

City of Houston, Texas, Ordinance No. 2019- 205

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 10.71 ACRES COMMONLY KNOWN AS 3120 BUFFALO SPEEDWAY, HOUSTON, HARRIS COUNTY, TEXAS; SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AT THE REQUEST OF 3120 BUFFALO SPEEDWAY ASSOCIATES, LP; CONTAINING OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

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 amended that process on July 14, 2010, by Ordinance No. 2010-556; and

WHEREAS, Sections 47-765(c) 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 March 9, 2018, **3120 Buffalo Speedway Associates, LP** ("Applicant") applied to the Director of Houston Public Works, requesting that the City Council support a municipal setting designation ordinance for property that is located generally at 3120 Buffalo Speedway (10.71 acres), Houston, Harris County, Texas 77098; and

WHEREAS, on December 6, 2018, the Director of Houston Public Works conducted a public meeting at the Houston Permitting Center, 1002 Washington Avenue, Houston, TX 77002, as required by Section 47-764 of the Code of Ordinances, and notified the community when the City Council public hearing would occur; and

WHEREAS, the Regulation and Neighborhood Affairs City Council Committee, designated by the Mayor, conducted a public hearing on January 17, 2019; 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 designated property; and

(4) this Municipal Setting Designation Ordinance is necessary because the concentrations of contaminants of concern exceed 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 Houston Public Works 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, the Regulation and Neighborhood Affairs City Council Committee 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, TEXAS:

Section 1. That for purposes of this Municipal Setting Designation Ordinance, the "designated property" means the property as 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 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 5. That the City Council supports the application to the TCEQ for a municipal setting designation on the designated property, with the following comment:

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 6. 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 7. 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 8. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Applicant shall provide the Director of Houston Public Works 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 9. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Director of Houston Public Works shall send a certified copy of this ordinance to the Applicant, the TCEQ, and the EPA.

Section 10. That the Applicant shall provide the Director of Houston Public Works 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 11. That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of Houston Public Works shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Harris County.

Section 12. 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 application 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 13. That 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 that date and shall take effect immediately upon its passage and approval by the mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 27th day of March, 2019.

APPROVED this _____ day of _____, 2019.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is APR 02 2019.

[Signature]

City Secretary **Assistant**

(Prepared by Legal Department *[Signature]*,
(WC/gd 2/21/2019 Senior Assistant City Attorney)
(Requested by Carol Ellinger Haddock, P.E., Director, Houston Public Works)
(L.D. File No. 067-1900009-001)

| AYE | NO | |
|---------|---------|-----------------|
| ✓ | | MAYOR TURNER |
| | | COUNCIL MEMBERS |
| ✓ | | STARDIG |
| ✓ | | DAVIS |
| ✓ | | COHEN |
| ✓ | | BOYKINS |
| ABSENT | | MARTIN |
| ✓ | | LE |
| ✓ | | TRAVIS |
| ✓ | | CISNEROS |
| ✓ | | GALLEGOS |
| ✓ | | LASTER |
| ✓ | | CASTEX-TATUM |
| ✓ | | KNOX |
| ✓ | | ROBINSON |
| ✓ | | KUBOSH |
| ✓ | | EDWARDS |
| ✓ | | CHRISTIE |
| CAPTION | ADOPTED | |

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: APR 02 2019

EXHIBIT "A"

Survey of Designated Property
(4 pages)

DESCRIPTION OF A 10.71 ACRE TRACT OF LAND SITUATED
IN THE A.C. REYNOLDS SURVEY, ABSTRACT NO. 61
HARRIS COUNTY, TEXAS

BEING a 10.71 acre (466,741 square feet) tract of land situated in the A.C. Reynold Survey, Abstract No. 61 of Harris County, Texas and being a portion of a called 16.7670 acre tract of land, Restricted Reserve "A" of EXXONMOBIL UPSTREAM RESEARCH COMPANY TRACT a subdivision plat recorded under Film Code Number (F.C. No.) 513070 of the Harris County Map Records (H.C.M.R.), and being the same tract of land as described in an instrument recorded under Harris County Clerk's File Number (H.C.C.F. No.) 20150563258, and being a portion of Buffalo Speedway (100 feet wide) as recorded under Volume (Vol.) 1879, Page (Pg.) 168 of the Harris County Deed Records (H.C.D.R.), said 10.71 acre tract of land described by metes and bounds as follows:

BEGINNING at a 5/8-inch iron rod found for the southeast corner of the herein described tract, the southwest corner of RIVER OAKS APARTMENTS, a subdivision plat recorded under Vol. 345, Pg. 25 of the H.C.M.R., same being the northwest corner of a called 1.8644 acre tract as described in an instrument to Camp Wampum, Ltd., recorded under H.C.C.F. No. X814118 and lying on the east right-of-way line of said Buffalo Speedway, and having grid coordinates of X=3,101,471.56, Y=13,832,013.65;

THENCE, S 87°24'14" W, over and across said Buffalo Speedway, at a distance of 103.19 feet passing a 5/8-inch iron rod with cap stamped "AL Sikes RS 2914" found for the southeast corner of said EXXONMOBIL UPSTREAM RESEARCH COMPANY TRACT, same being the northeast corner of a called 3.9704 acre tract as described in an instrument to MC/RBS, LP, recorded under H.C.C.F. No. RP-2016-217170, and continuing along and with common line of said EXXONMOBIL UPSTREAM RESEARCH COMPANY TRACT and said 3.9704 acre tract and partially along the north line of THIRTY SIX SIXTEEN RICHMOND REPLAT NO. 1, a subdivision plat recorded under F.C. No. 623236 of the H.C.M.R., a total distance of 721.13 feet to the southwest corner of the herein described tract, same being the southeast corner of RANDALL ACRES, a subdivision plat recorded under Vol. 46, Pg. 53 of the H.C.M.R.;

THENCE, N 02°32'44" W, along and with the common line of said EXXONMOBIL UPSTREAM RESEARCH COMPANY TRACT and Block 1 of said RANDALL ACRES, a distance of 284.32 feet to the northeast corner of Lot 20, Block 1 of said RANDALL ACRES and being an interior corner of the herein described tract;

THENCE, S 87°27'16" W, along and with the north line of said Lot 20, a distance of 99.23 feet to the northwest corner of said Lot 20, lying on the east right-of-way line of Mercer Street (60 feet wide) as shown on said RANDALL ACRES;

THENCE, N 02°32'44" W, along and with said east right-of-way line, a distance of 101.02 feet to a mag nail found for the southwest corner of Lot 17, Block 1 of said RANDALL ACRES;

THENCE, N 87°27'16" E, along and with the south line of said Lot 17, a distance of 99.23 feet to the southeast corner of said Lot 17 and being an interior corner of the herein described tract;

RIVER OAKS GREEN ENVIRONMENTAL PARCEL SURVEY
10.71 ACRES

FEBRUARY 22, 2018
JOB NO. 4595-36

THENCE, N 02°33'50" W, along and with the east line of said Block 1 of RANDALL ACRES, a distance of 151.53 feet to a 5/8-inch iron rod with cap stamped "AL Sikes RS 2914" found the northeast corner of Lot 15, Block 1 of said RANDALL ACRES and being an interior corner of the herein described tract;

THENCE, S 87°27'16" W, along and with the north line of said Lot 15, a distance of 99.18 feet to a 5/8-inch iron rod with cap stamped "AL Sikes RS 2914" found for the northwest corner of the said Lot 15, lying on the east right-of-way line of said Mercer Street;

THENCE, N 02°32'44" W, along and with said east right-of-way line, a distance of 101.02 feet to a 5/8-inch iron rod with cap stamped "AL Sikes RS 2914" found for the southwest corner of Lot 12, Block 1 of said RANDALL ACRES;

THENCE, N 87°27'16" E, along and with the south line of said Lot 12, a distance of 99.23 feet to the southeast corner of said Lot 12 and being an interior corner of the herein described tract;

THENCE, N 02°32'44" W, along and with the east line of said Lot 12, a distance of 33.06 feet to the northwest corner of the herein described tract;

THENCE, N 87°28'59" E, over and across said EXXONMOBIL UPSTREAM RESEARCH COMPANY TRACT, a distance of 312.31 feet to an angle point in the north line of the herein described tract;

THENCE, N 84°29'25" E, partially over and across said EXXONMOBIL UPSTREAM RESEARCH COMPANY TRACT, and over and across said Buffalo Speedway, a distance of 311.50 feet to the northeast corner of the herein described tract, lying on a non-tangent curve to the left of the east right-of-way line of said Buffalo Speedway from which its center bears S 84°37'26" W, 3,769.83 feet, same being the west line of THIRTY ONE TWENTY ONE BUFFALO SPEEDWAY, a subdivision plat recorded under F.C. No. 389065 of the H.C.M.R.;

THENCE, In a Southerly direction, along and with said east right-of-way line and along said curve to the left, a distance of 694.18 feet, having a radius of 3,769.83 feet, a central angle of 10°33'02" and a chord which bears S 10°39'05" E, 693.19 feet to the POINT OF BEGINNING and containing 10.71 acres (466,741 square feet) of land.

RIVER OAKS GREEN ENVIRONMENTAL PARCEL SURVEY
10.71 ACRES

FEBRUARY 22, 2018
JOB NO. 4595-36

Bearing orientation is based on the Texas Coordinate System of 1983, South Central Zone 4204 and is referenced to said EXXONMOBIL UPSTREAM RESEARCH COMPANY TRACT as cited herein.
Combined Scale Factor 0.999887514.

This metes and bounds description was prepared under 22 Texas Annotated Code 663.21 and reflects the assembly of instruments of record to describe the political boundary limits shown hereon and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



James B. McAllister, Jr.
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Telephone: (281) 558-8700
TBPLS Licensed Surveying Firm No. 10106500

LEGEND

B.L. BUILDING LINE
 CONC. CONCRETE
 ESMT. EASEMENT
 F.C. FILM CODE
 FND. FOUND
 H.C.F. HARRIS COUNTY CLERK'S FILE
 H.C.R. HARRIS COUNTY CONDOMINIUM RECORDS
 H.D.R. HARRIS COUNTY DEED RECORDS
 H.L.M.R. HARRIS COUNTY MAP RECORDS
 I. IRON
 NO. NUMBER
 P.O.C. POINT OF COMMENCING
 WATER METER EASEMENT
 W.M.E. FOUND 5/8-INCH IRON ROD W/
 CAP STAMPED "A. L. SIKES RS 2514"

NOTE: THIS EXHIBIT IS FOR GRAPHICAL PURPOSES ONLY IN RELATION TO THE PROPOSED BOUNDARIES SHOWN HEREON AND IS NOT A BOUNDARY SURVEY NOR SHALL IT BE CONSTRUED IN ANY WAY AS A BOUNDARY SURVEY.

Scale: 1"=100'
 Job No.: 4595-38
 Date: 02/2018
 1 OF 1

CITY OF HOUSTON
PUBLIC WORKS AND
ENGINEERING DEPARTMENT

APPROVAL _____ DATE _____

SURVEY SECTION _____ RIGHT OF WAY SECTION _____

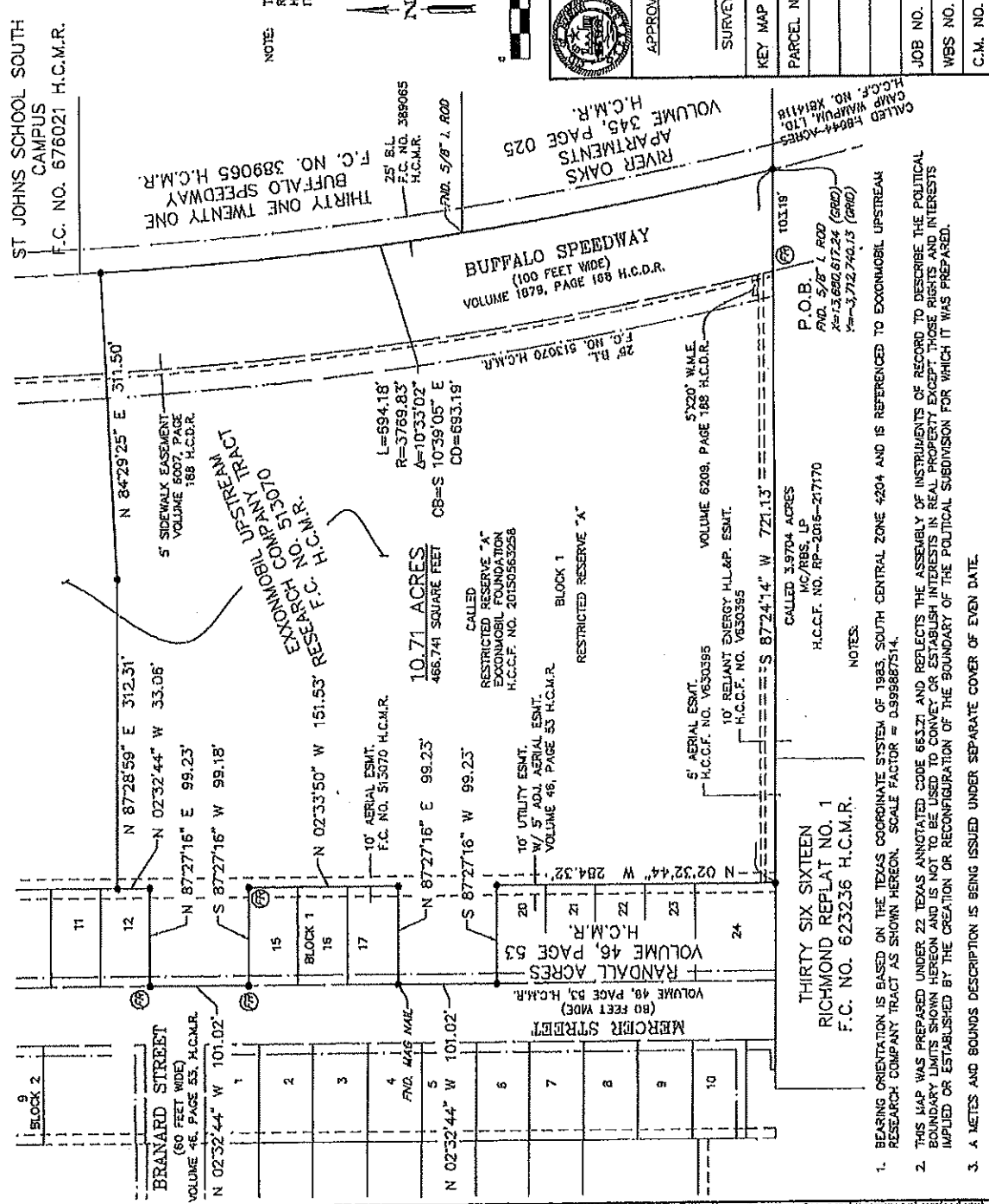
KEY MAP NO. 492T
 GIMS MAP NO. 5256b & d

PARCEL NO. _____

JOB NO. _____

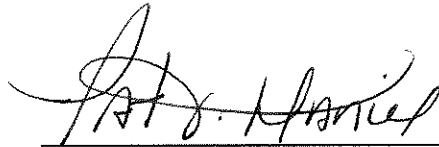
WBS NO. _____

C.M. NO. _____



I, PAT J. DANIEL, Assistant City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance 2019-205 passed and adopted by the City Council of said City on the 27th day of March, 2019, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 17th day of April, 2019.

A handwritten signature in black ink, appearing to read "Pat J. Daniel", written over a horizontal line.

Pat J. Daniel
Assistant City Secretary