

ORDINANCE NO. 28277

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 1607 West Commerce Street and supporting issuance of a municipal setting designation certificate by the Texas Commission on Environmental Quality; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality to create municipal setting designations; and

WHEREAS, Section 51A-6.108, "Municipal Setting Designation Ordinance," of Article VI, "Environmental Performance Standards," of Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code authorizes municipal setting designation ordinances prohibiting the use of designated groundwater as potable water and thereby enable the Texas Commission on Environmental Quality to certify a municipal setting designation for designated property; and

WHEREAS, the city council finds that:

- (1) the eligibility criteria of Section 361.803 of the Texas Health and Safety Code have been met;
- (2) this municipal setting designation ordinance will not have an adverse effect on the current or future water resource needs or obligations of the city of Dallas;
- (3) there is a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half mile of the designated property; and

(4) this municipal setting designation ordinance is necessary because the concentration of contaminants of concern exceed protective concentration levels for human ingestion; and

WHEREAS, the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the city of Dallas, have given the required notices and have held the required public hearings regarding this municipal setting designation ordinance; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That for purposes of this municipal setting designation ordinance, the “designated property” means the property described in Exhibit A, attached to the ordinance.

SECTION 2. That for purposes of this municipal setting designation ordinance, “designated groundwater” means water below the surface of the designated property to a depth of 200 feet.

SECTION 3. That use of the designated groundwater from beneath the designated property as potable water is prohibited.

SECTION 4. That the use of the designated groundwater from beneath public rights-of-way included in the designated property as potable water is prohibited.

SECTION 5. That the following uses of or contacts with the designated groundwater are prohibited:

- (1) Human consumption or drinking.
- (2) Showering or bathing.
- (3) Cooking.
- (4) Irrigation of crops for human consumption.

SECTION 6. That the following conditions are imposed on the designated property and designated groundwater:

- (1) The potable use of the designated groundwater from beneath the designated property is prohibited.

- (2) The potable use of the designated groundwater from beneath public rights-of-way included in the designated property is prohibited.
- (3) The portion of the designated property assigned VCP No. 2317 must receive a certificate of completion from the Texas Commission on Environmental Quality by no later than June 22, 2013.

SECTION 7. That the city council supports the application to the Texas Commission on Environmental Quality for a municipal setting designation on the designated property, with the following comments:

- (1) The Texas Commission on Environmental Quality, as the state agency chartered to protect human health and the environment, is requested to thoroughly review the conditions of the designated property and issue a certificate of completion only when all contaminants of concern, through the applicable routes of exposure, have been addressed.

SECTION 8. That the public rights-of-way immediately adjacent to the designated property must be included, at no additional cost to the city of Dallas, in the application to the Texas Commission on Environmental Quality.

SECTION 9. That a state or federal program must address the entire non-ingestion protective concentration level exceedence zone originating from sources on the designated property or migrating from the designated property no later than June 22, 2013. That within this time period, the applicant shall provide the managing director of the office of environmental quality documentation, including a certificate of completion from the Texas Commission on Environmental Quality, that it has been addressed to the satisfaction of the agency administering the program. If it has not been addressed, the managing director of the office of environmental quality may, for good cause, take any of the following actions:

- (1) allow additional time to address the non-ingestion protective concentration level exceedence zone;

28277

- (2) request a review by the Texas Commission on Environmental Quality or the agency administering the program;
- (3) recommend to the city council that this municipal setting designation ordinance be repealed;
- (4) request additional information or documentation from the applicant; or
- (5) pursue other actions that the managing director of the office of environmental quality believes may be warranted.

SECTION 10. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations; all ordinances, rules, and regulations of the city of Dallas; and all environmental regulations, and that this municipal setting designation ordinance in itself does not change any environmental assessment or cleanup requirements applicable to the designated property.

SECTION 11. That any person owning, operating, or controlling any portion of the designated property is responsible for ensuring compliance with this ordinance with respect to their portion of the designated property. Allowing use of designated ground water for potable purposes or failure to provide the managing director of the office of environmental quality with required documentation is a violation of this ordinance and may result in the ordinance being repealed for that portion of the designated property.

SECTION 12. That approval of this municipal setting designation ordinance shall not be construed to subject the city of Dallas to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

SECTION 13. That within 30 days after adoption of this municipal setting designation ordinance, the applicant shall provide the managing director of the office of environmental quality with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with the city of Dallas' geographic information system.

SECTION 14. That within 60 days after adoption of this municipal setting designation ordinance, the managing director of the office of environmental quality shall file a certified copy of this municipal setting designation ordinance in the deed records of the county where the designated property is located.

SECTION 15. That within 60 days after adoption of this municipal setting designation ordinance, the managing director of the office of environmental quality shall send a certified copy of this municipal setting designation ordinance to the applicant and the Texas Commission on Environmental Quality, and that the managing director of the office of environmental quality shall notify the Texas Commission on Environmental Quality 60 days prior to any amendment or repeal of this municipal setting designation ordinance.

SECTION 16. That the applicant shall provide the managing director of the office of environmental quality with a copy of the municipal setting designation certificate issued by the Texas Commission on Environmental Quality pursuant to Section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

SECTION 17. That the applicant shall provide the managing director of the office of environmental quality with a copy of the certificate of completion or other documentation issued by the Texas Commission on Environmental Quality showing that any site investigations and response actions required pursuant to Section 361.808 of the Texas Health and Safety Code have been completed to the satisfaction of the Texas Commission on Environmental Quality within the time period required. The managing director of the office of environmental quality may, for good cause, extend the time for submitting the documentation.

SECTION 18. That the applicant shall notify the managing director of the office of environmental quality in writing if the applicant determines that notice is required to be sent to an owner of other property beyond the boundaries of the designated property under Title 30 Texas Administrative Code, Chapter 30, Section 350.55(b), and provide the name of the property owner, the property address, and a copy of the notice sent to the property owner.

SECTION 19. That a person violating a provision of this municipal setting designation ordinance, upon conviction, is punishable by a fine not to exceed \$2,000, and that the Texas Commission on Environmental Quality shall be notified of any violations.

SECTION 20. That Chapter 51A of the Dallas City Code shall remain in full force and effect, save and except as amended by this municipal setting designation ordinance.

SECTION 21. That the terms and provisions of this municipal setting designation ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 22. That this municipal setting designation ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By

  
Assistant City Attorney

Passed

JUN 22 2011

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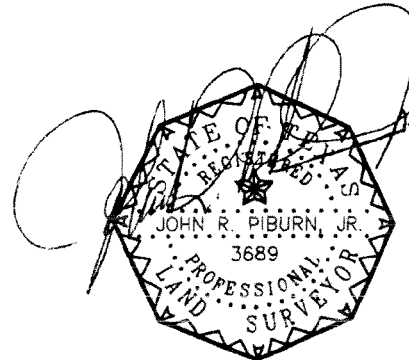
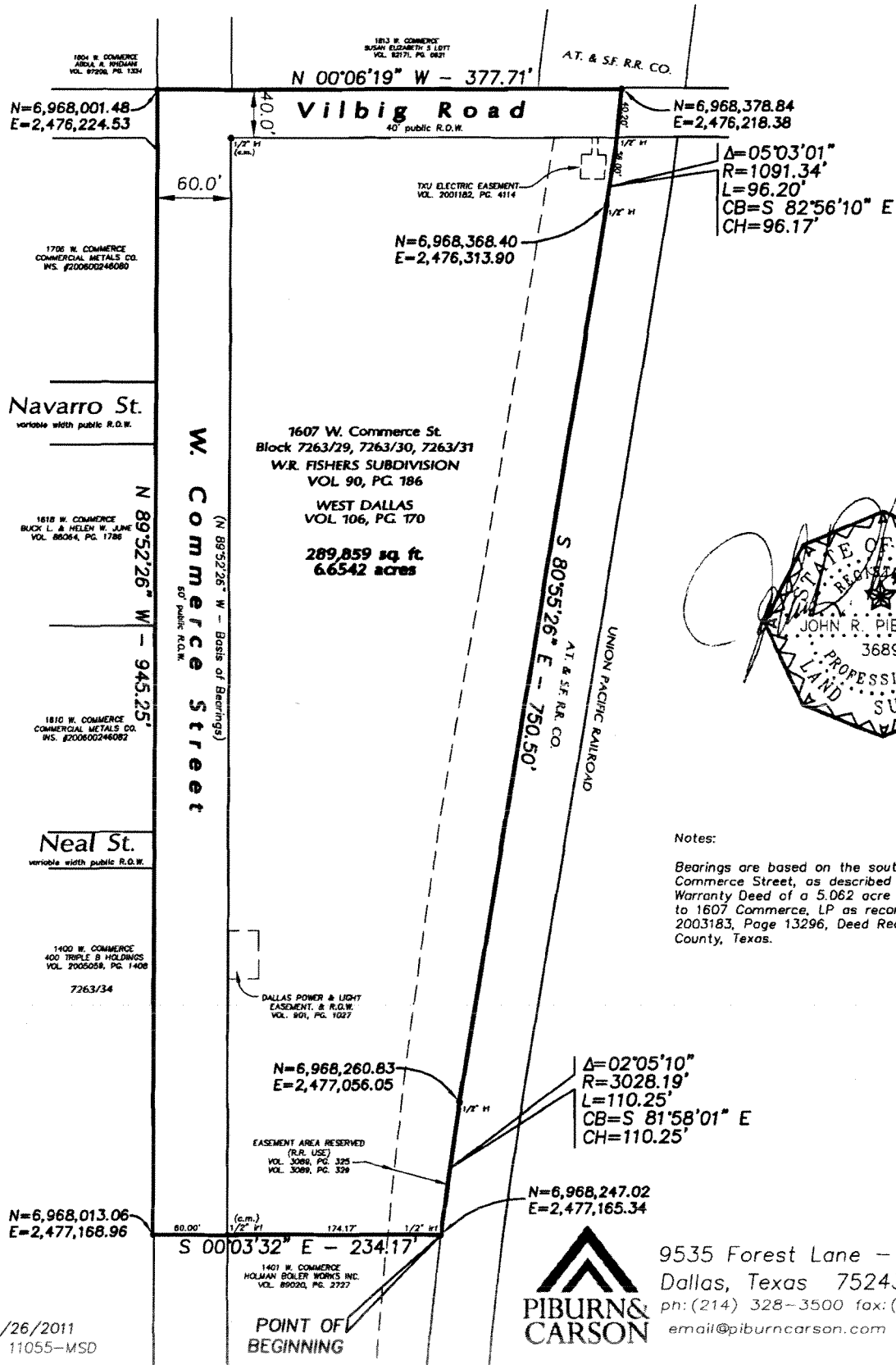
Exhibit A

111791

# EXHIBIT "A"

## M.S.D. SURVEY

SCALE: 1" = 120'



DATE: 5/26/2011  
Project No. 11055-MSD

Sheet 1 of 3

# EXHIBIT "A"

## M.S.D. SURVEY

### Property Description:

BEING a 6.6542 acre tract of land situated in the W.M. Coombs Survey, Abstract NO. 290 and being all of Blocks 7263/29, 7263/30, and 7263/31 of W.R. FISHERS SUBDIVISION, an addition to the City of Dallas, Dallas County, Texas, according to the plat thereof recorded in Volume 90, Page 186, Deed Records, Dallas County, Texas, and of WEST DALLAS, an addition to the City of Dallas, Dallas County, Texas, according to the plat thereof recorded in Volume 106, Page 170, Deed Records, Dallas County, Texas, and further being all of that certain tract of land conveyed to 1607 Commerce, LP, recorded in Volume 2003183, Page 13296, Deed Records, Dallas County, Texas, together with a portion of Vilbig Road (40' Public R.O.W.) and a portion of W. Commerce Street (60' Public R.O.W.), all being more particularly described as follows:

BEGINNING at a 1/2" iron rod found for the northeast corner of said 1607 Commerce, LP tract of land, same being the northeast corner of the herein described tract of land;

THENCE S00°03'32"E, along the easterly line of said tract of land and passing at a distance of 174.17 feet the southeast corner of said tract, same being on the north line of aforementioned W. Commerce Street, and continuing across said W. Commerce Street for a total distance of 234.17 feet to the south line of said street;

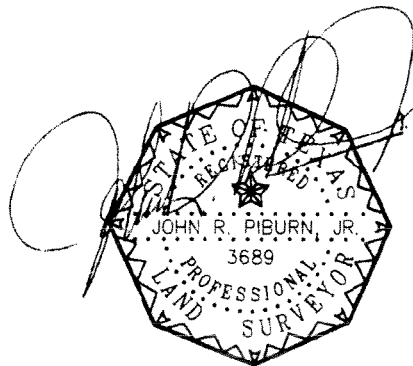
THENCE N89°52'26"W, along said south line of W. Commerce Street, for a distance of 945.25 feet to the intersection of said south line with the extended west line of aforementioned Vilbig Road;

THENCE N00°06'19"W, crossing said W. Commerce Street and at a distance of 60.00 feet becoming along said west line of Vilbig Road, for a total distance of 377.71 feet to the intersection of said west line with the extended curving north line of the aforementioned 1607 Commerce, LP tract, said curve to the right having a radius of 1091.34 feet, a central angle of 05°03'01", and a chord which bears S82°56'10"E for 96.17 feet;

THENCE southeasterly, along said curve extension, passing at an arc distance of 40.20 feet a 1/2" iron rod found for the northwest corner of said 1607 Commerce, LP tract and continuing along the north line of said tract for a total arc distance of 96.20 feet to a 1/2" iron rod found for corner;

THENCE S80°55'26"E, continuing along said north line, for a distance of 750.50 feet to a 1/2" iron rod found for corner at the beginning of a curve to the left, having a radius of 3028.19 feet and a chord which bears S81°58'01"E, for 110.25 feet;

THENCE southeasterly, along said curve to the left, through a central angle of 02°05'10", for an arc distance of 110.25 feet, to the point of beginning and containing 289,859 square feet or 6.6542 acres of land.



9535 Forest Lane – Suite 229  
Dallas, Texas 75243  
ph: (214) 328-3500 fax: (214) 328-3512  
email@piburncarson.com

Sheet 2 of 3

DATE: 5/26/2011  
Project No. 11055-MSD



28277  
Exhibit A

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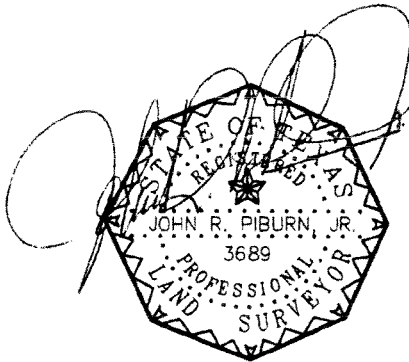
**EXHIBIT "A"**  
**M.S.D. SURVEY****Certification:**

The undersigned Registered Professional Land Surveyor (John R. Piburn, Jr.) hereby certifies that, (a) this survey and the property description set forth hereon were prepared from an actual on-the-ground survey; (b) such survey was conducted by the Surveyor, or under his direction; (c) all monuments shown hereon actually existed on the date of the survey, and the location, size and type of material thereof are correctly shown; Use of this survey by any other parties and/or for any other purpose shall be at User's own risk and any loss resulting from use shall not be the responsibility of the undersigned. The plat hereon is a correct and accurate representation of the property lines and dimensions are as indicated.

Executed this 25th day of April, 2011.

By:

John R. Piburn, Jr.  
R.P.L.S. No. 3689



DATE: 5/26/2011  
Project No 11055-MSD



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Sheet 3 of 3

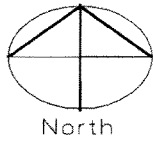
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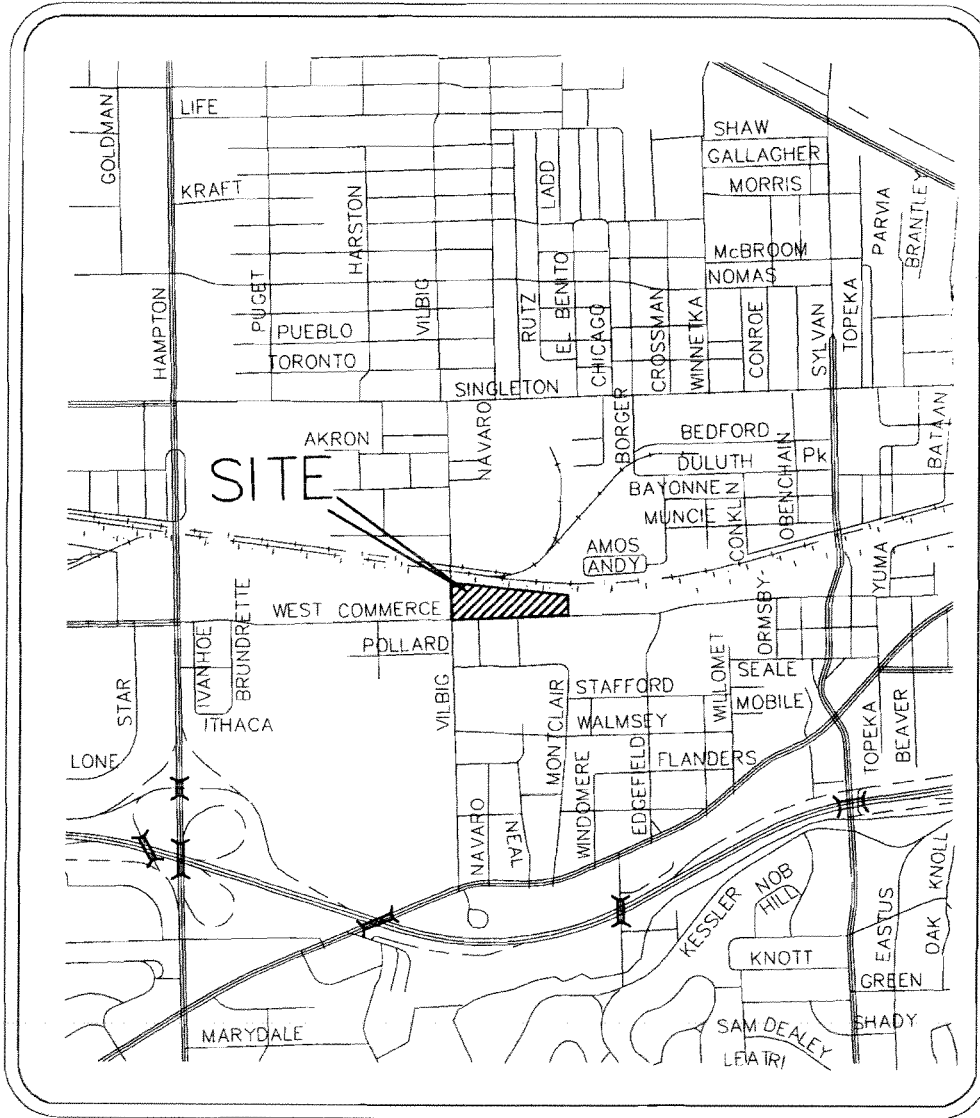
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# EXHIBIT "A"

## M.S.D. SURVEY



### VICINITY MAP



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