

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 9, 2011

Mr. Greg Rogers, Legal Counsel  
Guida, Slavich & Flores, P.C.  
816 Congress Avenue, Suite 1500  
Austin, Texas 78701

RE: Municipal Setting Designation (MSD) Certificate for 902 Tyler Partners,  
LP, Old Tyler Road and Powers Street, Nacogdoches, Nacogdoches  
County; MSD No. 154

Dear Mr. Rogers:

Enclosed is the Municipal Setting Designation Certification for your site. You can use this certification as the basis to avail of the groundwater assessment and remediation flexibility offered in accordance with Texas Health and Safety Code §361.808, consistent with the site-specific circumstances.

If I can be of any further assistance, please do not hesitate to contact me at (512) 239-2960 or via e-mail ([richard.goldsmith@TCEQ.Texas.gov](mailto:richard.goldsmith@TCEQ.Texas.gov)).

Sincerely,

A handwritten signature in black ink, appearing to read "R. Stuart Goldsmith".

R. Stuart Goldsmith, Program Coordinator  
VCP-CA Section  
Remediation Division

RSG/jdm

Enclosure: MSD Certificate No. 154

cc: Ms. Roslyn Kygar, VCP 2134 Project Manager, Remediation Division, MC-221

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



MUNICIPAL SETTING DESIGNATION CERTIFICATE

As provided for in §361.807, Subchapter W, Texas Health and Safety Code (Solid Waste Disposal Act):

I, Mark R. Vickery, Executive Director of the Texas Commission on Environmental Quality certify the Municipal Setting Designation for MSD No. 154, in the City of Nacogdoches, for the tract of land described in Exhibit "A". The eligibility requirements of Texas Health and Safety Code §361.803 are satisfied as attested to by the affidavit in Exhibit "B", provided pursuant to Texas Health and Safety Code §361.804(b)(2)(D). This certificate shall continue in effect so long as the institutional control required by Texas Health and Safety Code §361.8065 is maintained in effect.

Any person addressing environmental impacts for a property located in the certified municipal setting designation shall complete any necessary investigation and response action requirements in accordance with Texas Health and Safety Code §361.808, in conjunction with the applicable Texas Commission on Environmental Quality environmental remediation regulation, as modified by Texas Health and Safety Code §361.808.

EXECUTED this the 20<sup>th</sup> day of April, 2011


  
\_\_\_\_\_  
Mark R. Vickery, P.G.  
Executive Director  
Texas Commission on Environmental Quality

EXHIBIT "A"

SURVEYED FOR  
902 TYLER PARTNERS, LP

All that certain lot or parcel of land situated in the City of Nacogdoches, Nacogdoches County, Texas and being **LOTS 11 AND 12, BLOCK 47** of said City as described as Tract 1 in a conveyance from Jean Blount Baker to LaNana Watershed Partnership, LP, dated March 26, 2006 and recorded in Volume 2056, Page 185 of the Deed Records of Nacogdoches County, Texas and being more particularly described as follows:

**BEGINNING** at a 3/8" iron rod found for corner at the SWC of said Lot 12, said beginning corner being in the East Right of Way of the Union Pacific Railroad and also being the NWC of Lot 12-A, Block 47 of said City as described in a conveyance from Rosine Blount McFaddin et al to Crawford Building Material Co., dated April 1, 1982 and recorded in Volume 822, Page 245 of the Deed Records of Nacogdoches County, Texas

**THENCE** N 04°00' 00" E, 567.79 feet with the East Right of Way of the Union Pacific Railroad (Bearing base) and the WBL of said Lot 12 and continuing with the WBL of said Lot 11 to a 1/2" iron rod set for corner from which a 5" Elm, marked "X", bears N 01°E, 37.9 feet, said corner being the agreed upon NWC of said Lot 11 and the agreed upon SWC of Lot 26, Block 47 of said City as described as Tract No. 70 in a conveyance from Middlebrook Management, LLC to HGT Group, LP, dated November 19, 1999 and recorded in Volume 1394, Page 14 of the Deed Records of Nacogdoches County, Texas as set forth in a proposed boundary line agreement with George F. Middlebrook, III and not yet of record;


**THENCE** S 85°43' 12" E with the agreed upon NBL of said Lot 11 and the agreed upon SBL of said Lot 26, at 363.05 feet pass a 1/2" iron rod set for witness from which an 11" Elm, marked "X", bears N 64°W, 9.6 feet and a total distance of 403.66 feet to a point for corner in the center of Banita Creek, said corner being the agreed upon NEC of said Lot 11 and the agreed upon SEC of said Lot 26;

**THENCE** with the center of Banita Creek and the EBL of said Lot 11 and continuing with the EBL of said Lot 12 as follows:

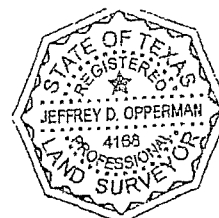
S 13°26' 02" E, 54.59 feet;  
S 26°54' 09" W, 301.61 feet;  
S 05°56' 04" W, 208.53 feet to a point for corner from which a 3/8" iron rod found for witness bears S 88°41' 07" W, 18.54 feet, said corner being the SEC of said Lot 12 and the NEC of said Lot 12-A;

**THENCE** S 88°41' 07" W, 296.87 feet with the SBL of said Lot 12 and the NBL of said Lot 12-A to the place of **BEGINNING**, containing 4.33 acres.

I, Jeffrey D. Opperman, a duly Registered Professional Land Surveyor for the State of Texas, hereby certify that the above field notes of the property surveyed for **902 TYLER PARTNERS, LP** and being **LOTS 11 AND 12, BLOCK 47** of the City of Nacogdoches, Texas are true and correct and were written from a survey made by me on the ground the 4th day of October, 2007.

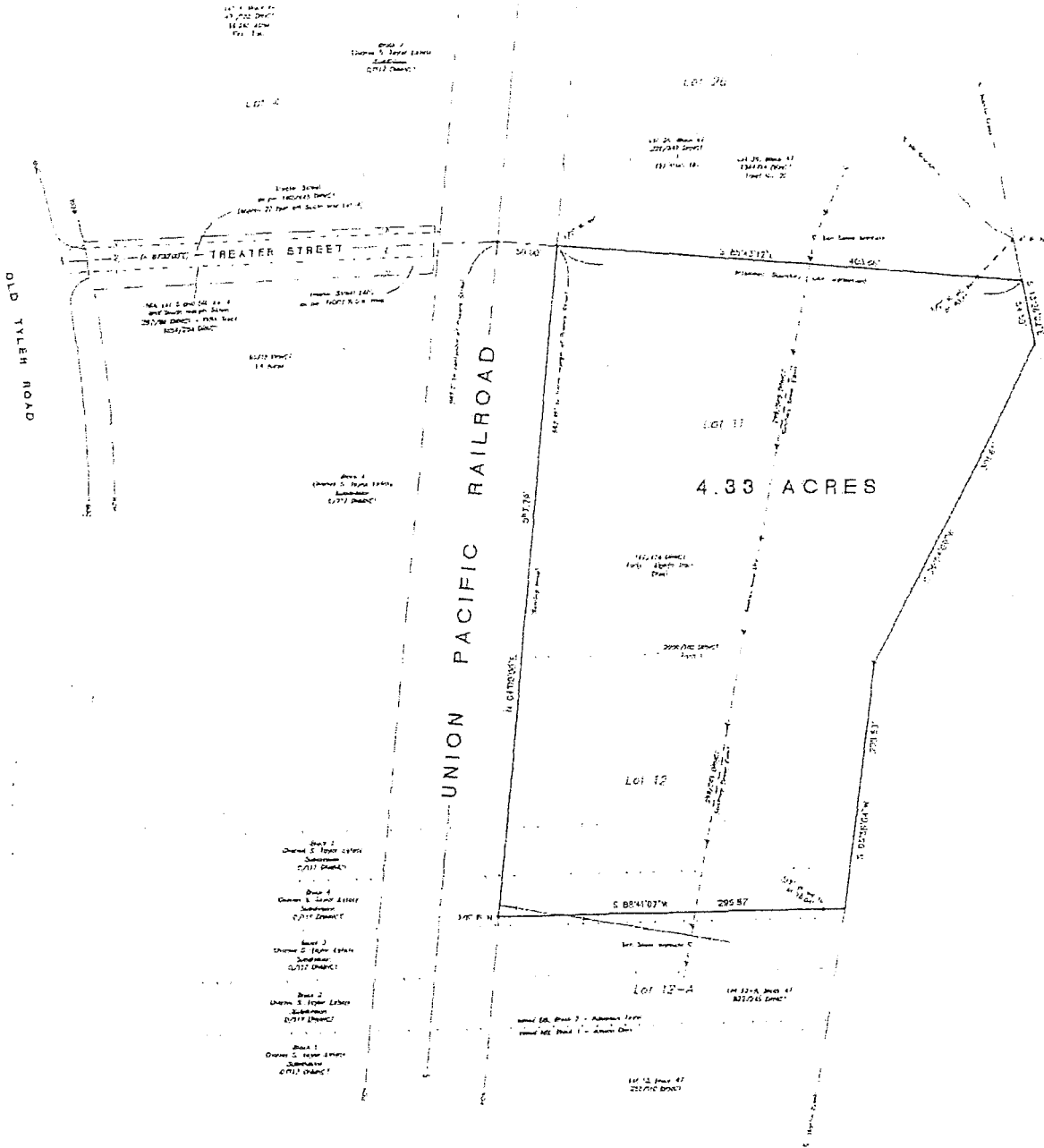
  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4168

REFER TO A PLAT PREPARED ON SAME DATE.  
WP11VBAK11A



# EXHIBIT "A"

IMPROVEMENTS ON THIS PROPERTY HAVE NOT BEEN LOCATED OR DRAWN. THIS INFORMATION IS SHOWN TO BE WITHIN FIVE FEET OF THE RECORD SURVEY. ANY DISCREPANCIES SHOULD BE RECONCILED BEFORE CONSTRUCTION. REFER TO RECORD NOTES REFERRED TO BY SAME DATE.



I, Jeffrey D. Opperman, a duly Registered Professional Land Surveyor for the State of Texas hereby certify that the above plat of the property surveyed for 902 TYLER PARTNERS, L.P. and being LOT 11 AND PART OF LOT 12, BLOCK 47 in Nacogdoches, Texas is true and correct and was drawn from a survey made by me or the ground the 4th day of October, 2007.

*Jeffrey D. Opperman*  
 REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4168



SURVEYED FOR  
 902 TYLER PARTNERS, L.P.  
 LOT 11 AND PART OF LOT 12, BLOCK 47  
 NACOGDOCHES, TEXAS  
 SCALE: 1" = 60' OCTOBER 4, 2007

OPFERMAN SURVEYING COMPANY  
 376 LEWIS STREET  
 NACOGDOCHES, TEXAS 75960  
 (936) 566-5484

# EXHIBIT "B"

c) each retail public utility, as defined by Texas Water Code, §13.002, that owns or operates a groundwater supply well located within five miles beyond the proposed MSD boundaries?	<input checked="" type="radio"/> Yes	<input type="radio"/> No <sup>3</sup>	<input type="radio"/> NA <sup>4</sup>
<sup>3</sup> Do not submit application.			
<sup>4</sup> NA only when no such municipality, private well owner, or retail public utility exists			

**MSD Information:**

List all existing TCEQ and US Environmental Protection Agency registration, permit, identification numbers (e.g., SWR No., VCP No., LPST ID No., UIC Registration No., PWS ID. No.), if any, that apply to the groundwater contamination situation within the proposed MSD boundary. State "none" if none applicable. VCP No. 2134; CN603314212; RNI05205694		
Is the proposed designated groundwater contaminated in excess of an applicable potable water <sup>5</sup> use standard (i.e., 30 TAC 350, <sup>GW</sup> GW <sub>ing</sub> )?	<input checked="" type="radio"/> Yes	<input type="radio"/> No <sup>6</sup>
Was the groundwater contamination previously reported to the TCEQ? (To support implementation of HB 3030, 78 <sup>th</sup> Legislature.)	<input checked="" type="radio"/> Yes, when? 10 / / 08	<input type="radio"/> No
Is there a potable-use well within the boundary of the proposed MSD that uses the designated groundwater as source water?	<input type="radio"/> Yes <sup>6</sup>	<input checked="" type="radio"/> No
Is there a potable-use well within the boundary of the proposed MSD that uses a deeper groundwater zone for the source water that is not properly sealed off from the designated groundwater?	<input type="radio"/> Yes <sup>6</sup>	<input checked="" type="radio"/> No
Is the applicant aware of any non-consumptive use of the groundwater or other human health or ecological exposure pathways that are of concern? If yes, specify:	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Has each municipality and retail public utility identified in §361.8065 provided firm commitment to adopt an ordinance or resolution in support of the application?	<input checked="" type="radio"/> Yes	<input type="radio"/> No <sup>6</sup>
Is a copy of the ordinance or restrictive covenant that restricts consumptive use and appropriately restricts other uses of and contact with the designated groundwater, and any required resolutions provided with this application?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
<sup>5</sup> "Potable water" means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes [THSC §361.801(2)].		
<sup>6</sup> Do not submit an application.		

- I affirmatively state that (place an X in all applicable blanks):
- The MSD eligibility criteria of THSC §361.803 are satisfied.
  - True and accurate copies of all documents demonstrating that the MSD eligibility criteria provided by THSC §361.803 have been satisfied and are included with the application.
  - A true and accurate copy of a legal description of the proposed MSD property is included with the application.
  - Notice was provided in accordance with THSC §361.805.
  - A copy of an ordinance or restrictive covenant and any required resolutions are provided in this application or will be provided before the executive director certifies this application.

Applicant Signature: *[Signature]* Date: 10/27/10

Before me Claudia Westbrook the undersigned authority, on this day personally appeared Greg Pocus  
Name of Notary Name of Applicant and signed this Municipal Setting Designation Application.

Sworn, subscribed and signed before me in the County of Tarrant, State of TX, on the 27<sup>th</sup> day of October, this month of 2010.

