RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

OIL AND GAS DOCKET NO. 03-0316027

APPLICATION OF LH GROVES, LLC FOR AN AMENDMENT PURSUANT TO STATEWIDE RULE 76 FOR A QUALIFIED SUBDIVISION FOR A 466.3 ACRE TRACT APPROVED IN OIL & GAS DOCKET NO. 03-0284496 IN HARRIS COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY: Lynn Latombe – Administrative Law Judge
Robert Musick, P. G. – Technical Examiner

PREPARED BY: Ezra A. Johnson – Administrative Law Judge
Robert Musick, P. G. – Technical Examiner

HEARING DATE: January 11, 2019

PROCEDURAL HISTORY:

Application Filed -	October 23, 2018
Notice of Hearing Issued -	November 20, 2018
Hearing Date -	January 11, 2019
Transcript Received -	January 11, 2019
Final Written Submissions and Close of Record -	June 17, 2019
Proposal for Decision Issued -	July 23, 2019

APPEARANCES:

For Applicant LH Groves, LLC
Mr. John W. Camp
Scott, Douglass & McConnico, LLP

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I. Statement of the Case

LH Groves, LLC ("Applicant"), seeks amendment, pursuant to Statewide Rule 76,[1] of a qualified subdivision in Harris County, Texas approved by the Railroad Commission of Texas (the "Commission") on April 7, 2014 in Oil & Gas Docket No. 03-0284496. Appendix A of this Proposal for Decision consists of a plat and metes and bounds description of the revised location of the affected operations site. No party protested this application for amendment. The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision and recommend the Commission grant the subject application ("Application").

II. Jurisdiction and Applicable Legal Authority

The Commission has jurisdiction over the approval of "qualified subdivisions" pursuant to Chapter 92 of the Texas Natural Resources Code ("Chapter 92"). A qualified subdivision is defined in Chapter 92 as a tract of land of not more than 640 acres that (i) is located in a county having a population in excess of 400,000 (or in an adjacent county having a population in excess of 140,000), (ii) has been subdivided in a manner authorized by law for residential, commercial or industrial use, and (iii) contains an operations site for each separate 80 acres within the qualified subdivision and provisions for road and pipeline easements to allow use of the operations site.[2]

Prior to approval, the Commission must provide notice and an opportunity for hearing to all of the owners of mineral interests in the proposed subdivision.[3] At a hearing called for this purpose, the Commission considers the adequacy of the number and location of operations sites and road and pipeline easements so that the mineral resources of the subdivision may be fully and effectively exploited.[4] Once the subdivision plat is approved by the Commission (and filed of record in the applicable county), the owners of mineral interests in a qualified subdivision must limit oil and gas exploration activities to the operations sites and easements indicated on the plat.[5]

Chapter 92 further delegates to the Commission the authority to adopt rules governing the contents of an application for a qualified subdivision.[6] These rules and procedures are found in Statewide Rule 76:

> An application for a hearing under this section must be made in writing and mailed or delivered to the director of the Oil and Gas Division. The application must include:

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[1] Statewide Rule 76 refers to 16 Tex. Admin. Code §3.76.
[2] Tex. Nat. Res. Code §§ 92.002(3) and 92.003-4 .051.
[3] Tex. Nat. Res. Code § 92.004
[4] *Id.*
[5] Tex. Nat. Res. Code § 92.005
[6] Tex. Nat. Res. Code § 92.004

> (1) a jurisdictional statement setting out the facts stated in subsection (a)(4)(A) and (B) of this section;
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> (2) a statement that the applicant has authority to represent and represents all surface owners of land contained in the proposed qualified subdivision;
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> (3) the names and addresses of all owners of possessory mineral interests and all mineral lessors of land contained in the proposed qualified subdivision;
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> (4) a plat of the proposed subdivision showing each proposed 80-acre tract with its operations site, road easements, and pipeline easements and a legible copy thereof no larger than 8 1/2 inches by 11 inches;
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> (5) a concise description of mineral development in the area, including the number of oil and/or gas wells within 2.5 miles of the boundary of the proposed qualified subdivision and the depths at which each well is completed;
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> (6) a list of all the Railroad Commission designated oil and/or gas fields, if any, which underlie the proposed qualified subdivision; including the spacing and density requirements. If no Railroad Commission designated fields underlie the qualified subdivision, the application should so state.[7]

The Commission is also given jurisdiction to approve subsequent amendments to qualified subdivisions:

> All or any portion of a qualified subdivision may be amended, replatted, or abandoned by the surface owner. An amendment or replat, however, may not alter, diminish, or impair the usefulness of an operations site or appurtenant road or pipeline easement unless the amendment or replat is approved by the commission. Railroad Commission approval of a replat or amendment may be administratively granted by the director of the Oil and Gas Division, or his delegate, upon submission of items required in subsection (c) of this section and after notice and opportunity for hearing has been afforded to all possessory mineral interest owners and mineral lessors of land contained within the original and/or replatted or amended qualified subdivision.[8]

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[7] 16 Tex. Admin. Code §3.76(c)
[8] 16 Tex. Admin. Code §3.76(h); see also Tex. Nat. Res. Code §§ 92.006.

III. Discussion of the Evidence

On October 23, 2018, the above-referenced docketed case was initiated by Applicant filing a request to amend the qualified subdivision plat approved by final order of the Commission in Oil and Gas Docket No. 03-0284496 dated April 8, 2014 (the "Original Subdivision"). Applicant proposed to relocate one of the operations sites indicated on the Original Subdivision plat and requested Commission approval for the change.[9] No other changes to the original plat were requested.[10]

Applicant's request to amend the Original Subdivision and application for hearing included the following information and attachments:

1) A description of the Original Subdivision and reference to the Commission's prior final order;
2) A plat of the Original Subdivision depicting the proposed relocation of one of the surface operations sites;
3) The addresses of the mineral owners of property within the Original Subdivision;
4) Enclosures showing all Commission designated oil and gas fields that underlie the Original Subdivision;
5) A list of all the Railroad Commission designated oil and/or gas fields in the subdivision; and
6) A description of the mineral development and the oil and gas wells within two and a half miles of the boundaries of the Original Subdivision.

Notice of Hearing was first mailed on October 8, 2018.[11] Several mailings were returned due to deficient addresses. Supplemental notices were mailed to Hildegarde Lyons Mitchell and Carolyn McPhillips Meador (on November 29, 2018), Mary Aymar Hobart (on December 4, 2018), Carolyn M. Meador (on December 12, 2018), James C. Crumlish (on December 13, 2018), Bernard J. Crumlish and Evelyn Cromwell Bond (December 14, 2018), and Thomas J. Crumlish (on December 17, 2018). As to those parties that received supplemental notice, no mailings were returned due to deficient addresses.

Beginning on November 28, 2018, and once each week for four weeks thereafter, Applicant caused the Notice of Hearing and a plat of the proposed amendment to be published in the *Anacostia Observer*, a periodical generally circulated in the locality of the Original Subdivision.[12]

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[9] The Applicant filed its application in the form of a letter filed with Docket Services on October 23, 2018, which shall be referred to as "Applicant's letter."
[10] *See* Applicant's letter.
[11] *Id.*
[12] *See* Applicant's Exhibit 2

No protests were received, and no party appeared in protest of this application at the January 11, 2019 hearing (the "Hearing"). At the Hearing, Applicant appeared and presented evidence by and through its counsel John Camp. In addition, Sean Compton, Tim Smith, and Gregory Frazier, appeared on behalf of the Applicant to offer sworn expert testimony.[13] Applicant also provided fourteen exhibits at the Hearing in support of the request for amendment. Official notice was taken of the information contained in the file for this docket.[14]

Applicant's Exhibit 1 consisted of the final order for the Original Subdivision entered by the Commission in Oil and Gas Docket No. 03-0284496 on April 8, 2014. The applicant in that case was Crescent LHTX2012, LLC, ("Crescent"). This final order contained, inter alia, the following findings of fact:

1) Crescent owned all of the surface acreage in the Original Subdivision and thus all of the surface ownership in the Original Subdivision was represented in the hearing held on January 23, 2014.
2) The Original Subdivision was located in Harris County, Texas, a county having a population in excess of 400,000 (4,250,000 per US Census Bureau).
3) The Original Subdivision was to be subdivided in a manner authorized by law by the surface owner for residential use, pursuant to ordinances relating to zoning, planning, and subdivisions.
4) The Original Subdivision contained 466.3 acres in the Victor Blanco Survey including two four-acre operations sites and one six-acre operations site, for a total of 14 acres. The operations sites had access to an east-west thoroughfare to the south. The operations sites were to be used by possessory mineral interest owners to explore for and produce minerals. The operations sites were located within the Original Subdivision.
5) The Original Subdivision contained a provision for roads and pipeline easements to allow use of the operations sites within the Original Subdivision.
6) There had been no mineral development within the boundaries of the Original Subdivision. Within the 2.5-mile radius of review from the subdivision boundary, there had been mineral development on the flanks of the Humble Salt Dome to the northwest of the Original Subdivision. 76 wells were drilled in 15 fields. Any field extensions found to underlie the Original Subdivision in the future could be reached by directional drilling from the proposed operations sites. The operations sites had sufficient road and pipeline easement access.
7) The proposed operations sites and pipeline road easements were adequate to ensure that any mineral resources under the Original Subdivision be fully and effectively exploited.[15]

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[13] The audio hearing file in this case is referred to as "Tr. at [minutes]."
[14] Tr. at 1-2.
[15] *See* Applicant's Exhibit 1

As the first witness for the Applicant, Greg Frazier, a Certified Professional Landman, testified that he was tasked with researching the ownership of the mineral estate under the Original Subdivision for the January 2014 hearing.[16] In preparation for the January 2014 hearing, Mr. Frazier researched mineral ownership under the Original Subdivision back to 1900 and forward to 2014.[17] For the Hearing in this docket, Mr. Frazier built upon his prior research and carried mineral title forward from 2014 to 2018.[18]

Mr. Frazier testified that all parties entitled to notice of the Hearing in this docket were mailed notice.[19] There was very little change in mineral ownership from 2014.[20] Mr. Frazier created and submitted a service list of all mineral owners in the Original Subdivision based upon his title research. When some Notices of Hearing were returned to the Commission as non-deliverable, Mr. Frazier provided updated addresses for several recipients, but after a diligent search, could not find forwarding addresses for all of the returned Notices.[21]

Mr. Frazier also researched title to the surface of the Original Subdivision from 2014 through 2018.[22] Crescent was the sole owner of all of the surface of the Original Subdivision at the time of the January 2014 hearing.[23] Effective February 17, 2017, Crescent conveyed to Applicant a portion of the Original Subdivision located west of Timber Forest Drive.[24] As is shown by Applicant's Exhibits 4 and 5, Applicant is the present owner and holder of this portion of the Original Subdivision, which includes both the present platted location of an operations site approved by the Commission in 2014 and the revised location of that site sought by Applicant in this docketed case.[25]

Sean Compton next took the stand on behalf of the Applicant as an expert on land planning. Mr. Compton testified that he was involved in the application process for the Original Subdivision and appeared as a witness at the January 2014 hearing. In support of his testimony, Mr. Compton provided an updated map of the Original Subdivision, now known as "The Groves."[26] Mr. Compton further testified that roads were platted and lots within the Original Subdivision were sold to third parties on and after July 25, 2014.[27] The updated map of the Original Subdivision showed multiple stages of residential and

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[16] Tr. at 11.
[17] Tr. at 12.
[18] *Id.*
[19] Tr. at 24.
[20] Tr. at 21.
[21] Tr. at 22-3.
[22] Tr. at 15.
[23] Tr. at 17.
[24] Tr. at 18. *See also* Applicant's Exhibits 4,5, and 6.
[25] Tr. at 19-20. *See also* Applicant's Exhibit 6.
[26] Tr. at 27-8. *See also* Applicant's Exhibit 6.
[27] Tr. at 30.

commercial development that occurred on and after July 25, 2014.[28] Almost all of this development took place east of the road indicated on the map as Timber Forest Drive, which runs north to south in the approximate "middle" of the Original Subdivision.[29]

The plat of the Original Subdivision was approved by the Planning Commission of the City of Houston in 2014.[30] Residential and commercial developments are usually completed in successive phases of construction according to an approved subdivision plan.[31] These plans are often adjusted over the various phases of development to account for changing circumstances.[32] In general, minor adjustments and amendments to a subdivision plan not involving changes to the location of roadways do not need to be approved by the City of Houston to be effective.[33]

Mr. Compton testified that the current location of the affected operations site was an "inefficient" use of the property for residential or commercial purposes.[34] The area of the affected operations site was "constricted" by adjacent drainage easements and surrounding roadways.[35] Potential access to the area for commercial and residential purposes was limited unless the operations site was relocated.[36]

The third and final witness for Applicant was Tim Smith, a Licensed Professional Engineer. Mr. Smith was tendered at the Hearing in this docket as an expert in mineral exploration and development operations.[37] Mr. Smith also appeared as an expert witness in the January 11, 2014 hearing for the Original Subdivision concerning the mineral development in the surrounding area and the sufficiency of access to the mineral estate.[38]

Mr. Smith first provided testimony in the present case concerning mineral development within 2.5 miles of the boundary of the Original Subdivision including the number of oil and/or gas wells and the depths at which each well was completed. This information was contained in Applicant's Exhibits 9 and 10. Applicant's Exhibit 9 consisted of a map depicting a 2.5-mile radius surrounding the Original Subdivision, and to the extent known, the location and depth of all active and inactive wells in the area.[39]

Applicant's Exhibit 10 consisted of a list of those wells and the oil and gas fields in which they were located.[40] Mr. Smith testified that, as was the case in 2014, there were

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[28] Tr. at 27-8. *See also* Applicant's Exhibit 6.
[29] Tr. at 31. *See also* Applicant's Exhibit 6.
[30] Tr. at 34.
[31] Tr. at 36.
[32] *Id.*
[33] Tr. at 39-40.
[34] Tr. at 37.
[35] *Id.*
[36] Tr. at 38-9.
[37] Tr. at 43-5; *See also* Applicant's Exhibit 7.
[38] Tr. at 43-5.
[39] Tr. at 48-9.
[40] *Id.*

no oil or gas wells drilled within the Original Subdivision.[41] In addition, there had been no new drilling within the 2.5-mile study area since 2014, and no new geological events of note.[42]

Applicant's Exhibit 11 consisted of a list of the Commission-designated oil and gas fields which underlie the Original Subdivision and the 2.5-mile study area. Again, between 2014 and 2019 there was no change between the number of producing fields in this area.[43] All told, there was no change in circumstances from 2014 to 2019 within the 2.5-mile study area that had any substantive effect on a determination as to access to the minerals underlying the Original Subdivision from the relocated operations site.[44]

Using Applicant's Exhibit 12, a schematic and map of the proposed operations site within the Original Subdivision, Mr. Smith next discussed his methodology for determining the proper location, size and shape of the relocated operations site so as to not alter, diminish, or impair the usefulness of the original site.[45] He wanted first to ensure that there was no impairment to surface access. The amended operations site was located so that all access points available to the original surface site were equally available to the amended location.[46] Mr. Smith then configured the revised site location to accommodate two vertical or directional wells within the available space, which he considered to be adequate for this purpose.[47] In doing so, the original site was moved 560 feet to the west along the existing south right-of-way of Rankin Road.[48] All previously approved road and pipeline easements within the Original Subdivision remained unchanged.[49]

For the drilling activity anticipated in this area, operations sites are generally located with the expectation that all of the minerals within a 3000-foot radius are reasonably accessible.[50] Given this assumption, 560 feet is not considered significant in the industry.[51] Assuming a 3000-foot accessibility radius around the revised site location, Applicant's Exhibit 12 showed that moving the site 560 feet to the west would create *additional* areas of overlapping mineral access within the subdivision.

In summing up his testimony, Mr. Smith offered his expert opinion that the relocated operations site, in conjunction with the remainder of the sites and easements approved for the Original Subdivision, was adequate to ensure that the mineral resources of the subdivision could be fully and effectively developed. He also stated his opinion that

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[41] Tr. at 46.
[42] Tr. at 50.
[43] Tr. at 51.
[44] Tr. at 50-51.
[45] Tr. at 53.
[46] Tr. at 55-6.
[47] Tr. at 61-4. See also Applicant's Exhibit 12.
[48] Tr. at 65.
[49] Tr. at 66.
[50] *Id.*
[51] *Id.*

the relocated operations site did not alter, diminish, or impair the usefulness of the original site.[52] In responding to questions put forth by the Examiners after the completion of his testimony, Mr. Smith further noted that, given the nature and extent of historic oil and gas development along this part of the Gulf Coast, it is unlikely that the operations sites in the Original Subdivision will ever be used for oil and gas operations.[53]

IV. Examiners' Analysis

The Examiners conclude that:

1) Proper notice was given to all parties entitled to notice of the Hearing;
2) The Original Subdivision is a qualified subdivision under Statewide Rule 76;
3) Applicant has presented facts and information sufficient to show that the proposed amendment to the Original Subdivision will not alter, diminish, or impair the usefulness of any operations site or appurtenant road or pipeline easement within the Original Subdivision;
4) Applicant is the only surface owner in the Original Subdivision that has a surface interest that would be affected by the proposed amendment; and
5) Neither Chapter 92 of the Texas Natural Resources Code nor Statewide Rule 76 precludes the Commission from approving Applicant's request for amendment to the Original Subdivision under the circumstances presented.

The Examiners recommend that the Commission exercise its discretion concerning the application process delegated to it by Chapter 92 of the Texas Natural Resources Code and approve the amended plat for the Original Subdivision submitted by Applicant, as further discussed below.

A. Notice.

In an application for a *proposed* qualified subdivision, the applicant and owners of possessory mineral interests and mineral lessors of land contained in the proposed qualified subdivision are entitled to at least ten days' notice of a hearing to determine the adequacy of the number and location of operations sites and road and pipeline easements.[54] Administrative approval of an amendment to a qualified subdivision may be granted by the director of the Oil and Gas Division of the Commission, or a delegate, following at least ten days' notice and an opportunity for hearing has been extended to all possessory mineral interest owners and mineral lessors of land contained within the original and/or replatted or amended qualified subdivision.[55]

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[52] Tr. at 75.
[53] Tr. at 81.
[54] 16 Tex. Admin. Code §3.76(d); *see also* 16 Tex. Admin. Code §1.42(a)(1).
[55] 16 Tex. Admin. Code §3.76(h); *see also* 16 Tex. Admin. Code §1.42(a)(1).

To obtain administrative approval of an amendment to a qualified subdivision, however, the applicant must provide all of the information required by subsection (c) of Statewide Rule 76 ("Subsection (c)").[56] Subsection (c) requires, *inter alia*, that an application for a qualified subdivision include a statement that the applicant has authority to represent and does represent all surface owners of land contained in the subdivision.[57] Here, Applicant acknowledges that it does not have authority to represent all of the surface owners in the Original Subdivision due to intervening sales of residential lots to perhaps hundreds of third parties.[58] It follows that Applicant cannot satisfy the requirements for administrative approval for an amendment to the Original Subdivision.[59] Applicant must instead seek approval from the Commission through a final order signed by two or more commissioners.[60]

There is no specific requirement within Statewide Rule 76 concerning notice and hearing applicable to an amendment to a qualified subdivision *approved by final order of the Commission*.[61] There is some question, therefore, as to the sufficiency of notice and hearing under the circumstances presented here. Caselaw indicates that construction of Statewide Rule 76 is within the discretion of the Commission so long as that interpretation is reasonable and consistent with the underlying statute's meaning.[62] "When, as here, a statutory scheme is subject to multiple interpretations, we must uphold the enforcing agencies construction if it is reasonable and in harmony with the statute."[63]

Chapter 92 provides the statutory framework for Statewide Rule 76.[64] All approvals of qualified subdivisions contemplated by Chapter 92 require extending proper notice and affording an opportunity for hearing to the applicant and owners of possessory mineral interests.[65] This appears to set the minimum standards for all hearings requested under Statewide Rule 76. The Examiners conclude that this is a reasonable interpretation of the applicable statutory framework.[66] Applicant's request for a hearing for Commission approval of an amendment to an existing qualified subdivision requires at least ten days' notice to the owners of possessory mineral interests in the subdivision and an opportunity for those parties to be heard.[67]

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[56] 16 Tex. Admin. Code §3.76(h).
[57] 16 Tex. Admin. Code §3.76(c)(2).
[58] *See* Applicant's Bench Brief Regarding Rule 76, p. 2-3.
[59] *See* 16 Tex. Admin. Code §3.76(h).
[60] *See* 16 Tex. Admin. Code §3.76(h); 16 Tex. Admin. Code §1.126(a).
[61] *See* 16 Tex. Admin. Code §3.76(h).
[62] *See* Oil & Gas Docket No. 03-0289581, Application of Ward-Brown Partners, LLC, Proposal for Decision (March 6, 2014), p. 7 (adopted by Commission).
[63] *First Am.Title Ins. Co., v. Combs*, 258 S.W.3d 627, 632, quoted *in Railroad Commission of Texas v. Texas Citizens for a Safe Future and Clean Water*, 336 S.W.3d 619, 630.
[64] Oil & Gas Docket No. 03-0289581, Application of Ward-Brown Partners, LLC, Proposal for Decision (March 6, 2014), p. 7 (adopted by Commission).
[65] *See* Tex. Nat. Res. Code §§ 92.003-4.
[66] *See* Oil & Gas Docket No. 03-0289581, Application of Ward-Brown Partners, LLC, Proposal for Decision (March 6, 2014), p. 7 (adopted by Commission).
[67] *See* 16 Tex. Admin. Code §1.41(a)(1).

In this case, notice was mailed to all parties entitled to notice at least ten days prior to the hearing held on January 11, 2019. Notice of the hearing was published in a newspaper generally circulated within the locality of the Original Subdivision on November 28, 2018, December 5, 2018, December 12, 2018, and December 19, 2018. When certain notices of hearing were returned as undeliverable to the Commission, the Applicant provided all of the updated addresses that could be found for these returned notices. Supplemental notice was sent to the updated address list, and of those, none were returned as undeliverable. Accordingly, sufficient notice and opportunity for hearing were provided to all persons shown of record to be the owners of mineral interests in the Original Subdivision.

B. The Original Subdivision is a Qualified Subdivision Pursuant to Statewide Rule 76.

The surface owners of a parcel of land may restrict use of the surface by the possessory mineral owners if: (i) the parcel is a qualified subdivision; (ii) a plat of the subdivision has been approved by the Commission (after notice and hearing); and (iii) the approved plat is filed with the clerk of the county in which the qualified subdivision is to be located.[68] This restriction on the mineral estate ceases to apply if, by the third anniversary of the date on which the order of the Commission becomes final, the surface owner has not commenced actual constructions of roads or utilities within the qualified subdivision and a lot within the qualified subdivision has not been sold to a third party.[69]

As was shown in the findings of fact and conclusions of law for the April 8, 2014 final order in Oil & Gas Docket No. 03-0284496, the Original Subdivision is:

1) located in a county having a population of 400,000 or more;
2) subdivided in a manner authorized by law by the surface owner for residential use, pursuant to ordinances relating to zoning, planning and subdivisions;
3) 640 acres or less; and
4) possessed of a sufficient number of operations sites and road and pipeline easements adequate to ensure that any mineral resources may be fully and effectively exploited.

The amendment proposed by Applicant is intended only to alter the location of a single operations site within the Original Subdivision. There is no change requested to the outer boundaries of the Original Subdivision nor to any other operations site or road and pipeline easement approved by the Commission in 2014. Applicant's expert testified that the relocation of one of the original operations sites by 560 feet would not have any appreciable effect on the development of the mineral resources under the Original

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[68] 16 Tex. Admin. Code §3.76(b).
[69] 16 Tex. Admin. Code §3.76(g).

Subdivision. In fact, as shown in Applicant's Exhibit 12, the relocation of the affected operations site may actually result in increased access to the mineral estate as compared to the original location. As such, the findings of fact noted above remain applicable to the Original Subdivision.

The plat of the Original Subdivision was filed in the county in which the development is located.[70] Roads were constructed, and lots were sold to third parties, within three years of the date of the final order in in Oil & Gas Docket No. 03-0284496. Accordingly, the Original Subdivision is a qualified subdivision under Statewide Rule 76, and the restrictions on the mineral estate imposed by subsections (e) and (f) of that rule remain applicable to the Original Subdivision.

C. The Proposed Amendment to the Original Subdivision Will Not Alter, Diminish, or Impair the Usefulness of An Operations Site or Appurtenant Road or Pipeline Easement.

Subsection (h) of Statewide Rule 76 states that "[a]ll or any portion of a qualified subdivision may be amended, replatted, or abandoned by *the surface owner*."[71] "An amendment or replat, however, may not alter, diminish, or impair the usefulness of an operations site or appurtenant road or pipeline easement unless the amendment or replat is approved by the [C]ommission."[72] Accordingly, Statewide Rule 76 affords *a surface owner* the right to amend all *or a portion of* qualified subdivision without approval from the Commission if that amendment does not negatively affect the usefulness of an operations site and the appurtenant easements.

Applicant is successor-in-title to Crescent LHTX2012, LLC, sole surface owner of the Original Subdivision at the time of the Commission's April 2014 final order, as to that part of the subdivision that would be affected by the relocation of the affected operations site. Applicant presented evidence showing that the relocation of this operation site would not alter, impair or diminish the usefulness of the original site. As a consequence of this, it would appear that Applicant has a unilateral right under Statewide Rule 76 to amend its portion of the Original Subdivision by relocating the operations site as proposed without the Commission's approval and without the need for notice and hearing to affected mineral owners. All of the limitations on the mineral estate arising out of the Commission's approval of the Original Subdivision and subsequent development would presumably

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[70] *See* Applicant's Exhibit 4; *See also* Tr. at 73.
[71] 16 Tex. Admin. Code §3.76(h) (emphasis added)
[72] *Id.*

remain applicable to the relocated operations site as a consequence of the Commission's prior approval of the plat in 2014.

D. Chapter 92 of the Texas Natural Resources Code and Statewide Rule 76 do not preclude Commission Approval of the Requested Amendment.

Subsection (h) of Statewide Rule 76 states:

> All or any portion of a qualified subdivision may be amended, replatted, or abandoned by the surface owner. An amendment or replat, however, may not alter, diminish, or impair the usefulness of an operations site or appurtenant road or pipeline easement ***unless*** the amendment or replat is approved by the commission. Railroad Commission approval of a replat or amendment may be administratively granted by the director of the Oil and Gas Division, or his delegate, upon submission of items required in subsection (c) of this section and after notice and opportunity for hearing has been afforded to all possessory mineral interest owners and mineral lessors of land contained within the original and/or replatted or amended qualified subdivision.[73]

The stated language of the rule suggests that a portion of a subdivision may be amended without Commission approval *unless* the amendment negatively affects the usefulness of an operations site or appurtenant easements. Applicant presented sufficient evidence to show that the requested amendment to the Original Subdivision would not affect the usefulness of the relocated operations site, the only amendment sought by Applicant. Accordingly, Commission approval is not necessary for the proposed amendment to be valid and effective as to the limitations on the mineral estate arising out of the Commission's approval of the Original Subdivision plat. In spite of this, Applicant requested and received a hearing seeking the Commission's approval of the proposed amendment. This raises a question as to whether the Commission should consider the Applicant's request for approval when that approval is not otherwise necessary to render the requested amendment valid and effective.

As noted above, Chapter 92 provides the statutory framework for Statewide Rule 76. The language in Chapter 92 concerning Commission approval of amendments and replats is substantially the same as that of Statewide Rule 76.There is nothing within the statutory scheme expressly withholding authority from the Commission to approve an amendment or replat of a qualified subdivision when approval is not needed to render the amendment effective. The only stated limitation for consideration of amendments of qualified subdivisions in either the statute or the rule concerns *administrative* approval and requires that there be notice and a hearing on the request after the applicant files a

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[73] 16 Tex. Admin. Code §3.76(h) (emphasis added); see also Tex. Nat. Res. Code § 92.006.

complete application. Accordingly, neither the statutory scheme nor the applicable rule for qualified subdivisions expressly prevents the Commission from approving an amendment or replat when approval is not otherwise needed to be effective. As the rule contemplates the potential for *administrative* approval of every amendment or replat of a qualified subdivision, regardless of need, the availability of Commission approval would presumably extend to all requested amendments.

But this leaves unanswered the question originally posed: should the Commission exercise restraint in this case (when its approval is not "needed") or should it consider Applicant's request? Further discussion of possible answers to this question requires a threshold determination as to whether the Applicant filed a valid application for the proposed amendment to the Commission.

E. The Applicant Presented a Valid Application for Commission Approval of the Proposed Amendment to the Original Subdivision.

Chapter 92 delegates to the Commission the authority and discretion to adopt rules governing the contents of an application for a qualified subdivision.[74] As part of the Commission's exercise of this authority, Statewide Rule 76 requires that all applications for hearing on proposed qualified subdivisions include a statement that the applicant has authority to represent and does represent all surface owners of land contained in the proposed qualified subdivision.[75] While Statewide Rule 76 imposes the same requirement on applications for administrative approval of amendments to qualified subdivisions, the rule is silent as to any express requirements for applications for Commission approval of those amendments.

Applicant acknowledges that it does not represent all of the surface owners in the Original Subdivision. Many homebuilders and homeowners have acquired property during the development of the Original Subdivision.[76] Applicant did not consider it reasonable to obtain agreements from these parties because their interests would not be affected by the proposed amendment.[77] Accordingly, Applicant's request does not comply with Statewide Rule 76 as to administrative approval of the requested amendment and approval may not be granted on that basis.

Applicant presented evidence, however, that it represents the only surface owner in the Original Subdivision that would be affected by the proposed amendment. Applicant

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[74] *See* Tex. Nat. Res. Code § 92.004.
[75] 16 Tex. Admin. Code §3.76(c)(2).
[76] Applicant's Bench Brief Regarding Rule 76, p. 2.
[77] *Id.* at p. 2-3.

asserts that this is sufficient under the circumstances to apply for Commission approval of the proposed amendment for the following reasons:

1) The amendment concerns only a portion of the Original Subdivision, rather than the whole;
2) The amendment would achieve a more efficient use of the land for future development;
3) The amendment would not affect or have any impact on any part of the developed portion of the Original Subdivision where the other surface owners have their property;
4) The operations sites and easements in the developed area of the other surface owner's property remain exactly as when originally approved;
5) Denying the application because unaffected surface owners have not authorized representation by Applicant at the hearing would deprive Applicant of its right to develop its property and frustrate the statutory purposes of Chapter 92; and
6) Statutes should not be interpreted in such a way as to render an absurd result.[78]

The stated purpose of Chapter 92 is to promote the full and efficient utilization and development of all the land resources of the State of Texas. "[I]t is the intent of the legislature that the mineral resources of the state be fully and effectively exploited and that all land in the state be maintained and utilized to its fullest and most efficient use." [79] The exercise of this authority is considered necessary "to assure proper and orderly development of both the mineral and land resources of this state. [80] Enactment of Chapter 92 is further intended to, "protect the rights and welfare of the citizens of this state."[81]

Applicant's Exhibit 6 shows that the nearest existing surface development not represented by Applicant in the Original Subdivision is approximately 2000 feet away from the proposed relocation of the surface site. The expert witness testimony and other evidence presented at the Hearing shows that there is no change requested, and thus no alteration to the usefulness, of the sites and easements located within the developed portion of the Original Subdivision. The proposed amendment is not significant enough to require approval from the Planning Commission of the City of Houston. The amended plat would be valid under the existing approved subdivision plan without notice or opportunity for hearing for adjacent surface owners. Accordingly, Applicant has presented evidence sufficient to show that it is the only surface owner in the Original Subdivision that would be affected by the proposed amendment.

Applicant's expert witnesses testified that relocating the affected operations site would promote a more efficient use of the land in the Original Subdivision. Adjacent

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[78] Applicant's Bench Brief Regarding Rule 76, p. 2-3.
[79] Tex. Nat. Res. Code § 92.001.
[80] *Id.*
[81] *Id.*

roadways and drainage easements create access constraints within the area of the affected operations site. These constraints limit the potential for residential and commercial development in this area. Relocating the operations site would relieve some of these constraints without affecting its usefulness. In consequence of this, the Examiners conclude that relocating the operations site as proposed by Applicant would promote the full and efficient utilization and development of the land within the Original Subdivision as well as the full development of the minerals.

Subsection (h) of Statewide Rule 76 gives "the surface owner" the right to amend a qualified subdivision. Unlike other provisions in Statewide Rule 76, subsection (h) refers to the "surface owner" rather than the "surface owners." The applicable provisions of Chapter 92 also make a distinction between "surface owner" and "surface owners" for amendments to qualified subdivisions.[82] It would appear, therefore, that an individual surface owner may amend a qualified subdivision without the joinder of other surface owners when the amendment does not negatively affect the usefulness of any site or easement within the subdivision. This would account for the readily foreseeable circumstance in which an individual surface owner seeks to amend its portion of the qualified subdivision after initial approval and intervening development has divided surface ownership into dozens or hundreds of residential and commercial lots.

The developed portion of the Original Subdivision, which Applicant has shown would not be affected by the proposed amendment, now has hundreds of surface owners. Applicant states that it would be impracticable, if not impossible, to achieve unanimous agreement among all of these separate owners, even when their interest is not affected.[83] Requiring express joinder or agreement by all surface owners before approving an amendment to a portion of a qualified subdivision would effectively prevent a developer from developing a property as intended.[84] The Examiners agree that such an interpretation would not further the statutory purpose of Chapter 92 where, as here, the proposed amendment would not negatively affect the usefulness of any part of the qualified subdivision nor affect any surface owner other than the applicant.

Lastly, approval by the Commission of the proposed amendment in this case would not be a purposeless exercise of the authority delegated under Chapter 92. Proper and orderly development of land resources is based in no small part upon establishing lasting, workable, and enforceable rules relating to the use of land. In the absence of certainty, developers are less likely to take a commercial risk to develop a property. While subsection (h) of Statewide Rule 76 gives Applicant the apparent right to amend its portion of the Original Subdivision without approval, there is no real certainty as to the validity of the amendment unless the Applicant has an opportunity to prove in some tribunal the lack of negative effect upon the usefulness of the qualified subdivision. A hearing at the

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[82] *See* Tex. Nat. Res. Code § 92.001 et seq.
[83] Applicant's Bench Brief Regarding Rule 76, p. 8-10
[84] *Id.* at p. 10.

Commission allows Applicant to obtain a ruling on the effect of the proposed amendment prior to an investment of additional time and resources. To require Applicant to do this, post hoc, if a controversy later arises concerning the effect of the proposed amendment could create a level of uncertainty that limits the proper and orderly development of land. A hearing at the Commission, however, if granted following notice to the affected mineral owners, would provide an opportunity to add certainty to the development process and further the stated intent of Chapter 92 while protecting the rights and welfare of the citizens of this state.

V. Conclusion

The Examiners recommend that the Applicant's request for amendment to the Original Subdivision, as shown in Appendix A attached hereto, should be approved and that the Commission adopt the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. LH Groves, LLC, ("Applicant") is the surface owner of the undeveloped property involved in this application to amend the qualified subdivision previously approved by the Commission's Final Order dated April 7, 2014 in Oil & Gas Docket No. 03-0284496 ("Original Subdivision").

2. The purpose of the amendment of the Original Subdivision is to relocate one of the operations sites the Commission previously approved from the location that is shown as "Existing Drill Site" to the location shown as "Proposed Amended Drill Site" on Appendix A attached hereto. No other amendment to the Original Subdivision is proposed. All other operations sites and all pipeline and access easements in the Original Subdivision remain the same as approved in Oil & Gas Docket No. 03-0284496.

3. On October 8, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Applicant and all mineral owners of record in the Original Subdivision, setting a hearing date of January 11, 2019. The Notice contains (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.

4. The Notice was published in the *Atascocita Observer*, a newspaper in the Houston Chronicle Network and of general circulation in Harris County, Texas. The publication was done for four consecutive weeks, on November 28, 2018, December 5, 2018, December 12, 2018 and December 19, 2018.

5. At least ten (10) days' notice of the hearing was provided to all persons required to be notified thereof.

6. The hearing was held on January 11, 2019, as noticed. Applicant appeared at the hearing and presented evidence in support of the application. No one appeared in protest.

7. Applicant is the successor to Crescent LHTX2012, LLC, which was the applicant of the Original Subdivision approved in Oil & Gas Docket No. 03-0284496, as to the undeveloped portion of the Original Subdivision.

8. Applicant is the only surface owner in the Original Subdivision that would or could be affected by the proposed relocation of the operations site.

9. The Original Subdivision is:

    a. located in a county having a population of 400,000 or more;

    b. subdivided in a manner authorized by law by the surface owner for residential use, pursuant to ordinances relating to zoning, planning and subdivisions; and

    c. 640 acres or less.

10. Construction of roads and utilities and the sale of lots to third parties within the Original Subdivision began on and after July 23, 2015, within three years of the date of the Final Order in Oil & Gas Docket No. 03-0284496.

11. There has not been any additional well drilling or production within a 2.5-mile area of review around the Original Subdivision since the entry of the Final Order in Oil & Gas Docket No. 03-0284496.

12. The proposed relocated operations site, together with the existing pipeline and access easements, does not alter, diminish, or impair the usefulness of any operations site or pipeline and access easement within the Original Subdivision.

13. The proposed relocated operations site, together with the existing operations sites and pipeline and access easements, is adequate to ensure that any mineral resources under the Original Subdivision may be fully and effectively exploited.

14. The Applicant has agreed on the record that, pursuant to the provisions of Texas Government Code §2001.144(a)(4), the final order in this case shall be effective on the date a Master Order relating to this Final Order is signed.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons entitled to notice. 16 Tex. Admin. Code §§ 1.42, 1.43, and 3.21.

2. All things have occurred to give the Commission jurisdiction to decide this matter. Tex. Nat. Res. Code § 81.051.

3. The legislative purpose stated in Section 92.002 of the Texas Natural Resources Code favors consideration of Applicant's request for hearing for an amendment of the Original Subdivision to relocate an operations site.

4. The grant of Commission authority over the application process for qualified subdivisions in Section 92.004 of the Texas Natural Resources Code favors consideration of Applicant's request for hearing for an amendment of the Original Subdivision to relocate an operations site.

5. The proposed relocated operations site, together with the existing pipeline and access easements, does not alter, diminish, or impair the usefulness of any operations site or pipeline and access easement within the Original Subdivision.

6. The proposed relocated operations site, together with the existing operations sites and pipeline and access easements, is adequate to ensure that any mineral resources under the Original Subdivision may be fully and effectively exploited.

7. Pursuant to §2001.144(a)(4) of the Texas Government Code, and the consent of the applicant on the record, the Final Order in this case is effective when it is signed.

Examiners' Recommendation

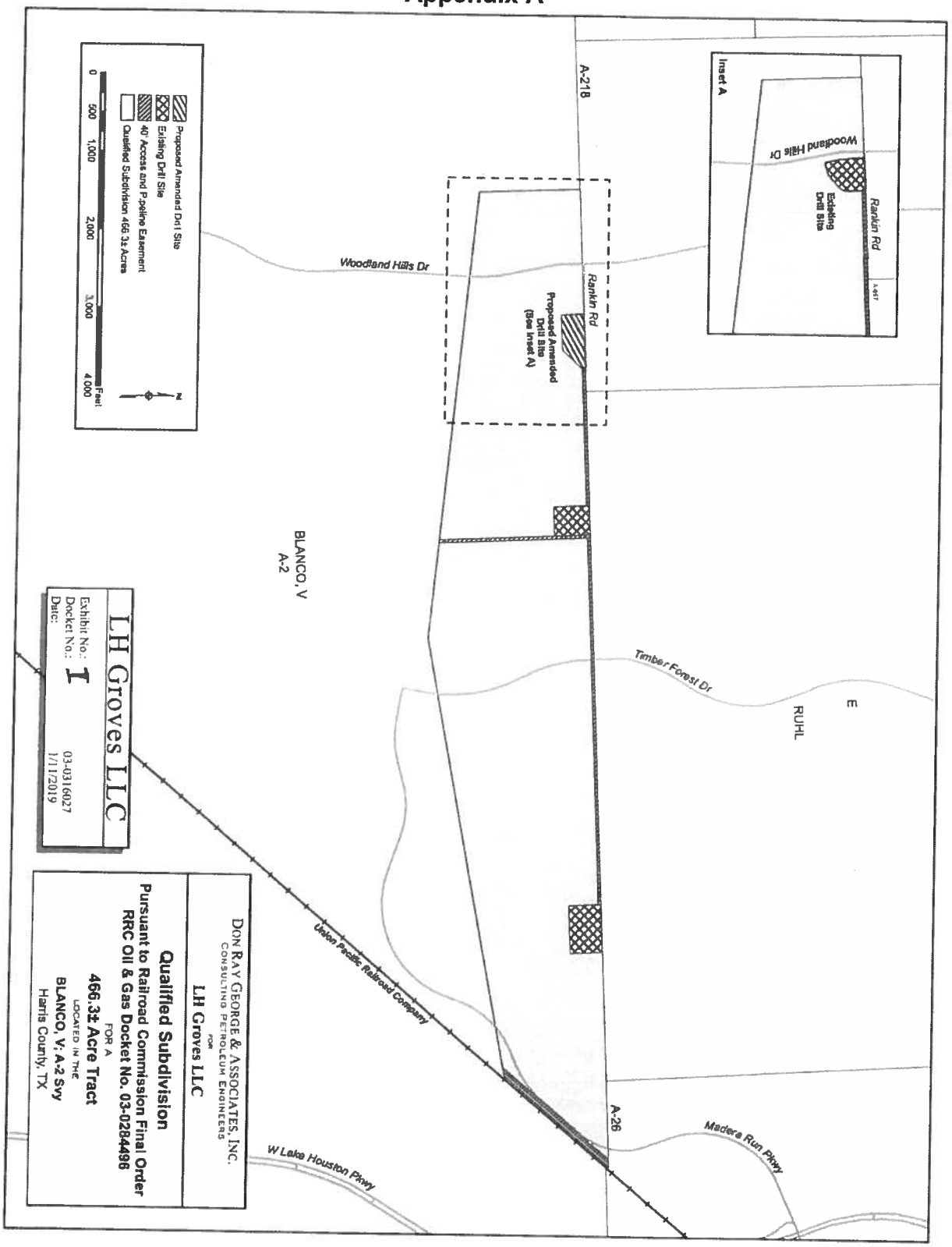
The Administrative Law Judge and Technical Examiner recommend that Applicant LH Groves, LLC,'s request be granted to allow for amendment to the Original Subdivision previously approved by the Commission's Final Order dated April 7, 2014, in Oil & Gas Docket No. 03-0284496, in accordance with the attached final order.

Respectfully submitted,

Ezra A. Johnson
Administrative Law Judge

Robert Musick, P. G.
Technical Examiner

Appendix A


Proposed Amended Drill Site
Existing Drill Site
40' Access and Pipeline Easement
Qualified Subdivision 466.3± Acres
0
500
1,000
2,000
3,000
4,000
Feet
N
Inset A
Woodland Hills Dr
Existing Drill Site
Rankin Rd
A-218
Woodland Hills Dr
Rankin Rd
Proposed Amended Drill Site (See Inset A)
BLANCO, V
A-2
Timber Forest Dr
RUHL
E
A-26
Union Pacific Railroad Company
Madera Run Pkwy
W Lake Houston Pkwy
LH Groves LLC
Exhibit No.: 1
Docket No.: 03-0316027
Date: 1/11/2019
DON RAY GEORGE & ASSOCIATES, INC.
CONSULTING PETROLEUM ENGINEERS
FOR
LH Groves LLC
Qualified Subdivision
Pursuant to Railroad Commission Final Order
RRC Oil & Gas Docket No. 03-0284496
FOR A
466.3± Acre Tract
LOCATED IN THE
BLANCO, V; A-2 Svy
Harris County, TX

GROVES DRILLSITE
4.010 ACRES

AUGUST 27, 2018
JOB NO. 4862-00

DESCRIPTION OF A 4.010 ACRE TRACT OF LAND SITUATED
IN THE VICTOR BLANCO SURVEY, ABSTRACT NO. 2
HARRIS COUNTY, TEXAS

BEING a 4.010 acre (174,674 square foot) tract of land situated in the Victor Blanco Survey, Abstract No. 2 of Harris County, Texas and being a portion of a called 519.3 acre tract of land described as Tract 2 in an instrument to LH Groves, LLC recorded under Harris County Clerk's File Number (H.C.C.F. No.) RP-2017-72827 and a portion of Lot 8 of HARRIS COUNTY LAND AND IMPROVEMENT COMPANY SUBDIVISION, a subdivision per plat recorded under Vol. 359, Pg. 570 of the Harris County Deeds Records, said 4.010 acre tract of land described by metes and bounds as follows:

COMMENCING at a 1/2-inch iron rod found for the Southwest corner of a called 0.9191 acre Force Main Easement described in an instrument to the State of Texas recorded under H.C.C.F. No. X213925 and the Northeast corner of a called 10.1705 acre Drainage Easement described in an instrument to Tall of the Lakes M.U.D. recorded under H.C.C.F. No. J277004, lying on the North line of said 519.3 acre tract and Lot 9 of said HARRIS COUNTY LAND AND IMPROVEMENT COMPANY SUBDIVISION and South right-of-way line of Rankin Road (100 feet wide) as recorded in H.C.C.F. No. F230895;

THENCE, S 87° 28' 11" W, a distance of 197.99 feet along and with the North line of said 519.3 acre tract and the South right-of-way line of said Rankin Road to the **POINT OF BEGINNING** and the Northeast corner of the herein described tract;

THENCE, over and across said 519.3 acre tract and said Lot 8, the following courses and distances:

S 42°57'45" W, a distance of 416.48 feet to the Southeast corner of the herein described tract;

S 87°28'11" W, a distance of 449.68 feet to the Southwest corner of the herein described tract;

N 02°34'21" W, a distance of 291.95 feet to the Northwest corner of the herein described tract, lying on the common line of said 519.3 acre tract and said Rankin Road;

THENCE, N 87°28'11" E, a distance of 746.91 feet to the **POINT OF BEGINNING** and containing 4.010 acres (174,674 square feet) of land.

Bearing orientation is based on the Texas Coordinate System of 1983 (NAD83), South Central Zone 4204 and is referenced to a called 519.3 acre tract as cited herein.

08/27/18

James B. McAllister, Jr. RPLS No. 5717
BGE, Inc.
10777 Westheimer Road, Suite 400
Houston, Texas 77042
Telephone: (281) 558-8700
TBPLS Licensed Surveying Firm No. 10106500

LH Groves LLC
Exhibit No.: II
Docket No.: 03-0316027
Date: 1/11/2019

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