

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH AN 8.5103 ACRE SITE SITUATED IN THE HENRY H. CONE SURVEY A-191, CITY OF HOUSTON, HARRIS COUNTY, TEXAS, LOCATED GENERALLY AT 8671 WEST BELLFORT, HOUSTON, TEXAS 77031; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; 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

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, Gary K. Ferguson and Bohica Holdings, Ltd. D/b/a Randall's Center/West Bellfort ("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 8671 West Bellfort, Houston, Texas 77031; 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.

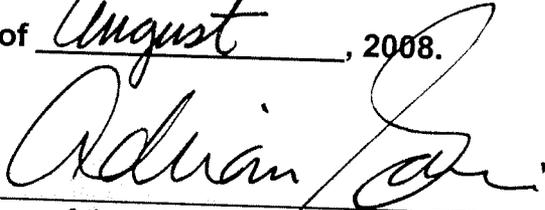
Section 11. That the applicant shall provide the Director of the Public Works and Engineering Department with a copy of the municipal setting designation certificate issued by the TCEQ pursuant to section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

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.

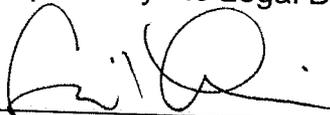
Section 13. That if any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their applicability 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

 DPA
 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	
		ABSENT-CITY BUSINESS
••••	••••	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 02 2008

EXHIBIT A

Being a tract of land containing 8.5103 acres (370,707 square feet) situated in the Henry H. Cone Survey A-191 in Harris County, Texas as conveyed unto A.M. Smith by General Warranty deed recorded under County Clerk's File No. F570053, Film Code Number 193-06-1504, and amended by Correction deed filed under County Clerk's File No. G069980 Film Code Number 127-86-0177, in the Official Public Records of Real Property of Harris County, Texas. Said 8.5103-acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a cut X set for the south cutback comer at the intersection of the south right-of-way of West Belfort Avenue (based on a 100 foot width) and the west right-of-way of South Gessner Road (based on a 100 foot width) for the southernmost Northeast comer of said tract herein described;

THENCE South $02^{\circ} 22' 10''$ East coincident with said west right-of-way of said South Gessner Road, a distance of 268.45 feet to a $5/8$ inch iron rod found for the Southeast comer said tract herein described;

THENCE South $87^{\circ} 31' 37''$ West, a distance of 1 067.96 feet to a $5/8$ inch iron rod found for the southwest comer of the herein described tract of land;

THENCE North $02^{\circ} 22' 30''$ West, a distance of 470.11 feet to a $5/8$ inch iron rod set in the south right-of-way line of said West Belfort Avenue and for the Northwest comer said tract herein described;

THENCE South $77^{\circ} 49' 28''$ East coincident with said South right-of-way of said West Belfort Avenue, a distance of 492.64 feet to a $5/8$ inch iron rod set for the beginning of a curve to the left of said tract herein described;

THENCE continuing in a southeasterly direction with said curve to the left whose central angel is $14^{\circ} 26' 56''$ and whose radius is 2050.00 feet (chord bears South $85^{\circ} 02' 56''$ East, a distance of 515.60 feet) for a curve length of 516.97 feet to a $5/8$ inch iron rod with cap set for a point of tangency point located in the South right-of-way of said West Belfort Avenue;

THENCE North $87^{\circ} 43' 31''$ East, coincident with said South right-of-way of said Elgin Avenue, a distance of 69.67 feet to a cut X set in a concrete sidewalk for the Westernmost Northeast corner of said tract herein described;

THENCE South $47^{\circ} 03' 31''$ East, a distance of 14.34 feet to a to the POINT OF BEGINNING and containing 8.51 03-acres (370,707 square feet) of land, more or less. ,

SAVE, EXCEPT AND EXCLUDING a 0.458149 acre tract described as follows:

LEGAL DESCRIPTION

0.458149 TRACT

SURVEY OF AN 0.458149 Acre (19,956.9514 square feet) Tract of land, being as existing and to found corners, and being further described as being out of the Northeasterly portion of a total 8.510350 acre tract of land as described by the deed conveyed from Wycliffe - U.S., a joint venture, to Randalls Properties. Inc., dated July 20, 1982, and recorded in Clerk's File No. H-537762 of the Deed Records of Harris County, Texas, and the said total 8.510350 acre tract of land being also as shown by the survey plat prepare by R. W. Patrick' Associates, Inc. under job number S-71-82 and dated July 16, 1982: lying in the Henry H. Cone Survey, Abstract No. 191; being located in the Southwesterly quadrant of the existing intersection of West Bellfort Avenue (being an existing 100.00 feet wide right-of-way) with South Gessner Road (being an existing 100.00 feet wide right-of-way at the location of this property); being in Houston, Harris County, Texas: and the said 0.458149 Acre Tract of land being more particularly described by Metes and Bounds as follows:

COMMENCING at a found 5/8 inch iron rod, lying on the existing Southerly right-of-way (R.O.W.) line of the said West Bellfort Avenue (being an existing 100.00 feet wide R.O.W.), and being the existing most Westerly Northeasterly corner of the said Randalls Properties, Inc. total surveyed B.510350 acre tract of land, and being also the existing Northwesterly corner of the existing Southwesterly corner cut-back line between the existing Southerly R.O.W. line of the said West Bellfort Avenue (being an existing 100.00 feet wide R.O.W.) with the existing Westerly R.O.W. line of the said South Gessner Road (being an existing 100.00 feet wide R.O.W.) for the most Westerly Northeasterly corner of the herein described 0.458149 Acre Tract of land, and being also the PLACE OF BEGINNING:

THENCE South 47° 03' 31" East along the said existing Southwesterly corner cut-back line between the existing Southerly R.O.W. line of the said West Bellfort Avenue (being an existing 100.00 feet wide R.O.W.) with the existing Westerly R.O.W. line of the said South Gessner Road (being an existing 100.00 feet wide R.O.W.) and being also along the existing most Northeasterly line of the said Randalls Properties, Inc. total surveyed 8.510350 acre tract of land, a distance of 14.34 feet to a found 5/8 inch iron rod, lying on the existing Westerly R.O.W. line of the said South Gessner Road (being an existing 100.00 feet wide R.O.W.) and being the existing Southeasterly corner of the said existing Southwesterly corner cut-back line between the existing Southerly R.O.W. line of the said West Bel1fort Avenue (being an existing 100.00 feet wide R.O.W.) with the existing Westerly R.O.W. line of the said South Gessner Road (being an existing 100.00 feet vide R.O.W.), and being also the existing most Easterly Northeasterly corner of the said Randal1s Properties, Inc. total surveyed 8.510350 acre tract of land, for the most Easterly Northeasterly corner of the herein described tract of land;

THENCE South 02° 22' 10" East along the existing Westerly R.O.W. line of the said South Gessner Road (being an existing 100.00 feet vide R.O.W.), and being also along part of the existing Easterly line of the said Randal1s Properties, Inc. total surveyed 8.510350 acre tract of land, a distance of 103.45 feet to a set 5/8 inch iron rod, for the Southeasterly corner of the herein described tract of land;

THENCE South $87^{\circ} 31' 37''$ West across a Northeasterly corner of the said Randalls Properties, Inc. total called 8.510350 acre tract of land, a distance of 175.00 feet to a set $5/8$ inch iron rod, for the Southwesterly corner of the herein described tract of land;

THENCE North $02^{\circ} 22' 10''$ West across a Northeasterly corner of the said Randalls Properties, Inc. total called 8.510350 acre tract of land, a distance of 116.45 feet to a set $5/8$ inch iron rod, lying on the existing Southerly R.O.W. line of the said West Belfort Avenue (being an existing 100.00 feet wide R.O.W.), and lying also on an existing Northerly line of the said Randalls Properties, Inc. total called 8.510350 acre tract of land, and being also an established point on an existing curve to the left having a radius of 2,050.00 feet, for the Northwesterly corner of the herein described tract of land;

THENCE in an Easterly direction along the existing Southerly R.O.W. line of the said West Belfort Avenue (being an existing 100.00 feet wide R.O.W.), and being also along part of an existing Northerly line of the said Randalls Properties, Inc. total surveyed 8.510350 acre tract of land, and being also along the said existing curve to the left having a radius of 2,050.00 feet and a central angle of $02^{\circ} 39' 47''$, an arc length distance of 95.28 feet to a found $5/8$ inch iron rod, being the existing Point Of Tangent of the said curve to the left having a radius of 2,050.00 feet, and being also an existing Northerly corner of the said Randalls Properties, Inc. total surveyed 8.510350 acre tract of land, for a Northerly corner of the herein described tract of land;

THENCE North $87^{\circ} 43' 31''$ East along the existing Southerly R.O.W. line of the said West Belfort Avenue (being an existing 100.00 feet wide R.O.W.), and being also along an existing Northerly line of the said Randalls Properties, Inc. total surveyed 8.510350 acre tract of land, a distance of 69.67 feet to a found $5/8$ inch iron rod, being the existing most Westerly Northeasterly corner of the said Randalls Properties, Inc. total surveyed 8.510350 acre tract of land, and being also the existing Northwesterly corner of the said existing Southwesterly corner cut-back line between the existing Southerly R.O.W. line of the said West Belfort Avenue (being an existing 100.00 feet wide R.O.W.) with the existing Westerly R.O.W. line of the said South Gessner Road (being an existing 100.00 feet wide R.O.W.) for the most Westerly Northeasterly corner of the herein described tract of land, and being also PLACE OF BEGINNING;

CONTAINING 0.458149 Acres (19,956.9514 square feet) of land, more or less.