

Control Number: 47811



Item Number: 1

Addendum StartPage: 0

PUC DOCKET NO.

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PETITION BY BCDE, LTD. FOR EXPEDITED RELEASE FROM WATER CCN NO. 13203 AND SEWER CCN NO. 21065 HELD BY AQUA TEXAS, INC. IN HARRIS COUNTY

DUDI IC LITH ITY COMMISSIO

PUBLIC UTILITY COMMISSION

OF TEXAS

PETITION BY BCDE, LTD. FOR EXPEDITED RELEASE PURSUANT TO TEXAS WATER CODE SECTION 13.254(A-5)

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TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW, BCDE, LTD. ("Petitioner") and files this Petition with the Public Utility Commission of Texas (the "PUC") for expedited release from Aqua Texas, Inc.'s ("Aqua") water certificate of convenience and necessity ("CCN") No. 13203 and sewer CCN No. 21065, pursuant to (i) Texas Water Code Section 13.254(a-5); and (ii) Rule 24.113(l) of the Commission's Rules found at 16 Tex. Admin. Code Section 24.113; and in support thereof would respectfully show as follows:

I. APPLICABLE REGULATIONS

Section 13.254(a-5) of the Texas Water Code provides that the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN.¹ For land that is located within a county with a population of at least one million, or a county adjacent to a county with a population of at least one million, the owner of the qualifying tract "is entitled to that release." The rule adopted by the PUC pursuant to Section 13.254(a-5) provides the same, and it recognizes that Harris County is a county in

¹ Tex. Water Code Ann. § 13.254(a-5) (West 2008 and Supp. 2016) (TWC).

² *Id*.

which owners of at least 25 acres are entitled to expedited release.³ Under Section 13.254(a-6), the PUC "shall grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition."

II. REQUEST FOR EXPEDITED RELEASE

Petitioner owns approximately 64 acres of contiguous property in Harris County (the "Property"). All of the Property is within the boundaries of water CCN No. 13203 and sewer CCN No. 21065, held by Aqua. None of the Property receives service from any water or sewer service provider. An Affidavit in support of this Petition is attached hereto as Exhibit "A." A map showing the location of the Property is attached hereto as Exhibit "B." A deed showing ownership of the Property is attached hereto as Exhibit "C."

III. CONCLUSION AND PRAYER

Texas Water Code Section 13.254(a-5) entitles Petitioner to expedited release of the Property described herein. The Property is greater than 25 acres, is not receiving water or sewer service, and is entirely within Harris County. Under Section 13.254(a-6), the PUC should grant this Petition no later than the 60th day after the date of filing. Petitioner respectfully requests that the PUC grant this Petition and issue an order under the authority of Section 13.254(a-5) releasing all portions of the Property that are within the boundaries of water CCN No. 13203 and sewer CCN No. 21065 from CCN No. 13203 and CCN No. 21065.

³ 16 Tex. Admin. Code § 24.113(1)

Respectfully submitted,

COATS ROSE, P.C.

14755 Preston Road, Suite 600 Dallas, Texas 75254 (972) 419-4717 (Telephone) (972) 702-0662 (Facsimile) seidman@coatsrose.com (Email)

SCOTT W. EIDMAN

State Bar No. 24078468

ATTORNEYS FOR PETITIONER BCDE, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2017, a true and correct copy of the Petition by BCDE, Ltd. for Expedited Release Pursuant to Texas Water Code Section 13.254(a-5) was sent, via certified mail, return receipt requested to the following recipient at the address indicated.

Aqua Texas, Inc. 1106 Clayton Lane Austin, Texas 78723-3489 Via Certified Mail, RRR

CSC-Lawyers Incorporating Service Company 211 E. 7th Street, Suite 620 Austin, Texas 78701-3218

Via Certified Mail, RRR

Scott W. Eidman

EXHIBIT "A"

Affidavit of Douglas J. Eibsen

PETITION BY BCDE, LTD. § BEFORE THE

FOR EXPEDITED RELEASE FROM §

WATER CCN NO. 13203 AND SEWER \$ PUBLIC UTILITY COMMISSION

CCN NO. 21065 HELD BY AQUA TEXAS, INC. §

IN HARRIS COUNTY § OF TEXAS

AFFIDAVIT OF DOUGLAS J. EIBSEN IN SUPPORT OF PETITION FOR EXPEDITED RELEASE FROM WATER CCN NO. 13203 AND SEWER CCN NO. 21065 HELD BY AQUA TEXAS, INC. PURSUANT TO TEXAS WATER CODE SECTION 13.254(A-5)

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned notary, personally appeared Douglas J. Eibsen, the affiant, a person who is known to me. After administering an oath, the affiant testified that:

- 1. "My name is Douglas J. Eibsen. I am over the age of eighteen years, of sound mind, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
- 2. I am President of Eibsen & Associates, Inc., General Partner of BCDE, Ltd., the Petitioner in the above-captioned matter. BCDE, Ltd. owns approximately 64 acres of land (the "Property"), which appears to be located within the boundaries of water CCN No. 13203 and sewer CCN No. 21065 issued to Aqua Texas, Inc. The Property is located in Harris County, Texas, is over 25 acres in size, and consists of contiguous tracts of land. Exhibit "B" attached to this Petition is a true and correct copy of a map identifying the Property, its location, and the area of the CCN.
- 3. The Property is not receiving water or sewer service from Aqua Texas, Inc. or any other water or sewer service provider. BCDE, Ltd. has not requested water or sewer service from Aqua Texas, Inc. or paid any fees or charges to initiate or maintain water or sewer service, and there are no billing records or other documents indicating an existing account for the Property.
- 4. I request that the Public Utility Commission of Texas release this Property from water CCN No. 13203 and sewer CCN No. 21065."

FURTHER AFFIANT SAYETH NOT.

Douglas J. Eidsen

SWORN TO AND SUBSCRIBED TO BEFORE ME by Douglas J. Eibsen on 28, 2017

Notary Public, State of Texas

STACEY ANN SHIELDS
Notary ID #126940560
My Commission Expires
June 23, 2021

EXHIBIT "B"

Map Showing Location of Property





EXHIBIT "C"

Deed

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SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

STATE OF TEXAS

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M332593 1/03/03 200038602

MEN BY THESE PRESENTS:

23.00

COUNTY OF HARRIS

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That J. N. WARREN (a/k/a Jasper Newton Warren, a/k/a Jack Warren, individually and d/b/a Warren Arabians, a sole proprietorship), joined herein by his wife, MAXINE C. WARREN, hereinafter called Grantor (whether one or more), for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other valuable consideration paid by the Grantee herein named, the receipt of which is hereby acknowledged, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto BCDE, LTD., a Texas limited partnership, hereinafter called Grantee (whether one or more), whose mailing address is 24522 Creekview Dr., Spring, Harris County, Texas 77389-4904, the following described real property in Harris County, Texas, together with (i) any and all appurtenances belonging or appertaining thereto; (ii) any and all improvements located thereon; (iii) any and all appurtenant easements or rights of way affecting said real property and any of Grantor's rights to use same; (iv) any and all rights of ingress and egress to and from said real property and any of Grantor's rights to use same; (v) any and all mineral rights and interests of Grantor relating to said real property (present or reversionary); (vi) any and all rights to the present of future use of wastewater, wastewater capacity, drainage, water or other utility facilities to the extent same pertain to or benefit said real property or the improvements located thereon, including without limitation, all reservations of or commitments or letters covering any such use in the future, whether now owned or hereafter acquired; (vii) any and all rights and interests of Grantor in and to any leases covering all or any portion of said real property; and (viii) all right. title and interest of Grantor, if any, in and to (a) any and all roads, streets, alleys and ways



(open or proposed) affecting, crossing, fronting or bounding said real property, including any awards made or to be made relating thereto including, without limitation, any unpaid awards or damages payable by reason of damages thereto or by reason of a widening of or changing of the grade with respect to same, (b) any and all strips, gores or pieces of property abutting, bounding or which are adjacent or contiguous to said real property (whether owned or claimed by deed, limitations or otherwise), (c) any and all air rights relating to said real property and (d) any and all reversionary interests in and to said real property (said real property together with any and all of the related improvements, appurtenances, rights and interests referenced in items (i) through (vii) above are herein collectively referred to as the "Property"), to-wit:

A 78.4754 acre tract of land out of Unrestricted Reserve "C" of TOMBALL GREENS, a subdivision out of the Elizabeth Smith Survey, Abstract No. 70, in Harris County, Texas, and being more particularly described by metes and bounds on Exhibit "A" attached hereto.



Notwithstanding anything contained herein to the contrary, however, with respect to the rights and interests described in (iv), (vi) and (viii) directly above, Grantor is hereby only granting, selling and conveying any of Grantor's right, title and interest in and to same without warranty (whether statutory, express or implied).

This conveyance is made and accepted subject to the Permitted Title Exceptions listed on attached Exhibit "B" to the extent same are in effect at this time.

TO HAVE AND TO HOLD the above described property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, and Grantee's heirs, personal representatives, successors, and assigns forever, and Grantor hereby binds Grantor and Grantor's heirs, personal representatives, successors, and assigns to WARRANT AND FOREVER DEFEND, all and singular, the said property to Grantee and

Grantee's heirs, personal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

Of the consideration hereinabove recited, the sum of \$875,000.00 has been paid to Grantor in cash by Texas State Bank (hereinafter called the "Mortgagee"), at the special instance and request and on behalf of Grantee, as evidenced by that certain promissory note of even date herewith, executed by Grantee, payable to the order of the Mortgagee, bearing interest at the rate as therein provided, and providing for the usual clauses with regard to acceleration of maturity and attorney's fees, reference to such note being here made for all pertinent purposes, the payment of such note being secured by the Vendor's Lien herein retained, and additionally being secured by a Deed of Trust of even date herewith to John E. Phillips, Trustee for the benefit of the Mortgagee.

But it is expressly agreed that the Vendor's Lien, as well as the Superior Title in and to the above described property, is retained against the above described property, premises and improvements until the above described note and all interest thereon are fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute, and Grantor, for value received from the Mortgagee, as recited above, does hereby Transfer, Assign, and Set Over, without recourse, to the Mortgagee, its successors and assigns, said Vendor's Lien and the Superior Title remaining in Grantor.

Except for the limited warranties of title contained herein and the representations and warranties of Grantor contained in that Purchase and Sale Agreement dated August 1, 2002, entered into between Grantor and Grantee, the above described Property is conveyed "as is".

Ad valorem taxes and standby fees with respect to the Property, other than "roll back taxes" have been prorated between Grantor and Grantee as of the date hereof, and Grantee hereby expressly assumes and agrees to pay all ad valorem taxes and all maintenance fees, standby fees, assessments and similar charges with respect to the Property for the year 2002 and all subsequent years.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED on December 30, 2002.

N. WARREN

MAXINE C. WARREN

STATE OF TEXAS

Ş

COUNTY OF HARRIS

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This instrument was acknowledged before me on December 30, 2002, by J. N. Warren and Maxine C. Warren.

NOTARY PUBLIC in and for THE STATE OF TEXAS



Agen Recording Return To:

CHICAGO TITLE-MAGNOLIA 38627 FM 1774 MAGNOLIA, TEXAS 77355 4

Fieldnotes for 78.4754 acres of land out of Unrestricted Reserve "C" of Tomball Greens, a subdivision out of the Elizabeth Smith Survey, Abstract No. 70, in Harris County, Texas, according to the map or plat thereof recorded under Film Code No. 440128 of the Map Records of Harris County, being the residue of that certain 87.8666 acre tract of land conveyed to J.N. Warren, et ux as described in deed recorded under County Clerk's File No. K381722 of the Real Property Records of Harris County and all of that certain 3.000 acre tract of land conveyed to Jack N. Warren as described in deed recorded under County Clerk's File No. T613633 of the said Real Property Records, said 78.4754 acre tract of land being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch steel rod set in the East line of Haffamith-Kohrville Road, based on a 60.00 foot right-of-way, at its intersection with the North line of Spell Road, based on a 60.00 right-of-way, said point also being the Southwest corner of said Unrestricted Reserve "C", and the said Warren 87.8666 acre tract;

Thence, North 17°59'48" West, 350.00 feet with the East line of said Huffsmith-Kohrville Road and the West line of said Reserve "C" to a 5/8 inch steel rod set for the most Northerly Southwest corner and PLACE OF BEGINNING for the herein described tract of land;

Thence, continuing with the East line of said Huffsmith-Kohrville Road and the West line of said Reserve "C", North 17°59'48" West, 1235.72 feet to a ½ inch steel rod found marking the Northwest corner of said Reserve "C", the said 87.8666 acre tract, and the herein described tract, said point also being the most Northerly Southwest corner of Unrestricted Reserve "A" of said Tomball Greens;

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- Thence, North 45°27'56" East, 400.00 feet with the North line of said Reserve "C" and the South line of said Reserve "A" to a 5/8 inch steel rod set at an angle point;
- Thence, continuing with the North line of said Reserve "C" and the South line of said Reserve "A", North 49°06'40" East, 1333.88 feet to a 5/8 inch steel rod set for the Northeast corner of said Reserve "C" and the herein described tract, said point also being an eli corner of said Reserve "A";
- Thence, South 40°43'33" Bast, 1112.94 feet with the East line of said Reserve "C" and the West line of said Reserve "A" to a 5/8 inch steel rod set at an ell corner of said Reserve "A" and the herein described tract, said point also being the most Southerly Southwest corner of said Reserve "A", said point also being in the North line of the aforesaid 3.000 acre tract;
- Thence, North 45°11'20" East, 54.64 feet with a Southerly line of said Reserve "A" and a Northerly line of said Reserve "C" to a 5/8 inch steel rod set at a second ell corner of said Reserve "C" and the herein described tract, said point also being the Northeast corner of the said 3.000 acre tract, said point also being the Northwest corner of that certain 31.5 acre tract of land conveyed to Leo West, et ux as described in deed recorded in Volume 1352, Page 256 of the Deed Records of Harris County;
- Thence, South 39°26'44" East, 363.05 feet with the East line of said Reserve "C" and the said 3.000 acre tract and the West line of the said 31.5 acre tract to a 5/8 inch steel rod set at an angle point, said point also being the Southeast corner of the said 3.000 acre tract;
- Thence, continuing with the East line of said Reserve "C" and the West line of the said 31.5 acre tract, South 39°34'20" East, 408.21 feet to a 1/2 inch steel rod found in the Northwesterly line of aforesaid Spell Road marking the Southeast corner of said Reserve "C" and the herein described tract, said point also being the Southeast corner of the aforesaid Warren 87.8666 acre tract, said point also being the Southwest corner of the said 31.5 acre tract:

- Thence, South 59°56'55" West, 508.63 feet with the Southeasterly line of said Reserve "C" and the Northwesterly line of said Spell Road to a 5/8 inch steel rod found at a point of curve to the left having a radius of 446.65 feet and a central angle of 22°42'18";
- Thence, continuing with the Northwesterly line of said Spell Road and the Southeasterly line of said Reserve "C" and with the said curve to the left having a radius of 446.65 feet (chord bearing South 48°35'46" West, 175.84 feet), an arc distance of 177.00 feet to a 5/8 inch steel rod found at a point of tangency;
- Thence, continuing with the Northwesterly line of said Spell Road and the Southeasterly line of said Reserve "C", South 37°14'37" West, 584.10 feet to a 5/8 inch steel rod with cap set at a point of curve to the right having a radius of 579.03 feet and a central angle of 18°09'23";
- Thence, continuing with the Northwestorly line of said Spell Road and the Southeasterly line of said Reserve "C" and with the said curve to the right having a radius of 579.03 feet (chord bearing South 46°29'20" West, 182.72 feet), an arc distance of 183.49 feet to a 5/8 inch steel rod set at an ell corner;
- Thence, North 34°25'58" West, 335,38 feet to a 5/8 inch steel rod set at a second ell corner;
- Thence, South 75°08'55" West, 951.30 feet to the PLACE OF BEGINNING and containing 78.4754 acres or 3,418,387 square feet of land, more or less.

This description is based on the land title survey and plat (Job No. 02-4474A) made under the direction of John G. Thomas, Registered Professional Land Surveyor on August 6, 2002.

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EXHIBIT "B"

PERMITTED TITLE EXCEPTIONS

- 1. Restrictive covenants recorded under Film Code No. 440128 of the Map Records of Harris County, Texas; and also recorded under Harris County Clerk's File No. T891723 of the Real Property Records of Harris County, Texas.
- 2. Rights of tenants in possession under any leases assigned to Grantee.
- 3. An agreement for water well site with a 150 foot radius Sanitary Control easement along the easterly property line together with an eight (8) foot utility easement along the northerly property line to said water well as defined and located in instrument dated March 15, 1999, filed of record under Clerk's File No. T891723 of the Real Property Records of Harris County, Texas, said easement being further shown per the recorded plat thereof.
- 4. A Drill Site with access of ingress and egress together with a 40 foot pipe line easement affecting the subject property as defined and located in instrument dated March 15, 1999, filed of record under Clerk's File Nos. E299066 and T891723 of the Real Property Records of Harris County, Texas, said easement being further shown per the recorded plat thereof.
- 5. Pipeline right-of-way granted to Humble Oil & Refining Company, as created, defined and limited by instruments recorded in Volume 971, Page 53 and in Volume 1047, Page 620, both of the Deed Records of Harris County, Texas, and filed under Clerk's File Nos. D617052 and E183144. (as to 61.86 acres)
- 6. Easements and rights-of-way reserved by Exxon Corporation in instrument filed under Clerk's File No. F282492 of the Real Property Records of Harris County, Texas (as to 26.0066 acres).
- 7. All terms, conditions and provisions of deed from Exxon Corporation to Merit energy Corporation, filed under Clerk's File No. S099288 of the Real Property Records of Harris County, Texas. (as to 3.000 acres)
- 8. 1/4th royalty interest in and to all oil, gas and other minerals, on, in, under, that may be produced from the subject property is excepted herefrom as set forth in instrument recorded in Volume 971, Page 427 of the Deed Records of Harris County, Texas. (as to 50 acres out of 61.86 acres)
- 9. 1/4th royalty interest in and to all oil, gas and other minerals, on, in, under, that may be produced from the subject property is excepted herefrom as set forth in instrument recorded in Volume 971, Page 632 of the Deed Records of Harris County, Texas. (as to 50 acres out of 61.86 acres)
- 10. All of the oil, gas and other minerals and all other elements not considered a part of the surface estate are excepted herefrom, all having been reserved in instrument recorded in Volume 2474, Page 551 of the Deed Records of Harris County, Texas. (as to 20 acres out of 61.86 acres)
 - 11. All of the oil, gas and other minerals and all other elements not considered a part of the surface estate are excepted herefrom, all having been reserved in instrument recorded in Volume 923, Page 326 of the Deed Records of Harris County, Texas, and under Clerk's File No. F282492 of the Real Property Records of Harris County, Texas.

Surface rights waived under Clerk's File No. F282492 of the Real Property Records of Harris County, Texas. (as to 26.0066 acres)

- 1/2 of all the oil, gas and other minerals, the royalties, bonuses, rentals, and all other rights in connection with the same are excepted herefrom, as set forth in instrument recorded under Clerk's File No. T613628 of the Real Property Records of Harris County, Texas. Surface rights waived therein. (as to 3.000 acres)
- 13. All of the oil, gas and other minerals and all other elements not considered a part of the surface estate are excepted herefrom, all having been reserved in instrument recorded under Clerk's File No. T613633 of the Real Property Records of Harris County, Texas. Surface rights waived therein. (as to 3.000 acres)
- 14. Oil, gas and other mineral lease recorded in Volume 218, Page 544 of the Contract Records of Harris County, Texas. (as to 50 acres out of 61.86 acres)
- 15. Oil, gas and other mineral lease recorded in Volume 220, Page 372 of the Contract Records of Harris County, Texas. (as to 5 acres out of 50 acres out of 61.86 acres)
- 16. Oil, gas and other mineral lease recorded in Volume 223, Page 698 of the Contract Records of Harris County, Texas. (as to 20 acres out of 61.86 acres)
- 17. Surface rights waived as to the oil, gas and mineral leases shown above, except as to Drill Site and related amendments set out in instrument filed under Clerk's File No. E299066 of the Real Property Records of Harris County, Texas. (as to 61.86 acres)
- 18. Oil, gas and other mineral lease recorded in Volume 218, Page 638 of the Contract Records of Harris County, Texas. (as to 26.0066 acres)
- 19. All of the above oil, gas and mineral leases were unitized into Tomball Gas Unit No. 6 by Gas Pooling Agreement recorded in Volume 854, Page 237 of the Contract Records of Harris County, Texas. (as to 26.0066 acres and 61.86 acres).
- 20. Oil, gas and other mineral lease recorded in Volume 223, Page 362 of the Contract Records of Harris County, Texas. Said oil, gas and mineral lease was unitized into Tomball Gas Unit No. 6 by instruments recorded in Volume 853, Page 589, Volume 854, Page 189, Volume 859, Page 163, Volume 953, Page 385 and Volume 2047, Page 98, all of the Contract Records of Harris County, Texas. Surface rights were waived in instrument filed under Clerk's File No. T613634 of the Real Property Records of Harris County, Texas. (as to 3.000 acres)

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PROPRETY RECARRS OF COLOR OR MACE IS THE MAD AND WEST MACE CHIEFON FEBRUAL LINE.

THE STATE OF TEXAS

COUNTY OF HAPPRIS

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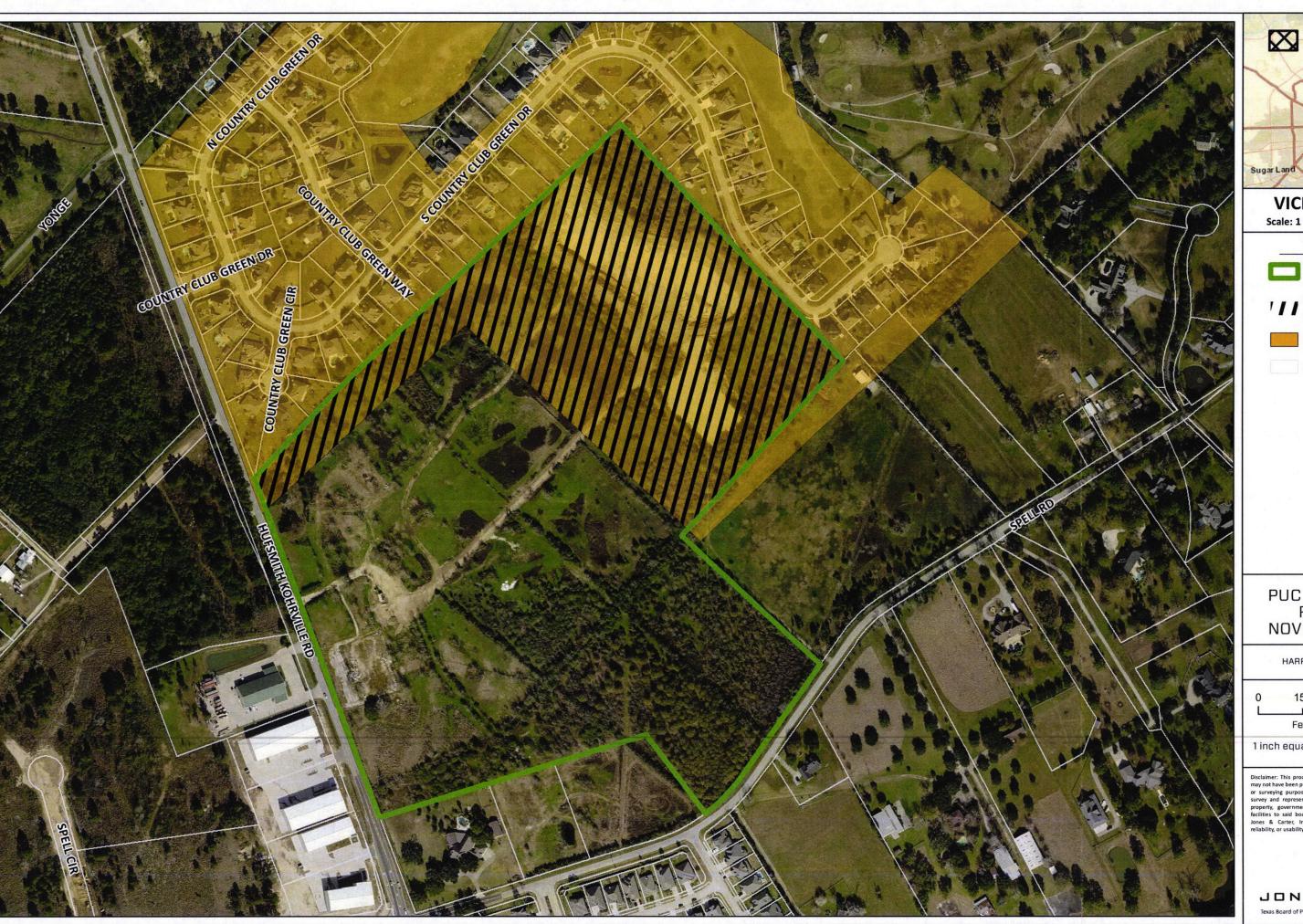
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COUNTY CLERK HARRIS COUNTY, TEXAS PILED

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Beneficial Enforcements

COUNTY CLERK
HARRIS CHINN'S TEXAS



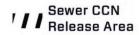


VICINITY MAP

Scale: 1 inch equals 20 miles

LEGEND

Tract Boundary

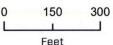






PUC SEWER CCN RELEASE **NOVEMBER 2017**

HARRIS COUNTY, TEXAS

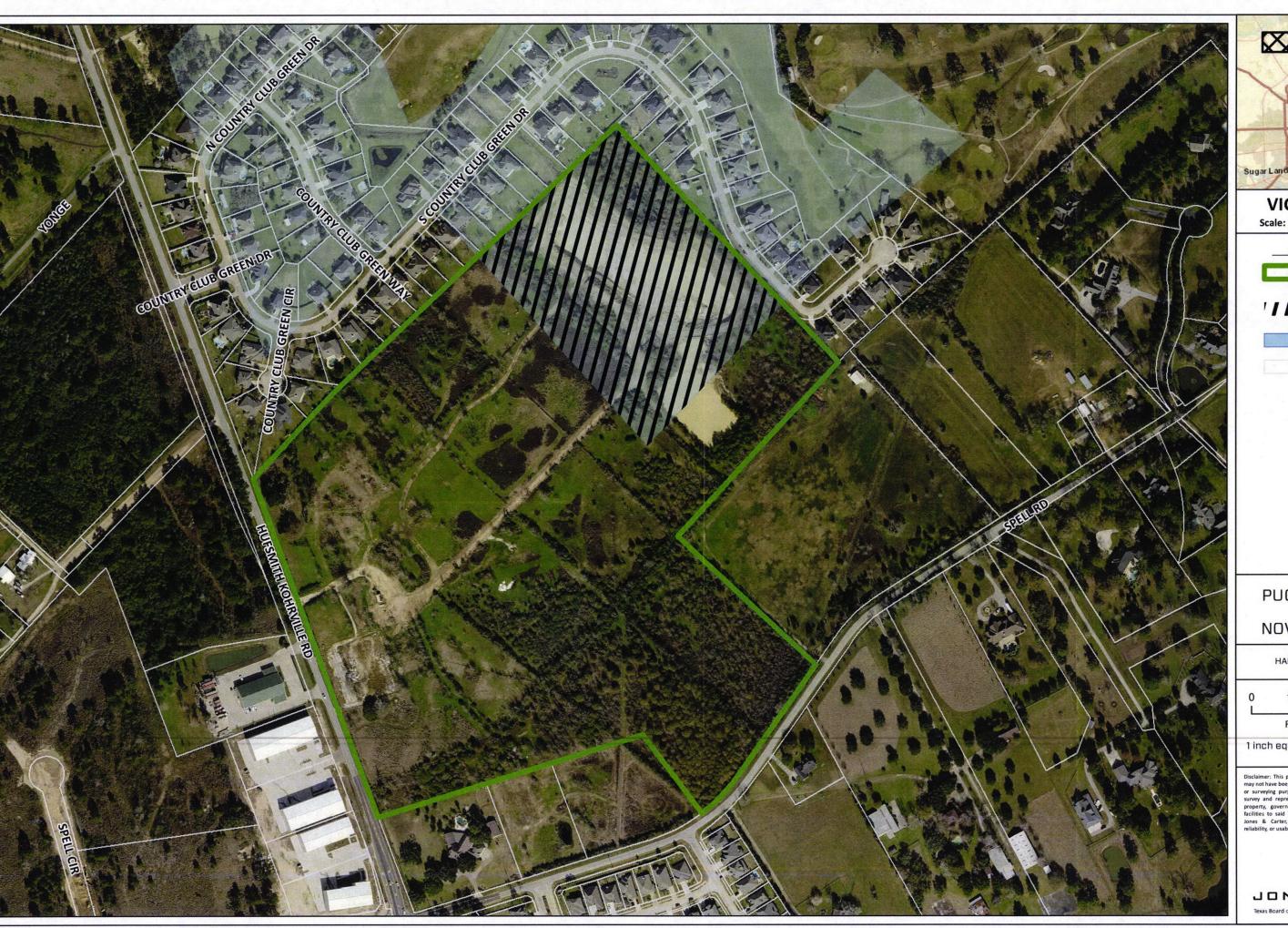


1 inch equals 300 feet

Disclaimer: This product is offered for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property, governmental and/or political boundaries or related facilities to said boundary. No express warranties are made by Jones & Carter, Inc. concerning the accuracy, completeness, reliability, or usability of the information included within this exhibit.



JONES CARTER

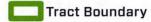




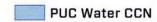
VICINITY MAP

Scale: 1 inch equals 20 miles

LEGEND









PUC WATER CCN RELEASE NOVEMBER 2017

HARRIS COUNTY, TEXAS

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1 inch equals 300 feet

Disclaimer: This product is offered for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property, governmental and/or political boundaries or related facilities to said boundary. No express warranties are made by Jones & Carter, Inc. concerning the accuracy, completeness, reliability, or usability of the information included within this exhibit.



JONES CARTER

Texas Board of Professional Engineers Registration No. F-4

OVERSIZED DOCUMENT(S)

TO VIEW OVERSIZED DOCUMENT(S) PLEASE GO TO

CENTRAL RECORDS

(512) 936-7180