

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH A 7.5677 ACRE SITE BEING A PART OF A 9.087 ACRE TRACT OUT OF TRACT "C", BONNIE BRAE ORANGE ORCHARDS, AS RECORDED IN VOLUME 2, PAGE 66, HARRIS COUNTY MAP RECORDS, HARRIS COUNTY, TEXAS, IN THE J. R. BLACK SURVEY, A-134, CITY OF HOUSTON, HARRIS COUNTY, TEXAS, GENERALLY LOCATED AT 7042 BISSONNET AVENUE, HOUSTON, TEXAS 77074; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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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 ("TCEQ") to create municipal setting designations; and

WHEREAS, on August 22, 2007, by Ordinance No. 2007-959, the City Council adopted Article XIII, of Chapter 47, Code of Ordinances, Houston, Texas, to provide a process for establishing municipal setting designation ordinances; and

WHEREAS, Sections 47-765(f) and 47-767(a) of the Code of Ordinances, Houston, Texas, authorize municipal setting designation ordinances that prohibit the use of designated groundwater as potable water and thereby enable the TCEQ to certify a municipal setting designation for designated property; and

WHEREAS, on January 31, 2008, Fondren Road Plaza, Ltd. ("applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for its

property that is generally located at 7042 Bissonnet Avenue, Houston, Texas 77074; and

WHEREAS, on June 24, 2008, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, and notified the community when the City Council public hearing would occur; and

WHEREAS, City Council conducted a public hearing on August 20, 2008; and

WHEREAS, the City Council finds that:

(1) the application meets the eligibility criteria of Section 361.803 of the Texas Health and Safety Code;

(2) the municipal setting designation will not have an adverse effect on the current or future water resource needs or obligations of the City of Houston;

(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 exceeds human ingestion protective concentration levels, and the establishment of a municipal setting designation will allow the property to be brought back into productive use; and

WHEREAS, City Council finds that the Director of the Public Works and Engineering Department on behalf of City Council, in accordance with the Charter of the City of Houston, state law, and the ordinances of the City of Houston, has

given the required notices, City Council has held the required public hearing regarding this Municipal Setting Designation Ordinance and all procedural requirements have been satisfied; **NOW THEREFORE;**

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

Section 1. That for purposes of this Municipal Setting Designation Ordinance, the "designated property" means the property described in Exhibit A, attached to this Ordinance and incorporated by reference herein.

Section 2. That for purposes of this Municipal Setting Designation Ordinance, "designated groundwater" means groundwater beneath the designated property to a depth not to exceed 200 feet that is prohibited from use as potable water by this Ordinance.

Section 3. That use of the designated groundwater from beneath the designated property as potable water, as that term is defined in section 47-761 of the Code of Ordinances, Houston, Texas, is prohibited.

Section 4. That the use of the designated groundwater from beneath public rights-of-way immediately adjacent to the designated property as potable water, as that term is defined in section 47-761 of the Code of Ordinances, Houston, Texas, is prohibited,

Section 5. That the designated property must receive a certificate of completion or other analogous documentation issued by the TCEQ or the United States Environmental Protection Agency ("EPA") 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

TCEQ or EPA within the time period required by them.

Section 6. That the City Council supports the application to the TCEQ for a municipal setting designation on the designated property, with the following comment:

(1) The TCEQ and the EPA, as agencies charged to protect human health and the environment, are requested to thoroughly review the conditions on 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 7. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations and all ordinances, rules, and regulations of the City of Houston. The City Council's approval of a municipal setting designation ordinance in itself does not change any environmental assessment or cleanup requirements applicable to the designated property.

Section 8. That approval of this Municipal Setting Designation Ordinance shall not be construed to subject the City of Houston to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

Section 9. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the applicant shall provide the Director of the Public Works and Engineering Department with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with

the City's geographic information system and its integrated land management system, and shall provide an electronic file showing the location of the designated property and the designated groundwater to the Harris County Appraisal District in a format compatible with its system.

Section 10. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Director of the Public Works and Engineering Department shall send a certified copy of this ordinance to the applicant, TCEQ and EPA.

Section 11. That the applicant shall provide the Director of the Public Works and Engineering Department with a copy of the municipal setting designation certificate issued by the TCEQ pursuant to section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

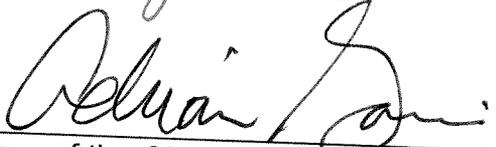
Section 12. That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of the Public Works and Engineering Department shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Harris County.

Section 13. That if any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their applicability to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any

unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 14. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor. **PROTEM**

PASSED AND APPROVED this 27th day of August, 2008.


 Mayor of the City of Houston
PROTEM

Prepared by the Legal Department


 August 14, 2008, Ceil Price, Senior Assistant City Attorney

Requested by Michael Marcotte, P.E., DEE, Director, Public Works and Engineering Department
 L.D. File No. 0760700009001

AYE	NO	
		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		KHAN
✓		HOLM
✓		MAYOR PRO TEM PRESIDING GARCIA
✓		RODRIGUEZ
✓		BROWN
		ABSENT-ON PERSONAL BUSINESS LOVELL
		ABSENT-ON PERSONAL BUSINESS NORIEGA
✓		GREEN
✓		JONES
		CAPTION ADOPTED

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: SEP 0 2 2008

EXHIBIT A

BEING 7.5677 ACRES OR 329,649 SQUARE FEET OF LAND AND BEING A PART OF A 9.087 ACRE TRACT OUT OF TRACT "C", BONNIE BRAE ORANGE ORCHARDS, AS RECORDED IN VOLUME 2, PAGE 66, HARRIS COUNTY MAP RECORDS, HARRIS COUNTY, TEXAS, IN THE J. R. BLACK SURVEY, A-134, CITY OF HOUSTON, HARRIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at ½ inch iron rod found for the northwest corner of herein described tract, said point also being the intersection of the east right-of-way of Fondren Road (100 feet wide), as recorded in Volume 6051, Page 52, of the Harris County Deed Records, Harris County, Texas, and the south line of a 60-foot drainage easement as recorded in Volume 2882, Page 628, of the Harris County Deed Records, Harris County, Texas.

THENCE N 89° 0 51' 12" E, along the southerly line of said 60-foot drainage easement, a distance of 880.54 feet to a 5/8 inch iron rod found for the northeast corner of this tract;

THENCE S 01 °038' 00" W, along the easterly line of a 10-foot sanitary sewer easement recorded in Volume 7813, Page 424, Harris County Deed Records, a distance of 193.44 feet to a 5/8 inch iron rod found for the southeast corner of this tract, also being the north right-of-way line of Bissonnet Avenue, as recorded in Volume 6051, Page 52, Harris County Deed Records, Harris County, Texas.

THENCE S 60°15' 30" W, along the north right-of-way line of said Bissonnet Avenue, a distance of 716.63 feet to a 1-1/8 inch iron rod found for a corner, said corner also being the southeast corner of Texaco Tract;

THENCE N 2°035' 00" W, along the easterly property line of said Texaco Station Tract, a distance of 150.00 feet to a 1/2 inch iron rod for a corner, said corner being the northeast corner of said Texaco Tract;

THENCE S 82°047' 38" W, along the north property line of said Texaco Tract, a distance of 150.00 feet to a 5/8 inch iron rod found for the most westerly southwest corner of this tract, said corner being on the east right-of-way line of said Fondren Road, said iron rod also being the point of curvature of a curve to the left, subtending a central angle of 06 °31' 17";

THENCE, northwesterly along the said curve, having a radius of 3,781.67 feet, an arc length of 430.44 feet, and a tangent of 215.45 feet, along the east right-of-way line of said Fondren Road to the POINT OF BEGINNING of the herein described tract containing as aforesaid 7.5677 Acres or 329,649 Square Feet of land.