

6-21-12

ORDINANCE NO. 28703

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 4102, 4108, 4212, and 4302 S. Buckner Boulevard; 8100 and 8195 Hoyle Avenue; and 8121 Shafter Drive 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;

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(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 ingestion 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 Voluntary Cleanup Program Facility ID No. 2441 must receive a certificate of completion from the Texas Commission on Environmental Quality by no later than June 27, 2015.

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 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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.

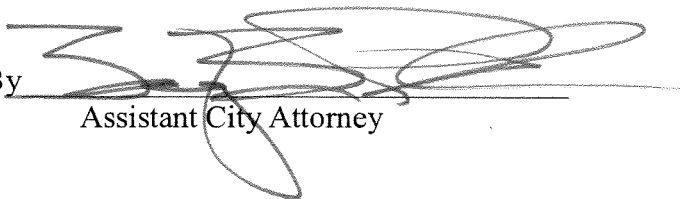
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SECTION 21. That this municipal setting designation ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By   
Assistant City Attorney

Passed JUN 27 2012

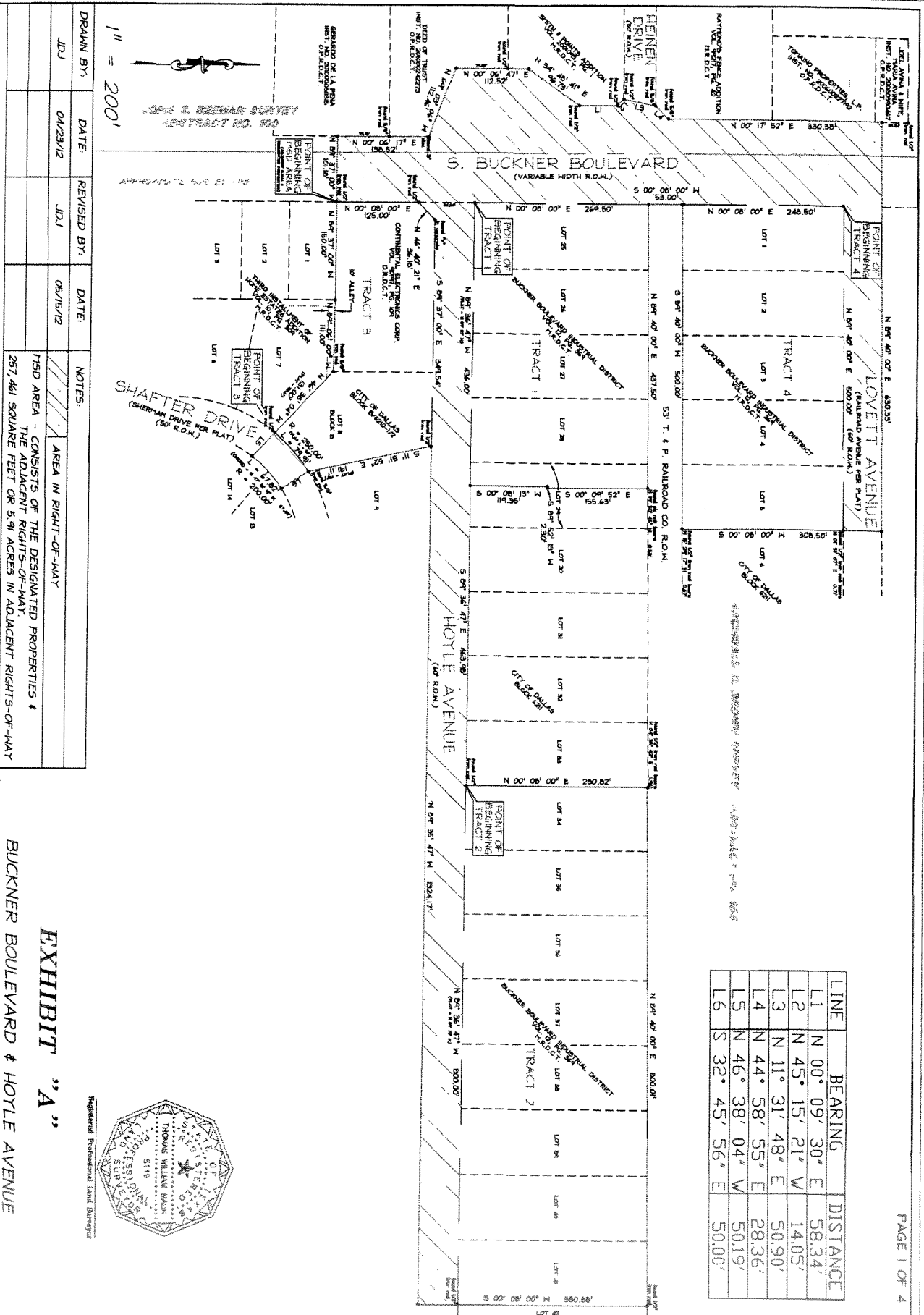


EXHIBIT "A"

BUCKNER BOULEVARD & HOYLE AVENUE  
ARCHIBALD D. BROWN SURVEY, ABSTRACT NO. 154 &  
JOHN S. BEEMAN SURVEY, ABSTRACT NO. 100

DALLAS COUNTY, TEXAS  
PREPARED BY: PRECISE LAND SURVEYING, INC. 4625 EASTOVER DR.,  
(972) 641-7079 MESQUITE TEXAS 75149

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Exhibit A

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***Precise Land Surveying, Inc.***

4625 Eastover Drive  
Mesquite, Texas 75149  
Phone 877-581-7072 Fax 888-438-1273

***Exhibit "B"*****MSD AREA**

GIS Approved

Being a 18.27 acre tract of land situated in the Archibald D. Brown Survey, Abstract No. 154 and the John S. Beeman Survey, Abstract No. 100, City of Dallas, Dallas County, Texas, same being all of Lots 1, 2, 3, 4, and 5 (Tract 4), Lots 25, 26, 27, 28, and a portion of Lot 29 (Tract 1), Lots 34, 35, 36, 37, 38, 39, 40, and 41 (Tract 2), BUCKNER BOULEVARD INDUSTRIAL DISTRICT, an Addition to the City of Dallas, Dallas County, recorded in Volume 12, Page 369, Map Records of Dallas County, Lot 8, Block B, THIRD INSTALLMENT OF HOME ESTATES ADDITION, an Addition to the City of Dallas, Dallas County, recorded in Volume 10, Page 309, said Map Records, that certain tract of land described in deed to Continental Electronics Corp., as recorded in Volume 90197, Page 109, Deed Records of Dallas County (Tract 3), and the adjacent rights-of-way to said Tracts, being S. Buckner Boulevard (variable width right-of-way), Lovett Avenue (60' right-of-way), Hoyle Avenue (60' right-of-way), and Shafter Drive (50' right-of-way), and being more particularly described by metes and bounds as follows:

BEGINNING at a found 1/2-inch iron rod on the east line of said S. Buckner Boulevard, being the southwest corner of said Continental Electronics Corp. tract, and the northwest corner of Lot 1, Block B (10/309), City of Dallas Block B/6210-1/2;

THENCE North 89° 37' 00" West, departing said east line, a distance of 101.18 feet to a point on the west line of said S. Buckner Boulevard, and the east line of that certain tract of land described in deed to Gerardo De La Pena, as recorded in Instrument No. 201000080315, Official Public Records of Dallas County;

THENCE North 00° 06' 17" East, along said west line and said east line, passing at a distance of 79.16 feet a found 5/8-inch iron rod, being the northeast corner of said Pena tract and the southeast corner of that certain tract of land described in deed to trust, recorded in Instrument No. 2010000242273, said Official Public Records, continuing along said west line a total distance of 138.52 feet to a found 3-inch disc;

THENCE North 69° 03' 06" West, along said west line, a distance of 112.46 feet to a point;

THENCE North 00° 06' 47" East, along said west line, passing at a distance of 79.93 feet a found 1/2-inch iron rod, being the southeast corner of SMITH & POINTS ADDITION, an Addition to the City of Dallas, Dallas County, recorded in Volume 2001093, Page 1, aforesaid Map Records, continuing along the east line of said Addition (2001093/1) a total distance of 112.52 feet to an angle point;

THENCE North 34° 48' 41" East, along said east and west lines, a distance of 96.73 feet to a found 1/2-inch iron rod;

THENCE North 00° 09' 30" East, along said east and west lines, a distance of 58.34 feet to a found 1/2-inch iron rod;

THENCE North 45° 15' 21" West, along said east and west lines, a distance of 14.05 feet to a found 1/2-inch iron rod on the south line of Heinen Drive (50' right-of-way), being the northeast corner of said Addition (2001093/1);



THENCE North 11° 31' 48" East, along said west line, a distance of 50.90 feet to a found 5/8-inch iron rod on the north line of said Heinen Drive, being the furthestmost south southeast corner of RAYMOND'S FENCE ADDITION, an Addition to the City of Dallas, Dallas County, recorded in Volume 99217, Page 42, aforesaid Map Records;

THENCE North 44° 58' 55" East, a distance of 28.36 feet to a found 5/8-inch iron rod on the aforesaid west line of S. Buckner Boulevard;

THENCE North 00° 17' 52" East, along said west line, a distance of 330.38 feet to a point on the east line of that certain tract of land described in deed to Joel Avina and wife, Maria Avina, as recorded in Instrument No. 20080390467, aforesaid Official Public Records, from which a found 1/2-inch iron rod bears North 00° 17' 52" East, a distance of 39.54 feet, being the northeast corner of said Avina tract;

THENCE North 89° 40' 00" East, departing said west line, a distance of 630.33 feet to a point on the north line of aforesaid Lovett Avenue;

THENCE South 00° 08' 00" West, departing said north line, a distance of 308.50 feet to the southeast corner of aforesaid Lot 5, aforesaid Addition (12/369), being on the north line of a 53' T. & P. Railroad Co. R.O.W., from which a found 1/2-inch iron rod bears North 15° 29' 17" West, a distance of 0.67 of one foot;

THENCE South 89° 40' 00" West, along said north line, a distance of 500.00 feet to the southwest corner of aforesaid Lot 1, said Addition (12/369), being on the aforesaid east line of S. Buckner Boulevard;

THENCE South 00° 08' 00" West, along said east line, a distance of 53.00 feet to the northwest corner of aforesaid Lot 25, said Addition (12/369);

THENCE North 89° 40' 00" East, departing said east line along the south line of aforesaid 53' T. & P. Railroad Co. R.O.W., a distance of 437.50 feet to a point on the north line of aforesaid Lot 29, said Addition (12/369), from which a found pk nail bears North 19° 50' 46" West, a distance of 0.53 of one foot;

THENCE South 00° 09' 52" East, departing said north and south lines, a distance of 155.63 feet to a point;

THENCE South 89° 52' 13" West, a distance of 2.30 feet to a point;

THENCE South 00° 08' 13" West, a distance of 119.35 feet to a point on the north line of aforesaid Hoyle Avenue, and the south line of aforesaid Lot 29;

THENCE South 89° 36' 47" East, along said north line, a distance of 463.98 feet to a found 1/2-inch iron rod, being the southwest corner of aforesaid Lot 34, said Addition (12/369);

THENCE North 00° 08' 00" East, departing said north line, along the west line of said Lot 34, a distance of 280.82 feet to a point on the aforesaid south line of a 53' T. & P. Railroad Co. R.O.W., being the northwest corner of said Lot and the northeast corner of Lot 33, said Addition (12/369), from which a found 1/2-inch iron rod bears North 04° 35' 42" East, a distance of 1.96 feet;

THENCE North 89° 40' 00" East, departing said west line along said south line, a distance of 800.01 feet to a found 1/2-inch iron rod, being the northeast corner of aforesaid Lot 41 and Lot 42, aforesaid Addition (12/369);

THENCE South 00° 08' 00" West, departing said south line, along the common line of said Lots 41 and 42, a distance of 350.88 feet to a point on the south line of aforesaid Hoyle Avenue;

THENCE North 89° 35' 47" West, along said south line, a distance of 1324.17 feet to a found 1/2-inch iron rod, being the northeast corner of aforesaid Lot 8, aforesaid Addition (10/309);

## Exhibit A

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THENCE South  $11^{\circ} 51' 52''$  East, along the east line of said Lot, a distance of 191.11 feet to a found 5/8-inch iron rod on the north line of aforesaid Shafter Drive, being the southeast corner of said Lot;

THENCE South  $32^{\circ} 45' 56''$  East, a distance of 50.00 feet to a point on the south line of said Shafter Drive, being on a curve to the left having a radius of 200.00 feet, a chord bearing of South  $47^{\circ} 31' 15''$  West, a chord distance of 67.49 feet;

THENCE along said curve to the left and said south line, an arc length of 67.81 feet to a point;

THENCE North  $46^{\circ} 38' 04''$  West, departing said south line, a distance of 50.19 feet to a found 1/2-inch iron rod on the aforesaid north line of Shafter Drive, being the southwest corner of aforesaid Lot 8, aforesaid Addition (10/309);

THENCE North  $46^{\circ} 38' 04''$  West, departing said north line, a distance of 131.00 feet to a found 5/8-inch iron rod, being the southeast corner of aforesaid Continental Electronics Corp. tract;

THENCE North  $89^{\circ} 06' 00''$  West, along the south line of Continental Electronics Corp. tract, a distance of 111.00 feet to an angle point;

THENCE North  $89^{\circ} 37' 00''$  West, along said south line, a distance of 150.00 feet to the POINT OF BEGINNING and containing 795,668 square feet or 18.27 acres of land, more or less, 257,461 square feet or 5.91 acres of land which lies in the aforesaid adjacent rights-of-way S. Buckner Boulevard, Lovett Avenue, Hoyle Avenue, and Shafter Drive.

This is to declare that on this date a survey was made on the ground, under my direction and supervision, of the above and foregoing description.



Thomas William Mauk  
Registered Professional Land Surveyor No. 5119  
April 24, 2012  
112-0803