



Control Number: 51023



Item Number: 405

Addendum StartPage: 0

**SOAH DOCKET NO. 473-21-0247  
PUC DOCKET NO. 51023**

APPLICATION OF THE CITY OF SAN ANTONIO	§	BEFORE THE STATE OFFICE
ACTING BY AND THROUGH THE CITY PUBLIC	§	
SERVICE BOARD (CPS ENERGY) TO AMEND	§	
ITS CERTIFICATE OF CONVENIENCE AND	§	OF
NECESSITY FOR THE PROPOSED SCENIC	§	
LOOP 138-KV TRANSMISSION LINE	§	
	§	
	§	ADMINISTRATIVE HEARINGS

**INTERVENOR STEVE AND CATHERINE CICHOWSKI'S REPLY AND OBJECTIONS  
TO CPS ENERGY'S RESPONSE TO STATEMENTS ON ROUTE ADEQUACY**

Intervenors Steve and Catherine Cichowski submit their objections and reply/response to CPS Energy's Response to Statements on Route Adequacy and for good cause would show as follows.

**I. BACKGROUND AND BRIEF DESCRIPTION**

On November 24, 2020 the Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") and Brad Jauer/ BVJ Properties, LLC ("Jauer") filed their Joint Motion Challenging Route Adequacy and Request for Route Adequacy Hearing in this proceeding. One of the central arguments in that joint motion was that CPS had failed to conduct a reasonable route accuracy study based upon its decision to arbitrarily remove a potential route that affected approximately 9 land owners and no residential developments. That route beginning with a segment designated 12 had been a part of the CPS September 2019 "Open House" presentation to landowners and affected residents in the project area. It was removed from consideration by CPS without notice to any of the residents or affected parties in the project area.

On December 3, 2020 CPS Energy filed a response in opposition to the above-referenced joint motion. Because CPS's response relies heavily upon unsupported legal

conclusions presented as facts, Intervenor's object to CPS's conclusory statements lacking a factual basis and offer this reply in response to correct the record.

## **II. LEGAL STANDARD AND BURDEN OF PROOF**

The Preliminary Order directs the ALJs to address whether CPS has filed an application that contains an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation.<sup>1</sup>

The legal standard for determining whether a utility has provided an adequate number of alternative routes is not a counting exercise but "whether an adequate number of reasonably differentiated routes has been proposed in the application to allow a reasoned choice of routes considering all the facts and circumstances presented."<sup>2</sup> The Commission has recognized that there may be circumstances that justify a limited number of alternative routes. In that case an application needs to provide a reasonable explanation of the circumstances and a reasoned justification for the limited number of routes. That justification must arise from investigation and analysis, which should also be included in the application. It is within the scope of a route adequacy hearing to inquire into whether the application has sufficiently justified the limited number of routes.<sup>3</sup>

Although intervenors challenge the adequacy of routes in an application, it is the applicant that bears the burden of proof to show it has filed an adequate application. It is not the intervenor's burden of proof to show that the application is inadequate.<sup>4</sup>

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<sup>1</sup> Preliminary Order at 3.

<sup>2</sup> *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, SOAH Docket No. 473-06-2341; PUC Docket No. 32070, Order on Appeal of Order No. 8 at 5 (October 31, 2006).

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.*

### III. ANALYSIS

When CPS first presented this project to the public in August or September of 2019 it included an area map showing preliminary alternative route segments and substation sites. (Exhibit 1) At this time, CPS was already aware of the Conservation Easement. Of the routes presented, one was far and away the least intrusive at any proposed. It began at substation site one proceeding west on Segment 12 to Segment 23 to Segment 28 to Segment 29 and finally to Segment 40 where it connected with the Ranchtown-Menger Creek transmission line. *Id.* According to the records of the Bexar County Appraisal District this route affected no more than nine properties, went through no developed subdivisions, nor came within 1000 feet of any developed subdivision. Yet when CPS submitted its application to the PUC this potential route had been eliminated. The sole reason given for eliminating this route was that Segment 12 crossed a Conservation Easement in which the Army had a property interest which prevented CPS from condemning said property. This property interest is allegedly contained in a Conservation Easement, not held by the Army nor by the landowner, but by The Nature Conservancy. In addition to not owning the easement, neither the Army nor the Air Force hold any title interest in the actual property to which the easement attaches. Despite this, Segment 12, and with it the least intrusive possible route in this project, was removed.

In their joint motion, Jauer and Anaqua Springs challenge the deletion of this segment and subsequent route alternative as not constituting a “reasoned choice of routes considering all the facts and circumstances presented”.

## The Conservation Easement

In its response CPS has made several unsupported factual allegations that are in truth legal conclusions. For instance CPS has asserted that Segment 12 crossed property in which the United States Army held an undeniable third-party interest. The only evidence offered in support of this statement is the Conservation Easement itself. (Exhibit 2) The terms of the easement do not support this conclusion. The easement grants no property interest to the Army or the Air Force. The only interest granted the Army is a contingent interest to enforce the easement in the event the fee simple landowners failed to do so. (Exhibit 2, para. 7.8) The only other interest granted the army is it the contingent right to assign the conservation easement to an appropriate replacement should The Nature Conservancy become unable to continue as caretaker. *Id.* at para 15. (see also Exhibit 2, Recital G.) Whether a contingent right to enforce an easement is a property right in the fee simple land hold, or the easement, is a legal question, not a factual one. Yet CPS offers no legal support for its legal conclusion.

Additionally, CPS relies heavily on statements contained in the easement that are unenforceable. For instance CPS points to a provision in the easement that states “Due to the Army's interest in this conservation easement, this conservation easement cannot be subject to a condemnation action without the Army's prior consent.” *Id.* at para. 17.(b). There are three fundamental problems with CPS's reliance on this statement. First the provision itself is *illusory* in that the easement does not identify any “interest” allegedly given to the Army that can support this grant of authority. *Id.* at Recital G. Second, CPS makes no showing in law that private parties can arbitrarily grant a federal agency an interest in an easement the agency does not own for the sole purpose of avoiding

condemnation. The reason it has not done so is because it cannot. Finally, this provision falls into a section of the easement document that relates to termination of the easement. (Exhibit 2, para. 17) The provision states: “If, as the result of changes in use due to condemnation of a part of the Property or of the entire Property by public authority, it is determined that conditions on the Property have changed so much that *none* of the Conservation Values remain viable or restorable, then this Conservation Easement may be terminated through such condemnation proceedings. Due to the Army’s interest in this Conservation Easement, this Conservation Easement cannot be subject to a condemnation action without the Army’s prior consent.” *Id. at para. 17(b), emphasis added.* This entire paragraph is contingent on the result of changes in use due to condemnation. Thus, the easement itself recognizes that public authorities may condemn the property. Significantly, this provision is exclusive to a time or condition in which **none** of the Conservation Values remain viable or restorable. Such would not be the case with this transmission line, rather CPS need only to condemn a strip wide enough to accommodate the necessary right of way for the intended line. Condemning less than one percent of the total easement could not possibly result in “none of the Conservation Values remain(ing) viable”.

The only precedential support offered by CPS for its position *vis-a-vis* condemnation in the Conservation Easement, is a previous case before this Commission which, by its own admission, involved property owned in fee simple by the United States Army Corps of Engineers. (CPS response page 4). In this case the very easement at issue unequivocally states that the Army has no interest in the property itself other than the contingent rights identified above. (Exhibit 2, Recital G) In fact, the Army is not even

allowed on the property unless the fee simple owners fail to enforce the easement. (Exhibit 2, para. 6.1, 7.8) As there is no evidence before the commission of that being the case, the Army has no justiciable nor enforceable rights in the property or the easement. By its own terms, the easement grants no ownership rights to the Army in either the easement or the fee simple property to which it attaches.

### **The Army Letter of March 26, 2020**

Rather than making a reasonable effort to explore the feasibility of Segment 12 and the route to which it attaches, CPS relied on a letter it received from the Army to justify the removal of Segment 12 from the route alternatives. (Exhibit 3) What CPS fails to tell the Commission is that the referenced letter was written by an agency with no authority to do so, by a representative with no first-hand knowledge of the issue and that it has been recanted by the branch of the government that oversees environmental affairs for Joint Base San Antonio (JBSA).

Attached as Exhibits 4 through 8 are a series of communications with representatives of the Army and the Air Force. Intervenor Anaqua Springs Ranch HOA sought a meeting with the Army/Air Force to verify if indeed they had a real interest in the property which would prevent condemnation, and, if so, was the government willing to negotiate a compromise. Intervenor initially dealt with Mr. Richard Trevino, the author of the letter presented as CPS's sole reason for abandoning Segment 12. On the day that a meeting was scheduled, Mr. Trevino notified Intervenor that it would not take place, because the Army had no authority in the matter and any concerns were properly addressed to the Air Force. (Exhibit 4) This was confirmed by way of correspondence

from Mr. James Cannizzo, the very attorney that had been involved with the original transaction creating the Conservation Easement. (Exhibit 5; Exhibit 2, para. 18.) Therefore, the letter which CPS relies on was authored by someone with no authority to do so. Even more damning is the fact that Mr. Cannizzo confirmed that neither the Army nor the Air Force had the authority to negotiate on matters of the Easement; that was reserved for the landowners and the Nature Conservancy. (Exhibits 5, 6, 7, 8) Both of those parties are subject to condemnation proceedings.

It is ironic that CPS insist on relying on the Army's letter of March 26, 2020 as "the only relevant communication ... expressed **in writing by the United States Army**" (Response p. 6, emphasis in orig.), while ignoring the only relevant communication **expressed in writing from someone with the actual authority to speak for JBSA.**

Finally, CPS makes much of its efforts to communicate with the Army concerning the Conservation Easement early in the process. (CPS Response, Exhibit. 2). However, its own evidence makes clear that from the beginning, at least someone in the Army doubted whether this project had anything to do with the Army. CPS's lack of reasonable diligence to confirm whether there really existed any impediment to the abandoned route is illustrated by this early communication from the Army:

*"Please help me understand how Segment 12 on the map link below would have any impact on the US Army? I've attached a few maps, the one from AFGIM illustrates in yellow the Camp Bullis Boundary line East of I-10. I might be wrong but Scenic Loop is West of I-10. Am I missing something, is this the right map? Please advise. I'm not aware of any military property in that area. v/r,"*



(CPS Response, Exhibit 2) Rather than fully explore whether any impediment truly existed to Segment 12, CPS instead relied on the March 26, 2020 letter as a pretext to abandoning Segment 12 when a better offer came along from a developer seeking to donate right of way in exchange for *his* preferred route.

#### IV. CONCLUSION

CPS abandoned a possible route segment that affected the least amount of property owners and land values for one that impacts the most. Its given reason does not hold up to scrutiny. When CPS received the March 26, 2020 letter from the Army, it did nothing to confirm if the author was qualified to write it, if it contained a valid reason for giving up Section 12, and if it even came from the correct branch of the military. The gross disparity between the real impact of the route it abandoned, in favor of the route it favors now is *prima fascia* evidence of the lack of a reasoned choice of routes considering the facts and circumstances. CPS has created a *fait accompli* in favor of its desired choice. Absence a *reasonable* route to compare it to, the Toutant Beauregard route becomes the “best” choice. It cannot be ignored that the Toutant Beauregard route “best addresses the requirements” only, or primarily, because a developer facing financial loss decided to donate land to CPS in exchange for route a preference to limit those losses. But for that, the calculus changes. We respectfully suggest that the public trust is not served by benefitting the few to the detriment of the many. CPS failed to present a reasoned choice of route considering all the facts and circumstances *because it chose not to*. Its lack of due diligence to determine if in fact there was a legal impediment to Segment 12 or providing northern alternatives to Toutant Beauregard has resulted in a lack of reasoned

choices. It has opted instead to present alternatives with a predetermined conclusion of what was best for CPS. We respectfully request that the ALJs and the Commission not reward this breach of the public trust, but instead grant the Route Adequacy Challenge as requested by the joint motion of ASRHOA and Jauer.

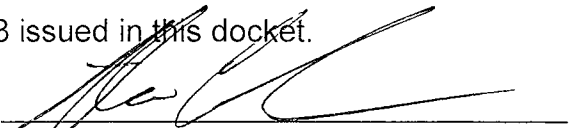
Respectfully submitted,

By:   
Steve and Catherine Cichowski  
Steve Cichowski TBN # 00793507  
24914 Miranda Ridge  
(210) 225-2300  
(210) (fax)  
steve@cichowskilaw.com

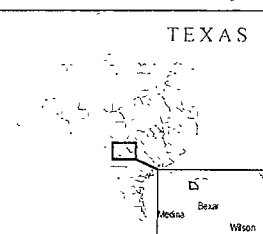
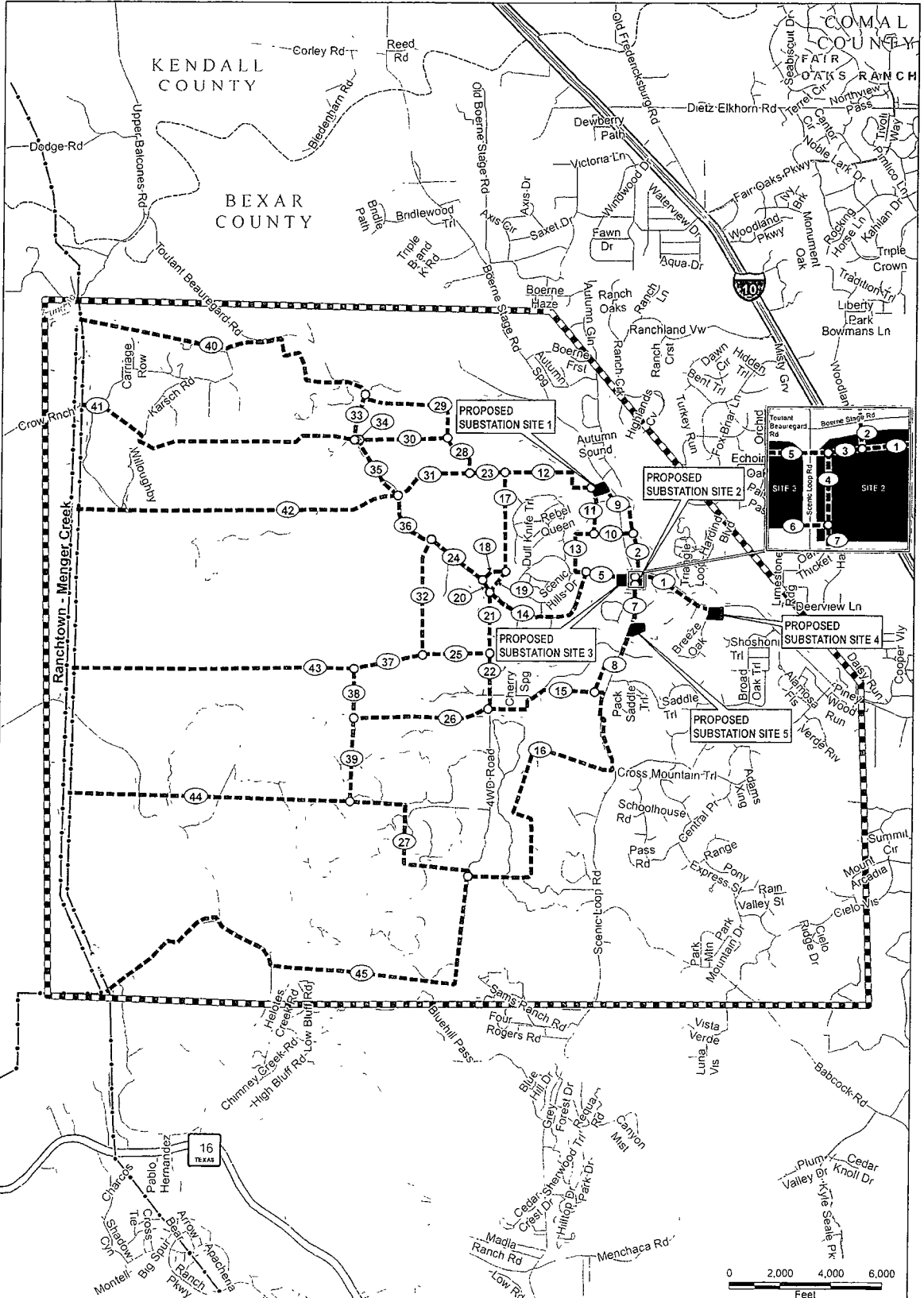
**INTERVENORS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been filed with the Commission and served on all other parties via the PUC Interchange on this 7<sup>th</sup> day of December 2020, pursuant to SOAH Order No. 3 issued in this docket.

  
Steve Cichowski

# EXHIBIT 1



Project Components	Existing Utilities	Administrative Boundaries
Study Area Boundary	Existing Transmission Line	City Limits
Preliminary Substation Site	Transportation	County Boundary
Preliminary Segment and Node	Interstate Highway	Surface Waters
	State Highway	River / Stream
	Local Road	

SCENIC LOOP 138 kV TRANSMISSION LINE AND SUBSTATION PROJECT

PRELIMINARY ALTERNATIVE SEGMENTS & SUBSTATION SITES

1 inch = 3,757 feet

Date: 9/16/2019

## EXHIBIT 2

STZ GF # 59681 / mp

**Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before It is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.**

**GRANT OF CONSERVATION EASEMENT**

STATE OF TEXAS           §  
   §  
 COUNTY OF BEXAR       §

This Grant of Conservation Easement (this "Conservation Easement") is made as of October 12, 2010, by William Bross Lloyd, Christopher Lloyd, Roberta Norris Lloyd, and Lola Lloyd Horwitz (collectively, the "Lloyds"), Deborah M. Kelley, Susan M. Kelley, and Nicholas M. Kelley (collectively, the "Kelleys"), Kathleen O'Connor ("O'Connor"), Pond Foundation, a New Mexico nonprofit corporation ("Pond"), and Lola Maverick Moonfrog F/K/A Lola Maverick Berndt ("Moonfrog"), (the Lloyds, the Kelleys, O'Connor, Pond, and Moonfrog are referred to collectively herein as the "Grantor") and The Nature Conservancy, a District of Columbia nonprofit corporation ("Grantee"), with a mailing address of P.O. Box 1440, San Antonio, Texas 78295-1440 (Bexar County).

*RECITALS*

A. Protected Property. Grantor is the sole owner in fee simple of the property which consists of approximately 610.42 acres, comprised of four tracts described below (and collectively referred to as the "Property") which are part of the land commonly known as the "Maverick Ranch", located in Bexar County, State of Texas.

(1) *The Lloyd Tract.* 122.65 acres owned by the Lloyds (the "Lloyd Tract"), as more particularly described in Exhibit A attached hereto and incorporated herein by reference.

(2) *The Kelley Tract.* 175.71 acres owned by the Kelleys (the "Kelley Tract"), as more particularly described in Exhibit B attached hereto and incorporated herein by reference.

(3) *The Pond-O'Connor Tract.* 280.30 acres owned by Pond and O'Connor (the "Pond-O'Connor Tract"), as more particularly described in Exhibit C attached hereto and incorporated herein by reference.

(4) *The Hill House Tract.* 31.76 acres owned by the Lloyds, O'Connor, and Moonfrog (the "Hill House Tract"), as more particularly described in Exhibit D attached hereto and incorporated herein by reference.

B. Conservation Values. The Property possesses significant natural, ecological, and scenic values (collectively, the "Conservation Values") the preservation of which are of importance to Grantor and Grantee, to the people of the county in which the Property is located, to the people of the State of Texas, and the people of this nation.

C. Ecological Values. Among the Property's Conservation Values are significant ecological values. In particular, the Property is a natural area which qualifies as a "relatively natural habitat of fish, wildlife, or plants, or similar ecosystem", as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986 (as amended). The protection of the Property will also help to support many plant and animal species which are dependent on the water sources, nesting habitat, and food sources found on the Property, and will help to ensure that this area and its existing features will continue to be available for its natural habitat values. Some of the natural systems to be protected that are well represented in the Property include: habitat for plant, animal, and invertebrate species representative of the Edwards Plateau of Central Texas. Some of the species and natural systems to be protected that are well represented on the Property include: breeding, feeding, sheltering, nesting, and foraging habitat for the Golden-cheeked Warbler, Black-capped Vireo, and other species. Several major habitats present on the Property include: dry to mesic juniper-oak and oak-juniper slope/canyon forests, dry grassland openings, and microhabitats provided by intermittent streams and karst formations.

D. Historical & Archeological Values. Through the preservation of the Conservation Values of the Property, this Conservation Easement will indirectly help protect significant historical and archeological values. The Property, from fence-line to fence-line, is part of the "Maverick-Altgelt Ranch and Fenstermaker-Fromme Farm", commonly known as the Maverick Ranch, which was entered as a historic district into the United States Department of the Interior, National Park Service, National Register of Historic Places on April 12, 1979, #300512 (the "National Register Listing"). According to the National Register Listing: "The [Maverick Ranch] District is located on an unnamed branch of Leon Creek between Boerne Stage Road (old Fredericksburg Road) and Toutant Beauregarde Road in northwestern Bexar County, Texas. Situated in the rolling hills leading to the Edwards Plateau, the district consists of two separate but adjoining areas, the Maverick-Altgelt Ranch headquarters, outbuildings and lands, including the George Obert site, and the Fenstermaker-Fromme Farm structures and lands, plus three prehistoric and for historic archeological sites." Included within the National Register Listing is a description of the Lloyd House located on the Hill House Tract (herein referred to as the "Hill House"): "A top a hill 175 yards west of the cottage, William Bross Lloyd and Lola M. Lloyd of Winnetka, Ill., built their house of concrete over metal lath and stucco in 1914. Built as a winter residence, the one story house design was based on the efficient use of space and materials in ship building. Water was originally furnished by two deep cisterns under the kitchen wing of the house and pumped to storage tanks on the roof."

E. Easement Documentation Report. The characteristics of the Property, its current use and state of improvement, are described in a report entitled Baseline Easement Documentation Report of Maverick Ranch, prepared by Grantee for Grantor, dated October 12, 2010 ("Easement Documentation Report"), mutually agreed upon, signed, and acknowledged by the parties. Grantor worked with Grantee to ensure that the report is a complete and accurate description of the Property as of the date of this Conservation Easement. It establishes the

baseline condition of the Property as of the date of this Conservation Easement and includes reports, maps, photographs, and other documentation.

F. Authority. Grantor and Grantee have the common purpose of conserving the Conservation Values in perpetuity, and the State of Texas has authorized the creation of conservation easements pursuant to Chapter 183 of the Texas Natural Resources Code, Tex. Nat. Res. Code Ann. §§ 183.01, *et seq.*, and Grantor and Grantee wish to avail themselves of the provisions of that law.

G. Third Party Rights. Grantor and Grantee acknowledge that all or partial funding for this conveyance was provided by the U.S. Army ("Army") pursuant to 10 U.S.C. § 2684a for the protection of land surrounding the Camp Bullis Military Installation from incompatible development and for preserving habitat on the Property, and accordingly the Army shall have certain third party contingent rights as more particularly described herein.

#### A G R E E M E N T

NOW, THEREFORE, Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions, and restrictions contained herein, and as an absolute and unconditional gift, hereby gives, grants, bargains, sells, and conveys unto Grantee a Conservation Easement in perpetuity over the Property of the nature and character as follows:

1. Purpose. The purpose of this Conservation Easement is to ensure that the Property will be retained forever predominantly in its natural condition; to protect Conservation Values, to prevent any use of the Property that will significantly impair or interfere with the Conservation Values, while allowing for traditional uses on the Property that are compatible with and not destructive of the Conservation Values, such as limited construction, selective timber harvesting, agricultural uses, controlled fishing and hunting, all subject to the terms of this Conservation Easement. Grantor and Grantee acknowledge and agree that any endangered species mitigation credits that may accrue as a result of Golden-cheeked Warbler preservation pursuant to this Conservation Easement shall be credited to the Army.

2. Retained Rights. Grantor reserves all rights to the Property to the extent not restricted or not conveyed by this instrument, including all rights accruing by virtue of ownership of the Property, the right to engage (and to invite others to engage) in all uses of the Property consistent with and not to the detriment of the Conservation Values, the right to exclude the public from trespassing on the Property, and the right to sell, lease, or mortgage the Property (provided that any mortgage shall be subordinate to this instrument) subject to this Conservation Easement.

3. General Prohibition. Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Conservation Easement. Grantor and Grantee acknowledge that the current uses of the Property and the improvements to the Property described in this instrument and in the Easement Documentation Report are consistent with the Conservation Values.



4. Specific Uses As an element of the Conservation Values, the Property contains occupied habit, buffer zone, and unoccupied habitat for the Golden-cheeked Warbler. As such, with the exceptions specifically noted below, the Property is essentially a "No Development Zone" as restricted by this Conservation Easement. Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly permitted

4.1 *No Subdivision.* The Property consists of four separate legal tracts under different ownership. Each individual tract may be separately sold or pledged for a debt in its current configuration in its entirety, but no individual tract may be divided, subdivided, or partitioned. If, and to the extent, any or all of the four tracts come under common ownership, such tracts shall thereafter be held and transferred together as one (as a means of re-assembling the historic unity of ownership of those parts of the Maverick Ranch) and cannot be divided, subdivided, or partitioned. Any time the Property, or any interest therein, is transferred by Grantor to any third party, the Grantor shall notify Grantee and the Army in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement.

4.2 *Construction.* The construction or placement of any temporary or permanent buildings, facilities, equipment, improvements or structures of any kind is prohibited except:

(a) Hill House. Grantor shall have the right to maintain, renovate, repair, replace, demolish, and remove the existing structure commonly known as the Hill House on the Hill House Tract subject to the provisions herein.

(b) Removal of Hill House. The Hill House shall not be demolished, razed, or removed unless repair and restoration of the Hill House is not feasible due to damage or destruction by fire, flood, windstorm, hurricane, earth movement, or other casualty; cumulative, sustained neglect; or structural instability. In the event the Hill House is to be demolished, razed, or removed (i) all reasonable efforts shall be taken to preserve and maintain the historical and artistic integrity of the fireplace (and, if necessary, relocate the same); (ii) other architectural elements and materials, if not reused or incorporated into a replacement structure, shall be salvaged and sold or donated for reuse as feasible; and (iii) demolition, razing, and removal shall be done without blasting, with minimal use of heavy machinery and disturbance to the site (for example, dismantled from within the footprint rather than knocked down from the area surrounding the structure), and by hand and/or hand-held equipment where feasible. Prior to demolishing, razing, or removing the Hill House, Grantor shall notify Grantee, provide Grantee with a plan for such demolition, razing, or removal demonstrating compliance with this Conservation Easement and protection of the Conservation Values, and certify that the plan is in compliance with this Conservation Easement. Demolition, razing, and removal may be

limited during the Golden-cheeked Warbler breeding season, or during other sensitive periods for any species, as determined by Grantee.

(c) **Replacement of Hill House** If the Hill House is demolished, razed, or removed as and for the reasons described above, a new structure may be constructed in its place including some portion of its original footprint, provided, however that the replacement structure will not exceed (i) one-hundred and twenty percent (120%) of the original footprint of the Hill House as of the date of Easement Documentation Report, and (ii) two stories (not to exceed a total of twenty-four feet) above the highest natural grade of the original footprint of the Hill House as of the date of Easement Documentation Report. Any replacement structure shall strive to use naturally existing cleared areas, the original footprint, and preserve trees and habitat (relocating sensitive plant species where necessary) surrounding the site. The replacement structure shall be energy and water efficient and employ "green" sustainable building materials, techniques, and design, and shall strive to blend into the surrounding landscape for a harmonious coexistence. Prior to construction Grantor shall notify Grantee, provide Grantee with a plan for such construction demonstrating compliance with this Conservation Easement and protection of the Conservation Values, and certify that the plan is in compliance with this Conservation Easement. Construction may be limited during the Golden-cheeked Warbler breeding season, or during other sensitive periods for any species, as determined by Grantee.

(d) **Other Improvements.** Other structures and improvements on the Property (including both new and existing structures and improvements) shall be limited to traditional ranching improvements in the county area, such as fences, corrals, pens, observation stands, wildlife drinkers and other wildlife improvements, water tanks, water wells, troughs, header dams, but only to the extent such improvements (i) do not impair or interfere with the Conservation Values, and (ii) each of which does not exceed a footprint of one hundred (100) square feet unless Grantee's prior written approval is obtained. Further, Grantor may construct, maintain, repair, and replace (with another of similar function, capacity, location, and material unless otherwise approved by Grantee or permitted elsewhere in this Conservation Easement) drainage ditches, trails, utilities, and wells to serve the Hill House and other structures and improvements permitted under this Section (Construction) as long as they are limited to the extent reasonably necessary to serve such structures and improvements and do not significantly impair or interfere with the Conservation Values. Septic systems and leach fields shall meet county codes and other applicable laws, and shall not be built or installed within two-hundred feet (200') of any surface waters or springs, flowing streams, rivers, and tributaries. Grantee shall have the right to limit the amount of new structures and improvements permitted under this Section (Construction) if Grantee determines in its discretion that the Conservation Values may be adversely impacted.

(e) **Manner of Improvement** Grantor shall at all times use best efforts and practices in the construction of structures and improvements to minimize impacts on the Conservation Values. All new construction shall be sited as to cause the least disturbance to the Conservation Values. Grantor agrees to use best efforts to site any new construction in such a manner so as to protect existing trees, take advantage of existing access to utilities, water, public roads, and existing drainages, prevent erosion, and preserve the Conservation Values.

#### 4.3 *Roads.*

(a) **Existing Roads.** Existing roads depicted in the Easement Documentation Report may be repaired and maintained as necessary to support the activities permitted herein. No new roads shall be constructed on the Property unless they are approved in advance by Grantee and do not compromise the Conservation Values (except as provided in Section 4.3(c) below)

(b) **Two-Track Roads.** Subject to Grantee's prior written approval, Grantor may create and maintain Two-Tracks (defined below) to the limited extent necessary for the activities, and to access the structures and improvements, permitted in this Conservation Easement. Grantee may limit the number or location of Two-Tracks if Grantee determines in its discretion that the Conservation Values may be adversely impacted. "Two-Tracks" means unpaved avenues of vehicle access delineated on the natural surface of the land as two (2) parallel wheel tracks and that have not been improved by any building, construction, installation, or placement of any materials thereon (other than for the purposes of preventing erosion or other environmental degradation).

(c) **Hill House Access Easement.** The individual grantors hereby grant an access and road easement for ingress and egress over and across their respective tracts (the "Hill House Access Easement") to and for the benefit of the Hill House Tract and the Hill House (or any replacement thereof) in particular. The Hill House Access Easement shall be deemed appurtenant to the Hill House Tract whether or not a given tract is physically contiguous with the Hill House Tract. The Hill House Access Easement shall permit the owner(s) of the Hill House Tract to construct, repair, and maintain a road over and across the Property, including the Hill House Tract, for the purposes of accessing the Hill House. Such road shall utilize the existing roads and remnant Two-Tracks (as shown in the Easement Documentation Report) where advantageous to preserving the Conservation Values but may deviate from existing routes where alternative routes have less impact on the Conservation Values. Construction of such access road shall be done in as an environmentally sensitive manner as possible so as to preserve the Conservation Values and otherwise subject to the provisions of this Conservation Easement. Such access road shall be a single lane road with a maximum width of fifteen feet (15') that solely utilizes caliche or similar natural materials (except to the limited extent necessary for the purposes of preventing erosion or other environmental degradation or for the safe use of the road). Prior

to construction of such road, the owner(s) of the Hill House Tract shall notify Grantee, provide Grantee with an initial plan for such construction demonstrating protection of the Conservation Values to the extent feasible given the necessity for construction of such road, and obtain Grantee's written approval of such plan. If any significant amount of mature ash juniper and/or oak needs to be cut or removed during the road construction, then the owner(s) of the Hill House Tract shall consult with U.S. Fish & Wildlife Service (USFWS) prior to any construction and perform such mitigation as required by USFWS, if any, for construction of the road. Grantee shall assist the owner(s) of the Hill House Tract in designing and locating such access road so as to eliminate or minimize any mitigation requirements. Construction may be limited during the Golden-cheeked Warbler breeding season, or during other sensitive periods for any species, as determined by Grantee. If access, satisfactory to the owner(s) of the Hill House Tract, is granted over the existing road which has traditionally and historically been used to access the Hill House (which road is not on the Property or subject to this Conservation Easement), then the Hill House Access Easement may be released at the Hill House Tract owner(s)' discretion.

4.4 *Vehicles.* The operation of motorized vehicles off of roads or Two-Tracks permitted by this Conservation Easement is prohibited other than for occasional maintenance (which may be limited during the Golden-cheeked Warbler breeding season, or during other sensitive periods for any species, as determined by Grantee), monitoring, research, and restoration activities permitted by this Conservation Easement, or emergency purposes. The off-road use of all-terrain vehicles ("ATVs") and off-road motorcycles ("dirt bikes") as a recreational activity is prohibited. Pursuit of native wildlife by any form of motorized transportation is prohibited. All permitted vehicle use shall be conducted in a manner that minimizes impacts on the Conservation Values.

4.5 *Parking.* Two small parking areas (less than one acre each) may be established at or near the boundary of the Property, one along Boerne Stage Road and a second along Toutant Beauregarde Road, in existing treeless areas or where trees do not need to be removed. The approximate locations of such parking areas are depicted in the Easement Documentation Report. Such parking shall only be for Grantor, Grantee and its agents, and Grantor's guests and invitees, shall be behind a gate and not accessible to the general public, shall be improved only with caliche or impervious natural materials (except to the limited extent necessary to prevent erosion or other environmental degradation or for the safe use of the parking area), and shall be implemented, if at all, in a way so to minimize any disturbance to the Conservation Values.

4.6 *Public Access.* Notwithstanding that all or partial funding for this conveyance was provided by the Army, no right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads and waterways.

4.7 *Minerals*. There shall be no exploration, development, production, extraction, or transportation of oil, gas, soil, sand, gravel, caliche, rock, or other mineral substances (whether such other mineral substances be part of the mineral estate or part of the surface estate but not including water if deemed a mineral substance) on, from, or across the Property ("Mineral Activities") except in accordance with this Section (Minerals).

(a) *No Surface Mining*. Mineral Activities shall not be conducted by any surface mining methods. Surface mining is strictly prohibited.

(b) *Third-Party Minerals*. In the event all or part of the oil, gas, or other mineral substances (whether such other mineral substances be part of the mineral estate or part of the surface estate) are owned by third parties as of the date of this Conservation Easement, the following provisions shall apply to such third party oil, gas, and other mineral substances to the extent this Conservation Easement is deemed subordinate (by law or otherwise) to such oil, gas, and other mineral substances ownership rights: Whenever such third party owners are required by applicable law or pursuant to any existing or future contract, conveyance, or lease to obtain any consent from Grantor with respect to any access to, operation on, physical alteration of, or improvement to the Property, Grantor shall, prior to giving any such consent, consult with Grantee and use its best efforts to incorporate conditions or restrictions on such consent as Grantee may reasonably determine are required in order to prevent a significant impairment or interference with the Conservation Values. In the event Grantor at any time becomes the owner of any of such third party ownership rights, then such rights shall be deemed immediately subject to this Conservation Easement, and any and all subsequent Mineral Activities, contracts, conveyances, and leases of or relating to such ownership rights shall be bound by the provisions of this Conservation Easement.

4.8 *Agricultural Use*. Except as specified below, agricultural activities on the Property shall be limited to those that do not significantly impair or adversely impact the Conservation Values.

(a) *Farming*. Grantor shall have the right to plant gardens for personal consumption and/or to participate in local farmers' markets; provided, however, that trees shall not be removed for such purposes and plots in excess of two hundred square feet (200 ft.<sup>2</sup>) shall require Grantee's prior approval.

(b) *Grazing*. Grantor shall have the right to breed, raise, graze, and pasture domestic animals at or below the stocking rates described in the Easement Documentation Report or as otherwise determined by a grazing plan approved by Grantee. Notwithstanding the forgoing, no level of grazing may be permitted that would result in an unreasonable deterioration of the pastures or other Conservation Values. Feedlots are prohibited.

4.9 *Timber*. Timber harvesting on the Property is prohibited except to provide firewood for residences permitted on the Property and for maintaining permitted structures and improvements on the Property, such as corrals, fences, *etc.* No additional timber harvesting shall be permitted without the prior written permission of Grantee. All timber harvesting shall comply with Section 4.25 (Golden-cheeked Warbler Habitat Protection).

4.10 *Recreational Uses*. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property, such as hiking and wildlife viewing, that do not require or result in any surface alteration or other development or disturbance of the land and that do not adversely affect the Conservation Values. Recreational uses may be limited during the Golden-cheeked Warbler breeding season, or during other sensitive periods for any species, as determined by Grantee.

4.11 *Home Businesses*. Any business that is conducted by, and in the home of, a person residing on the Property in an approved structure, and which does not require or result in any surface alteration or other development or disturbance of the land and that do not adversely affect the Conservation Values, is permitted.

4.12 *Commercial Use*. Any commercial or industrial use of or activity on the Property, other than those relating to agricultural, recreational, and home business use permitted in this Conservation Easement, is prohibited. No rights of passage shall be granted or retained across or upon the Property if that right of passage is used in conjunction with prohibited activities.

4.13 *Excavation*. Except as necessary to accommodate the activities permitted under this Conservation Easement, there shall be no ditching, draining, diking, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, mining, drilling or removal of minerals, nor any change in the topography of the Property or disturbance in the soil in any manner. Placement of underground storage tanks (other than for rainwater catchment or storage of fresh water associated with permitted structures) is prohibited.

4.14 *Habitat Maintenance*.

(a) *Approval Not Required*. Without needing the approval of Grantee, Grantor shall have the right to: (i) cut and remove non-native trees, shrubs, or plants; (ii) cut and remove dead, dying, or diseased native trees, shrubs, and plants; (iii) cut or prune trees and brush to the limited extent that they constitute a hazard to permitted road and trail usage; and (iv) cut and remove trees, shrubs, or plants to accommodate the structures and improvements permitted under this Conservation Easement so long the Conservation Values are not significantly impaired.

(b) *Approval Required*. With the prior written approval of Grantee, Grantor shall have the right to: (i) cut firebreaks, except that such prior written

approval shall not be required in case of emergency firebreaks; and (ii) cut and remove native trees, shrubs, or plants in order to preserve or enhance natural communities or other Conservation Values or other reasonable purposes that do not adversely impact the Conservation Values.

4.15 *Non-Native and Invasive Plants and Animals* Except for agricultural uses permitted hereunder, there shall also be no planting of non-native or invasive trees, shrubs, or plants on the Property without the prior written approval of Grantee. There shall be no intentional introduction of non-native animals on the Property except for domestic livestock (subject to the terms of this Conservation Easement), household pets (properly restrained), and otherwise with Grantee's prior written approval. Intentional introduction of genetically modified organisms is prohibited.

4.16 *Hydrology*. Other than the construction of wells to serve permitted improvements or for activities permitted in this Conservation Easement, there shall be no alteration, depletion, or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water, or any other water bodies on the Property.

4.17 *Signs*. Signs are permitted for purposes of identifying the Property as private property, posting the Property against trespassing or hunting, identifying the Property as protected by Grantee, or any posting or notice required by law. All other signs are prohibited. Signs shall not exceed one (1) by two (2) feet in size, be made with reflective surfaces, or be artificially illuminated. Sign placement, number, and design must not significantly diminish the Conservation Values.

4.18 *Pesticides & Fertilizers*. Pesticides and biocides, including insecticides, fungicides, rodenticides, and herbicides, are prohibited, except for herbicides utilized for habitat restoration purposes that have been approved by Grantee. Fertilizers, other than natural compost and manure, are prohibited.

4.19 *Dumping*. The storage or dumping of trash, garbage, hazardous substances, toxic waste, or other unsightly or offensive material on the Property is prohibited.

4.20 *Pollution*. There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water, or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property. Nor shall activities be conducted on the Property that contribute to erosion or siltation.

4.21 *Density*. Neither the Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this

Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights or cluster development arrangement.

4.22 *Soil and Water Conservation; Erosion Control.* Subject to Grantee's prior written approval and all applicable laws and regulations governing such practices, Grantor may conduct activities for the purpose of soil and water conservation and erosion control utilizing practices that are best suited for the conservation of soil and water, the maintenance of soil and water quality, and so as to avoid erosion, soil contamination, and water pollution. The Grantor and the Grantee desire to provide sufficient flexibility so that the Grantor can take advantage of emerging sustainable practices, all in a manner to protect and enhance the Conservation Values.

4.23 *Fishing & Hunting.* Controlled fishing and hunting is permitted on the Property with the advance written permission of the respective grantor who owns the tract where such activities are to be conducted. Hunting shall only be to limit the population of certain species, such as deer, when such species are deemed overpopulated by Grantee in consultation with a wildlife biologist. Fishing and hunting may be prohibited by Grantee during the Golden-cheeked Warbler breeding season, or during other sensitive periods for any species, as determined by Grantee.

4.24 *Predator Control.* Grantor shall have the right, by means and methods approved by Grantee, to trap, remove, control, or destroy predatory and problem animals which pose a material threat to livestock, humans, or the Conservation Values. The method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques. Trapping of animals shall be done a humane manner with live animal traps monitored daily. In no event shall leg-hold traps, body-gripping or body-crushing traps, or snares be used anywhere on the Property. Trapped animals shall be relocated to appropriate areas or facilities or if necessary, dispatched humanely.

4.25 *Golden-cheeked Warbler Habitat Protection.* Notwithstanding anything herein to the contrary, the following activities are prohibited unless Grantee's prior written approval is obtained: (i) removal, cutting, or harvesting of ashe junipers (commonly called "cedar") or oaks greater than or equal to eight inches (8") in diameter at breast height that are located on slopes equal to or greater than twelve percent (12%), and (ii) removal of brush or vegetation in or within three hundred feet (300') of Golden-cheeked Warbler habitat during the Golden-cheeked Warbler breeding season, or during other sensitive periods for any species, as determined by Grantee.

4.26 *Habitat Restoration and Enhancement.* With the prior written approval of Grantor, Grantee shall have the right, but not the obligation, to restore and enhance native plant and wildlife habitat, consistent with approved wildlife management and soil conservation practices and all applicable laws and regulations governing such practices. Similarly, with the prior written approval of Grantee, Grantor shall have the right, but not the obligation, to restore and enhance native plant and wildlife habitat, consistent with approved wildlife management and soil conservation practices and all applicable laws and regulations governing such practices.



4.27 *Ecological Monitoring, Surveying, Inventorying, and Research.* Grantee shall have the right, but not the obligation, to monitor, survey, inventory, and conduct research on the plant and wildlife populations, communities, and habitats on the Property. Grantor shall cooperate with Grantee in establishing, at no expense to Grantor, written Monitoring and Research Plan(s), if desired by Grantee, to direct such monitoring, surveying, inventorying, and research. All such monitoring, surveying, inventorying, and research of biological and botanical resources shall be done without killing, collection, or removal of organisms; provided, however, that injured or threatened individuals may be removed to an appropriate facility for their own protection, rehabilitation, or propagation, and provided further that deceased individuals may be removed for post-mortem determination of death and further study. Scientific research reports, surveys, and inventories, as well as management plans for the Property, prepared or obtained by Grantee pursuant to this Conservation Easement shall be provided to Grantor and, upon request, to the Army.

4.28 *Management of Exotics and Invasive Species.* Grantee shall have right, but not the obligation, to control, manage, remove, or destroy exotic non-native species or invasive species of plants and animals that threaten the Conservation Values. Such activities shall be in accordance with management practices of Grantee and may include, but shall not be limited to mowing, fencing, humane trapping, and prescribed burning. Trapping of animals shall be done in a humane manner with live animal traps monitored daily. In no event shall leg-hold traps, body-gripping or body-crushing traps, or snares be used anywhere on the Property. Whenever possible, trapped animals shall be relocated and animals (such as cowbirds) which cannot be relocated shall be dealt with in an environmentally conscious manner (such as being donated to a local raptor rescue group as a captive prey source) or, if necessary, dispatched humanely. Grantee will consult with Grantor prior to implementing exotic or invasive species management activities.

5. Exercise of Rights. For activities that require the other party's approval, the request for such approval shall be in writing, contain detailed information regarding the proposed activity, and identify the tract on which the proposed activity will be conducted. Such request shall be delivered to other party at least thirty (30) days prior to the anticipated start date of such activity. Grantee shall only need to provide notice to or request approval from the respective grantor who owns the tract that is the subject of the notice or request for approval. Such approvals shall not be unreasonably withheld, delayed, or denied. The parties agree to use reasonable diligence to respond in writing to the request within said thirty-day period; provided, however, that failure to respond with said thirty-day period shall not be deemed approval.

6. Grantee's Access.

6.1 *Ingress & Egress.* Grantor grants, conveys, and assigns to Grantee (and to the Army under the conditions for permitting the exercise of its rights as set forth in Section 7.8) the rights of ingress and egress to, through, over, and across the Property as an assignee of a partial interest in the Property (*i.e.*, this Conservation Easement) for the purposes described herein, including Section 7 (Enforcement). Without limiting the

foregoing. Grantee may access any tract of the Property from and across the other tracts of the Property for the purpose of exercising its rights under this Conservation Easement.

6.2 *Purposes.* Grantee (including Grantee's staff, contractors, and associated natural resource management professionals) shall have the right to enter the Property at reasonable times for the purposes of (i) monitoring, surveying, inventorying, and conducting research on the plant and wildlife populations, communities, and habitats of the Property; (ii) controlling, managing, removing, or destroying exotic non-native species or invasive species of plants and animals that threaten the Conservation Values; (iii) inspecting the Property to determine if there is compliance with the terms of this Conservation Easement; (iv) obtaining evidence for the purpose of seeking judicial enforcement of this Conservation Easement; and (v) exercising such other rights, and for such other purposes, as described in this Conservation Easement.

6.3 *Manner.* Grantee's entry into the Property shall be done in a manner that will not unreasonably interfere with Grantor's permitted uses or quiet enjoyment of the Property. Grantee will provide reasonable advance written notice to Grantor prior to entering the Property, except in any case where immediate entry is necessary or desirable to prevent, terminate, or mitigate damage to, or the destruction of, the Conservation Values, or to prevent, terminate, or mitigate a violation of the terms of this Conservation Easement.

6.4 *Reports.* Compliance and monitoring reports prepared or obtained by Grantee pursuant to this Conservation Easement shall be provided to Grantor and, upon request, to the Army unless such reports are attorney-client or work-product privileged.

7. Enforcement. Grantee, along with the Army under certain circumstances described in Section 7.8 below, shall have the right to enforce, and to prevent and correct violations of, the terms of this Conservation Easement

7.1 *Notice of Violation.* If Grantee becomes aware that a violation of the terms of this Conservation Easement has occurred or is threatened to occur, Grantee may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the Conservation Values, Grantee shall give a written notice of the violation to Grantor prior to taking such legal action.

7.2 *Corrective Action.* Upon the receipt of a notice of violation, Grantor shall promptly commence, and thereafter diligently pursue to completion, corrective action sufficient to cure the violation (if there is a violation) and, where the violation involves injury to the Property, to restore the portion of the Property so injured. However nothing in this Conservation Easement shall require Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control.

7.3 *Default.* Grantor shall be in default of this Conservation Easement if Grantor fails to so cure the violation within sixty (60) days after the notice of violation is

given; provided that, if more than sixty (60) days is reasonably required for the corrective action, then, if Grantor promptly begins the corrective action within such sixty (60) day period, no default shall exist as to the violation for so long thereafter as Grantor is diligently pursuing such cure to completion. The fact that a default does not exist under the foregoing provisions (*i.e.*, there was a violation but the violation was cured or the cure was commenced and Grantor is diligently pursuing such cure to completion) shall in no event, however, absolve Grantor from any liability under this Conservation Easement with respect to the violation.

7.4 *Remedies.* In the event of a violation, Grantee shall have all remedies available at law or in equity to enforce the terms of this Conservation Easement, including the right to: (i) seek a temporary or permanent injunction with respect to any activity causing a violation; (ii) require the restoration of that portion of the Property affected by the violation to a condition similar or equivalent to the condition that existed prior to the violation, by restoring soils, replanting suitable native vegetation, or taking such other action as is reasonably necessary to achieve such restoration, and (iii) recover any additional damages arising from the violation; provided, however, that, except in the event of emergency enforcement, Grantee shall not enforce its rights under clauses (i) or (ii) above after the giving of a notice of violation until such time as a default exists under the foregoing provisions. The foregoing remedies shall be cumulative and shall be in addition to all other remedies existing at law or in equity with respect to the violation.

7.5 *Costs of Enforcement.* In any action, suit, or other proceeding undertaken to enforce any right or obligation under this Conservation Easement, or to interpret any of the provisions of this Conservation Easement, the prevailing party shall be entitled to recover from the non-prevailing party the costs and expenses of such proceeding, including the court costs and attorneys' fees and expenses incurred by the prevailing party (whether incurred at the trial, appellate, or administrative level), in such amount as the court or administrative body may judge reasonable, all of which may be incorporated into and be a part of any judgment or decision rendered in such action, suit or other proceeding.

7.6 *Emergency Enforcement.* The foregoing provisions notwithstanding, if Grantee reasonably determines that a violation has occurred or is about to occur and circumstances require immediate action to prevent, terminate, or mitigate significant damage to or the destruction of any of the Conservation Values, or to prevent, terminate, or mitigate a significant violation of this Conservation Easement, Grantee may give a notice of violation to the extent reasonably practicable under the circumstances (which may be given orally in such cases or not at all depending on the circumstances) and may then pursue its remedies under this Conservation Easement without waiting for the period to cure the violation which is provided for above.

7.7 *Discretion.* The failure of Grantee to discover a violation or to take action under this Conservation Easement with respect to a violation shall not bar it from doing so at a later time, and shall not be deemed or construed to be a waiver of Grantee's rights in the event of any subsequent occurrence of that or any other violation.

7.8 *Army Enforcement* Should Grantee fail to adequately enforce any term of this Conservation Easement or permit the Property to be used or developed in a manner inconsistent with the purposes of this Conservation Easement, as reasonably determined by the Army and after having given Grantee and Grantor notice thereof and a reasonable opportunity to cure the matter, then the Secretary of the Army, through his or her authorized representative, shall have the right to enforce this Conservation Easement using the procedures under this Section (Enforcement), together with the right of entry granted to Grantee under Section 6 (Grantee's Access), and all authorities available under state or federal law. No greater right of entry by the Army shall be exercised than specified in this Section (Enforcement). Any activities by the Army under this Section shall be subject to the availability of appropriated funds

8. Responsibilities Not Affected. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owners of the Property. Among other things, this shall apply to:

8.1 *Taxes*. Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

8.2 *Upkeep and Maintenance*. Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

9. Perpetual Duration. This Conservation Easement shall run with the land in perpetuity. In order to ensure the perpetual enforceability of this Conservation Easement, Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

10. Merger. The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

11. Subsequent Liens No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing is subordinate to this Conservation Easement and does not violate the restrictions on subdivision of the Property.

12. Parties. Every provision of this Conservation Easement that applies to Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in this Conservation Easement or the Property except that liability for acts or omissions prior to transfer shall survive transfer. Notwithstanding anything else to the contrary, this Conservation Easement does not create any third party rights of enforcement, except those expressly granted herein to the Army.

13. Title. The individual grantors covenant and represent as to their respectively owned tracts of the Property that they are the sole owner(s) and are seized of the Property in fee simple and have good right to grant and convey this Conservation Easement: that the Property is free and clear of any and all financial encumbrances, including any mortgages not subordinated to this Conservation Easement, and that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

14. Hazardous Waste. The individual grantors represent and warrant as to their respectively owned tracts of the Property that, to their individual actual knowledge, no hazardous or toxic waste exists or has been generated, treated, stored, used, disposed of, or deposited in or on the Property and that there are not now any underground storage tanks located on the Property. Without limitation of any other indemnity or release set forth in this Conservation Easement, the individual grantors and their successors and assign release and shall indemnify, defend, and hold Grantee harmless from any liability related to such individual grantor's representations and warranties in this Section (Hazardous Waste) or related to the use, deposit, or release of any hazardous substance or toxic waste on their respectively owned tracts of the Property. Nothing contained in this Conservation Easement shall give rise, in the absence of a judicial decree, to any right or ability of Grantee to become the operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act by exercising physical control over the day-to-day operations of Grantor or the Property or becoming involved in management decisions of Grantor regarding the generation, handling, or disposal of hazardous substances.

15. Transfer of Conservation Easement. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable. Upon prior written notice to the Army and the Grantor, Grantee shall have the right to transfer or assign this Conservation Easement to a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code (which qualified organization must also be qualified to hold this Conservation Easement under applicable state law) that (i) is approved by the Army after prior consultation with Grantor, (ii) qualifies as an "eligible entity" as defined by 10 U.S.C. § 2684a(b), and (iii) expressly agrees to assume the responsibility imposed on Grantee by this Conservation Easement. Should Grantee, or Grantee's assignee, either dissolve or become incapable of providing for long-term monitoring and enforcement of this Conservation Easement, Grantee or Grantee's assignee shall notify the Army, and in such event, the Secretary of the Army, through his designated representative, shall have the option to direct Grantee or Grantee's assignee to transfer this Conservation Easement to the Army or a third party that qualifies as a permitted transferee under this Section (Transfer). Grantee shall ensure that any assignment or instrument transferring this Conservation Easement contains the rights set forth in this Section (Transfer). Further, if Grantee ever ceases to exist or no longer qualifies under Section 170(h) and 10 U.S.C. § 2684a(b) or applicable state law, a court with jurisdiction may transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility. In the event Grantee transfers or assigns this Conservation Easement, in whole or in part, Grantee is hereby granted the right to reserve a third-party right of enforcement if Grantee so elects at the time of the transfer.

16 Amendment. This Conservation Easement may be amended only with the written consent of Grantor, Grantee, and the Army. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code and any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Chapter 183 of the Texas Natural Resources Code and any regulations promulgated pursuant to that law. Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability or perpetual duration of this Conservation Easement.

17 Termination.

(a) *Changed Conditions.* If it is determined that conditions on or about the Property have changed so much that none of the Conservation Values remain viable or restorable, then a court with jurisdiction may, at the joint request of Grantor, Grantee, and the Army, terminate this Conservation Easement.

(b) *Condemnation.* If, as the result of changes in use due to condemnation of a part of the Property or of the entire Property by public authority, it is determined that conditions on the Property have changed so much that none of the Conservation Values remain viable or restorable, then this Conservation Easement may be terminated through such condemnation proceedings. Due to the Army's interest in this Conservation Easement, this Conservation Easement cannot be subject to a condemnation action without the Army's prior consent.

(c) *Proceeds.* At the time of the conveyance of this Conservation Easement to Grantee, this Conservation Easement gives rise to a real property right, immediately vested in Grantee. If this Conservation Easement is terminated and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Grantor) equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. Grantee shall use the proceeds consistently with the Conservation Values of this Conservation Easement.

18. Notices. Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address, or unless a party no longer has an ownership interest in the Property or this Conservation Easement, in which case notices shall be sent to the address of the then-current owner.

To Grantor: The Lloyds' William B. Lloyd, M.D.  
245 W. 107th St. #16C  
New York, New York 10025

The Kelleys: c/o Sherry A. Goldin, Esq.  
Armstrong, Gibbons, & Gnys, LLP  
155 S. Main St., Suite 301  
Providence, Rhode Island 02903

And upon transfer to Pond:

Pond Foundation  
Post Office Box 2656  
Santa Fe, New Mexico 87504-2656

With a copy to:

Lawrence Steven Taub, Esq.  
1447 Seville Rd.  
Santa Fe, New Mexico 87505

O'Connor: Kathleen O'Connor  
Post Office Box 957  
Lincoln, New Hampshire 03251

Pond: Pond Foundation  
Post Office Box 2656  
Santa Fe, New Mexico 87504-2656

With a copy to:

Lawrence Steven Taub, Esq.  
1447 Seville Rd.  
Santa Fe, New Mexico 87505

Moonfrog: Lola Maverick Moonfrog:  
Post Office Box 2656  
Santa Fe, New Mexico 87504-2656

With a copy to:

Matthew McQueen, Esq  
Post Office Box 1236  
Santa Fe, New Mexico 87504-1236

To Grantee. The Nature Conservancy  
Attn: Legal Department  
Post Office Box 1440  
San Antonio, Texas 78295-1440

The Army: James V. Cannizzo, Admin. & Civil Law Advisor  
U.S. Army, Fort Sam Houston & Camp Bullis  
Camp Stanley Storage Area (AMC), Environmental Dept.  
25800 Ralph Fair Rd  
Boerne, Texas 78015-4877

19 Compliance with Law. Grantor and Grantee shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions or requirements applicable to the Property. Nothing herein shall be construed to permit Grantor or Grantee to engage in any activity which is restricted or prohibited by statute, law, ordinance, rule, regulation, code, order, guideline, or other restriction or requirements applicable to the Property

20. Interpretation. This Conservation Easement shall be interpreted under the laws of the State of Texas, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum protection to its Conservation Values. This Conservation Easement shall not be interpreted for or against any party on the basis of authorship, but rather shall be interpreted so as to give maximum protection to the Conservation Values. The captions and section headings of this Conservation Easement are not necessarily descriptive (or intended or represented to be descriptive) of all the terms thereunder, and such captions and section headings shall not be deemed to limit, define, or enlarge the terms of this Conservation Easement. The use of the words "include" and "including" shall be construed as if the phrases "without limitation" or "but not [be] limited to" were annexed thereafter

21 Incorporation. The recitals set forth at the beginning of this Conservation Easement, and any exhibits referenced herein and attached hereto, are incorporated herein by this reference.

22. Severability. If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

23. No Joint and Several Relationship between Grantors. The individual grantors are acting only in the capacity of owners of those portions of the Property that they actually own. The individual grantors shall not be jointly and severally liable or responsible for any provision, violation, default, indemnity, or obligation of this Conservation Easement, but are responsible individually for the provisions of this Conservation Easement as it applies to their individual ownership interests. Any statement, representation, warranty, or covenant contained in this Conservation Easement shall only apply between an individual grantor and that individual grantor's specific ownership interest in the Property. In the event that fee ownership of the Property becomes unified, this Section (No Joint and Several Relationship between Grantors) shall be of no further force or effect.



24     Acceptance and Effective Date. As attested by the signature of its authorized representative, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Bexar County Real Property Records.

*[Remainder of page intentionally left blank.]*

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

"Grantor" as to the Lloyd Tract and the Hill House Tract

William Bross Lloyd  
William Bross Lloyd

STATE OF New York §

COUNTY OF New York §

This instrument was acknowledged before me on October 12th, 2010, by William Bross Lloyd.

Mark E. Linde  
Notary Public

MARK E. LINDE  
Notary Public, State of New York  
No. 0148121280  
Qualified in Westchester County  
Certificate filed in New York County  
Commission Expires Jan. 16, 2013

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

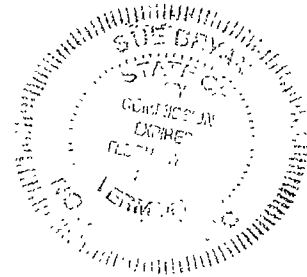
"Grantor" as to the Lloyd Tract and the Hill House Tract

Christopher Lloyd  
Christopher Lloyd

STATE OF Vermont §  
COUNTY OF Windham §

This instrument was acknowledged before me on October 12, 2010, by Christopher Lloyd.

Sue L. Bryer  
Notary Public



TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

"Grantor" as to the Lloyd Tract and the Hill House Tract

Roberta Norris Lloyd  
Roberta Norris Lloyd

STATE OF Vermont §  
COUNTY OF Chittenden §

This instrument was acknowledged before me on October 13, 2010, by Roberta Norris Lloyd.

Joellen Kraft  
Notary Public  
State of Vermont

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

"Grantor" as to the Lloyd Tract and the Hill House Tract

Lola Lloyd Horwitz  
Lola Lloyd Horwitz

STATE OF NY §

COUNTY OF Kings §

This instrument was acknowledged before me on October 12, 2010, by Lola Lloyd Horwitz.

Marina Ovtchinnikova

Notary Public  
MARINA OVTCHINNIKOVA  
Notary Public, State of New York  
No. 01OV6077008  
Qualified in Kings County  
Commission Expires July 1, 2014

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

"Grantor" as to the Kelley Tract

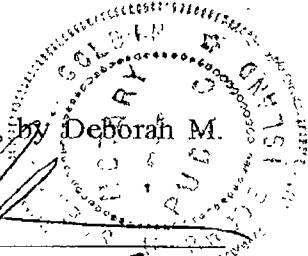
Deborah M. Kelley  
Deborah M. Kelley

STATE OF Rhode Island §

COUNTY OF Providence §

This instrument was acknowledged before me on October 8<sup>th</sup>, 2010, by Deborah M. Kelley.

Sherry A. Goldin  
Notary Public # 6689  
My commission expires 9/8/13



TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

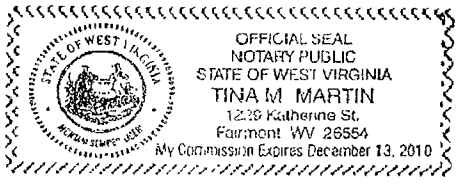
"Grantor" as to the Kelley Tract

Susan M. Kelley  
Susan M. Kelley

STATE OF West Virginia  
COUNTY OF Martin

This instrument was acknowledged before me on October 8, 2010, by Susan M. Kelley

Tina M. Martin  
Notary Public



TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

"Grantor" as to the Kelley Tract

*Nicholas M. Kelley*  
Nicholas M. Kelley

STATE OF Massachusetts §  
COUNTY OF Suffolk §

This instrument was acknowledged before me on October 8th, 2010, by Nicholas M. Kelley.

*Brigitte Lucey*  
Notary Public



BRIGETTE LUCEY,  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
March 19, 2015





TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

"Grantor" as to the Pond-O'Connor Tract

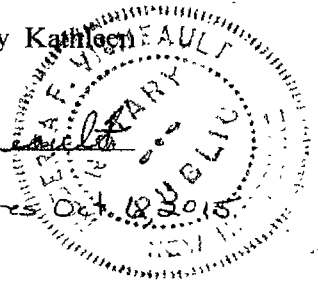
Kathleen W. O'Connor  
Kathleen O'Connor

STATE OF New Hampshire §

COUNTY OF Grafton §

This instrument was acknowledged before me on October 14, 2010, by Kathleen O'Connor.

Roberta F. Vignone  
Notary Public  
My commission expires Oct. 28, 2015





TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

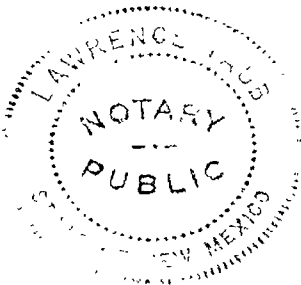
"Grantor" as to the Hill House Tract

Lola Maverick Moonfrog  
Lola Maverick Moonfrog  
F/K/A Lola Maverick Berndt

STATE OF New Mexico §  
  §  
COUNTY OF Santa Fe §

This instrument was acknowledged before me on October 09, 2010, by Lola Maverick Moonfrog.

[Signature]  
Notary Public  
My commission expires: 07Oct12



IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above. This Conservation Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

"Grantee"

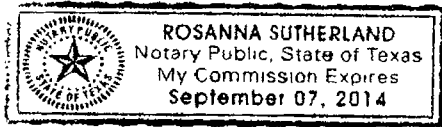
The Nature Conservancy

By: *[Signature]*  
Name: Laura Huffman  
Title: Tx State Director

STATE OF Texas §  
COUNTY OF Tarrant §

This instrument was acknowledged before me on October 10 2010, by Laura Huffman, State Dir of The Nature Conservancy in said capacity on behalf of said entity.

*[Signature]*  
Notary Public



AFTER RECORDING, RETURN TO:

The Nature Conservancy  
Attn: Legal Department  
200 E. Grayson St., Suite 202  
San Antonio, Texas 78215

## EXHIBIT 3



**DEPARTMENT OF THE AIR FORCE  
502D AIR BASE WING  
JOINT BASE SAN ANTONIO**



26 March 2020

Mr. Richard Trevino, USAF  
Base Civil Engineer  
502d Civil Engineer Group  
2428 Stanley Rd  
JBSA-Fort Sam Houston TX 78234

COL Isaac C. Manigault  
Commander, Army Environmental Command  
2455 Reynolds Road  
Fort Sam Houston, Texas 78234-7664

Kirk D. Rasmussen  
Jackson Walker LLP  
100 Congress Ave #1100  
Austin, Texas 78701

Re: Request for Right of Way to CPS for a transmission line through Maverick Ranch

Dear Mr. Rasmussen,

We write jointly regarding your client's, City Public Service (CPS), request for a Right of Way (ROW) for an electric transmission line and substation through a tract on Maverick Ranch located in northwest Bexar County. For the reasons set forth below, it is the Air Force's and Army's position that the proposed ROW would be inconsistent with the conservation easement over the Maverick Ranch that the Army's conservation partner, The Nature Conservancy (TNC), acquired in 2010 (see enclosed conservation easement). In addition, a ROW for an electric transmission line would negatively impact the ongoing military missions at Camp Bullis.

By way of background, the Maverick Ranch perpetual conservation easement was one of six endangered species habitat exchanges executed during 2009 – 2013 between Camp Bullis and TNC with assistance from the City of San Antonio, Bexar County, and Texas Parks and Wildlife Department (TPWD). The specific tract at issue is made up of very dense old growth cedar and oak and contains a high percentage of Golden-cheeked Warbler (GCW) habitat (see enclosed 2019 Endangered Species Presence-Absence Survey of the subject property). This effort was vital to relieving endangered species habitat restrictions on more than 2,500 acres of GCW habitat on Camp Bullis.

In return for conserving land off of the installation in perpetuity, US Fish and Wildlife Service (USFWS) authorized Camp Bullis to clear most of the cedar on 2,500 acres on Camp Bullis. This exchange made it much more feasible to accommodate the growth related to the

Base Realignment and Closure (BRAC) recommendations of 2005, wherein Joint Base San Antonio stood up, and 12,000 additional personnel were added to Fort Sam Houston and Camp Bullis. This made Fort Sam Houston the home of all Department of Defense medic training, including 5,000 additional medical trainees. The field training at Camp Bullis is essential to the long-term viability of Fort Sam Houston and is home to a multitude of critical training, including security forces trainees from Joint Base San Antonio-Lackland.

If the TNC in perpetuity conservation easements were to be disturbed, USFWS would require another consultation under Section 7 of the Endangered Species Act and Camp Bullis would need to obtain replacement GCW mitigation credits. Finally, regardless of any willingness of Camp Bullis (US Air Force or Army) to entertain additional endangered species replacement habitat, Section 4 of the conservation easement only allows utilities to be installed for existing houses already on the tracts.

We have also been communication with the owners of the underlying fee title of the Maverick Ranch as well as TNC, and both are resistant to a utility ROW over the Maverick Ranch.

Sincerely

Sincerely

RICHARD TREVINO JR., GS-15  
Director, 502d Civil Engineer Group

ISAAC C. MANIGAULT  
COL, CM  
Commanding

Enclosures

cc: The Nature Conservancy  
The Pond Foundation

## EXHIBIT 4



## Steve Cichowski

---

**From:** TREVINO, RICHARD JR GS-15 USAF AETC 502 CEG/CL <richard.trevino@us.af.mil>  
**Sent:** Wednesday, October 07, 2020 10:03 AM  
**To:** Steve Cichowski; Rasmussen, Kirk  
**Cc:** JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS, Anderson, John H CIV USAF 502 ABW (USA); MULHEARN, MARY H GS-14 USAF AFMC AFCEC/SAF/GCN-SA  
**Subject:** CPS Project and Conservation easement and GCW habitat credits  
**Importance:** High

Mr. Cichowski/Mr. Rasmussen,

Good morning. Hope all is safe and healthy for you and your families.

Sincerely apologize for the late notice, but I must cancel today's discussion concerning the CPS Energy project as it pertains to the Conservation easement and habitat credits.

It has been recently brought to my attention that the appropriate office to address your concerns is the Air Force Civil Engineer Center located on Joint Base San Antonio.

Mr. John Anderson, the 502d Air Base Wing Community Initiatives Director will contact you to facilitate any further meetings on this issue with the Air Force Civil Engineer Center. Mr. Anderson's contact information is 210-808-7513 (office) or 660-238-4708 (cell).

Again, I sincerely apologize for the late cancellation, as I know there has much time spent trying to set up this meeting. Sincerely appreciate your continued partnership with the United States Armed Forces and Joint Base San Antonio.

Respectfully, Richard

RICHARD TREVINO JR., P.E., GS-15  
Director, 502d Civil Engineer Group  
Joint Base San Antonio, Texas  
(210) 221-0903

# EXHIBIT 5

## Steve Cichowski

---

**From:** CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC <james.cannizzo@us.af.mil>  
**Sent:** Wednesday, October 14, 2020 4:56 PM  
**To:** steve@cichowskilaw.com  
**Subject:** CPS Project and Conservation easement and GCW habitat credits

The Joint Base POCs asked me to call you to explain the situation the Air Force is in. Until about 2 years ago I worked for the Army and was actually the one who arranged all of the Camp Bullis golden-cheeked warbler mitigation transactions from 2009-2013. I now work for the Air Force at a legal HQ at Lackland's Kelly Annex.

The options you laid out for John Anderson are NOT within the Air Force (or Army's) control because the REPI conservation partner, TNC, and the underlying fee owner, the Pond Foundation, are unwilling to extinguish the easement. I re-verified this with TNC and the Pond Foundation today.

I tried calling the direct line in your email below, but it just rang without an answering machine. I have been working from home for the past 7 months, so my telework number is below if you wish to discuss this.

Regards, Jim C  
Jim Cannizzo, GS-15, USAF  
Senior Attorney, Mission Sustainment and Planning AF/JAOE  
3515 S. General McMullen, Suite 4060  
JBSA-Lackland AFB, 78226  
(210) 375-4142 teleworking from home

**From:** TREVINO, RICHARD JR GS-15 USAF AETC 502 CEG/CL  
<richard.trevino@us.af.mil>  
**Sent:** Wednesday, October 7, 2020 12:44 PM  
**To:** steve@cichowskilaw.com; 'Rasmussen, Kirk' <krasmussen@jw.com>  
**Cc:** JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS  
<candace.jackson@us.af.mil>; Anderson, John H CIV USAF 502 ABW (USA)  
<john.h.anderson54.civ@mail.mil>; MULHEARN, MARY H GS-14 USAF AFMC  
AFCEC/SAF/GCN-SA <mary.mulhearn@us.af.mil>  
**Subject:** RE: [Non-DoD Source] RE: CPS Project and Conservation easement and GCW habitat credits

Mr. Cichowski,

Mr. John Anderson will be contacting you to reset with the correct points of contact.

Thank you for your understanding.

v/r, Richard

From: Steve Cichowski <steve@cichowskilaw.com <mailto:steve@cichowskilaw.com>  
>

Sent: Wednesday, October 7, 2020 12:28 PM

To: TREVINO, RICHARD JR GS-15 USAF AETC 502 CEG/CL  
<richard.trevino@us.af.mil <mailto:richard.trevino@us.af.mil> >; 'Rasmussen, Kirk'  
<krasmussen@jw.com <mailto:krasmussen@jw.com> >

Cc: JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS  
<candace.jackson@us.af.mil <mailto:candace.jackson@us.af.mil> >; Anderson, John  
H CIV USAF 502 ABW (USA) <john.h.anderson54.civ@mail.mil  
<mailto:john.h.anderson54.civ@mail.mil> >; MULHEARN, MARY H GS-14 USAF  
AFMC AFCEC/SAF/GCN-SA <mary.mulhearn@us.af.mil  
<mailto:mary.mulhearn@us.af.mil> >

Subject: [Non-DoD Source] RE: CPS Project and Conservation easement and GCW  
habitat credits

Mr. Trevino,

Understood. Just to be clear, do I need to call and reset with the proper persons, or will  
we be contacted?

Steve Cichowski  
Cichowski Law Firm, P.C.  
Board Certified - Personal Injury Trial Law Texas Board of Legal Specialization  
10500 Heritage Blvd., Suite 102  
San Antonio, Texas 78216  
210-223-5299 direct  
210-870-1521 fax

From: TREVINO, RICHARD JR GS-15 USAF AETC 502 CEG/CL

[mailto:richard.trevino@us.af.mil]

Sent: Wednesday, October 07, 2020 10:03 AM

To: Steve Cichowski <steve@cichowskilaw.com <mailto:steve@cichowskilaw.com> >;  
Rasmussen, Kirk <krasmussen@jw.com <mailto:krasmussen@jw.com> >

Cc: JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS  
<candace.jackson@us.af.mil <mailto:candace.jackson@us.af.mil> >; Anderson, John  
H CIV USAF 502 ABW (USA) <john.h.anderson54.civ@mail.mil  
<mailto:john.h.anderson54.civ@mail.mil> >; MULHEARN, MARY H GS-14 USAF  
AFMC AFCEC/SAF/GCN-SA <mary.mulhearn@us.af.mil  
<mailto:mary.mulhearn@us.af.mil> >

Subject: CPS Project and Conservation easement and GCW habitat credits

Importance: High

Mr. Cichowski/Mr. Rasmussen,

Good morning. Hope all is safe and healthy for you and your families.

Sincerely apologize for the late notice, but I must cancel today's discussion concerning the CPS Energy project as it pertains to the Conservation easement and habitat credits.

It has been recently brought to my attention that the appropriate office to address your concerns is the Air Force Civil Engineer Center located on Joint Base San Antonio.

Mr. John Anderson, the 502d Air Base Wing Community Initiatives Director will contact you to facilitate any further meetings on this issue with the Air Force Civil Engineer Center. Mr. Anderson's contact information is 210-808-7513 (office) or 660-238-4708 (cell).

Again, I sincerely apologize for the late cancellation, as I know there has much time spent trying to set up this meeting. Sincerely appreciate your continued partnership with the United States Armed Forces and Joint Base San Antonio.

Respectfully, Richard

RICHARD TREVINO JR., P.E., GS-15  
Director, 502d Civil Engineer Group  
Joint Base San Antonio, Texas  
(210) 221-0903

# EXHIBIT 6

## Steve Cichowski

---

**From:** CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC <james.cannizzo@us.af.mil>  
**Sent:** Monday, October 19, 2020 5:42 PM  
**To:** steve@cichowskilaw.com  
**Subject:** CPS Powerline Project and Conservation Easement and GCW Habitat Credits

As I mentioned on the phone, very few people understand the difference between section 7 and 10 of the ESA, credits under Section 10 are not usable under Sec 7 (the federal agency section), see excerpt from SEPHCP website:

P 3:

### **WHO MAY USE THE SEP-HCP?**

Landowners, developers, Bexar County, the City of San Antonio, and others conducting nonfederal activities within the jurisdictions of Bexar County or the City of San Antonio (excluding any portion of Comal County) may be eligible to achieve ESA compliance through the Plan

[https://www.fws.gov/southwest/es/Documents/R2ES/AUES\\_SEP\\_HCP\\_FINAL\\_11\\_13\\_2015.pdf](https://www.fws.gov/southwest/es/Documents/R2ES/AUES_SEP_HCP_FINAL_11_13_2015.pdf)

The key issue in my mind as I relayed in the prior email, is TNC and Pond Foundation willingness to extinguish/relinquish part of the conservation easement for the 100 ft ROW. When we spoke with them last spring and when I checked back with them last week, they were not willing. Here are their POC contact #s:

Kathryn Tancig, Braun & Gresham:

### **Kathryn Tancig**

Attorney and Counselor  
512.894.5426

<https://braungresham.com/meet-the-team/kathryn-tancig/>

*Justin G. Rice, Senior Attorney  
The Nature Conservancy  
200 E. Grayson St., Suite 202  
San Antonio, TX 78215  
Tele (210) 301-5779 direct  
(210) 224-8774*

[https://lawyers.findlaw.com/profile/view/4076872\\_1](https://lawyers.findlaw.com/profile/view/4076872_1)

Regards, Jim C

Jim Cannizzo, GS-15, USAF  
Senior Attorney, Mission Sustainment and Planning  
AFLOA/JACE-FSC  
3515 S. General McMullen, Suite 4060  
JBSA-Lackland AFB, 78226  
(210) 375-4142 teleworking from home

# EXHIBIT 7



## Steve Cichowski

---

**From:** CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC <james.cannizzo@us.af.mil>  
**Sent:** Thursday, October 22, 2020 7:38 AM  
**To:** steve@cichowskilaw.com  
**Subject:** FW: RE: CPS Powerline Project and Conservation Easement and GCW Habitat Credits; Email from HOA

I would have not used some of the wording you use, but you are correct in the key point that unless the TNC and Pond Foundation agree to relinquish part of the conservation easement, the Army/Air Force cannot act -- we cannot force them to relinquish it. Ref GCWA mitigation credits, we would need credits from a FWS approved GCWA mitigation bank and even then a new section 7 formal consultation would have to be done.

Regards, Jim C  
Jim Cannizzo, GS-15, USAF  
Senior Attorney, Mission Sustainment and Planning AFLOA/JACE-FSC  
3515 S. General McMullen, Suite 4060  
JBSA-Lackland AFB, 78226  
(210) 375-4142 teleworking from home

From: Steve Cichowski <steve@cichowskilaw.com <mailto:steve@cichowskilaw.com>  
>  
Sent: Wednesday, October 21, 2020 12:41 PM  
To: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC  
<james.cannizzo@us.af.mil <mailto:james.cannizzo@us.af.mil> >  
Subject: [Non-DoD Source] RE: CPS Powerline Project and Conservation Easement  
and GCW Habitat Credits

Thank-you for taking the time to visit with me regarding the Pond Foundation property and the Conservation Easement. I am meeting with the other Board members tomorrow to brief them on what we discussed and want to confirm that I understood what we talked about.

To summarize, CPS Energy is planning a transmission line to improve service in the Scenic Loop/Boerne Stage Road area. CPS formerly proposed a possible route that had a short segment (segment 12) going through the old Maverick Ranch. Upon final submittal to the PUC, that segment had been removed. We were under the impression that it had been removed because the Army/Air Force would not give its agreement to CPS for that segment because it would result in a loss of Golden Cheeked Warbler Habitat credits now owned by the Army/Air Force. We (the group of homeowners represented by the Anaqua Springs HOA) proposed to acquire replacement credits and donate them to the Army/Air Force in exchange for the Army/Air Force giving its

agreement to allow the route segment in question to be re-added to the routes being considered by the PUC. For this purpose we sought a meeting with the Army's representatives in order to present this proposal. Numerous e-mails were exchanged regarding the subject matter of the sought after meeting of which you are aware.

Prior to meeting with the Army, we were made aware that we were talking to the wrong people and that the Air Force was now the point of contact on this matter. You subsequently e-mailed me and we were able to visit this week regarding what we (the HOA) were proposing. After speaking with you it is my understanding that the things we were proposing are not within the Air Force' control, nor within the Air Forces authority under the Conservation Easement to agree to. In other words, the Air Force cannot give CPS Energy its agreement to go forward with the transmission line in the location we are talking about because the Conservation Easement does not grant it the authority do so. Based on our conversation it is my understanding that the only authority the Air Force has is the authority to enforce the terms of the Conservation Easement in the event the Nature Conservancy does not, and the authority to have the Easement transferred to the Air Force or other qualified entity in the event the Nature Conservancy dissolves or becomes incapable of monitoring and enforcing the terms of the Easement. I was left with the impression that it is the Air Force's position that it is up to the Nature Conservancy and the Grantors of the easement to agree to the location of a transmission line on the property.

Because it is so important to the Board members and affected homeowners that what I report to them is accurate, can you please confirm or correct any of the impressions I have taken away from our conversation. The proposed project is going to affect hundreds of home and land owners so your time is greatly appreciated.

Thank-you again for your time.

Steve Cichowski  
Cichowski Law Firm, P.C.  
Board Certified - Personal Injury Trial Law Texas Board of Legal Specialization  
10500 Heritage Blvd., Suite 102  
San Antonio, Texas 78216  
210-223-5299 direct  
210-870-1521 fax

From: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC  
[mailto:james.cannizzo@us.af.mil]  
Sent: Monday, October 19, 2020 5:42 PM  
To: steve@cichowskilaw.com <mailto:steve@cichowskilaw.com>  
Subject: CPS Powerline Project and Conservation Easement and GCW Habitat Credits

As I mentioned on the phone, very few people understand the difference between section 7 and 10 of the ESA, credits under Section 10 are not usable under Sec 7 (the federal agency section), see excerpt from SEPHCP website:

P 3:

#### WHO MAY USE THE SEP-HCP?

Landowners, developers, Bexar County, the City of San Antonio, and others conducting nonfederal activities within the jurisdictions of Bexar County or the City of San Antonio (excluding any portion of Comal County) may be eligible to achieve ESA compliance through the Plan.

[https://www.fws.gov/southwest/es/Documents/R2ES/AUES\\_SEP\\_HCP\\_FINAL\\_11\\_13\\_2015.pdf](https://www.fws.gov/southwest/es/Documents/R2ES/AUES_SEP_HCP_FINAL_11_13_2015.pdf)

The key issue in my mind as I relayed in the prior email, is TNC and Pond Foundation willingness to extinguish/relinquish part of the conservation easement for the 100 ft ROW. When we spoke with them last spring and when I checked back with them last week, they were not willing. Here are their POC contact #s:

Kathryn Tancig, Braun & Gresham:

Kathryn Tancig  
Attorney and Counselor  
512.894.5426

<https://braungresham.com/meet-the-team/kathryn-tancig/>

Justin G. Rice, Senior Attorney  
The Nature Conservancy  
200 E. Grayson St., Suite 202  
San Antonio, TX 78215  
Tele (210) 301-5779 direct  
(210) 224-8774 <tel:+1(210)%202248774>

[https://lawyers.findlaw.com/profile/view/4076872\\_1](https://lawyers.findlaw.com/profile/view/4076872_1)

Regards, Jim C  
Jim Cannizzo, GS-15, USAF  
Senior Attorney, Mission Sustainment and Planning AFLOA/JACE-FSC  
3515 S. General McMullen, Suite 4060  
JBSA-Lackland AFB, 78226  
(210) 375-4142 teleworking from home

## EXHIBIT 8

## Steve Cichowski

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**From:** CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC <james.cannizzo@us.af.mil>  
**Sent:** Friday, October 23, 2020 9:46 AM  
**To:** steve@cichowskilaw.com  
**Subject:** RE CPS Powerline Project and Conservation Easement and GCW Habitat Credits; 2nd Email from HOA

Ref the map you attached, off the top of my head, I do not know where the Maverick Range is in relation to the map routes, we would have to have a GIS tech plot it to understand route dynamics.

It is largely irrelevant what the route is and whether the AF/Army objects or supports a ROW through the Maverick easement. As long as the easement holder and property fee interest owner do not agree to relinquishment, it cannot happen.

In the ACUB/REPI program we normally support our conservation partners. And undoing even part of the conservation easement would cause GCWA mitigation crediting issues and cause us to have to reopen our prior Section 7 ESA formal consultation.

I am not working today, just logged in for a few minutes to check my email.

Regards, Jim C  
Jim Cannizzo, GS-15, USAF  
Senior Attorney, Mission Sustainment and Planning  
AF/JAOE-FSC  
3515 S. General McMullen, Suite 4060  
JBASA-Lackland AFB, 78226  
(210) 375-4142 teleworking from home

-----Original Message-----

**From:** Steve Cichowski <steve@cichowskilaw.com>  
**Sent:** Thursday, October 22, 2020 1:52 PM  
**To:** CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC <james.cannizzo@us.af.mil>  
**Subject:** [Non-DoD Source] RE: RE: CPS Powerline Project and Conservation Easement and GCW Habitat Credits; Email from HOA

Thank-you for your response. It seems the more I learn, the less I understand.

Can you answer this question that I will be asked:

1. Does the Air Force/Army object to the construction of a 138 kv transmission line, shown as Segment 12 on the attached proposed route map, across the property known as the old Maverick Ranch.

Steve Cichowski  
Cichowski Law Firm, P.C.  
Board Certified - Personal Injury Trial Law Texas Board of Legal  
Specialization  
10500 Heritage Blvd., Suite 102  
San Antonio, Texas 78216  
210-223-5299 direct  
210-870-1521 fax

-----Original Message-----

From: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC  
[mailto:james.cannizzo@us.af.mil]  
Sent: Thursday, October 22, 2020 7:38 AM  
To: steve@cichowskilaw.com  
Subject: FW: RE: CPS Powerline Project and Conservation Easement and GCW  
Habitat Credits; Email from HOA

I would have not used some of the wording you use, but you are correct in the key point that unless the TNC and Pond Foundation agree to relinquish part of the conservation easement, the Army/Air Force cannot act -- we cannot force them to relinquish it. Ref GCWA mitigation credits, we would need credits from a FWS approved GCWA mitigation bank and even then a new section 7 formal consultation would have to be done.

Regards, Jim C  
Jim Cannizzo, GS-15, USAF  
Senior Attorney, Mission Sustainment and Planning AFLOA/JACE-FSC  
3515 S. General McMullen, Suite 4060  
JBSA-Lackland AFB, 78226  
(210) 375-4142 teleworking from home

From: Steve Cichowski <steve@cichowskilaw.com  
<mailto:steve@cichowskilaw.com> >  
Sent: Wednesday, October 21, 2020 12:41 PM  
To: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC  
<james.cannizzo@us.af.mil <mailto:james.cannizzo@us.af.mil> >  
Subject: [Non-DoD Source] RE: CPS Powerline Project and Conservation  
Easement and GCW Habitat Credits