewater collection systems located within three miles of the Proposed Service Area. The City also has additional collection system infrastructure under construction that would be even closer to the Proposed Service Area. The City’s collection system is located less than 1 mile from the Proposed Service Area.

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<sup>19</sup> The City owns and operates the following wastewater treatment facilities: (1) the Cimarron Hills WWTF (TPDES Permit No. WQ0014232001); (2) the San Gabriel WWTF (TPDES Permit No. WQ0010489002); (3) the Dove Springs Plant (TPDES Permit No. WQ0010489003); (4) the Pecan Branch WWTF (TPDES Permit No. WQ0010489005); and (5) the Berry Creek WWTF (TPDES Permit No. WQ0010489006). In addition, the City holds TPDES Permit No. WQ0010489007 for the Northlands WWTF, which is not yet under construction.

<sup>20</sup> The city is working on increasing its treatment capacity by: expanding the capacity of its Dove Springs WWTF by an additional 1.0 MGD in March 2025; an additional 2.0 MGD at its Pecan Branch WWTF in the next two years; and adding two new WWTFs in the next five to six years (i.e., the 10 MGD Three Forks WWTP and 3.0 MGD Northlands WWTP).

<sup>21</sup> U.S. Census Bureau, *Quick Facts, Georgetown [City], Texas*, <https://www.census.gov/quickfacts/fact/table/georgetowncitytexas/PST045221>.

In summary, the City is an “affected person,” with significant interests in issues relevant to the Application, because the Proposed Package Plant, Proposed Service Area, and proposed outfall would all be located in close proximity to the City’s wastewater collection system, corporate limits, and/or ETJ, and the planned discharge route flows through the City’s ETJ. That proximity directly affects the people and environment the City has a Legislative mandate to protect. Moreover, because the City owns and operates an extensive wastewater treatment and collection system that can serve the Proposed Service Area, there is absolutely no need for the Proposed Package Plant and the associated risk of water quality degradation, nuisance odors, and other threats to public and environmental health that are typical of such plants; authorizing the operation of a private wastewater treatment plant in close proximity to the City’s existing wastewater infrastructure effectively creates a competitor to the City’s wastewater utility. The creation of competition not only harms the City immediately by preventing the City from obtaining the maximum benefits of providing wastewater services at scale as residential development unfolds over the coming months and years, it also harms the City’s ability to secure ratepayers that will use and fund the expansion of wastewater capacity that the City has invested in and is developing even now to serve the long-term population growth that the Proposed Package Plant is intended to serve. Therefore, the City should be granted a contested case hearing so that it may represent and protect its interests in and uphold its statutory duties related to regionalization and need, environmental protection, and public health, safety and welfare.

### **III. THE CITY’S DISPUTED ISSUES**

While the City does not dispute RTC No. 8 and RTC No. 9, it does dispute the ED’s other RTCs. The City further disputes that the ED provided responses to all of the public comments submitted in its June 14, 2024 City Comment Letter. As such, the City hereby reiterates its request for a contested case hearing and/or reconsideration of the ED’s decision on the relevant and material disputed issues raised in the City Comment Letter, which is attached hereto and incorporated in its entirety herein, and as further discussed below.

#### **A. Issuance of Permit Violates Regionalization Policy**

In the City Comment Letter, the City noted that the approval of the application and issuance of the Draft Permit would violate Texas’ legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems. The City Comment Letter identified inaccurate and incomplete information provided by the Co-Applicants in the regionalization portion of the Draft Permit Application (i.e., Domestic Technical Report 1.1, Section 1.B.3) and in attached correspondence. The erroneous information in the Application indicated that the City did not currently have the capacity to accept and would not be willing to expand to accept the volume of wastewater proposed in the Application. A letter from the Co-Applicants’ engineering consultant falsely noted that the City supported the Draft Permit Application and had “verbally [sic] agreed to the application in principle” but had been unable to provide written confirmation. The ED’s RTC No. 14 fails to provide a substantive response to the City’s specific and detailed comments regarding Regionalization and the ED’s issuance of the permit authorizing the Proposed Package Plant when it has been informed of the

inaccurate and false nature of the information in the Application and supplemental information, the absence of justification of the need for the Draft Permit, and the clear balkanizing effect of the ED's profligate issuance of permits to package plants.

The ED's RTC No. 14 notes that the Co-Applicants provided evidence that they mailed a certified letter, dated December 29, 2022, to the City requesting service and concluded that "[b]ased on the information the Applicant [sic] provided in its [sic] application, the Executive Director has determined that the Applicant has complied with the regionalization policy and has demonstrated a need for the proposed WWTF." The City disputes the ED's RTC No. 14 in that the ED's acceptance of proof of the mailing of a request for denial of service as sufficient efforts *by the Applicant* to implement Texas' Regionalization Policy is not only wrong on the law (it is the *ED* who is responsible for implementing the Regionalization Policy), it is also wrong on the facts. That is, the ED's decision willfully disregards the following information that was presented to the ED in the City's comment letter: 1) the inaccuracy of the Co-Applicants' representation that no existing wastewater utility within three miles of the Proposed Package Plant has the capacity or willingness to expand to accept the volume of wastewater to be treated by the Proposed Package Plant (in Section 1.B.3 of Domestic Technical Report 1.1); 2) the falsity of the Co-Applicants' representations that the City supports and agrees in principle with the Application; 3) the Co-Applicants failure to provide any of the requisite financial analysis to justify the need for the permit; and 4) the absence of need for the Proposed Package Plant given the existence of three facilities and the pending applications for three new package plants, all of which are within three miles the Proposed Package Plant. This information not only shows that the information presented by the Co-Applicants is not reliable, it also demonstrates that the Proposed Package Plant is not needed and the issuance of permit to operate the same is flatly inconsistent with Texas' Regionalization Policy – indeed, the profligate permitting of so many wastewater treatment plants and sources of pollution in this three-mile area represents a preference for balkanization and a complete disregard for the Regionalization Policy and the statutory requirement to "use all reasonable methods to implement this policy." TWC § 26.003. Thus, the ED's decision to issue the requested permit in light of these facts is manifest legal error, is unreasonable, arbitrary and capricious, and not supported by substantial evidence.

Furthermore, the City's interconnected wastewater treatment and collection system has sufficient capacity to accept the Phase I and Phase II interim volumes of wastewater that will be generated as residential and commercial development unfolds in the area southeast of the City in the immediate future. In addition, the City is in the process of significantly expanding its treatment capacity for longer-term growth as well – sufficient to accept the final wastewater production volume (1.34 MGD) that would be treated by the Proposed Package Plant. The issuance of a permit to the Co-Applicants for the Proposed Package Plant fails to implement the Legislature's policy directives regarding wastewater regionalization in Texas; and fails to respond to any of City's very specific comments regarding whether the Application and Draft Permit are consistent with those Legislative policy directives.

Therefore, the City reasserts the comments it made in the City Comment Letter on the issues of justification and need for the permit and regionalization, and requests a contested case hearing and the ED's reconsideration of the following issue: whether the Application and Draft

Permit comply with the Legislature's statutory directives regarding wastewater need and regionalization codified in TWC §§ 26.003 and 26.081-26.086.

**B. Application is Materially Deficient, Incomplete, and Inaccurate and is Insufficient to Constitute Substantial Evidence Supporting the TCEQ's Decision to Issue the Requested Permit**

The City Comment Letter identified many instances of inaccurate and incomplete information and omissions in the Co-Applicants' Draft Permit Application. Even taken individually, these errors and omissions materially affect the ED's understanding of the underlying facts and its analysis (as explained more fully below); but when taken together, the result is an Application that is so rife with information that is not reliable, complete, and accurate, that the ED should have refused to issue the permit or, at a minimum, should have issued a notice of deficiency to elucidate a clear, consistent, and reliable set of facts (i.e., substantial evidence) upon which the ED could render a reasonable, well-informed decision. Yet rather than evaluating the import of the individual and cumulative errors and omissions highlighted in the City Comment Letter, the ED's RTCs respond in piecemeal to minutia to avoid the sum and substance of the City's comments. The ED's approach in its RTCs is shortsighted and effectively abdicates its duty to protect water quality (including the implementation of Texas' Regionalization Policy) by ignoring relevant facts and the absence of relevant information, treating as reliable information that is not, and requiring individual property owners to undertake costly litigation (that they will likely lose) so as to attempt to abate nuisance conditions created by the ED's granting of permits where they should be denied.

For the reasons set forth below, the City disputes the ED's RTCs Nos. 5, 6, 7, 10, 11, 12, 13, 14, and 15. As noted in these RTCs, the City Comment Letter indicates that the Application is materially incomplete in that it fails to provide correct, complete, and relevant information that is necessary for the TCEQ to conduct a full analysis of the possible effects of the Proposed Package Plant on water quality and surrounding existing uses.

**1. RTCs No. 5 & No. 15 – Incorrect Outfall and Discharge Route Information**

The City Comment Letter highlighted to the ED that the Application contains conflicting descriptions of the discharge route and that the Co-Applicants have proposed to discharge treated effluent to a dirt road on land that is not owned by the Co-Applicants. See Exhibit 1 at 7-9. The City Comment Letter included snips of aerial photographs from Google Earth that show the proposed outfall would be located in an area that is obviously a private farm road. In addition, the collection of "Original Photographs" in the Co-Applicant's Application also clearly and unambiguously show that the first leg of the discharge route (some 400 feet) is a dirt or gravel road on an adjacent parcel of agricultural land. In addition, publicly available USGS topographic maps

contradict the Co-Applicant's assertion that a stream exists at the point of the proposed outfall as there is neither a blue line (indicating a stream) nor elevation consistent with a drainageway.

In RTC No. 5, the ED simply restates the description of the discharge route, suggesting that the ED has accepted, as true and accurate, the Co-Applicants' assertion that treated effluent will be discharge to a surface water body. Similarly, in RTC No. 15, the ED seems to assume the veracity of that assertion in noting that "[t]he State is authorized to use the bed and banks to transport water, and TCEQ has the authority to authorize a discharge of treated domestic wastewater into water in the state through a TPDES permit" and that "TCEQ has been delegated the authority to issue TPDES permits for the discharge of waste or pollutant into or adjacent to water in the state." The ED's failure to appreciate the obvious factual proof of the absence of a water body at the proposed outfall location that was provided in the City Comment Letter and the Co-Applicant's own site photographs is clear error. Given that the Draft Permit would authorize the discharge of up to 1.34 MGD of treated effluent onto the private dirt or gravel road used by a neighbor to cross their land, the ED should, at a minimum, reconsider its decision to grant the permit and return the Application to staff for additional investigation as to whether the features described by the Co-Applicants as a stream and bordering "swale" in its collection of "Original Photographs" are, in fact, a stream with discernable bed and banks or a depression created by a private farm road and the surrounding farmland.<sup>22</sup>

RTC No. 15 also notes that, if issued, the permit would not "grant the permittee the right to use private or public property for the conveyance of wastewater along the discharge route" and that "[i]t is the responsibility of the permittee to acquire all property rights necessary to use the discharge route." This RTC also notes that issuance of the permit "does not limit the ability of nearby landowners to seek legal remedies in a judicial court for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on . . . property, or that may or actually do interfere with the normal use and enjoyment of . . . property." Sections 9(D) and 9(E) of the Administrative Report 1.0 that forms part of the TPDES permit application provides a measure of protection against such unlawful trespass by requiring applicants to identify the owner of land where the treatment facility is or will be located and ownership information for the effluent disposal site; both sections require Applicants to "attach a lease agreement or deed recorded easement" where the land is not owned by the Applicants. As noted in the City Comment Letter, the Co-Applicants' Application does not include a lease agreement or deed recorded easement for the outfall pipe that will transport treated effluent to the outfall location; despite this glaring omission, the ED has decided to grant the permit. Assurances to landowners that they may seek to prevent the discharge onto their land an issued permit expressly authorizes ignores the reality that such suits impose an unnecessary and costly expense on landowners that can be easily avoided by the ED's exercising a minimal effort at due diligence by requiring Applicants to provide the information already required by the Draft Permit Application

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<sup>22</sup> The Co-Applicants should be required to address inconsistencies in the description of the receiving stream in Worksheet 2.0 and to complete Worksheet 2.1, which was omitted in its entirety in the Co-Applicant's Draft Permit Application as noted on page 12 of the City Comment Letter. This receiving stream information will make clear that there is neither a pond nor a receiving stream at the proposed outfall location.

and confirming the existence of a water body (i.e., a water feature that has discernable bed and banks).

Even if the Co-Applicants were to acquire the land on which the outfall is proposed to be located prior to commencing discharges, the ownership of that land would not authorize the discharge as the farm road would nonetheless not constitute a stream or other water in the State. Although the TCEQ is authorized to grant TPDES permits for the discharge of pollutants to waters in the State and to use the bed and banks of a stream to transport water (including wastewater), it does not have the authority to grant TPDES permits to authorize such discharges to dry land. Because the TPDES permit here would authorize the discharge of pollutants to dry land (a farm road) not owned by the Co-Applicants, the ED's decision to grant the permit exceeds its statutory authority.

Because the ED's RTCs No. 5 and No. 15 do not respond to the facts and legal issues raised in the City Comment Letter relating to the outfall location and discharge route, the City requests a contested case hearing regarding this issue or, in the alternative, the ED's reconsideration of its decision to issue the permit.

## **2. RTCs Nos. 6 – Inaccurate and Incomplete Description of Receiving Waters and Activities in Proximity to Proposed Outfall**

The City Comment Letter highlighted to the ED that the Application inaccurately describes the receiving waters for the proposed discharge and fails to identify those activities in proximity to the proposed outfall that are required by the Draft Permit Application. See Exhibit 1 at The City Comment Letter notes that the discharge route is inaccurately described by the Co-Applicants as, in various portions of the Application, a water-quality impaired stream (i.e., Mankins Branch) is omitted from the description of the discharge route. In addition, USGS map information provided by the Co-Applicants was substantially incomplete – USGS maps covering a full one-mile radius were not provided and the following were not shown: the three-mile discharge route; the Co-Applicants' property boundary; and the on-site and off-site features and activities (parks, schools, recreational areas, all new and future commercial and housing developments) explicitly required to be identified by the Draft Permit Application form instructions. Taken together, the required information would allow the TCEQ to correctly identify existing uses and derive conditions protective of those uses and necessary to address existing impairments to the full use and enjoyment of receiving waters that would be affected by the proposed discharge.

The ED's response RTC No. 6 acknowledges that the discharge route includes an impaired stream and identifies a single permit condition related to that impairment. Nowhere else does the ED's RTCs address the City's comments on the inaccurate and incomplete information of the receiving waters and the activities in proximity to the proposed outfall. Because the permitting decision relied on insufficient and inaccurate information, the requisite technical analyses would necessary be flawed and permit conditions protective of existing water uses and users would not have been derived.

The ED's RTCs in no way allay the concern about the material data gaps, errors, and omissions highlighted by the City Comment Letter and their consequential implications on the decision to issue a permit, the conditions included in the permit, and the adequacy of the water quality, public health, and environmental protections afforded by the permit. Therefore, the material incompleteness and inaccuracy of the receiving waters and activities near the outfall and the effect of such information failures on the ED's permitting decision should be considered in a contested case hearing; in the alternative, the ED should reconsider its decision and should deny the permit based on the materially incorrect, incomplete, and inaccurate information provided by the Co-Applicants.

### **3. RTC No. 7, No. 11, and No. 12 – Incorrect and Incomplete Facility Information and Inadequate Nuisance Odor Control**

The City Comment Letter highlighted to the ED that the Application contains incorrect and incomplete facility information regarding the Proposed Package Plant. The faulty information includes failing to identify the Co-Applicant's property boundary on the USGS map, the Affected Landowner Map, and Buffer Zone Map. Buffer zone requirements were also deficient in the Affected Landowner Map and the Buffer Zone Map. The Application does not include information about proposed access roads, utility lines, construction easements, or disturbance of vegetation or wetlands. Public notices regarding this permitting action have contained inconsistent and incorrect information about the nature of the facility (minor or major), the permitting action (modification of issuance of a new permit), and the size / treatment capacity of the facility (0.411 MGD vs. 0.1 MGD for the initial operational phase). In addition, the original application did not include sludge disposal information (a written statement or contractual agreement from the sludge processing facility). And the Application and Core Data Forms submitted by the Co-Applicants had inconsistent information about which city was nearest the proposed outfall (it is, in fact, the City). Each of these errors and omissions may cause TCEQ staff to misapprehend the factual setting and potential impacts to water quality, public and environmental health, and use and enjoyment of waters in the State, and to err in making recommendations regarding permit issuance and permit conditions. In addition, taken together, the inconsistencies and information gaps throughout the permit application and supplemental information about all aspects of the Proposed Package Plant's design and operations does not constitute reliable information upon which decisions to grant a permit or to devise permit conditions may be made.<sup>23</sup>

The ED's RTC No. 7 provides general information about odor control options open to applicants, identifies the option selected by the Co-Applicants, and notes that odor problems are not expected given the enclosed nature of the facility and assuming that the plant is properly operated. Nowhere does the ED identify how the many instances of incorrect and incomplete information were addressed and why such a faulty Application nonetheless constitutes reliable evidence upon which appropriate, well-informed, and protective permitting decisions may be

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<sup>23</sup> The City Comment Letter also noted that the Co-Applicants used outdated versions of the TPDES permit application forms. To the extent that the newer versions of the application forms requested additional or different information not required by the earlier versions used by the Co-Applicants, such information would also not have been available to inform the TCEQ's decision-making.



made. In light of the ED's failure to address these substantive concerns in its RTCs, this issue should be taken up in a contested case hearing or, in the alternative, the ED should reconsider its decision and deny the permit in light of the indicia of unreliability of the information in the Draft Permit Application.

#### **4. RTC No. 10 – Facility Operator Information Not Provided**

The City Comment Letter highlighted to the ED that the Application does not contain information regarding the facility operator. Notably, the website of New Horizons Utility LLC,<sup>24</sup> one of the Co-Applicants, notes the following under "What We Do": private financing, design, implementation, and operation management. In addition, the website notes that it "offer[s] turn-key wastewater and water solutions to developers and utility companies . . . eliminating the wait for traditional infrastructure" and that its "water recovery services take an environment-first approach." These statements indicate that New Horizons Utility will be the operator and should have a compliance history for the operational activities it touts on its website; however, the compliance history for New Horizons Utility did not include an evaluation of its wastewater operation activities at any other facility.

The ED's RTC No. 10 notes that the facility must be operated by an operator holding a Class C license or higher during the interim phases and a Class B license or higher in the final phase. In addition, the ED notes that the facility must be operated a minimum of 5 days per week. Nowhere else does the ED address the absence of operator information, which would have allowed TCEQ to evaluate the suitability of New Horizons Utility LLC and qualifications of its operators to operate the Proposed Package Plant. Because the absence of this information is an important factor in deciding whether to issue or deny a permit, this issue should be taken up in a contested case hearing or, in the alternative, the ED should reconsider its decision and deny the permit in light of the failure to provide true, complete, and accurate operator information in the Draft Permit Application.

#### **5. RTC No. 13 – Permit is Not Needed and New Package Plant is Not Needed or Justified**

As noted in the regionalization discussion above, the City Comment Letter shows that there will be three to six wastewater treatment facilities in the area in which the Proposed Package Plant would be located. Also, the City's wastewater treatment system currently has capacity to treat the volume of wastewater to be treated by the Proposed Package Plant during interim phases I and II; and the City has already undertaken efforts to add new wastewater treatment plants and expand treatment capacity at existing plants, which will provide sufficient capacity to treat the volume to be treated at the Proposed Package Plant's final phase (1.34 MGD). In addition, the City Comment Letter highlighted to the ED that the Co-Applicants incorrectly answered the regionalization related questions in Section 1.B.3 of the Domestic Technical Report 1.1 portion of the permit

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<sup>24</sup> The website, <https://newhorizonsutility.com/>, was determined to be that of New Horizons Utility LLC by matching the office address on the website with the Co-Applicant's address on the Draft Permit Application.

application, indicating that no permitted domestic wastewater treatment facility or collection systems were located within three miles of the Proposed Package Plant that currently have capacity or are willing to expand to accept the volume of water proposed in the application. The inaccurate manner in which the Co-Applicants answered the question about those treatment or collections systems allowed them to avoid providing the financial information to compare the cost to connect with an existing system with the cost of building the Proposed Package Plant. Without true, accurate, and complete information about currently available and anticipated future wastewater treatment capacity, as well treatment cost comparisons, the Application cannot reasonably be relied upon to assess the economic or logistical feasibility of regionalization. And in the absence of such information, the ED cannot reasonably conclude that the issuance of the permit complies with Texas' Regionalization Policy.

The ED's RTC No. 13 notes that other commented on the failure of the Co-Applicants to demonstrate a need for the permit but does not acknowledge the City's comments regarding the absence of information to support a conclusion that the permit is needed or that the Proposed Package Plant is justified. In addition, the ED's baldly asserts that the Co-Applicants "provided justification for the requested flows" and that it "has determined that the Applicant has sufficiently demonstrated the need for the requested flow." The ED does not explain how the Co-Applicants proved the need for the permit or justified the Proposed Package Plant, or how the issuance of the permit is consistent with the Regionalization Policy's directive all reasonable methods be used to implement this policy. Because the City disputes that the ED's response provides a meaningful, substantive response to the concerns raised about the lack of justification and need for the Proposed Package Plant, this issue should be taken up in a contested case hearing; or, the alternative, the ED should reconsider its decision and deny the permit.

### **C. Permit Does not Adequately Protect Water Quality, Uses and Users Thereof**

The ED RTC notes that the City's comments raised "concerns about the negative impacts on water quality and the failure of the proposed discharge to show satisfactory compliance with the antidegradation policy of TCEQ." Relatedly, the City Comment Letter also raised concerns about the whether the permit would be protective of existing uses and users of the receiving water bodies – i.e., agricultural, terrestrial and other wildlife (including endangered species), and other uses. The City disputes that the ED's RTCs are responsive to and allay the concerns raised by the City.

#### **1. RTC No. 1 – Adverse Water Quality Impacts and Failure to Comply with TCEQ' Antidegradation Policy**

The ED's RTC No.1 notes that the City expressed concerns about negative impacts on water quality. More specifically, the City Comment Letter noted that the TCEQ's evaluation of the Application did not investigate or duly consider all existing uses (for example, agricultural uses like livestock watering and irrigation) or water quality standards protective of all uses (for example, aesthetic parameters related to recreational and passive use and enjoyment of waters in the State, which also implicate public and environmental health). In addition, the City Comment

Letter noted that the TCEQ's water quality evaluations and analyses were based on general assumptions, the accuracy and relevance of which were never confirmed for this particular setting. The City Comment Letter also noted that the slightest plant upset would adversely affect water quality in the receiving streams and would create unsanitary conditions affecting neighbors (who reside in the City's ETJ) and the environment. The City also objected to the paucity of conditions in the permit to protect against the discharge of untreated or partially untreated wastes.

The ED's RTC No. 1 notes that its standards and procedures<sup>25</sup> are intended to derive permit conditions that protect against discharges that result in instream aquatic toxicity, violate Texas surface water quality standards (WQS) (including narrative WQS), endanger drinking water, or result in aquatic bioaccumulation that threatens human health. The ED notes that TCEQ staff "determined the uses of the receiving waters and set effluent limits that are protective of those uses" and performed an antidegradation review of the receiving waters. In addition, the ED identifies certain effluent limitations that are based on stream standards and waste load allocations for impaired streams. However, the ED's response does not address the specific concerns raised by the City regarding those existing uses and associated WQS that the IPs does not consider – i.e., aesthetic values associated with passive and recreational enjoyment of the receiving waters, livestock watering, and use by other terrestrial and aquatic wildlife (including endangered species).

The ED's TRC No. 1 also acknowledges the City's comment on the failure of the proposed discharge to show satisfactory compliance with the TCEQ's antidegradation policy. Specifically, the City raised concerns about the whether the use of an uncalibrated model based on default values that do not reflect site conditions could be expected to produce correct antidegradation analyses, and whether the correct standard and process was used in TCEQ's Tier 2 antidegradation review. However, nothing in the ED's RTC No. 1 (or other RTCs) identified information or supplemental procedures to ensure compliance with the agency's antidegradation policy.

Because the ED's response to the City's concerns about adverse impacts on water quality, existing uses and users, and the unreasonable risk of water quality degradation, these issues should be taken up in a contested case hearing; or, in the alternative, the ED should reconsider its permitting decision and direct TCEQ staff to undertake the requisite analyses and either derive such permit conditions as are needed to protect the aforementioned uses and users or recommend denial of the permit, as appropriate.

## **2. RTC No. 2 (City Comment E) – Discharge of Elevated Nutrient Levels, Resulting in Excessive Algal Growth and Blooms, and Other Unregulated Constituents**

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<sup>25</sup> TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010) (the "IPs") provide technical guidance on the derivation of permit conditions to ensure protection of certain WQS. Although this guidance document does not address narrative standards (like aesthetics) and protection of livestock, agricultural irrigation, and wildlife uses of waters of the state (including by endangered species), their protection is nevertheless the TCEQ's charge under Section 26.011 of the Texas Water Code and the State's water quality protection policy set forth at Section 26.003.

The ED's RTC No. 2 notes that the City raised concerns about "elevated nutrient levels resulting in excessive algal growth and blooms." The ED notes that the Draft Permit includes phosphorus limits to reduce the likelihood of stimulating algal blooms or the growth of other aquatic vegetation; however, the ED does not explain how the phosphorus limits during the interim phases will be adequately protective given the significant increase in flow that these discharges will cause in the receiving water bodies, which includes livestock watering ponds along and upstream of Tributary T17.06.

The ED's RTC does not acknowledge or respond to the City's concern about nitrogen discharges, which create nuisance algal growth and blooms that affect aquatic life and adversely effects water palatability that affect livestock watering and may affect sensitive species (e.g., endangered species whose presence or absence has not been ascertained). The RTC also does not acknowledge or respond to the City's comments regarding the discharge of other unregulated constituents, including toxic substances and microbiological contaminants, that may also affect livestock and wildlife watering and health.

The ED's RTC also notes that the IPs require that the concentration and relative ratios of dissolved minerals such as chloride and sulfate that comprise total dissolved solids (TDS) be maintained to protect existing and attainable uses. However, the ED notes that TDS screening cannot be performed until effluent water quality becomes available for the Proposed Package Plant and the ED's chloride and sulfate concerns seem to be limited to the San Gabriel River segment. And although the RTC indicates that the Proposed Package Plant's discharges would need to be below 158 mg/L for TDS for the final operational phase of 1.34 MGD, the Draft Permit does not include a TDS limit. Also, there is no indication that a TDS limit will be derived to protect existing and attainable uses of other upstream water bodies along the course of the discharge.

Therefore, the City disputes the ED's contention in RTC No. 2 that the aforementioned uses and users should be protected by imposing a total phosphorus limit, without more. The ED's RTC does not address or allay the concern that, in light of the significant volume of treated effluent discharges (up to 1.34 MGD) and agricultural nature of the land use in the area surrounding the Proposed Package Plant and discharge route, issuing a Draft Permit based on a potentially incomplete and inaccurate Application would expose these livestock and other environmental receptors animals to adverse effects from growth of algae, high nitrogen content, and bacterial contamination from the proposed discharge (particularly in the event of a plant upset or bypass that is not detected during periods of time that the facility is not being monitored, sampled, or staffed). Therefore, this issue should be take up at a contested case hearing; or, in the alternative, the ED should reconsider its permitting decision and direct TCEQ staff to undertake the requisite analyses and either derive such permit conditions as are needed to protect livestock, terrestrial and aquatic species (including endangered species) or recommend denial of the permit, as appropriate.

### **3. RTC No. 3 (City Comments C and E) – Protection of Aquatic Life and Stream Uses**

The ED's RTC No. 3 notes that the City expressed concerns about the aquatic life and stream uses. The RTC notes that designated uses of Segment No. 1248 should be protected "if the [Proposed Package Plant] is operated and maintained as required by the [Draft Permit] and regulations." The RTC notably does not include any such assurance about the protection of existing uses of any other water body along the discharge route. In addition, the RTC does not acknowledge the City's concern that the proposed discharge of treated effluent will adversely affect all existing uses of the receiving waters that flow through the City's ETJ. Because the proposed discharge may create nuisance conditions in the receiving waters and within 5,000 feet of the City's corporate limits, the discharge activity subject to regulation by the City pursuant to numerous mandates of the Texas Legislature (*see* Section II.A.2.a, above).

The discharge route and uses of the various constituent water bodies are described above. Among these uses, the aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer; portions of the discharge route are within the transition zone. TCEQ's own rules express a policy to protect such higher uses when it is possible to do so.<sup>26</sup> In this circumstance, these higher uses could be maintained simply by denying the Application and upholding the state's regionalization policy. Failing to do so by issuing the Draft Permit for an unnecessary package plant risks the creation of unsanitary or unsafe water quality conditions in the receiving waters that would threaten the health and safety of any wildlife, livestock, or people using them. This is especially true given that such risks could be avoided, or at least substantially diminished, if wastewater from the Proposed Service Area was collected, treated, and discharged by the City in accordance with the state's regionalization policy.

The ED's RTC attempts to disclaim any duty to protect water quality for the protection of wildlife, noting that "[t]he Texas Parks and Wildlife Department [("TPWD")] is the state agency that oversees and protects wildlife and their habitat." However, the TPWD has no authority to regulate discharges to ensure protection of aquatic or terrestrial wildlife while the TCEQ does under Sections 26.003 and 26.011 of the Texas Water Code.

Because the City disputes that the ED has appropriately identified the existing uses and users of each of the water bodies along the discharge route, has identified water quality standards protective of terrestrial and aquatic life, and has derived permit conditions protective of existing and attainable uses, and that the ED's RTC has addressed and allayed these concerns, the City requests that these issues be taken up in a contested case hearing; in the alternative, the City requests the ED to reconsider its decision and direct its staff to conduct such fact finding, research, and analyses as are necessary to determine the conditions that must be maintained in the receiving waters to ensure protection of existing and attainable uses by livestock and other wildlife receptors.

#### **4. RTC No. 4 (City Comment E) – Protection of Endangered Species**

The ED's RTC No. 4 confirms the City's concerns that the Application was approved without the proper authorities having conducted the requisite endangered species review.

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<sup>26</sup> *See* 30 TAC § 307.4(h).

As noted in the City Comment Letter, because the area surrounding the Proposed Package Plant, including the San Gabriel River, is home to several endangered species—including the Texas Shiner and Guadalupe Bass as well as several endangered salamanders—issuing the Draft Permit would expose these animals to adverse effects from growth of algae, high nitrogen content, and bacterial contamination from the proposed discharge. These concerns are compounded by the fact that portions of the receiving water for the proposed discharge are already listed on TCEQ's 303(d) List of waters impaired by high levels of bacteria.

The ED's RTC No. 4 notes that the TCEQ has determined that permit action is not expected to have an adverse effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. However, this determination was based on and limited to species and habitat listed or designated prior to October 21, 1998. Finally, the ED's RTC notes that neither the US Fish and Wildlife Service nor TPWD expressed concern about the discharge effects on wildlife in the area. This RTC demonstrates that the TCEQ is not evaluating permit applications, making permitting decisions, or deriving permit conditions to ensure the protection of water quality necessary to support endangered species. Indeed, the TCEQ seems to suggest that it is under no obligation to protect species not identified in the outdated Appendix A to its 1998 TPDES memorandum of agreement (MOA) with the US EPA. However, as noted above, under Sections 26.011 and 26.003 of the Texas Water Code, the TCEQ is responsible for controlling of the quality of water in the state, which are to be protected to maintain water quality that is consistent with the propagation and protection of (all) terrestrial and aquatic life, including threatened and endangered species (even those not listed in Appendix A to the EPA-TCEQ MOA authorizing the TPDES program). The RTC makes clear that TCEQ failed to complete the requisite endangered species review prior to issuing the permit and did not determine water quality standards or derive permit conditions appropriate to their protection.

Because the City disputes that the ED's RTC No. 4 has responded to and allayed the concerns raised by the City regarding the protectiveness of the Draft Permit as to endangered or otherwise threatened, rare, or sensitive species (all of which are within the ambit of aquatic or terrestrial wildlife), this issue should be taken up in a contested case hearing; or, in the alternative, the ED should direct TCEQ staff to undertake the requisite analyses and either derive such permit conditions as are needed to protect the aforementioned species or recommend denial of the permit, as appropriate.

#### **IV. SUMMARY OF DISPUTED ISSUES FOR REFERRAL**

The City has identified critical issues that the Commission should explore through an open and public contested case hearing. At a minimum, the City requests that the following issues be referred to SOAH for a contested case hearing:

1. Whether the Application and Draft Permit are consistent with the Legislature's statutory directives regarding wastewater regionalization as expressed in TWC §§ 26.003 and

26.081–26.086, including whether issuance of the Draft Permit is contrary to the state’s regionalization policy;

2. Whether the Application is substantially and materially complete and accurate;
3. Whether the issuance of the Draft Permit impermissibly authorizes a discharge of pollutants to dry land rather than waters in the State (with a discernable bed and banks);
4. Whether the discharge route and receiving waters have been properly characterized and their uses correctly identified;
5. Whether the Draft Permit is adequately protective of water quality;
6. Whether the Draft Permit is adequately protective of the existing uses of the receiving waters in accordance with the Texas Surface Water Quality Standards, including applicable antidegradation review requirements;
7. Whether there is a need for the Proposed Package Plant;
8. Whether the Draft Permit includes adequate provisions to protect the health of nearby residents<sup>27</sup> and aquatic and terrestrial wildlife;
9. Whether the Draft Permit includes adequate provisions to protect endangered, threatened, rare, or otherwise sensitive species;
10. Whether the Draft Permit complies with applicable requirements to abate and control nuisances;
11. Whether the Applicant has substantially complied with all applicable notice requirements; and
12. Whether the draft permit contains adequate provisions to protect the use and enjoyment of property.

The City reserves the right to raise and pursue any and all issues that may be relevant to its interest in the event of a contested case hearing.

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<sup>27</sup> The ED’s RTCs did not respond to the City’s comments regarding the public health and safety concerns raised by the close proximity of the proposed discharge to residents living in the City’s ETJ.

Ms. Laurie Gharis, Chief Clerk  
Re: TPDES Permit No. WQ0016257001  
January 2, 2025  
Page 24

Respectfully submitted,

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**ATTORNEYS FOR CITY OF  
GEORGETOWN**



# EXHIBIT 1



SpencerFane

MARIS M. CHAMBERS  
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mchambers@spencerfane.com

June 14, 2024

Ms. Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Via e-Comment to <https://www14.tceq.texas.gov/epic/eComment/>

Re: **Public Comments and Requests for a Public Meeting and Contested Case Hearing**  
Application by New Horizons Utility, LLC (CN606081594) and OptiN Holdings 1 LLC (CN606081602) for Proposed New Texas Pollutant Discharge Elimination System Permit No. WQ0016257001 (EPA I.D. No. TX0143804)

Dear Ms. Gharis:

On behalf of the City of Georgetown, Texas ("**City**"), please accept these timely filed public comments ("**Public Comments**") and requests for a public meeting and contested case hearing (respectively, the "**Meeting Request**" and "**Hearing Request**") regarding the application ("**Application**") by New Horizons Utility, LLC and OptiN Holdings 1 LLC ("**Applicants**") for new Texas Pollutant Discharge Elimination System ("**TPDES**") Permit No. WQ0016257001 (the "**Draft Permit**") for the proposed New Horizons WWTP (RN111609582) (the "**Proposed Plant**"). As I represent the City with respect to this matter, please include me on the mailing list for all filings related to the above-referenced Application. My mailing/contact information is as follows:

Ms. Maris M. Chambers  
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## I. EXECUTIVE SUMMARY

The City respectfully requests that the Texas Commission on Environmental Quality ("**TCEQ**") deny the Application based on the relevant and material public comments presented herein. If the Application is not denied or, at least, remanded back to TCEQ staff for further technical review, the City alternatively requests a public meeting and contested case hearing regarding the Application, Draft Permit, and each and every issue raised herein and in any and all supplements and/or amendments hereto.

## II. BACKGROUND

### A. Description of the Proposed Plant

The Application requests authorization to discharge wastewater effluent from the Proposed Plant at an annual average flow not to exceed 1.34 million gallons per day (“*MGD*”). The Proposed Plant is intended to serve areas within the City’s extraterritorial jurisdiction (“*ETJ*”) from a plant site (“*Plant Site*”) located approximately one-half mile northeast of the intersection of County Road 107 and County Road 110 in Williamson County, Texas 78626. The Plant Site is less than one (1) mile from the City’s nearest corporate boundary and less than three (3) miles from the City’s nearest wastewater treatment plant. According to the Notice of Application and Preliminary Decision (“*NAPD*”), the proposed discharge route for the wastewater effluent is to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. As an unclassified freshwater stream, the presumed uses for the unnamed tributary of Huddleston Branch are primary contact recreation 1 and limited aquatic life use. As perennial freshwater streams, the presumed uses of Huddleston Branch, Mankins Branch, and San Gabriel/North Fork San Gabriel River are primary contact recreation 1 and high aquatic life use. Mankins Branch is included in the 2022 Integrated Report—Texas 303(d) List (“*303(d) List*”) of impaired and threatened waters for bacteria in the water. Other site-specific uses for San Gabriel/North Fork San Gabriel River are public water supply and aquifer protection use, applying to the contributing, recharge, and transition zones of the Edwards Aquifer.

### B. Procedural History

The Application was received by TCEQ on November 22, 2022, and TCEQ’s Executive Director (“*ED*”) declared it administratively complete on February 14, 2023. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (“*NORI*”) was issued that same day and then published in English and Spanish in *The Williamson County Sun* on March 1, 2023. The *NAPD* was issued on January 12, 2024, and according to TCEQ’s Commissioners’ Integrated Database, the *NAPD* was published on May 15, 2024. As such, 30 Texas Administrative Code (“*TAC*”) § 55.152 dictates that the current deadline to submit public comments and request a public meeting about the Application is June 14, 2024. Therefore, these combined Public Comments, Meeting Request, and Hearing Request are timely filed.

## III. PUBLIC COMMENTS

The Application should be denied because it is inaccurate, incomplete, and fails to comply with all applicable regulatory and statutory requirements. Specifically: (1) issuance of the Draft Permit would contravene the regionalization policy codified in Chapter 26 of the Texas Water Code (“*TWC*”); and (2) the Application contains numerous significant deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.

**A. Approval of the Application and issuance of the Draft Permit would violate Texas' legislatively mandated policy to encourage and promote the development and use of regional and areawide wastewater collection, treatment, and disposal systems.**

The Application should be denied because issuance of the Draft Permit would contravene TCEQ's statutory mandate to encourage and promote the regionalization of wastewater infrastructure. Texas's regionalization policy is clearly and expressly set forth in TWC § 26.003 as follows:

It is the policy of this state . . . to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

The regionalization policy is also codified in TWC § 26.081, which plainly and unambiguously states that the Texas legislature has found and declared "that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." In addition, the TWC contains numerous other provisions relating to or facilitating the implementation of the regionalization policy. Such provisions include, but are not limited to, the following:

- TWC § 26.0282, which states that it "is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater," authorizes TCEQ, "[i]n considering the issuance, amendment, or renewal of a permit to discharge waste," to "deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems" without regard to whether a given system has been "designated as such by [TCEQ] order."
- TWC § 13.183(c), which provides that the Public Utility Commission ("*PUC*") or the governing body of a municipality may use alternative ratemaking methodologies to fix the rates for sewer services "to encourage regionalization."
- TWC § 13.241(d), which requires an applicant to "demonstrate to the [PUC] that regionalization or consolidation with another retail public utility is not economically feasible" in order for PUC to grant "a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system."<sup>1</sup>

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<sup>1</sup> *Accord* Tex. Water Code § 13.245(c-4)(2)(B) (providing that the PUC may not grant a certificate of convenience and necessity within the corporate boundaries or ETJ of a municipality with a population of 500,000 or more unless it determines that "regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under Section 13.241(d).").

- TWC § 26.0135(a), which requires TCEQ to conduct periodic assessments of water quality, also dictates that such an “assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.”

TCEQ is charged with implementing the regionalization policy and, pursuant to TWC § 5.013(a)(10), has general jurisdiction over “the state’s responsibilities relating to regional waste disposal.” This mandate is clearly acknowledged in TCEQ form TCEQ-10053ins (October 31, 2022) Instructions for Completing the Domestic Wastewater Permit Application (the “*Instructions*”), in effect at the time the Application was submitted, which state “TCEQ is required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”<sup>2</sup> For purposes of “implementing regionalization,” the Instructions also indicate that TCEQ “will” require TPDES permit applicants to justify the need for such a permit.<sup>3</sup> As part of its commitment to do so, TCEQ’s TPDES permit application form includes Domestic Technical Report 1.1, the first section of which contains questions related to the potential for regionalization.<sup>4</sup> Of such questions, those included in Section 1.B.3 are most relevant to these Public Comments, and Applicants’ responses thereto are shown by the following excerpt from the Application:

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<sup>2</sup> Instructions at 67.

<sup>3</sup> *Id.* at 54 – 55.

<sup>4</sup> TCEQ-10054 (June 1, 2017) Domestic Wastewater Permit Application, Technical Reports at 21–22.

### 3. *Nearby WWTPs or collection systems*

Are there any domestic permitted wastewater treatment facilities or collection systems located within a three mile radius of the proposed facility?

Yes ☒ No ☐

If yes, attach a list of these facilities that includes the permittee's name and permit number, and an area map showing the location of these facilities.

Attachment: Georgetown - Dove Springs WWTP Exhibit

If yes, attach copies of your certified letters to these facilities and their response letters concerning connection with their system.

Attachment: Will Serve letters to Georgetown, Round Rock and Jonah SUD.

Does a permitted domestic wastewater treatment facility or a collection system located within three (3) miles of the proposed facility currently have the capacity to accept or is willing to expand to accept the volume of wastewater proposed in this application?

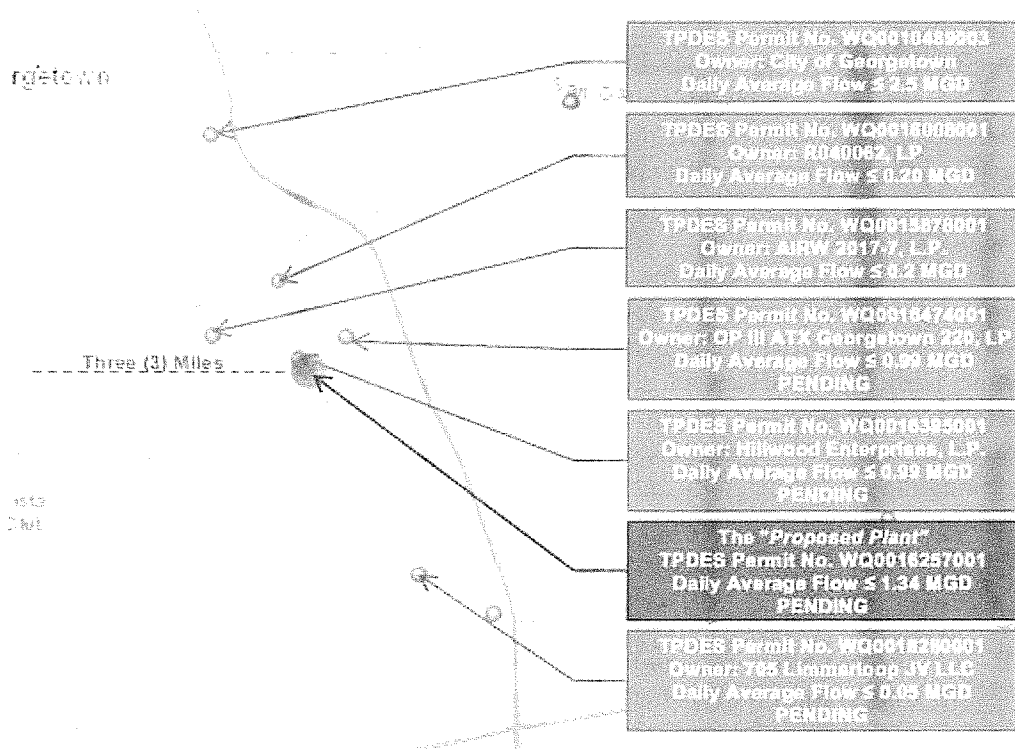
Yes ☐ No ☒

If yes, attach an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion.

Attachment:

The Applicants' foregoing responses are not fully accurate and incomplete.

First, the Application materials identify three (3) domestic permitted wastewater treatment facilities located within a three-mile radius of the Proposed Plant despite the fact that there may soon be six (6) such facilities, meaning there would be a total of seven (7) permitted domestic wastewater facilities within the three-mile radius surrounding the Proposed Plant. The nearby facilities identified in the Application are (1) the City's Dove Springs Wastewater Treatment Facility (WQ0010489003); (2) the Rockride Lane Water Resource Reclamation Facility (WQ0015878001), owned by AIRW 2017-7, L.P.; and (3) the Indigo Water Resource Recovery Facility (WQ0016008001), owned by R040062, LP. TCEQ should be aware, however, that after the Application was filed, the agency received three (3) additional applications for authorization to discharge wastewater effluent from additional facilities also intended to be located within a three-mile radius of the Proposed Plant. Those facilities are (1) the proposed Limmer Loop WWTF (WQ0016260001), owned by 705 Limmerloop JV LLC; (2) the proposed H4 East GT WWTP (WQ0016395001), owned by Hillwood Enterprises, L.P.; and (3) the proposed OP III ATX Georgetown Wastewater Treatment Plant (WQ0016474001), owned by OP III ATX Georgetown 220, LP. Further, the proposed H4 East GT WWTP facility is anticipated to be situated less than 1,000 feet from the Proposed Plant. For reference, the following annotated screenshot from TCEQ's online Wastewater Outfalls map shows the very close proximity of these seven (7) permitted and proposed domestic wastewater treatment facilities (as well as two other nearby facilities).



The proliferation of so many wastewater treatment facilities within such a small geographic area is unnecessary and completely at odds with Texas' regionalization policy; and, therefore, should not be authorized by TCEQ. Rather, both this Application and those related to the proposed facilities identified above should be denied in accordance with Texas' legislatively mandated regionalization policy and the requirement that Applicants demonstrate a need for the Proposed Plant.

Second, the Application materials do not include all the requisite responses concerning the possibility of connection with the aforementioned neighboring wastewater facilities. In fact, the only such response indicates that the City of "Round Rock cannot provide wastewater service to [Applicants'] property," but the City of Round Rock does not even own a permitted domestic wastewater treatment facility located within three (3) miles of the Proposed Plant. The Application materials contain no such correspondence from the owners of the six (6) nearby wastewater treatment facilities identified above. Instead, a cover letter to the Application states that "the City of Georgetown, the City of Round Rock, and Jonah [Water Special Utility District] . . . have verbally agreed to th[e] [A]pplication in principle but have been unable to provide written confirmation," and an email included with the Application further states that Applicants "had two verbal denials from the cities." To be clear, Jonah Water Special Utility District also does not have a permitted domestic wastewater treatment facility located within three (3) miles of the Proposed Plant. More importantly, Applicants' statements regarding the City are patently false. **The City has never indicated—either verbally or otherwise—that it "agreed" to the Application or did not have capacity to accept the volume of wastewater contemplated by the Application.**

The Application falsely indicates that no permitted wastewater treatment facility located within three (3) miles of the Proposed Plant currently has the capacity to accept or is willing to expand to accept the volume of wastewater contemplated by the Application. In fact, the aforementioned lack of communication between Applicant and the six (6) neighboring wastewater utility service providers means Applicants have no basis to make such an assertion, which is also not supported by any other documentation included with the Application. Likely because of such lack of communication, and in further contravention of the instructions in Section 1.B.3, Applicants also failed to provide the requisite analysis of related expenditures. Without such information, the Application fails to demonstrate that no permitted domestic wastewater treatment facility or collection system located within three miles of the Proposed Plant currently has the capacity or willingness to accept the volume of wastewater proposed in the Application. Consequently, the Application cannot reasonably be relied upon to assess the feasibility, either economic or logistical, of regionalization, so there is no adequate basis to conclude that approval of the Application and issuance of the Draft Permit complies with Texas's statutorily mandated regionalization policy. Rather, the foregoing map of domestic wastewater treatment facilities demonstrates that there is already an over-proliferation of such facilities in the area.

**B. The Application contains numerous deficiencies, which create substantial uncertainty as to whether TCEQ was provided with sufficiently accurate and complete information to prepare the Draft Permit in compliance with all applicable laws and regulations.**

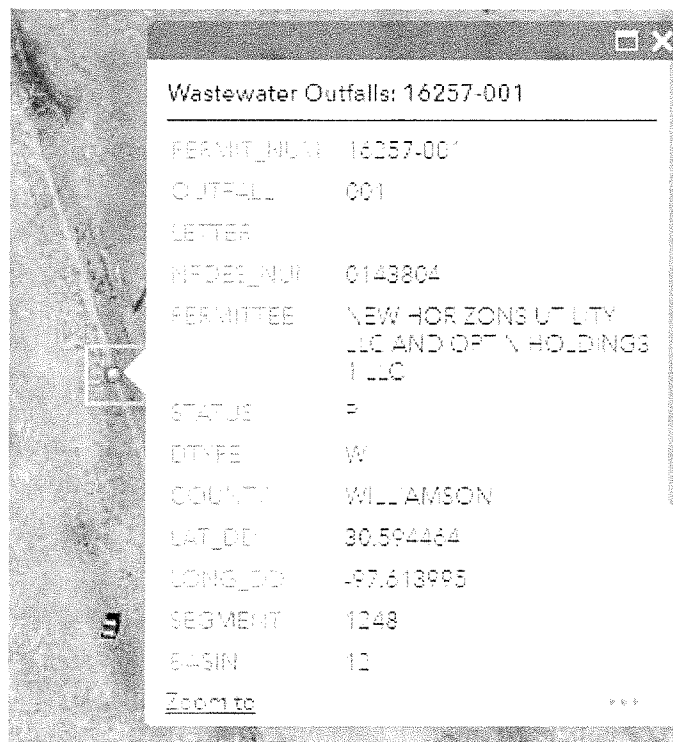
The Application should be denied, or at a minimum, remanded to technical review as a result of the following significant deficiencies that call into question whether issuance of the Draft Permit would comply with all applicable requirements:

- **The Application contains varying inconsistent descriptions of the proposed discharge route.** According to the Draft Permit, the discharge route is "to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin." This is consistent with the NORI, NAPD, and the notice to state legislators in accordance with TWC § 5.5553. However, the Supplemental Permit Information Form ("*SPIF*") describes the discharge route differently, as follows: "From the [Proposed P]lant to an unnamed tributary of Huddleston Branch, to Huddleston Branch, Segment 1248B." The discharge route described in Section 10.B. of Administrative Report 1.0 also varies from that described in the aforementioned notices. There, Applicants described the discharge route as follows: "From the [Proposed P]lant, W to an unnamed tributary of Huddleston Branch, to Huddleston Branch, Segment 1248B." The two foregoing descriptions are not compliant with the Instructions, which state that "[t]he discharge route must follow the flow of effluent from the point of discharge to the nearest major watercourse (from the point of discharge to a classified segment as defined in *30 TAC Chapter 307*) . . . . Classified segments can be found in *30 TAC § 307.10 Appendix A*" (emphasis in original). "Segment 1248B" is not listed in *30 TAC § 307.10 Appendix A*. Further, while Section 13 of Administrative Report 1.0 requires TPDES permit applicants to submit an



“[o]riginal full-size USGS Topographic Map” showing “3 miles downstream information,” and the Instructions clarify that such map must depict “the highlighted discharge route for a distance of three stream miles or until the effluent reaches a classified segment,” none of the maps included with the Application do so. Instead, the maps titled “Domestic Technical Report: SPIF Attachment 1f: USGS Map” and “Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map” (collectively, the “*USGS Maps*”) arbitrarily depict the discharge route for a distance of only one (1) stream mile, which does not coincide with the point at which the effluent reaches a classified segment. Given all of these discrepancies in the characterization of the proposed receiving waters and discharge route, the effluent set in the Draft Permit may be inconsistent with applicable statutory and regulatory requirements. This is especially troubling given that the site-specific uses for the San Gabriel/North Fork San Gabriel River include public water supply and aquifer protection.

- **Based on the outfall location, the Proposed Plant would discharge to dry land, which is inconsistent with the TPDES permitting scheme.** According to the Fact Sheet and Executive Director’s Preliminary Decision document, the location of the proposed outfall is Latitude 30.594348 N, Longitude 97.613857 W. This is consistent with the location shown on TCEQ’s online Wastewater Outfalls map, Latitude 30.594464, Longitude -97.613995. As shown by the following screenshot of such map, the proposed outfall is located on dry land (onto what appears to be a neighbor’s private road) and would not discharge to an unnamed tributary of Huddleston Branch, as stated in the Draft Permit and Application.



Rather, as shown by the following screenshot from Google Earth, there are no waterbodies located at or near the location of the proposed outfall.



**The proposed discharge of wastewater effluent directly to dry land would be entirely inconsistent with the TPDES permitting scheme and should not be authorized by TCEQ.**

- **Applicants do not own the land on which the proposed outfall/effluent disposal site is to be located, and the Application lacks the requisite lease agreement authorizing the use of such land for effluent disposal.** Again, according to the Fact Sheet and Executive Director's Preliminary Decision document, the location of the proposed outfall is Latitude 30.594348 N, Longitude 97.613857 W. According to the Williamson Central Appraisal District, however, that location corresponds to land owned by Mr. Greg Zunker. The TPDES application form states "[i]f landowner is not the same person as the facility owner or co-applicant, attach a lease agreement or deed recorded easement." This is consistent with the Instructions, which provide the following clear directions: "If the owner of the land is not the same as the applicant, a long-term lease agreement must be provided. The lease agreement must give the facility owner uses of the land for effluent disposal." The Application lacks any such lease agreement between Applicants and Mr. Zunker, and, as such, is deficient.
- **The Application fails to demonstrate that Applicants have the technical, managerial, or financial capabilities to own and operate the Proposed Plant.** According to *Application of New Horizons Utility, LLC for a Certificate of*

*Convenience and Necessity in Williamson County*, Public Utility Commission of Texas Docket No. 54520 (Dec. 28, 2022), Applicants, through their affiliates and/or subsidiaries, “currently operate[] 25 public utility systems in Texas that serve a population of over 15,000.” The Application, however, lacks the requisite evidence regarding the compliance history of these related entities. This is contrary to 30 TAC § 60.1(c), which requires an evaluation of the compliance history of “other sites which are owned or operated by the same person.”

- In addition to lacking the requisite “3 miles downstream information,” as described in more detail above, **the USGS Maps submitted with the Application otherwise fail to comply with the Instructions.** Specifically, “[f]or all USGS Map submittals,” the Instructions state that “the maps must contain,” among other things, the following information **“clearly outlined and labeled on the map:”** (1) “one mile in all directions from the [Proposed Plant]. If more than one map is required to show one mile in all directions from the facility, provide each individual map. Do not splice together;” (2) “[Applicants’] property boundary;” (3) “all ponds including storage, evaporation, and holding ponds;” and (4) “all new and future commercial developments, housing developments, industrial sites, parks, schools, and recreational areas” (emphasis in original). First, the USGS Maps do not depict the entire one-mile radius surrounding the Proposed Plant. Instead, as shown by the USGS Maps attached hereto and incorporated herein for all purposes as **Attachment A**, given the scope and 1:24,000 scale of the 7.5 Minute USGS Topographic Quadrangle Map(s) required to be used, “more than one map is required to show one mile in all directions from the [Proposed Plant],” but Applicants failed to “provide each individual map,” as required. Second, as demonstrated by **Attachment A**, the USGS Map titled “Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map” does not depict the Applicants’ property boundary. Further, the USGS Map titled “Domestic Technical Report: SPIF Attachment 1f: USGS Map” inaccurately depicts the Applicants’ property boundary.<sup>5</sup> Finally, the USGS Maps also do not depict “all ponds” or “all new and future commercial developments, housing developments, industrial sites, parks, schools, and recreational areas.”
- **The Affected Landowner Map is similarly deficient in that it fails to depict and/or identify Applicants’ property boundary and the buffer zone surrounding the Proposed Plant, both of which are required by the Instructions.**
- **The required buffer zone map is also deficient.** Pursuant to Section 3 of Domestic Administrative Report 1.1, TPDES permit applicants are required to provide a buffer zone map showing, among other things, the applicant’s property boundary and the distance from each treatment unit to the property boundary. The map titled “Domestic Technical Report 1.0 Attachment 2e: Buffer Zone Map,” however, fails to depict either such item.

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<sup>5</sup> Compare the USGS Maps in **Attachment A** with the Williamson Central Appraisal District information and maps of Applicants’ property attached hereto and incorporated herein for all purposes as **Attachment B**.

- **The Application lacks certain required photographs.** Section 2 of Domestic Administrative Report 1.1 instructs TPDES permit applicants to provide “[a]t least two photographs of the existing/proposed point of discharge and as much area downstream (photo 1) and upstream (photo 2) as can be captured.” As demonstrated by the “Aerial Photo with Photograph Location and Direction,” however, the Application fails to include the required upstream photo or any photos of the point of discharge.
- **The SPIF is likely inaccurate.** Section 5 of the SPIF requires TPDES permit applicants to indicate, among other things, whether their project involves “[p]roposed access roads, utility lines, construction easements” or “[d]isturbance of vegetation or wetlands.” According to Section 1.A. of Domestic Technical Report 1.1, Applicants’ “plans for development include building multiple housing subdivisions and a commercial area on approximately 2,100 acres.” That being the case, it would be impossible to complete such a project without disturbing vegetation or requiring access roads, utility lines, and construction easements. As such, Applicants should have so indicated on the Application, but they failed to do so.
- **The Plain Language Summary provided in Section 15 of Administrative Report 1.0 is inaccurate and deficient.** According to the Plain Language Summary (“*PLS*”), “[t]his is a modification of a previously authorized permit.” However, according to numerous other Application materials, Applicants have applied to TCEQ for “new” or “proposed” TPDES Permit No. WQ0016257001. Such Application materials include, but are not limited to, the “Permit Application Routing and Summary Sheet,” which states the “Application Type” is “New;” the NORI, NAPD, and notice to state legislators in accordance with TWC § 5.5553; multiple TCEQ interoffice memorandums; the “EPA – Region 6 NPDES Permit Certification Checklist;” the “Check List for Admin Review of Municipal Application for Permit;” and the “Fact Sheet and Executive Director’s Preliminary Decision” document. As such, contrary to the statement in the PLS, it is unlikely that Applicants are seeking “modification of previously authorized permit.” The PLS further indicates that the Proposed Plant will have “an initial rated treatment capacity of 0.411 MGD.” That is also inconsistent with the Draft Permit and numerous other Application materials, including Domestic Technical Report 1.0, all of which indicate that the daily average flow of effluent in the Interim I Phase shall not exceed 0.10 MGD, the daily average flow of effluent in the Interim II Phase shall not exceed 0.30 MGD, and the daily average flow of effluent in the Final Phase shall not exceed 1.34 MGD.
- **The Application lacks the requisite stormwater management information.** Section 6.E.1. of Domestic Technical Report 1.0 requires TPDES applicants to indicate whether their proposed wastewater treatment facility has a design flow of 1.0 MGD or greater in any phase. According to the NORI, NAPD, Draft Permit, and numerous other Application materials, the Final Phase design flow of the Proposed Plant is 1.34 MGD. Nevertheless, the Application incorrectly indicates that the Proposed Plant does not have a design flow of 1.0 MGD or greater in any phase. By so indicating, Applicants were able to avoid completing the remainder of Section 6.E., which pertains to stormwater management. In other words, because the Final Phase design flow of the

Proposed Plant is 1.34 MGD, Applicants should have completed Section 6.E.2 – 6, but they did not. As such, the Application is not only inaccurate but is also incomplete.

- **The Application lacks required information regarding the facility operator.** Section 8 of Domestic Technical Report 1.0 requires TPDES applicants to provide the name and license classification, level, and number of the operator of the proposed wastewater treatment facility, and the Instructions state “[p]rovide the name, operator certification number, and class for the facility operator as listed in the Central Registry.” Nevertheless, no such information is included in the Application. Instead, Applicants indicated that the “Facility Operator Name” was “TBD.”
- **The Application lacks required documentation related to sludge disposal.** Section 9 of Domestic Technical Report 1.0 requires TPDES permit applicants to “identify the current or anticipated sludge disposal method,” and Applicants indicated that sludge from the Proposed Plant would be “[t]ransported to another permitted wastewater treatment plant or permitted sludge processing facility.” For TPDES permit applicants that select such method of sludge disposal, the instructions in Section 9 further provide that “a written statement or contractual agreement from the wastewater treatment plant or permitted sludge processing facility accepting the sludge must be included with the[e] application.” Nevertheless, no such written statement or contractual agreement is included with the Application, which is, therefore, deficient.
- In Section 10.B. of Administrative Report 1.0, **the Application misrepresents that the “[c]ity nearest the outfall(s)” is “Round Rock.”** That is inaccurate. Based on TCEQ’s online “Wastewater Outfalls” map, version 3.0, the proposed outfall is roughly five (5) miles from the approximate center of the City of Georgetown and roughly seven (7) miles from the approximate center of the City of Round Rock. Indicating that Round Rock is the city nearest the outfall for the Proposed Plant is also inconsistent with the Core Data Forms submitted by Applicants, all of which correctly identify Georgetown as the “Nearest City” to the Proposed Plant.
- **Applicants used outdated forms to complete the Application.** Applicants completed and submitted the TCEQ form titled “TCEQ-10053 (06/28/2022) Municipal Wastewater Application Administrative Report.” However, because the Application was submitted to TCEQ on November 22, 2022, Applicants should have used the version of that form dated October 31, 2022. Similarly, all of the TCEQ Core Data Forms submitted by Applicants use the version of the form dated February 2021 despite the fact that the most current version of the TCEQ Core Data Form at the time the Application was submitted was dated November 2022.
- **Applicants failed to complete all required portions of the TPDES permit application form.** Specifically, the Application lacks Worksheet 2.1: Stream Physical Characteristics. According to the Instructions, applicants should “[c]omplete and submit [Worksheet 2.1] if the application is for a new permit . . . with an existing or proposed phase of 1.0 MGD or greater.” Because the Draft Permit authorizes a new

daily average discharge of effluent not to exceed 1.34 MGD in the Final Phase, the Application should include Worksheet 2.1. Applicants, however, failed to complete and submit such worksheet, thereby rendering the Application incomplete.

- **Application materials incorrectly indicate that the Proposed Plant is a minor facility.** Per the TPDES permit application form, a major domestic wastewater discharge facility has a permitted flow of 1.0 MGD or greater. Because the Draft Permit authorizes a daily average flow of effluent not to exceed 1.34 MGD in the Final Phase, the Proposed Plant is a major facility. Nevertheless, certain Application materials fail to so indicate. The “Permit Application Routing and Summary Sheet,” for example, states that the “EPA Classification” of the Proposed Plant is “Minor.” The “Check List for Admin Review of Municipal Application for Permit” also incorrectly indicates that the Proposed Plant is a “Minor” facility, as does the “Central Registry Internal Reporting” sheet, which states that the “Site Classification” is “Domestic Minor.” This is inconsistent with the truth and other Application materials.
- **The Application incorrectly indicates that the Proposed Plant would not discharge to a 303(d) listed waterbody segment.** As noted above, the proposed discharge route for the wastewater effluent is to an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. Mankins Branch is included in the 303(d) List of impaired and threatened waters for bacteria in the water. Nevertheless, the “EPA – Region 6 NPDES Permit Certification Checklist” indicates that the Proposed Plant does not discharge to a 303(d) listed waterbody segment. Similarly, the “Municipal EPA Review Checklist” indicates that the Draft permit does not authorize a discharge to an impaired 303(d) listed segment. These inaccuracies deprived the EPA of the opportunity to meaningfully review whether the Proposed Plant has the potential to discharge any pollutant that is causing or contributing to the impairment of Mankins Branch.

**C. The Draft Permit is not protective of water quality and existing uses of the receiving waters in accordance with Texas Surface Water Quality Standards, including protection of public health and enjoyment of waters in the state and aquatic and terrestrial life.**

The City is concerned that the proposed discharge of treated effluent will adversely affect the supposed receiving water, which is within the City’s extraterritorial jurisdiction and its City limits, and existing and future uses thereof. The Statement of Basis for the Draft Permit indicates that TCEQ’s evaluation of the Application did not investigate or duly consider all existing uses (for example, agricultural uses like livestock watering and irrigation) or water quality standards protective of all existing uses (for example, aesthetic parameters related to recreational uses that are implicated in public health and enjoyment of waters in the state, criteria protective of livestock and other terrestrial and aquatic life). And although TCEQ’s review included an evaluation of the aquatic life use, this review was based on general assumptions the accuracy of which has not been confirmed as appropriate in this specific circumstance. For example, it is unclear if the pond to which the proposed discharge would flow (from a private road on a neighbor’s agricultural land

west of the proposed plant) is fed by one or more springs or well water. If fed by spring water, the pond and unnamed tributary fed by the overflow from the pond may contain aquatic life that is dependent on the water quality of such spring water or groundwater and would be particularly sensitive to changes in water quality resulting from the proposed discharge; however, the TCEQ's review does not appear to have considered either the hydrology<sup>6</sup> or the aquatic life in the pond to which the proposed discharge would flow. In the absence of an investigation into and evaluation of existing uses and relevant water quality standards, the City is concerned that the Draft Permit does not contain conditions that will be protective of water quality and all existing uses in accordance with Texas law.

Given that the slightest plant upset would adversely affect the water quality in the receiving streams and rivers, the City is further concerned that the proposed discharge poses risks to the receiving water quality and may create unsanitary or unsafe water quality conditions in the receiving waters and the health and safety of its citizens.

In addition, the Draft Permit does not contain measures to protect against discharges of untreated or partially untreated effluent. Because this creates an unnecessary risk of contamination of the receiving waters, the Application should be denied.

**D. The Draft Permit is not protective of the public health and safety of nearby residents.**

The City is also concerned about the public health risk posed by the Proposed Plant to nearby residents. The City is concerned that the very close distance of the Proposed Plant to adjacent residences poses health risks, including the potential exposure of residents to harmful pathogens via vectors (e.g., flies), aerosols (e.g., bacteria containing mists), and the receiving water (e.g., bacteria and viruses in the treated wastewater).

**E. The Draft Permit does not protect the health and safety of landowners' livestock and the habitats of endangered species.**

The area surrounding the Proposed Plant and discharge route is agricultural in nature and contains livestock. Also, the surrounding area and the San Gabriel River are home to several endangered species including the Texas Shiner and Guadalupe Bass as well as a number of endangered salamanders.<sup>7</sup> Granting the Application would expose these animals to adverse effects

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<sup>6</sup> To the extent that the pond to which the proposed discharge will flow is fed by shallow groundwater or spring water, the issuance of the Draft Permit for the proposed plant is concerning as it is inconsistent with Texas' regionalization policy, which includes the promotion of use of existing area-wide waste collection, treatment, and disposal systems to prevent pollution. If the Proposed Plant discharges treated effluent in an area of shallow groundwater, the TCEQ should have considered the potential contamination of shallow groundwater in this area. The failure to consider shallow groundwater and how it may be contaminated by the proposed discharge is troubling.

<sup>7</sup> These endangered species can be found by using the Texas Parks and Wildlife Endangered Species by Counties search available at [tpwd.texas.gov/gis/test](http://tpwd.texas.gov/gis/test) and cross-referencing using the United States Geological Survey species list available at [nas.er.usgs.gov/queries](http://nas.er.usgs.gov/queries).

from growth of algae<sup>8</sup>, high nitrogen content, toxic substances that are not subject to effluent limitations<sup>9</sup>, and bacterial contamination from the proposed discharge.

**F. The Application failed to show the proposed discharge satisfied TCEQ's antidegradation policy.**

As noted above, the Statement of Basis for the Draft Permit indicates that TCEQ did not consider all existing uses and water quality protective thereof. Without this information, it is not clear how TCEQ could have conducted its Tier 1 and Tier 2 antidegradation review consistent with the Texas antidegradation policy and procedures implementing the same.

Nothing in TCEQ's materials indicate that TCEQ conducted a site visit to the unnamed tributary of Huddleston Branch to determine whether it has been appropriately classified. Also, no information from TCEQ shows a site visit to unnamed tributary of Huddleston Branch or Huddleston Branch to confirm the actual conditions, such as the hydraulics, of these receiving waters to determine what the impact of the proposed discharge will be.

Therefore, TCEQ's analysis of the discharge relied on an uncalibrated model based on default values that do not reflect the actual conditions of the unnamed tributary of Huddleston Branch or Huddleston Branch. Due to the potential of accidental releases from the Proposed Plant, untreated or partially treated discharges may adversely impact the receiving waters. The use of site-specific data of the receiving waters is necessary to ensure the proper antidegradation analysis is conducted and that improper degradation of water quality is avoided.

In addition, the City is also concerned about elevated nitrogen levels in the receiving watercourses and its effect on water quality in the immediate receiving unnamed intermittent tributary and in downstream segments of this receiving water body.

Finally, the City is concerned that TCEQ is using an incorrect standard in conducting its Tier 2 antidegradation review. The Statement of Basis for the Draft Permit indicates TCEQ used a "no significant degradation" standard in conducting its Tier 2 evaluation. Such a standard is inconsistent with Texas antidegradation policy, which provides that no degradation is allowed unless it can be shown that the lowering of water quality is necessary for important economic or social development. Here, there is no indication that such economic or social development considerations were contemplated or that such a determination was made.

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<sup>8</sup> The Draft permit includes a limit of 0.15 mg/L for total phosphorus, which concentration limit was determined by the TCEQ to not be adequately protective against algal blooms in the recently issued permit for the City of Liberty Hill's wastewater treatment plant. Because algal blooms are known to present health hazards to livestock, the 0.15 mg/L total phosphorus limit does not appear to be protective of agricultural uses (e.g., livestock watering).

<sup>9</sup> The Draft permit does not include effluent limits that are protective of livestock watering uses and irrigation of crops – for example, limits on arsenic, copper, salinity, sulfates, etc. that may affect crop production, palatability or growth and development of livestock, and other agricultural uses.



#### **IV. REQUEST FOR PUBLIC MEETING**

In light of relevant and material concerns raised herein, the City requests a public meeting regarding the Application. TCEQ's regulations in 30 TAC § 55.154(c) provide that "[a]t any time, the [ED] or the . . . Chief Clerk may hold public meetings," and that "[t]he [ED] or the . . . Chief Clerk shall hold a public meeting if: (1) the [ED] determines that there is a substantial or significant degree of public interest in an application." Pursuant to 30 TAC § 55.150, this opportunity to request a public meeting under 30 TAC § 55.154(c) applies to applications for a new TPDES permit, such as the Application. The City, for the benefit of its citizens, has a substantial and significant degree of interest in the Application. Moreover, besides these Public Comments, Meeting Request, and Hearing Request, TCEQ has already received four (4) other requests for a contested case hearing and another set of public comments regarding the Application to date. As such, there is a demonstrated substantial and significant degree of public interest in the Application, and the ED or Chief Clerk should hold a public meeting thereon.

#### **V. REQUEST FOR CONTESTED CASE HEARING**

The City also requests a contested case hearing regarding the Application, Draft Permit, and each and every issue raised in these Public Comments, and any and all supplements and/or amendments thereto. For the reasons set forth herein, the City is an affected person, as defined by 30 TAC § 55.203. The City has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is not common to the general public that would be adversely affected should the Draft Permit be issued. In determining whether a person is an affected person, TCEQ may consider, among other factors, "(1) whether the interest claimed is one protected by the law under which the application will be considered; (2) distance restrictions or other limitations imposed by law on the affected interest; (3) whether a reasonable relationship exists between the interest claimed and the activity regulated; . . . and (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application."<sup>10</sup> TCEQ may also consider "the merits of the underlying application and supporting documentation . . . including whether the application meets the requirements for permit issuance."<sup>11</sup> All such considerations are applicable to the City, and, as noted in its foregoing Public Comments, the City has a particular interest in the issues relevant to the Application because the Application indicates that the service area for the Proposed Plant is located within its ETJ.

#### **VI. CONCLUSION**

Based on the foregoing, sufficient grounds exist for TCEQ to deny the Application. If the Application is not denied or, at least, remanded back to TCEQ staff for further technical review, a public meeting and contested case hearing regarding the Application, Draft Permit, and each and every issue raised herein and in any and all supplements and/or amendments hereto should be ordered.

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<sup>10</sup> 30 TAC § 55.203(c).

<sup>11</sup> *Id.* § 55.203(d).

Given that additional information may become apparent through a public meeting, the City reserves its right to supplement these Public Comments and its Hearing Request as it learns more about the Application and/or Draft Permit.

Thank you for your consideration of this important matter, and please do not hesitate to contact me if you or your staff have any questions regarding the City's Public Comments, Meeting Request, and/or Hearing Request.

Respectfully submitted,

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Coty Hopinks-Baul  
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Austin, TX 78701  
Telephone: (512) 575-6060  
Facsimile: (512) 840-4551

**ATTORNEYS FOR CITY OF GEORGETOWN**

## Attachment A



U.S. DEPARTMENT OF THE INTERIOR  
U.S. GEOLOGICAL SURVEY



HEBBO QUADRANGLE  
TEXAS  
7.5-MINUTE SERIES



# Domestic Technical Report: SPIF Attachment 1f: USGS Map

Produced by the United States Geological Survey  
U.S. Geological Survey  
1220 North 1st Street  
Reston, Virginia 20192-1212  
Telephone: 703/648-5000  
Internet: <http://www.usgs.gov>  
E-mail: [usgs@usgs.gov](mailto:usgs@usgs.gov)

Product	Scale	Projection	Units	Year
Topographic Map	1:50,000	NAD 83	Meters	2002
Geographic Map	1:50,000	NAD 83	Meters	2002
Geographic Map	1:50,000	NAD 83	Meters	2002

U.S. Geological Survey  
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Reston, Virginia 20192-1212  
Telephone: 703/648-5000  
Internet: <http://www.usgs.gov>  
E-mail: [usgs@usgs.gov](mailto:usgs@usgs.gov)





U.S. DEPARTMENT OF THE INTERIOR  
U.S. GEOLOGICAL SURVEY

The National Map  
US Topo

HUTTO QUADRANGLE  
TEXAS  
7.5-MINUTE SERIES

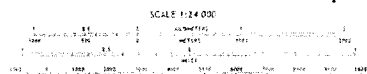


### Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map

Produced by the United States Geological Survey

Map of the Hutto area, Texas, showing the Applicant Property Boundary, Treatment Facility Boundary, and various roads and landmarks. The map is titled 'Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map'.

Map of the Hutto area, Texas, showing the Applicant Property Boundary, Treatment Facility Boundary, and various roads and landmarks. The map is titled 'Domestic Technical Report 1.0 Section 13 Attachment 1c: USGS Map'.



POSS CLASSIFICATION	
Topography	Contour Lines
Vegetation	Shrub
Water	Water
Buildings	Buildings
Other	Other

HUTTO, TX  
2012

## Attachment B



Property	Owner	Property Address	Tax Year	2024 Market Value
R040056	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	301 CR 107, GEORGETOWN, TX 78626	2024 ▼	\$501,263

Page: Property Details

## 2024 GENERAL INFORMATION

Property Status	Active
Property Type	LTRR-Land Transitional Residential
Legal Description	AW0426 AW0426 - McQueen, J. Sur., ACRES 5.07
Neighborhood	G305M50H - E Gtown ISD Abstracts
Account	R-20-0426-0000-0023
Map Number	3-2743

## 2024 OWNER INFORMATION

Owner Name	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES
Owner ID	
Exemptions	
Percent Ownership	100%
Mailing Address	7801 N CAPITAL OF TEXAS HWY #UNIT 390 AUSTIN, TX 78731
Agent	-

## 2024 VALUE INFORMATION

## MARKET VALUE

Improvement Homesite Value	\$170,762
Improvement Non-Homesite Value	\$0
Total Improvement Market Value	\$170,762

Land Homesite Value \$330,501

Land Non-Homesite Value \$0

Land Agricultural Market Value \$0

Total Land Market Value \$330,501

Total Market Value \$501,263

## ASSESSED VALUE

Total Improvement Market Value \$170,762

Land Homesite Value \$330,501

Land Non-Homesite Value \$0

Agricultural Use \$0





Timber Use \$0

Total Appraised Value \$501,263

Homestead Cap Loss ⓘ -\$0

Total Assessed Value \$501,263

## 2024 ENTITIES & EXEMPTIONS

TAXING ENTITY	EXEMPTIONS	EXEMPTIONS AMOUNT	TAXABLE VALUE	TAX RATE PER 100	TAX CEILING
CAD- Williamson CAD		-	\$501,263	0	0
 F08- Wmsn ESD #8		-	\$501,263	0.094073	0
 GWI- Williamson.CO		-	\$501,263	0.333116	0
 RFM- Wmsn CO.FM/RD		-	\$501,263	0.044329	0
 SGT- Georgetown.ISD		-	\$501,263	1.0467	0
<b>TOTALS</b>				<b>1.518218</b>	

## 2024 IMPROVEMENTS

⌵ Expand/Collapse All

Improvement #1	State Code	Homesite	Total Main Area (Exterior Measured)		Market Value
-	A1 - Residential Single Family	Yes	1,656 Sq. Ft		\$170,762
RECORD	TYPE	YEAR BUILT	SQ. FT	VALUE	ADD'L INFO
1	Main Area	1955	1,656	\$119,635	⌵ Details
2	Open Porch	1955	90	\$1,560	⌵ Details
3	Open Porch	1955	170	\$2,916	⌵ Details
4	Garage	1955	500	\$16,955	⌵ Details
5	Utility/storage	1955	100	\$3,391	⌵ Details
6	Site Improvement	-	1	\$12,000	⌵ Details
7	Out Bldg	2015	144	\$1,030	⌵ Details
8	Carport	2015	360	\$2,060	⌵ Details
9	Canopy	2015	360	\$2,060	⌵ Details
10	Canopy	2015	1,600	\$9,155	⌵ Details

## 2024 LAND SEGMENTS

LAND SEGMENT TYPE	STATE CODE	HOMESITE	MARKET VALUE	AG USE	TIM USE	LAND SIZE
1 - Residential	A1 - Residential Single Family	Yes	\$330,501	\$0	\$0	5.070000 acres
<b>TOTALS</b>						<b>220,849 Sq. ft / 5.070000 acres</b>



# VALUE HISTORY

YEAR	IMPROVEMENT	LAND	MARKET	AG MARKET	AG USE	APPAISED	HS CAP LOSS	ASSESSED
2023	\$164,095	\$330,501	\$494,596	\$0	\$0	\$494,596	\$0	\$494,596
2022	\$222,476	\$298,813	\$521,289	\$0	\$0	\$521,289	\$225,121	\$296,168
2021	\$163,450	\$138,273	\$301,723	\$0	\$0	\$301,723	\$32,479	\$269,244
2020	\$138,425	\$129,223	\$267,648	\$0	\$0	\$267,648	\$22,881	\$244,767
2019	\$164,210	\$58,305	\$222,515	\$0	\$0	\$222,515	\$0	\$222,515

# SALES HISTORY

DEED DATE	SELLER	BUYER	INSTR #	VOLUME/PAGE
1/18/2023	PETRERE, EDWARD R & EVELYN O	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	2023005095	
1/30/2013	HYDEN, LENA R	PETRERE, EDWARD R & EVELYN O	2013009338	
10/2/2003	HYDEN SR, R D, Sr	HYDEN, LENA R	-	

Property	Owner	Property Address	Tax Year	2024 Market Value
R091466	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	CR 107, GEORGETOWN, TX 78626	2024 ▼	\$1,019,381

Page: Property Details ▼

## 2024 GENERAL INFORMATION

Property Status	Active
Property Type	LTRR-Land Transitional Residential
Legal Description	AW0426 AW0426 - Mcqueen, J. Sur., ACRES 15.63
Neighborhood	G305M50H - E Gtown ISD Abstracts
Account	R-20-0426-0000-0023A
Map Number	3-2743

## 2024 OWNER INFORMATION

Owner Name	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES
Owner ID	
Exemptions	Circuit Breaker Limitation (Active)
Percent Ownership	100%
Mailing Address	7801 N CAPITAL OF TEXAS HWY #UNIT 390 AUSTIN, TX 78731
Agent	-

## 2024 VALUE INFORMATION

## MARKET VALUE

Improvement Homesite Value	\$0
Improvement Non-Homesite Value	\$500
Total Improvement Market Value	\$500

Land Homesite Value \$0

Land Non-Homesite Value \$1,018,881

Land Agricultural Market Value \$0

Total Land Market Value \$1,018,881

Total Market Value \$1,019,381

## ASSESSED VALUE

Total Improvement Market Value \$500

Land Homesite Value \$0

Land Non-Homesite Value \$1,018,881

Agricultural Use \$0

Timber Use \$0

Total Appraised Value \$1,019,381

Homestead Cap Loss ⓘ -\$0

Total Assessed Value \$1,019,381

## 2024 ENTITIES & EXEMPTIONS

### Special Exemptions CBL - Circuit Breaker Limitation

TAXING ENTITY	EXEMPTIONS	EXEMPTIONS AMOUNT	TAXABLE VALUE	TAX RATE PER 100	TAX CEILING
CAD- Williamson CAD		-	\$1,019,381	0	0
F08- Wmsn ESD #8		-	\$1,019,381	0.094073	0
GWL- Williamson CO		-	\$1,019,381	0.333116	0
RFM- Wmsn CO FM/RD		-	\$1,019,381	0.044329	0
SGT- Georgetown ISD		-	\$1,019,381	1.0467	0
<b>TOTALS</b>				<b>1.518218</b>	

## 2024 IMPROVEMENTS

⌵ Expand/Collapse All

Improvement #1	State Code	Homesite	Total Main Area (Exterior Measured)	Market Value	
-	E1 - Farm And Ranch Improvements-residence	No	-	\$500	
RECORD	TYPE	YEAR BUILT	SQ. FT	VALUE	ADD'L INFO
1	Barn	-	-	-	⌵ Details

## 2024 LAND SEGMENTS

LAND SEGMENT TYPE	STATE CODE	HOMESITE	MARKET VALUE	AG USE	TIM USE	LAND SIZE
1 - Vacant Land	E1 - Farm And Ranch Improvements- residence	No	\$1,018,881	\$0	\$0	15.630000 acres
<b>TOTALS</b>						<b>680,843 Sq. ft / 15.630000 acres</b>

## VALUE HISTORY

YEAR	IMPROVEMENT	LAND	MARKET	AG MARKET	AG USE	APPRAISED	HS CAP LOSS	ASSESSED
2023	\$500	\$0	\$500	\$1,018,881	\$625	\$1,125	\$0	\$1,125
2022	\$500	\$0	\$500	\$921,193	\$485	\$985	\$0	\$985
2021	\$500	\$0	\$500	\$426,272	\$531	\$1,031	\$0	\$1,031
2020	\$475	\$0	\$475	\$398,376	\$1,235	\$1,710	\$0	\$1,710
2019	\$500	\$0	\$500	\$179,745	\$1,188	\$1,688	\$0	\$1,688

## SALES HISTORY

DEED DATE	SELLER	BUYER	INSTR #	VOLUME/PAGE
10/26/2022	PETRERE, EDWARD R & EVELYN O	OPTIN HOLDINGS 1 CR107 PROTECTED SERIES	2022122434	
1/30/2013	HYDEN, LENA R	PETRERE, EDWARD R & EVELYN O	2013009340	
10/2/2003	HYDEN R D ETUX	HYDEN, LENA R	-	
8/1/1986	HYDEN, RONALD D	HYDEN R D ETUX	-	1405/0041
1/1/1985	VETERANS LAND BOARD OF TEXAS	HYDEN, RONALD D	-	1130/0291

## Vincent Redondo

---

**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, March 6, 2024 5:54 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001  
**Attachments:** 2024.03.05 Comment Letter and Hearing Request - file comp..pdf

H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** michael@carltonlawaustin.com <michael@carltonlawaustin.com>  
**Sent:** Tuesday, March 5, 2024 5:32 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Michael Parsons

**EMAIL:** [michael@carltonlawaustin.com](mailto:michael@carltonlawaustin.com)

**COMPANY:** The Carlton Law Firm

**ADDRESS:** 4301 WESTBANK DR B-130  
AUSTIN TX 78746-6568

**PHONE:** 5126140901

**FAX:** 5129002855

**COMMENTS:** Comments and Hearing Request

# The Carlton Law Firm, P.L.L.C.

4301 Westbank Drive, Suite B-130  
Austin, Texas 78746

Phone: (512) 614-0901  
Facsimile: (512) 900-2855

Michael Parsons  
*michael@carltonlawaustin.com*

March 5, 2024

**VIA e-file to: [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/)**

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

Re: Jonah Water Special Utility District's Comments on New Horizons, LLC's and OptiN Holdings 1, LLC's Application for a Proposed Texas Pollutant Discharge Elimination System, Permit No. WQ0016257001, to Authorize a Domestic Wastewater Treatment Facility and the Discharge of Treated Domestic Wastewater in Williamson County, Texas.

Dear Ms. Gharis:

On behalf of Jonah Water Special Utility District ("Jonah"), please accept this letter as Jonah's request for a contested case hearing and comments in opposition to the above-referenced permit application submitted by New Horizons, LLC and OptiN Holdings 1, LLC ("Application"). Jonah further requests to be placed on the permanent mailing list to receive all future public notices on this Application. This Application's Notice of Preliminary Decision (the "Notice") was issued on January 12, 2024. The deadline to submit comments and request a hearing is 30 days from the date the Notice was published in the newspaper.<sup>1</sup> After a thorough search of the Commissioner's Integrated Database (CID), newspaper publication has not been documented as of the date of filing these comments and request for hearing. This hearing request with comments is timely filed.

Jonah is a special utility district, a political subdivision of the State of Texas operating under Texas Water Code Chapter 65 and the holder of water Certificate of Convenience and Necessity ("CCN") No. 10970, in Williamson County, Texas. Jonah provides service for approximately 13,500 customers and 35,000 people in its service area. Jonah has concerns about the negative impacts on water quality and raw water sources; the additional flooding and contamination risk posed by the proposed facility; the Applicant's failure to demonstrate need for the permit; and the Applicant's failure to secure consent to provide wastewater service within Jonah's district boundary; and that the application fails to comply with TCEQ's regionalization requirements.

## **Negative Impacts on Water Quality and Raw Water Sources:**

The Notice indicates that Applicant intends to discharge its wastewater into an unnamed tributary of Huddleston Branch, thence to Huddleston Branch, thence to Mankins Branch,

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<sup>1</sup> 30 TAC § 39.551

thence to San Gabriel/North Fork San Gabriel River in segment No. 1248 of the Brazos River Basin. Jonah provides to its customers water obtained from surface water and wells, including water from Lake Granger, which is fed by the San Gabriel River. Jonah is concerned about increases in algal growth and blooms, and other unsanitary or unsafe water quality conditions in these creek beds, tributaries, Huddleston Branch, Mankins Branch, and the San Gabriel River.

As stated above, the effluent will flow through the District's water CCN territory and eventually into Lake Granger. Lake Granger is one of the sources of raw water for the District to serve its customers. Jonah provides water service for thousands of people in its service area. There have been applications for new developments in the District that could increase the number of service connections by almost 30,000. The source of raw water must be protected and contamination prevented so the customers who depend on it will continue to have reliable water service in this high growth area.

The proposed facility is located entirely within Jonah's district boundary and water CCN territory as reflected in the enclosed map (Attachment A), and will have a negative impact on the local community within Jonah. The location of the proposed facility (according to the Notice) is shown in Attachment A, with a blue highlight circle around it, depicting its relative location to Jonah's district boundary, CCN territory, and Jonah's wastewater master plan study area. The map in Attachment A also illustrates the discharge route will bisect Jonah's district boundary, CCN territory, and Jonah's wastewater master plan study area. This can be seen by starting at the proposed facility location on the western edge of the district boundary, CCN territory, and wastewater master plan study area and following the discharge route stated in the Notice until it eventually flows into Lake Granger just east of the boundaries, territory, and study area stated above. Jonah has a substantial interest in maintaining its service areas and protecting the investments that Jonah has made in its infrastructure, and the quality of water sources used to serve its customers, all of which may be adversely affected by the outcome of this Application.

Attachment B includes a series of four maps generated from the Texas Water Development Board's Groundwater Data Viewer Interactive mapping tool. The maps depict the wells in the vicinity of the proposed facility and along the discharge route of the proposed facility. The maps were prepared using the TWDB's Groundwater Data Interactive mapping tool, adding the location of the proposed facility (according to the Notice). The map on Attachment B shows the approximate location of the facility (according to the Notice), marked with a green arrow and labeled with black text, in relation to the closest residence which is approximately 334 feet away. This attachment also shows the unnamed tributary that feeds into Huddelston Branch, passing within feet of other existing residences, some of which likely source water from wells on their respective properties.

The maps on Attachments B-1, B-2, and B-3 depict a distance of approximately one mile, with a blue line, for scale. The location of the proposed facility under TPDES Permit No. WQ0016257001 has been marked with a green arrow (according to the Notice) and labeled with black text. As reflected on Attachment B-1, there are two wells to the north of the proposed facility within one mile. First, Jonah's Public Water Supply Well #6, Well No.



5828103 is located approximately .7 miles from the proposed facility. Second, Domestic Well No. 182283 owned by Marvin Johnson is located approximately .79 miles from the proposed facility.

As reflected on Attachment B-2, the proposed facility is located less than ½ mile from three domestic and one irrigation well to the southwest. Domestic Well No. 281125, owned by Jerry Richie, is approximately 0.25 miles; Irrigation Well No. 282327 owned by 4681 Investments is approximately 0.33 miles; Domestic Well No. 327397 owned by Kenneth Schmeiden is approximately .33 miles; and Domestic Well No. 174607 owned by Bill Nations is approximately .49 miles from the proposed facility.

To the southeast, as reflected on Attachment B-3, the proposed facility is approximately .94 miles from Domestic Well No. 482246 owned by Stermaster Properties.

**Additional Flood and Contamination Risk:**

The proposed facility also poses an additional risk of contributing to flooding along the discharge route. FEMA's evaluation of flood risk and flood zones are depicted in map form in its National Flood Hazard Layer. Attachment C, the National Flood Hazard Layer FIRMette map from FEMA's website, depicts the location of the proposed facility (according to the Notice) with a red pin, added by the user and not FEMA. The permit number was added in black text after downloading the map from FEMA's website.

Attachment C-1 is the National Flood Hazard Layer FIRM map from FEMA's website. The proposed facility location (according to the Notice) marked with a black "X" and labeled with black text and the discharge route (according to the Notice), shown with red arrows was added after downloading the map from FEMA's website. As reflected in Attachment C-1, a portion of the discharge route is denoted as Zone A. This is a Special Flood Hazard Area, a high-risk area where flood insurance is mandated for home and business owners with structures and where floodplain management regulations apply. This Zone A, which is less than a mile downstream from the proposed facility (according to the Notice), is a residential area. In the event of a flood, this residential area is at risk of additional inundation due to the flows from the proposed facility and contamination by the effluent from the proposed facility. Because the discharge from the proposed facility increases the flood potential and contaminants in the effluent may negatively impact the residential area downstream within one mile, potential adverse impacts should be further evaluated or the permit denied.

**Failure to Demonstrate Need for the Permit:**

The Applicant has also failed to provide sufficient justification for the need for the permit. The application requests a permit to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,340,000 gallons per day. Although the area is undoubtedly growing, there are no documented requests for service from this applicant that would substantiate the need for a facility that would discharge such a volume. A review of the Public Utility Commission's Water and Sewer CCN Viewer indicates that the proposed facility would be located at the confluence of the City of Round Rock, City of Georgetown, and Jonah's certificated service area. The proposed facility is located in an area bounded

by SH 130 to the east and north, the City of Round Rock approximately ½ mile to the west, and the City of Georgetown approximately 1 ¾ miles northwest. The combination of these two city service areas and the major state highway limits the potential service area. Important in this analysis are the four other wastewater treatment plant permits, two of which have been recently issued and two that are in process. As can be seen on Attachment A, AIR-W-2017-7 L.P (Permit No. WQ0015787001 - 200,000 GPD facility), and R040062, LP (Permit No. WQ001600001 – 200,000 GPD facility) are to the north of the proposed facility, further limiting the potential service area for this applicant. The permits were approved by TCEQ on November 28, 2022, and February 13, 2024, respectively. Also reflected on Attachment A are the pending applications for Hillwood Enterprises (Permit No WQ0016395001 – 999,000 GPD facility) whose outfall location is approximately 800 feet northwest of the proposed facility, and 705 Limmer Loop JV, LLC (Permit No WQ0016260001 – 50,000 GPD facility) that, if issued, will serve the areas just north and south of the Applicant's proposed area. Based on this, the Applicant has failed to demonstrate justification for permit need, a required analysis in the Domestic Wastewater Permit Application Technical Report 1.1. Failure to provide sufficient justification of the need for the permit and each proposed phase should result in a recommendation for denial of the application.

**Failure to Secure Consent to Serve within A Special District:**

Jonah has not consented to New Horizons, LLC's and OptiN Holdings 1, LLC's ("Applicant's") provision of sewer service within Jonah's district boundary. TWC § 13.044(c) requires the Applicant to obtain consent from Jonah and provide evidence of Jonah's consent as part of the Application. TCEQ's Domestic Wastewater Permit Application requests information regarding consent from the types of entities from which consent may be required before service can be provided in a particular area. TWC § 13.244(c) requires that "[e]ach applicant for a certificate or for an amendment shall file with the utility commission evidence required by the utility commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority." Jonah is the "other public authority" under this statute. Jonah is a special utility district, a political subdivision of the State of Texas operating under Texas Water Code Chapter 65 and thus has all of the rights, powers, privileges, authority and functions conferred by, and shall be subject to all duties imposed by, the rules and regulations of the Texas Commission on Environmental Quality and the general laws of the State of Texas relating to special utility districts. This includes the power to provide wastewater service. Jonah Water SUD was created via Texas Water Commission Order in the matter of the petition of Jonah Water Supply Corporation for creation of and conversion to Jonah Water Special Utility District, Ordering Provision No. 6, May 15, 1992. Without Jonah's consent, the Applicant will be legally barred from providing service.

**Failure to Comply with Regionalization Requirements:**

Finally, Jonah believes the proposed facility does not comply with TCEQ's regionalization policy and disputes that Applicant has demonstrated that obtaining wastewater service from Jonah would be cost prohibitive. The TCEQ has adopted a policy of regionalization as a means to safeguard water quality in the state. Texas Water Code ("TWC") § 26.081 provides that the Commission should "encourage and promote the development and use of

regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of water in the state.”<sup>2</sup> Similarly, TWC § 26.0282 allows the Commission, when considering the issuance of a wastewater permit, to deny a proposed permit based on consideration of need, including “the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems . . . .”<sup>3</sup>

Jonah is willing and able to provide wastewater service to Applicant for future residential customers within the proposed service area and pursuant to Jonah’s tariff. Nothing in the Notice indicates that Applicant requested wastewater service from Jonah, nor that Jonah is unable or unwilling to provide such service. Jonah believes the permit application is insufficient for that reason.

Thank you for your attention to this matter. Please contact me at (512) 614-0901 or [michael@carltonlawaustin.com](mailto:michael@carltonlawaustin.com) if you have any questions regarding this hearing request.

Sincerely,

**THE CARLTON LAW FIRM, P.L.L.C.**



---

Michael Parsons  
Attorney for Jonah Water Special Utility  
District

Enclosures: Map of Jonah’s CCN and District boundaries, and approximate location of proposed facility as identified in Notice (Attachment A)

Four maps from Texas Water Development Board Groundwater Data  
Interactive mapping tool showing wells in the vicinity of the proposed facility

1. A zoomed in map showing the immediate surrounding area of the proposed facility (Attachment B)
2. A map showing wells in the vicinity to the north of the proposed facility (Attachment B-1)
3. A map showing wells in the vicinity to the southwest of the proposed facility (Attachment B-2)
4. A map showing wells in the vicinity to the east of the proposed facility (Attachment B-3)

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<sup>2</sup> TWC § 26.081.

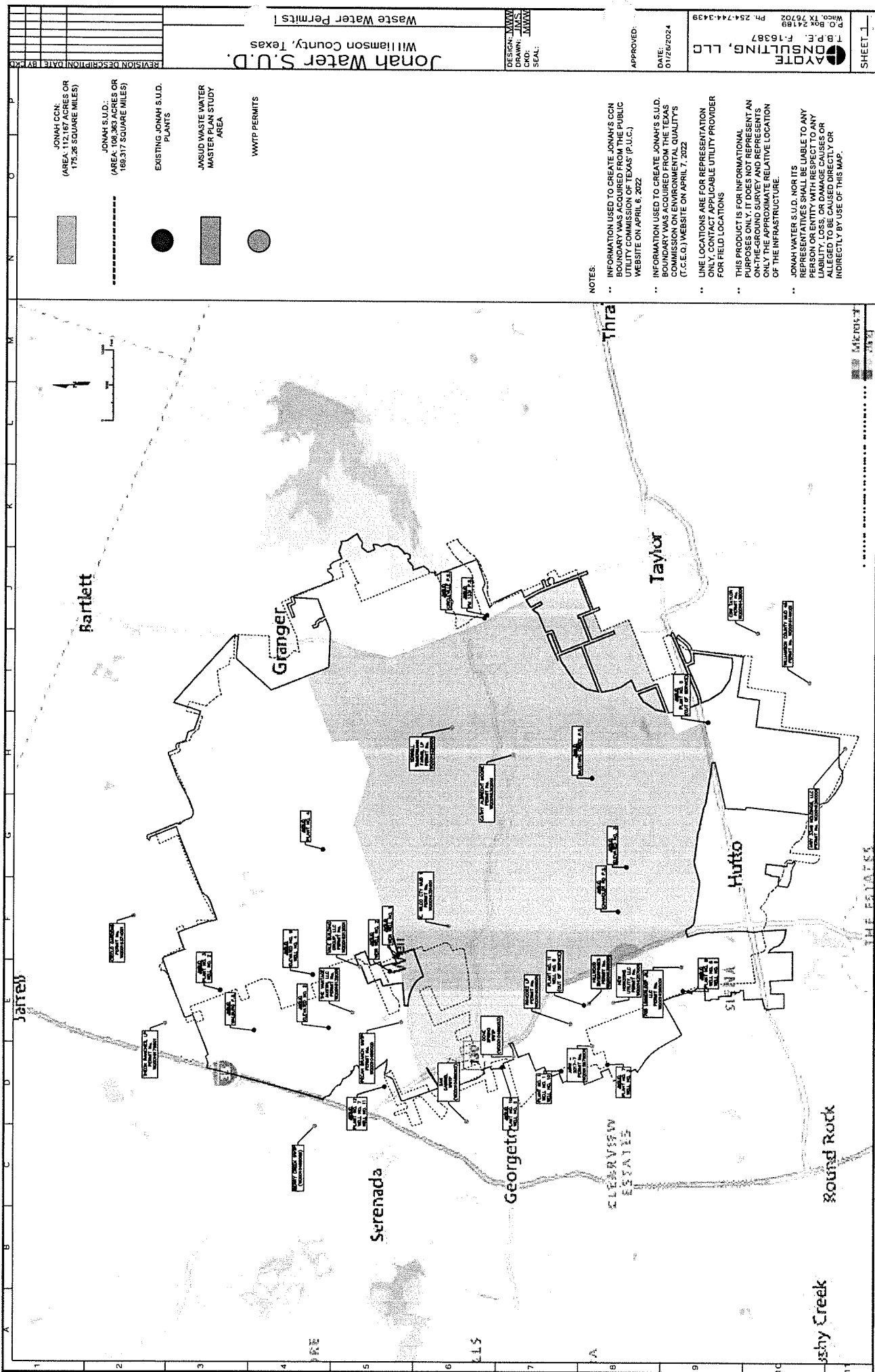
<sup>3</sup> TWC § 26.0282.

Two maps from Federal Emergency Management Agency (FEMA) National Flood Hazard Layer Viewer

1. A zoomed in map showing the immediate surrounding area of the proposed facility (Attachment C)
2. A map showing the discharge route of effluent from the proposed facility (Attachment C-1)

cc: Bill Brown, General Manager, Jonah Water Special Utility District.

# **Attachment A**



Jonah Water S.U.D.  
Williamson County, Texas  
Waste Water Permits

DESIGN: JWW  
DRAWN: JMS  
CADD: JWW  
SEAL:

APPROVED:  
DATE: 01/26/2024

DAYOTE  
ENGINEERING, LLC  
P.O. Box 24189  
Ph: 254-744-3439  
F: 16387

- NOTES:**
- INFORMATION USED TO CREATE JONAH'S CCN BOUNDARY WAS ACQUIRED FROM THE PUBLIC UTILITY COMMISSION OF TEXAS (P.U.C.) WEBSITE ON APRIL 6, 2022
  - INFORMATION USED TO CREATE JONAH'S S.U.D. BOUNDARY WAS ACQUIRED FROM THE PUBLIC UTILITY COMMISSION OF TEXAS (P.U.C.) WEBSITE ON APRIL 7, 2022
  - LINE LOCATIONS ARE FOR REPRESENTATION ONLY, CONTACT APPLICABLE UTILITY PROVIDER FOR FIELD LOCATIONS
  - THIS PRODUCT IS FOR INFORMATIONAL PURPOSES ONLY. IT DOES NOT REPRESENT AN ON-THE-GROUND SURVEY AND REPRESENTS ONLY THE APPROXIMATE RELATIVE LOCATION OF THE INFRASTRUCTURE.
  - JONAH WATER S.U.D. NOR ITS REPRESENTATIVES SHALL BE LIABLE TO ANY PERSON OR ENTITY WITH RESPECT TO ANY LIABILITY, LOSS, OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY USE OF THIS MAP.

# Attachment B





# Attachment B-1



# **Attachment B-2**



# Attachment B-3





TEXAS WATER DEVELOPMENT BOARD

# Attachment C

# National Flood Hazard Layer FIRMette

97°37'W 30°35'58"N



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

**SPECIAL FLOOD HAZARD AREAS**

**Without Base Flood Elevation (BFE)**  
Zone A, V, AE, AH, VE, AR

**With BFE or Depth**  
Regulatory Floodway

**0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile**  
Zone X

**Future Conditions 1% Annual Chance Flood Hazard**  
Zone X

**Area with Reduced Flood Risk due to Levee, See Notes, Zone X**

**Area with Flood Risk due to Levee**  
Zone D

**OTHER AREAS OF FLOOD HAZARD**

**NO SCREEN**  
Area of Minimal Flood Hazard  
Zone X

**Effective LOMRS**  
Area of Undetermined Flood Hazard  
Zone D

**GENERAL STRUCTURES**

**Channel, Culvert, or Storm Sewer**

**Levee, Dike, or Floodwall**

**OTHER FEATURES**

**Cross Sections with 1% Annual Chance**  
Water Surface Elevation

**Coastal Transect**

**Base Flood Elevation Line (BFE)**

**Limit of Study**

**Jurisdiction Boundary**

**Coastal Transect Baseline**

**Profile Baseline**

**Hydrographic Feature**

**MAP PANELS**

**Digital Data Available**

**No Digital Data Available**

**Unmapped**

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 3/4/2024 at 8:15 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



97°36'23"W 30°35'27"N

1:6,000

Feet

0 250 500 1,000 1,500 2,000

Basemap Imagery Source: USGS National Map 2023



# Attachment C-1



## Vincent Redondo

---

**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, March 6, 2024 5:53 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001  
**Attachments:** Georgetown 220 - Comments and Request for Contested Case Hearing1.pdf

H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** RSUTTLE@ABAUSTIN.COM <RSUTTLE@ABAUSTIN.COM>  
**Sent:** Tuesday, March 5, 2024 4:55 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** MR RICHARD T. SUTTLE, JR

**EMAIL:** [RSUTTLE@ABAUSTIN.COM](mailto:RSUTTLE@ABAUSTIN.COM)

**COMPANY:** Armbrust & Brown, PLLC

**ADDRESS:** 100 CONGRESS AVE Suite 1300  
AUSTIN TX 78701-4072

**PHONE:** 5124352300

**FAX:**

**COMMENTS:** Please refer to attached letter.

# ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

*Richard T. Suttle, Jr.*  
(512) 435-2310  
rsuttle@abaustin.com

March 5, 2024

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

Re: OP III ATX GEORGETOWN 220, LP's Comments and Request for Contested Case Hearing on New Horizons Utility, LLC's and Optin Holdings 1 LLC's Application for new Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0016257001 (the "Application") to Authorize a Domestic Wastewater Treatment Facility and the Discharge of Treated Domestic Wastewater in Williamson County, Texas.

Dear Ms. Gharis:

This letter is submitted on behalf of OP III ATX GEORGETOWN 220, LP ("Georgetown 220"), owner of a  $\pm 219.998$  acre tract of land out of the John McQueen Survey (Abstract No. 426) in Williamson County, Texas, and located at 1101 County Road 107, Hutto, Texas 78634 (the "Property"). The purpose of this letter is to provide comments and request a contested case hearing in opposition of the Application submitted by New Horizons Utility, LLC and Optin Holdings 1, LLC (collectively referred to herein as the "Applicants").

The Property is located  $\pm 0.3$  miles from the proposed facility and is intended to be developed with approximately 371 single family residential uses on  $\pm 120$  acres and industrial uses on the remaining  $\pm 100$  acres (the "Project"). Total buildout of the Project will require approximately  $\pm 2,890$  equivalent single-family connections ("ESFCs") to serve the development. Georgetown 220 has applied to the Texas Commission on Environmental Quality ("TCEQ") for a TPDES permit (WQ0016474001) to support the Project which is anticipated to be served by Jonah Water Special Utility District.

The Property is within the Applicant's proposed service area. However the Applicants have not provided sufficient information regarding terms of service or proposed rates for service nor provided information on whether their proposed facility will be able to adequately serve the Project. It is also unknown whether the Project will be able to obtain the necessary easements to access the Applicants facility to receive service. Further, the Applicants do not have a wastewater Certificate of Convenience and Necessity ("CCN") or other legal right to provide service to the

ARMBRUST & BROWN, PLLC

Page 2

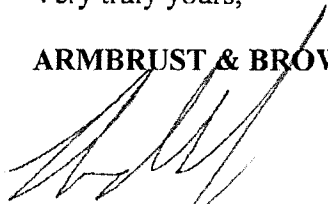
proposed service area and Georgetown 220 does not want to be limited by the Applicants CCN. The requirement to be limited by the Applicants CCN would adversely impact Georgetown 220 in a way not common to the general public. For these reasons Georgetown 220 objects to being within the Applicants service area and has submitted their own application to TCEQ for a discharge permit to meet the Project's demands.

Georgetown 220 offers these comments and requests a contested case hearing to the Application.

Thank you in advance for your time and consideration of this request. Should you require additional information, please do not hesitate to contact me at (512) 435-2300. Please direct all future correspondence to myself or Amanda Morrow at [amorrow@abaustin.com](mailto:amorrow@abaustin.com).

Very truly yours,

**ARMBRUST & BROWN, PLLC**

A handwritten signature in black ink, appearing to read 'Richard T. Suttle, Jr.', written over the printed name.

Richard T. Suttle, Jr.

cc: Luke Philippi  
Hillary Paris  
Amanda Morrow  
Amanda Hendrix

## Vincent Redondo

---

**From:** PUBCOMMENT-OCC  
**Sent:** Tuesday, November 5, 2024 5:46 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001

H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** pbwilkins@gmail.com <pbwilkins@gmail.com>  
**Sent:** Tuesday, November 5, 2024 1:57 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Beverly Wilkins

**EMAIL:** [pbwilkins@gmail.com](mailto:pbwilkins@gmail.com)

**COMPANY:**

**ADDRESS:** 1983 COUNTY ROAD 105  
HUTTO TX 78634-3048

**PHONE:** 8307766615

**FAX:**

**COMMENTS:** Don't look at each application in isolation. The cumulative volume of water that will be discharged into Mankins Branch which flows in the San Gabriel River would be close to 3 million gallons a day. This would occur if the following applications are approved - WQ0016585001, WQ0016257001, and WQ0016474001. 3 millions gallons would fill 6 Olympic swimming pools every day. This is like 3 football fields 10 foot deep. This amount of water discharged every day is terrifying. This amount of water will take out fences, bridges, roads and contaminate ground water and kill wildlife. I request a public hearing.



## Vincent Redondo

---

**From:** PUBCOMMENT-OCC  
**Sent:** Tuesday, November 5, 2024 5:46 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001

H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** pbwilkins@gmail.com <pbwilkins@gmail.com>  
**Sent:** Tuesday, November 5, 2024 1:18 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Beverly Wilkins

**EMAIL:** [pbwilkins@gmail.com](mailto:pbwilkins@gmail.com)

**COMPANY:**

**ADDRESS:** 1983 COUNTY ROAD 105  
HUTTO TX 78634-3048

**PHONE:** 8307766615

**FAX:**

**COMMENTS:** I request a public hearing so the community can get more information. Please don't approve this application. It will drastically increase traffic with heavy duty trucks hauling the solid waste to the plant. This causes dangerous traffic congestion along with polluting the air around my property.

## Vincent Redondo

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**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, October 30, 2024 5:48 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001

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**From:** pbwilkins@gmail.com <pbwilkins@gmail.com>  
**Sent:** Wednesday, October 30, 2024 2:35 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Beverly Wilkins

**EMAIL:** [pbwilkins@gmail.com](mailto:pbwilkins@gmail.com)

**COMPANY:**

**ADDRESS:** 1983 COUNTY ROAD 105  
HUTTO TX 78634-3048

**PHONE:** 8307766615

**FAX:**

**COMMENTS:** Please be aware that there are multiple entities wanting to discharge over 2 million gallons a day in the area around my house. This amount of discharge on a daily basis will cause catastrophic flooding. This will damage private as well as public property like roads and bridges. Please don't approve this request. I am requesting a public hearing.

**Vincent Redondo**

---

**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, October 30, 2024 5:48 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001

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**From:** pbwilkins@gmail.com <pbwilkins@gmail.com>  
**Sent:** Wednesday, October 30, 2024 2:21 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Beverly Wilkins

**EMAIL:** pbwilkins@gmail.com

**COMPANY:**

**ADDRESS:** 1983 COUNTY ROAD 105  
HUTTO TX 78634-3048

**PHONE:** 8307766615

**FAX:**

**COMMENTS:** The application requests up to 1.3 million gallons of waste water to be discharged in the area around my home on a daily basis. We have many low lying roads that will have the pavement washed out with this amount of discharge. I request a public hearing.

## Vincent Redondo

---

**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, October 30, 2024 5:48 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001

H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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**From:** pbwilkins@gmail.com <pbwilkins@gmail.com>  
**Sent:** Wednesday, October 30, 2024 2:26 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Beverly Wilkins

**EMAIL:** [pbwilkins@gmail.com](mailto:pbwilkins@gmail.com)

**COMPANY:**

**ADDRESS:** 1983 COUNTY ROAD 105  
HUTTO TX 78634-3048

**PHONE:** 8307766615

**FAX:**

**COMMENTS:** When the flooding comes with over a million gallons of waste water discharge a day, I don't believe our emergency services will be able to handle all of the 911 calls for rescue. I request a public hearing to discuss this matter.



**Vincent Redondo**

---

**From:** PUBCOMMENT-OCC  
**Sent:** Friday, November 1, 2024 4:51 PM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0016257001

**From:** pbwilkins@gmail.com <pbwilkins@gmail.com>  
**Sent:** Friday, November 1, 2024 11:16 AM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Beverly Wilkins

**EMAIL:** pbwilkins@gmail.com

**COMPANY:**

**ADDRESS:** 1983 COUNTY ROAD 105  
HUTTO TX 78634-3048

**PHONE:** 8307766615

**FAX:**

**COMMENTS:** Do not approve this proposal. The Williamson County Commissioners Court order of July 21, 2015, section 4, stated that solid waste streams can be explosive and for that reason it is against the law to allow solid waste disposal plants to be located in unincorporated areas of Williamson County.

**Vincent Redondo**

---

**From:** PUBCOMMENT-OCC  
**Sent:** Friday, November 1, 2024 4:50 PM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0016257001

**From:** pbwilkins@gmail.com <pbwilkins@gmail.com>  
**Sent:** Friday, November 1, 2024 9:32 AM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Beverly Wilkins

**EMAIL:** pbwilkins@gmail.com

**COMPANY:**

**ADDRESS:** 1983 COUNTY ROAD 105  
HUTTO TX 78634-3048

**PHONE:** 8307766615

**FAX:**

**COMMENTS:** Do not approve this application. Willimason County Court Order issued on July 21, 2015, regulates solid waste disposal. In section 4, the court order points out that contaminated wildlife can spread contamination to surrounding land and ground water. It is breaking the law if we allow this spread of contamination to spread.

**Vincent Redondo**

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, November 1, 2024 4:52 PM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0016257001

**From:** pbwilkins@gmail.com <pbwilkins@gmail.com>  
**Sent:** Friday, November 1, 2024 12:02 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**PN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** Beverly Wilkins

**EMAIL:** pbwilkins@gmail.com

**COMPANY:**

**ADDRESS:** 1983 COUNTY ROAD 105  
HUTTO TX 78634-3048

**PHONE:** 8307766615

**FAX:**

**COMMENTS:** Do not approve this application. The Williamson County Commissioners Court order of July 21, 2015, regulating solid waste disposal, section 4, said that soils in Williamson County allow migration of waste and hazardous materials into ground water. This affects the drinking water of many citizens of Williamson County. That is one reason it is against the law to allow solid waste disposal plants to operate in unincorporated areas of Williamson County.

## Vincent Redondo

---

**From:** PUBCOMMENT-OCC  
**Sent:** Monday, March 4, 2024 5:34 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001  
**Attachments:** Hillwood Comments to NH Permit.pdf

H

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** tlary@abhr.com <tlary@abhr.com>  
**Sent:** Monday, March 4, 2024 2:03 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC,OPTIN HOLDINGS 1 LLC

**CN NUMBER:** CN606081594,CN606081602

**NAME:** MR Trey Lary

**EMAIL:** [tlary@abhr.com](mailto:tlary@abhr.com)

**COMPANY:**

**ADDRESS:** 919 CONGRESS AVE Suite 1500  
AUSTIN TX 78701-2102

**PHONE:** 5122182422

**FAX:**

**COMMENTS:** Please see attached letter submitted on behalf of Hillwood Enterprises LP



CENTRAL TEXAS  
919 Congress Avenue,  
Suite 1500  
Austin, TX 78701  
(512) 518-2424

Trey Lary  
Partner  
tlary@abhr.com  
(512) 518-2422

March 4, 2024

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

Re: Hillwood Enterprises, L.P.'s Comments and Request for Contested Case Hearing on New Horizons Utility LLC's Application for proposed Texas Pollutant Discharge Elimination System Permit ("TPDES") No. WQ0016257001 to Authorize a Domestic Wastewater Treatment Facility and the Discharge of Treated Domestic Wastewater in Williamson County, Texas.

Dear Ms. Gharis:

On behalf of Hillwood Enterprises, LP ("Hillwood"), please accept this letter as Hillwood's comments and request for a contested case hearing in opposition to the above-referenced permit application (the "Application") submitted by New Horizons Utility, LLC and Optin Holdings 1, LLC (collectively referred to as the "Applicants"). By separate letter, a copy of which is attached hereto, M&RBFF, LLC (the "Bost Family") joins in these comments and request for a contested case hearing. Hillwood and the Bost Family are together referred as the "Protestants."

The Bost Family property is identified as an Affected Property within the Application. The Bost Family owns a tract of land immediately adjacent to the Applicants' property (the "Bost Tract") and has entered into a contract to sell the Bost Tract to Hillwood so that Hillwood can develop the Bost Tract into a single-family home residential community comprising of approximately 730 equivalent single-family connections ("ESFCs"). Hillwood, with support of the Bost Family, applied for a TPDES permit (WQ0016395001) to support the 730 ESFCs to be developed on the Bost Tract to be served from an anticipated future municipal utility district, the creation of which Protestants intend to seek.

HOUSTON  
3200 Southwest Freeway, Suite 2600  
Houston, TX 77027  
(713) 860-6400

NORTH TEXAS  
4514 Cole Avenue, Suite 1450  
Dallas, TX 75205  
(972) 823-0800

abhr.com

**Protestants are Affected Persons by the Application.**

According to the notice for the Application, the Applicants' proposed facility location will be located approximately 0.5 of a mile northeast of the intersection of County Road 107 and County Road 110, in Williamson County, Texas 78626. The proposed facility site is fifty (50) feet from the Bost Tract property line and fifty (50) feet from the sites for multiple future residences to be developed by Hillwood. Given the extremely close proximity to the Bost Tract and Hillwood's future development, the Applicants' proposed treatment plant site adversely affects Protestants in a manner not common to the general public. Protestants contend that this proximity to the Bost Tract and a number of intended homesites will substantially interfere with the Bost Family's use of the Bost Tract, with Hillwood's use of the Bost Tract, and future residents' ability to use and enjoy their properties. The close proximity of the Applicants' proposed plant site to the Bost Tract and future homes will generate nuisances in the form of blight, noise, unpleasant odors, and adversely affect the ability of the Protestants and future residents to enjoy the use of their property. Consequently, this interference will also have a significant impact on the economic interests of Protestants. The nuisance imposed by this close proximity to the Bost Tract and its intended use is a justiciable interest related to a legal right, duty, privilege, power or economic interest that makes both Hillwood and the Bost Family affected persons by the Application. 30 Tex. Admin. Code §55.203(a). Protestants request a contested case hearing on the Application.

**The Proposed Plant Site is an Unsuitable Site under 309.13.**

Protestants contend that the proposed facility location in the Application is an Unsuitable Site, as defined in 30 Tex. Admin. Code §309.13. Applicants propose a proposed plant site that is only 50 feet from the property line of the Bost Tract. Protestants contend that the proposed plant site is required to be at least 150 feet from the property line between the Bost Tract and the Applicants' property as is required by 30 Tex. Admin. Code §309.14 and §309.13(e)(1). Applicants' proposal requires additional buffer zone on the Bost Tract, rather than on the property owned by Applicants. Protestants have not granted and will not grant any legal restrictions (i.e. restrictive easement, right-of way, covenant, deed restriction, or private agreement) prohibiting residential structures within the portion of the buffer zone of the Bost Tract. 30 Tex. Admin. Code §309.13(e)(3). Protestants object to Applicants seeking to encumber Protestants' property rather than their own.

Even if Applicants are required to change the location of their proposed plant site in accordance with the Commission's rules and regulations, Protestants contend that a plant located on or near the property line with the Bost Tract is unsuitable and imposes

significant harm. It is unclear whether Applicant intends to provide landscaping, decorative fencing, and other aesthetic improvements that screen the plant and mitigate the adverse effects to the visual aesthetic that accompany a wastewater treatment plant. Additionally, it is unclear whether Applicants intend to utilize a plant design and equipment to eliminate, attenuate, and mitigate the nuisance noise and noxious odor produced by the plant. Regardless, Protestants contend that such efforts, if implemented, would not be capable of mitigating the adverse impacts suffered by Protestants.

**Protestants do not request or desire Applicants' service.**

Applicant's proposed Service Area (See Attachment 2c to Application) encompasses the Bost Tract, as well as other adjacent properties where there is reasonably foreseeable residential, industrial and economic development. Applicant's proposed Service Area suggests a desire for Applicant to be a regional water plant facility, but Applicant has provided insufficient information as to how it intends to or is legally or practically capable of providing such service. The Applicants do not possess a wastewater Certificate of Convenience and Necessity ("CCN") or other legal right to provide service. Applicants have no legal right to serve the Bost Tract and other properties within Applicants' proposed Service Area. Protestants contend that the Application is insufficient for this reason.

Protestants contend that the Application provides insufficient information about whether or not there will be actual capacity for Applicants' plant to serve the Bost Tract at the time service to the Bost Tract is needed. Protestants have clear requirements for treatment capacity required to serve their anticipated development and submitted an application that meets those requirements. It is unclear and unknown to Protestants whether such capacity, at the required times, is included in the Application's calculations. Additionally, Protestants have received no information from Applicants about how residents of the Bost Tract (and other adjacent property owners for that matter) will either be able to access the Applicants' plant site or receive service from the Applicants' proposed facilities. Moreover, Protestants have not received any information about terms of service or proposed rates for service from Applicants. Protestants are concerned that the Application seeks to provide service to its property without identifying an operator of the plant, without identifying a legal right or ability to serve the proposed service area, and without demonstrating Applicants' capability or operational ability to finance, construct, operate, and maintain the plant or providing a mechanism, like a municipal utility district, to do so. Protestants contend the Application is insufficient for this reason.




March 4, 2024

Page 4 of 4

Therefore, Protestants respectfully offer these comments and request a contested case hearing. Please include Protestants on the official mailing list for this Application. Thank you for your consideration.

Sincerely,

  
Trey Lary  
Attorney for Hillwood

## **Tammy Johnson**

---

**From:** PUBCOMMENT-OCC  
**Sent:** Monday, January 6, 2025 12:51 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016257001  
**Attachments:** 2025.01.02 OP III ATX Georgetown Request for Contested Case Hearing and Reconsideration .pdf

H  
RFR

Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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[www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

**From:** john.scott@scottpllc.net <john.scott@scottpllc.net>  
**Sent:** Thursday, January 2, 2025 3:30 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016257001

**REGULATED ENTY NAME** NEW HORIZONS WWTP

**RN NUMBER:** RN111609582

**PERMIT NUMBER:** WQ0016257001

**DOCKET NUMBER:**

**COUNTY:** WILLIAMSON

**PRINCIPAL NAME:** NEW HORIZONS UTILITY LLC

**CN NUMBER:** CN606081594

**NAME:** John Scott

**EMAIL:** [john.scott@scottpllc.net](mailto:john.scott@scottpllc.net)

**COMPANY:** Scott & Scott PLLC

**ADDRESS:** 316 W 12th St Suite 200  
Austin, TX 78701

**PHONE:** 6822502142

**FAX:**

**COMMENTS:** Please see the attached request for contested case hearing and request for reconsideration.

January 2, 2025

**VIA ELECTRONIC SUBMISSION AT [WWW.TCEO.TEXAS.GOV/GOTO/COMMENT](http://WWW.TCEO.TEXAS.GOV/GOTO/COMMENT)**

Texas Commission on Environmental Quality  
Office of the Chief Clerk  
MC105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application of New Horizon Utility, LLC and Optin Holdings 1, LLC for new Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0016257001;  
Request for Reconsideration; Request for Contested Case Hearing

To the Texas Commission on Environmental Quality:

The undersigned represents OP III ATX GEORGETOWN 220, LP ("Georgetown 220"), who owns an approximately 219.998 acre tract of land out of the John McQueen Survey (Abstract No. 426) in Williamson County, Texas, and located at 1101 County Road 107, Hutto, Texas 78634 (the "Property"). The Property is located 0.3 miles from Applicants' proposed facility. Please accept this letter as Georgetown 220's notice of opposition to the Application submitted by New Horizons Utility, LLC and Optin Holdings 1, LLC ("Applicants").

On March 5, 2024, in accordance with Title 30 of Texas Administrative Code Chapter 55, Section 55.200, et seq., Georgetown 220 submitted to the Texas Commission on Environmental Quality ("Commission") public comments and a Request Contested Case Hearing on the Application ("Request"), which includes Georgetown 220's formal comments, in the above-referenced matter.

On December 3, 2024, the Commission issued the Decision of the Executive Director ("Decision"). The Decision provides that requests for contested case hearings must be submitted "no later than 30 calendar days after the date of this letter," which would be January 2, 2025. Georgetown 220 hereby reasserts, restates, and resubmits this request for a contested case hearing on the merits of the Application and Draft Permit, and further requests that the Executive Director reconsider her decision in this matter and/or the Commissioners remand the Application back to the Executive Director for reissuance of the NORI, NAPD, and NOPM. Further, Georgetown 220 incorporates all comments, pleadings, and other documents submitted by Georgetown 220 in relation to the Application and Draft Permit and incorporates them herein by reference as if copied verbatim herein.

**Georgetown 220 hereby requests a contested case hearing** on the Application as an affected person. In accordance with the published notice, Georgetown 220 provides the following information:

**1. Your name, address, phone number:**

Georgetown 220 owns the property located at 1101 County Road 107, Hutto, Texas 78634 and may be provided notice and informed of any developments in this case by timely notifying the following legal counsel:

Richard T. Suttle, Jr.  
Armbrust & Brown, PLLC  
100 Congress Ave, Suite 1300  
Austin, Texas 78701  
(512) 435-2300  
[rsuttle@abaustin.com](mailto:rsuttle@abaustin.com)

John B. Scott  
316 W 12<sup>th</sup> St  
Suite 200  
Austin, Texas 78701  
(682) 250-2142  
[John.scott@scottpllc.net](mailto:John.scott@scottpllc.net)

**2. The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly:**

New Horizons Utility LLC and Optin Holdings 1 LLC; proposed TPDES Permit No. WQ0016257001

**3. Specific description of how you would be adversely affected by the facility in a way not common to the general public:**

**Georgetown 220 hereby requests a contested case hearing.**

The Property lies within the Applicants' proposed service area. However, the Applicants have not provided sufficient information regarding their service terms, rates, or the proposed facility's capacity to serve the Property. This is particularly problematic because the Property is slated for development with approximately 371 single-family homes on 120 acres and industrial uses on the remaining 100 acres (the "Project"). The Project will require approximately 2,890 equivalent single-family connections ("ESFCs"). Georgetown 220 has applied to the Texas Commission on Environmental Quality ("TCEQ") for a TPDES permit (WQ0016474001) to support the Project, which Jonah Water Special Utility District is anticipated to serve.

Furthermore, Georgetown 220 argues the Application is insufficient. The Applicants' proposed service area suggests an intent to become a regional water plant facility, but they have not demonstrated how they would legally or practically achieve this. The Applicants lack a wastewater Certificate of Convenience and Necessity ("CCN") or other legal right to provide service to the

proposed area. It is also unclear whether the Project could obtain the necessary easements to access the Applicants' facility. This lack of a CCN, combined with the absence of clear information about their capacity to serve the projected 2,890 ESFCs, raises serious doubts about the Applicants' ability to provide reliable service.

Additionally, the Applicants have not justified the need for the permit. They have not provided any documented service requests to substantiate the need for a facility that would discharge 1,340,000 gallons per day. The Applicants' proposed service area is also limited due to its proximity to other certificated service areas and State Highway 130.

Similarly, Georgetown 220 contends that the proposed facility does not comply with TCEQ's regionalization policy. They dispute that the Applicants have demonstrated that obtaining wastewater service from nearby wastewater treatment plants is impossible. Specifically, Jonah SUD indicated in a public comment that it "is willing and able to provide wastewater service to [the] Applicant for future residential customers within the proposed service area and pursuant to Jonah's tariff." Based on the documents included by Applicants in their Application, Jonah SUD never issued a Denial-of-Service letter, instead notifying the Applicants that it was unable to write one.

In summary, Georgetown 220 believes the proposed discharge will violate the Texas Water Code. They are also concerned that the Application doesn't fully comply with all applicable TCEQ regulations, including whether the Draft Permit complies with the Texas Surface Water Quality Standards, meets anti-degradation requirements, and protects surface and groundwater quality. Georgetown 220 is concerned with the impact on its property, considering the maximum volume and concentration of the proposed discharge. Additionally, Georgetown 220 is concerned that the Application doesn't sufficiently address and violates the State's policy on regionalization (e.g., alternative wastewater collection and treatment options).

Georgetown 220 has sufficiently demonstrated that it is adversely affected by the Application in a manner that is not common to the general public and must be granted party status in this case.

#### **4. Issues to be Considered in a Contested Case Hearing**

- (a) Whether the proposed discharge and Draft Permit will comply with all applicable antidegradation requirements, policies, and procedures;
- (b) Whether the proposed discharge and Draft Permit will comply with all applicable general criteria including, without limitation, aesthetic, toxicity, nutrient, aquatic life, and aquatic recreation parameters.
- (c) Whether the effluent limitations and other parameters of the Draft Permit will be protective of surface water and groundwater quality;
- (d) Whether the proposed design of the wastewater treatment plant and Draft Permit provisions are adequate to ensure that the required effluent quality will be achieved;

- (e) Whether the effluent limitations and other parameters of the Draft Permit are adequate to ensure that existing water quality uses will not be impaired;
- (f) Whether the proposed wastewater discharge will adversely affect the health and safety of persons on nearby property;
- (g) Whether the proposed wastewater discharge will harm or negatively impact fish, livestock, wildlife, and other environmental receptors;
- (h) Whether the proposed wastewater discharge will cause or contribute to problematic algae growth in the receiving waters, and whether the Draft Permit contains adequate provisions to prevent the same;
- (i) Whether the water quality modeling from which the proposed effluent limitations were derived relied on proper methodology, assumptions, and data including, without limitation, stream and lake characteristics, habitat quality, and element lengths, or whether such methodology, assumptions, or data were insufficient;
- (j) Whether the proposed operator is sufficiently qualified to operate, monitor, and maintain the proposed wastewater treatment plant to achieve the required effluent limitations and whether the Draft Permit contains adequate licensing, supervision, monitoring, and reporting requirements to assure the same;
- (k) Whether the wastewater treatment plant is needed and whether the Application and Draft Permit should be altered or denied in consideration of the need for the facility in accordance with TWC Section 26.0282;
- (l) Whether nuisance conditions, including but not limited to odors, will be created by the wastewater treatment plant or wastewater discharge and whether the Draft Permit contains adequate provisions to prevent the same;
- (m) Whether the Application is complete in all respects and provides truthful information upon which the TCEQ can rely;
- (n) Whether the proposed wastewater discharge and provisions of the Draft Permit meet all applicable requirements of the Texas Surface Water Quality Standards (30 TAC Chapter 307) including, without limitation, the General Criteria of 30 TAC sec. 307.4 which contains requirements for aesthetic parameters, toxic substances, nutrients, aquatic life uses and dissolved oxygen, and aquatic recreation; and
- (o) Whether the proposed wastewater discharge and provisions of the Draft Permit meet all applicable requirements of the Domestic Wastewater Effluent Limitations and Plant Siting Regulations (30 TAC Chapter 309).

For the reasons provided in this Request, all other documents filed by Georgetown 220 related to the Application, this request for contested case hearing, Georgetown 220 is an affected person in this matter; has standing to request a contested case hearing; and does request a contested case hearing and reconsideration of the Executive Director's Decision. These are critical issues the Commission should explore through an open and public contested case. Georgetown 220 reserves the right to raise and pursue all issues that may be relevant to their interests in the event of a contested case hearing.

Sincerely,

John B. Scott