

7-23-12

ORDINANCE NO. 28738

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 3518 Forest Lane (aka 3550 Forest Lane) and 3624 Forest Lane (aka 3544, 3546, 3556, 3610, 3612, 3616, and 3630 Forest Lane) 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;

## 28738

(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.

## 28738

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 ID No. 2087 must receive a certificate of completion from the Texas Commission on Environmental Quality by no later than August 8, 2014.

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 August 8, 2014. 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

## 28738

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;
- (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 clean-up 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.

## 28738

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.

28738

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.

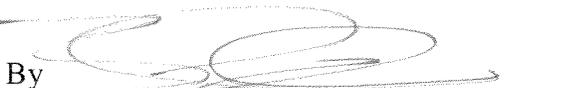
SECTION 20. That Chapter 51A of the Dallas City Code shall remain in full force and effect, save and except as amended by this municipal setting designation ordinance.

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

AUG 08 2012

Passed \_\_\_\_\_

28738

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

CIS Approved

BEING 18.637 acres of land located in the W. D. BARNES SURVEY, ABSTRACT NO. 152, and the JOHN RICHARDS SURVEY, ABSTRACT NO. 1220, City of Dallas, Dallas County, Texas, and said 18.637 acres of land also being the combined total of Lot 2, Block B/6445, ALBERTSON'S FOREST ADDITION, to the City of Dallas, Dallas County, Texas, according to the plat recorded in Volume 2003110, Page 33 and corrected from Lot 1 to Lot 2 by the deed recorded in Volume 2004065, Page 6255 of the Deed Records of Dallas County, Texas, and the 14.4243 acre tract of land conveyed to MDF Investments, LLC, by the deed recorded in Volume 2001161, Page 7257 of the Deed Records of Dallas County, Texas, and the 0.996 acre tract of land conveyed to Park Forest SWC, Ltd., by the deed recorded in Volume 2003194, Page 2326 of the Deed Records of Dallas County, Texas, and portions of the public right-of-ways of Forest Lane (a 130-foot-wide public right-of-way), and Marsh Lane (a 100-foot-wide public right-of-way). Said 18.637 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a point at the Southeast corner of said Lot 2, Block B/6445, ALBERTSON'S FOREST ADDITION, and said POINT OF BEGINNING also lying in the West right-of-way line of aforesaid Marsh Lane;

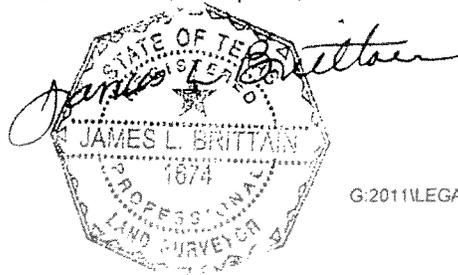
THENCE S 89° 12' 40" W 1330.04 feet, along the South boundary line of said Lot 2, Block 6445, ALBERTSON'S FOREST ADDITION, and the South boundary line of said MDF Investments, Inc. Tract, to a point at the Southwest corner of said MDF Investments, Inc. Tract;

THENCE NORTH 371.22 feet, along the West boundary line of said MDF Investments, Inc. Tract, to a point at the most Westerly Northwest corner of said MDF Investments, Inc. Tract;

THENCE N 89° 21' 00" E 140.00 feet, along the most Southerly North boundary line of said MDF Investments, Inc. Tract, to a point in the West boundary line of the aforesaid Park Forest SWC, Ltd. Tract;

THENCE NORTH along the West boundary line of said Park Forest SWC, Ltd. Tract, at 140 feet passing the Northwest corner of said Park Forest SWC, Ltd. Tract, and in all 270.01 feet, to a point in the North right-of-way line of aforesaid Forest Lane;

THENCE N 89° 21' 00" E 1050.00 feet, along the North right-of-way line of said Forest Lane, to a point;



Page 1 of 3

G:2011\LEGALS\18.637 ACRES - W.D. BARNES SURVEY

## Exhibit "A"

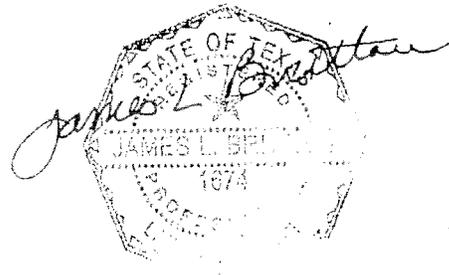
2011 Approved

THENCE SOUTH at 130.00 feet, passing the most Northerly Northeast corner of aforesaid Lot 2, Block 6445, ALBERTSON'S FOREST ADDITION, and the Northwest corner of Lot 1, Block B/6445, EXXON FOREST ADDITION, to the City of Dallas, Dallas County, Texas, according to the plat recorded in Volume 97198, Page 3589 of the Deed Records of Dallas County, Texas, and in all 270.01 feet, to a point at the Southwest corner of said EXXON FOREST ADDITION;

THENCE N 89° 21' 00" E running along the South boundary line of said EXXON FOREST ADDITION, and the most Southerly North boundary line of said Lot 2, Block B/6445, ALBERTSON'S FOREST ADDITION, at 140.00 feet, passing the most Easterly Northeast corner of said ALBERTSON'S FOREST ADDITION, and in all 240.00 feet, to a point in the East right-of-way line of aforesaid Marsh Lane;

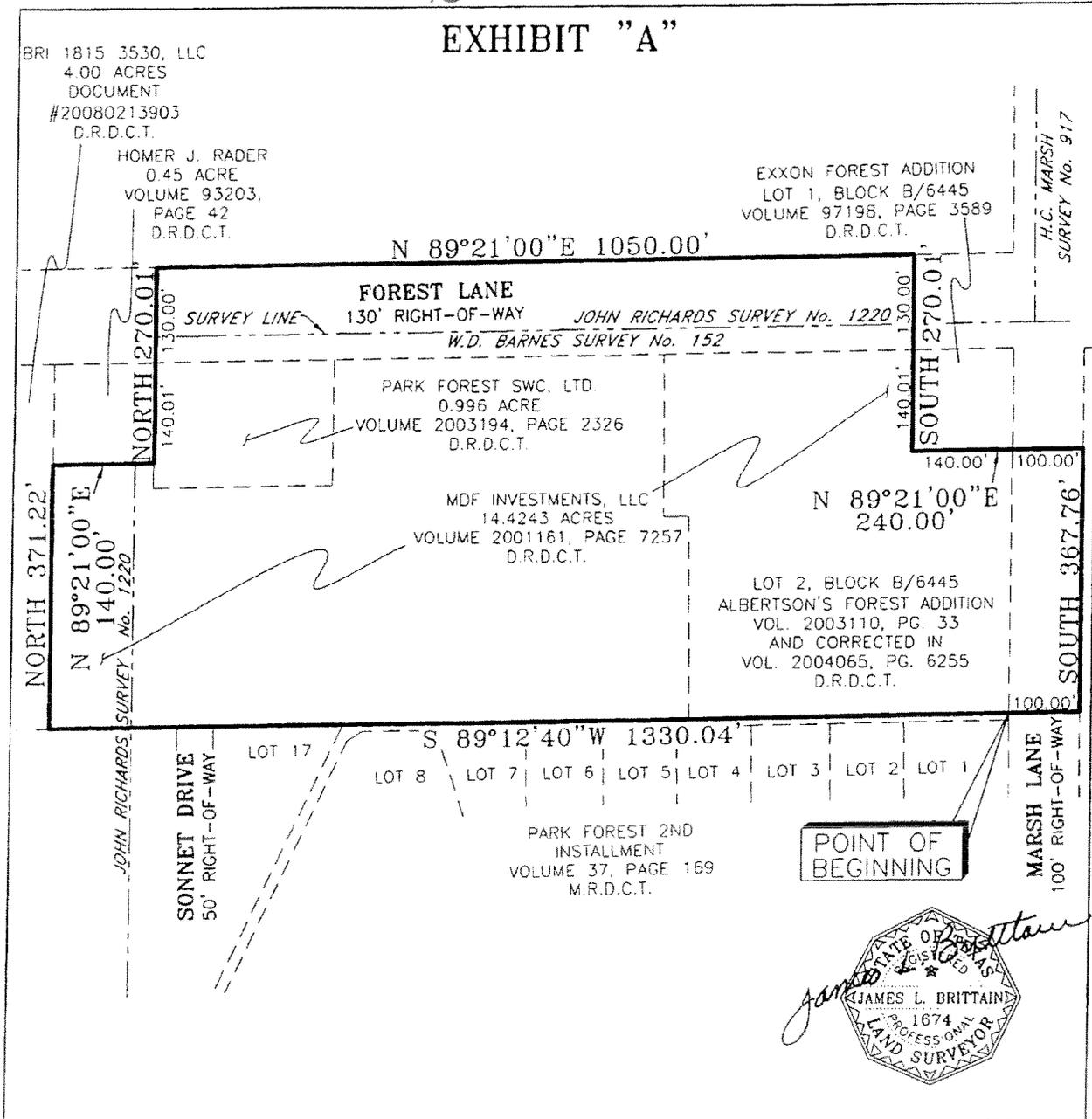
THENCE SOUTH 367.76 feet, along the East right-of-way line of said Marsh Lane, to a point;

THENCE S 89° 12' 40" W 100.00 feet, to the POINT OF BEGINNING containing 18.637 acres of land.



# 28738

## EXHIBIT "A"



*James L. Brittain*  
 STATE OF TEXAS  
 REGISTERED  
 JAMES L. BRITTAINE  
 1874  
 PROFESSIONAL  
 LAND SURVEYOR

EXHIBIT MAP OF PARK FOREST SOUTHWEST SHOPPING CENTER

**BRITTAINE & CRAWFORD**  
 LAND SURVEYING &  
 TOPOGRAPHIC MAPPING  
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 210 - 11374 • 3908 SOUTH FREEWAY  
 FORT WORTH, TEXAS 76110  
 E-MAIL: admin@brittain-crawford.com  
 WWW: www.brittain-crawford.com

EXHIBIT MAP  
 OF  
**18.637 ACRES OF LAND**  
 LOCATED IN  
 THE W.D BARNES SURVEY, ABSTRACT  
 No. 152, AND THE JOHN RICHARDS  
 SURVEY, ABSTRACT No. 1220,  
 DALLAS, DALLAS COUNTY, TEXAS

