

2009-092097

42

CONSERVATION EASEMENT

STATE OF TEXAS §

COUNTY OF MONTGOMERY §

THIS CONSERVATION EASEMENT is made this 5th day of October, 2009 by Montgomery County, a political subdivision of the State of Texas ("Grantor"), having an address at 301 N. Thompson, Conroe, Texas 77301, and its successors and assigns in favor of the Legacy Land Trust, Inc., and its successors and assigns, a Texas non-profit corporation qualified to do business in the State of Texas ("Grantee"), having an address at 10330 Lake Rd. Bldg. J, Houston, Texas 77070, and The Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, and the Department of the Interior represented by the United States Fish and Wildlife Service ("Trustees" or "Third Parties").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property in Montgomery County, Texas, being a tract of land containing 100.17 acres and more particularly described as follows:

A tract of land containing 100.17 acres of land located in the R.O.W. McManus Survey, Abstract Number 346, Montgomery County, Texas. And being out of a part of a certain tract of land called 124.44 acres conveyed by deed to Montgomery County as recorded under Clerk's File Number (CF No.) 2008-106829 of the Montgomery County Official Public Records of Real Property (MCOPRRP), said 124.44 acres being out of a parent tract called 330.62 acres ("Tract 2") described in a partition deed recorded in Volume 500, page 221 of the Montgomery County Deed Records, and

said 100.17 acre parcel being more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Easement Area"); and

WHEREAS, the above-referenced 100.17 acres of this property's development rights, having been identified as a preferred restoration alternative in the "Final Damage Assessment and Restoration Plan/Environmental Assessment for Greens Bayou, Harris County, Houston, Texas" ("Restoration Plan") issued December 14, 2008 as partial compensation for injuries to natural resources from the Greens Bayou Site, were purchased from Montgomery County by Legacy Land Trust with funding from GB Biosciences; and

WHEREAS, the above-referenced property was accepted by Montgomery County Commissioners' Court on January 12, 2009 for use as a low-impact public preserve; and

WHEREAS, the Easement Area (hereafter known as "Spring Creek Bend Preserve") possesses open space and environmental values (collectively, "Conservation Values") of great importance to Grantor, Grantee, Third Parties, the people of the Texas Gulf Coast Area and the people of the State of Texas; and

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WHEREAS, in particular, the Easement Area is a unique, diverse ecological area with 39 different native tree species, and 57 other native shrub, flower, grass and vine species, and contains 1,571 ft. of frontage on Spring Creek and is within the defined areas of the Spring Creek Greenway Project, providing a riparian corridor of connected wildlife habitat, and contains 9.487 acres of wetlands, providing migratory stop-over and wintering area for numerous migratory bird species; and

WHEREAS, in particular, simple preservation is consistent with the Conservation Values of the Easement Area so long as it is conducted in a manner consistent with the "permitted uses and practices" described in Exhibit D; and

WHEREAS, the Easement Area, which is 100% in the floodplain which is in the Spring Creek and San Jacinto River Watershed, contains the capacity to retain and absorb flood waters, thereby providing flood protection to downstream residents, providing important natural water quality controls before the water flows into Lake Houston – a primary water source for Houston; and

WHEREAS, the specific Conservation Values of the Easement Area are documented in an inventory of relevant features of the Easement Area, dated December 19, 2008, January 9, 2009 and July 30, 2009 and incorporated by this reference as Exhibit B ("Baseline Inventory Report"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Easement Area at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor is a political subdivision of the State of Texas, with rights, powers and immunities that are defined by Texas law; and

WHEREAS, Grantor intends that the Conservation Values of the Easement Area be preserved and maintained; and

WHEREAS, Grantor further intends, as owner of the Easement Area, to convey to Grantee and Third Parties the right to preserve and protect the Conservation Values of the Easement Area in perpetuity; and

WHEREAS, Grantee is a publicly supported organization pursuant to Section 509(a)(2) of the Internal Revenue Code and is a tax-exempt, nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is to protect and restore relatively natural, vegetated open space areas adjacent to bayous and rivers within the Texas Gulf Coast Area; and

WHEREAS, Grantor is a public entity and no federal or estate income tax deductions were taken or will be filed by Grantor; and

WHEREAS, on December 14, 2008, the State Trustees and Federal Trustees, i.e. the United States Department of Interior acting through the U.S. Fish and Wildlife Service, the Under Secretary of Commerce for Oceans and Atmosphere of the National Oceanic and Atmospheric Administration, the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality issued the Restoration Plan to address natural resources and ecological services injured or lost as a result of releases at or from the Greens Bayou Site; and

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WHEREAS, GB Biosciences will be entering into a Consent Decree for natural resource damages at the Greens Bayou Site; and

WHEREAS, Grantee agrees, by accepting this grant, to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Easement Area for the benefit of this generation and the generations to come; and

WHEREAS, Grantee and Grantor will execute contemporaneously with their execution of this Easement, a Management Plan that shall be consistent with this Easement. The Management Plan is incorporated into and is a part of this Easement. The Management Plan may be amended from time to time by mutual agreement of Grantee and Grantor subject to an opportunity by Third Parties to timely review and object thereto with or without conditions. Changes to the Management Plan shall be made only to the extent they are consistent with this Easement and not objected to by the Third Parties. A copy of the current Management Plan shall be maintained at the office of Grantee and Grantor and copies shall be provided to Third Parties.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and to the extent allowed by the laws of the State of Texas and, in particular, Chapter 183 of the Texas Natural Resources Code, Grantor hereby voluntarily grants and conveys to Grantee a perpetual and assignable conservation easement, said easement being on, over and across all of a certain parcel of land known as the Easement Area of the nature and character and to the extent hereinafter set forth ("Easement").

1. Duration. The duration of this Easement will be for perpetuity from the date of recording in the Official Public Records of Montgomery County, Texas; this Easement will run with the land and bind all successive owners of the Easement Area.

2. Purpose. It is the purpose of this Easement to assure that the Easement Area will be retained in perpetuity, subject to the express provisions of this Easement, in its open space condition and to prevent any use of the Easement Area that will significantly impair or interfere with the Conservation Values of the Easement Area. Grantor intends that this Easement will confine the use of the Easement Area to those activities described and limited in Section 4 and consistent with the purposes of this Easement.

3. Roles of Grantee and Third Parties. To accomplish the purposes of this Easement, the following irrevocable rights are hereby conveyed to the Grantee and Third Parties (to be exercised individually or collectively) by this Easement.

3.1 Preserve and Protect. Grantee and Third Parties will have the right to preserve and protect the Conservation Values of the Easement Area and enforce the terms of this Easement, to prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement; and to require the restoration of such areas or features of the Easement Area that may have been altered or adversely affected by such inconsistent activities;

3.2 Enter and Inspect. Grantee and Third Parties will have the right to enter onto and inspect the Easement Area during reasonable hours in order to monitor Grantor's compliance with and otherwise

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enforce the terms of this Easement; such right of entry shall also apply to volunteers, representatives, and/or contractors hired by Grantee or Third Parties;

3.3 Enforcement. The Grantee shall have the primary obligation for enforcing the terms of the Easement. Grantee and Third Parties will have the right to prevent any activity on or use of the Easement Area that is listed in Exhibit C or that is inconsistent with the purposes of this Easement and to require, pursuant to Section 7, the restoration of such areas or features of the Easement Area that may have been altered or damaged by any inconsistent activity or use; and

3.4 Annual Monitoring and Reporting. The Grantee shall inspect the Easement Area at least once annually to determine if the Conservation Values of the Easement Area are being maintained consistent with the requirements of this Easement. The Grantee shall report the finding of its inspection to the Grantor and Third Parties in writing throughout the life of the Easement to ensure compliance with the requirements and conservation objectives. Annual Performance Reports will be due to the Third Parties within ninety (90) days of the anniversary of the effective date of the Easement. The Third Parties reserve their right to enter and inspect the Easement Area at any time to determine compliance with this Easement and to ascertain whether or not the Conservation Values of the Easement Area are being maintained. The Grantee is not responsible for determining compliance with the requirements set out in the Restoration Plan/Environmental Assessment.

4. Prohibited Uses. Any activity on or use of the Easement Area inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the activities and uses described in Exhibit C are expressly prohibited, except as provided under Section 5 of this Easement.

5. Grantor's Reserved Rights and Responsibilities.

5.1 Existing Uses. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the servient, fee simple estate of such Easement Area, including the right to engage in or permit or invite third parties to engage in all uses of the Easement Area that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Section 4, the rights described in the attached Exhibit D are expressly reserved;

5.2 Transfer. Grantor shall have the right to sell, give, mortgage, lease, or otherwise transfer or convey the Easement Area but may not subdivide the Easement Area. Any such conveyance shall be subject to the terms of this Easement. In the event that the Grantor sells, gives, mortgages, leases, or otherwise transfers or conveys the Easement Area to any other person, agency or entity, Grantor shall notify the Grantee and Third Parties in writing at least thirty (30) days prior to such transfer. Any mortgage would have to be accompanied by a subordination agreement from the mortgage holder. Grantor shall provide documentation to the Grantee and Third Parties at least fifteen (15) days prior to the closing date that the party taking title to the Easement Area has been notified of, has the capability of carrying out, and agrees to accept the Easement's requirements and restrictions;

5.3. Access. Grantor shall guarantee access to the easement along existing roads or other reasonable routes of entry for the Grantee and Third Parties, and volunteers, representatives, and/or contractors hired by the Grantee or Third Parties. This right of access shall be the dominant right and run

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with all exchanges or sales of fee simple property under the control of the Grantor. Any agreements for rights of access to the Grantor's property shall apply to the Grantee and Third Parties, and volunteers, representatives, and/or contractors hired by the Grantee or Third Parties. No right of access by the general public to any portion of the Easement Area is conveyed by this Easement, but controlled access to the public may be implemented at the Easement Area at the discretion of the Grantor; and

5.4 Responsibilities of Grantor. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantor, or in any way to affect any existing obligation of Grantor as owner(s) of the Easement Area. Among other things, this shall apply to:

5.4.1 Costs, Legal Requirements and Liabilities. Grantor retains all responsibilities related to the ownership, operation, upkeep, and maintenance of the Easement Area. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state and local laws, regulations, and requirements. Grantor shall keep the Easement Area free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantee and Third Parties shall have no obligation for upkeep or maintenance of the Easement Area; and

5.4.2 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

6. Notice and Approval.

6.1 Notice of Intention to Undertake Certain Permitted Actions. In order to ensure that a proposed action is authorized in accordance with Section 5 of this Easement and to enable Grantee and Third Parties to ensure that any such activities are designed and will be carried out in a manner not inconsistent with the purposes of this Easement, the Grantor shall provide advanced notice to the Grantee and Third Parties whenever the Grantor or any of the Grantor's lessees propose to construct trails or any type of surface structure on the Easement Area. Whenever notice is required, Grantor shall notify Grantee and Third Parties in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the proposed activity in sufficient detail to permit Grantee and Third Parties to make an informed judgment as to the proposed activity's consistency with the purposes of this Easement;

It shall be the responsibility of the Grantor to notify Grantee and Third Parties in writing immediately upon receiving any notification of a mineral interest owner or lessee planning to exercise their mineral rights. To the extent the Grantor is legally able to control the activities of mineral interest owners, it shall act to incorporate into any lease providing access to the surface of the Easement Area a requirement for the owner or lessee to reclaim any surface damage that may have resulted from any exploration for or extraction of subsurface minerals such that the vegetative cover of the reclaimed area is consistent with the purposes of this Easement; and

6.2 Grantee's and Third Parties' Approval. Where Grantee and Third Parties' approval are required, as set forth in Section 6.1, Grantee and Third Parties shall grant or withhold their approval, with

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or without conditions, in writing within thirty (30) days of receipt of Grantor's written request therefore. Grantee's and Third Parties' approval may be withheld only upon a reasonable determination by Grantee and Third Parties that the action as proposed would be inconsistent with the purposes of this Easement. Any such determination shall be in writing and shall identify, if possible, the alterations in the proposed actions which would allow the Grantee and Third Parties to approve the contemplated actions. In the event Grantee and Third Parties fail to respond in writing within such period, any proposed activity by Grantor shall be deemed approved by Grantee and Third Parties.

6.3 Dispute Resolution. Any dispute that arises under or with respect to this Easement that is not otherwise resolved in accordance with Section 7 shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute. If the parties are unable to resolve the dispute through these informal means, they may elect to resolve the dispute through mutually agreeable alternative dispute resolution procedures within a sixty (60) day period after the dispute arises or, failing that, through judicial means. The costs of alternative dispute resolution shall be borne equally by the Grantor and Grantee.

7. Grantee's and Third Parties' Remedies.

7.1 Notice of Violation; Corrective Action. If Grantee or Third Parties determine that a violation of the terms of this Easement has occurred or is threatened, Grantee or Third Parties shall give written notice to Grantor of such violation and request corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Easement Area so injured to its prior condition in accordance with a plan approved by Grantee and Third Parties. Grantee and Third Parties shall provide Grantor written notice of any event of violation within ten (10) business days after becoming aware of the event. Copies of the written notice shall be mailed to all other parties;

7.2 Injunctive Relief. Grantor shall have no less than thirty (30) calendar days to cure the violation, and more if reasonable under the circumstances, provided Grantor gives the Grantee and Third Parties written notice of the intent to cure or dispute the default within such 30-day period. Within a reasonable time following receipt of Grantor's written response, the Grantee and/or Third Parties shall consult with Grantor regarding the appropriate actions and reasonable time period necessary to cure the violation. Thereafter, the Grantee or Third Parties shall issue a second letter to Grantor that sets forth its determination of appropriate actions and a reasonable time period for curing the violation. If Grantor fails to respond to the initial notice of default or to cure any event of violation within the time period specified in the second notice letter, then the Grantee and/or Third Parties may bring an action at law or equity in a court in Montgomery County to enforce the terms of this Easement, to require the restoration of the Easement Area, to enjoin non-compliance, and/or recover any damages arising from the non-compliance, as well as the costs of the Grantee and/or Third Parties in pursuing these remedies. Notwithstanding the foregoing, nothing in this paragraph prohibits the Grantee or Third Parties from immediately seeking a temporary restraining order, injunction, or similar judicial remedy if necessary to avoid irreparable harm to the Conservation Values protected by this Easement. Notwithstanding anything to the contrary elsewhere in the easement, no party shall be liable to the other for consequential, indirect, or punitive damages;

7.3 Damages. To the extent permitted by Texas law, Grantee and Third Parties shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement. Grantee and Third Parties must first apply any damages recovered toward habitat protection or restoration on the Easement Area to the extent possible. However, if the Grantee and Third Parties are not able to apply any portion of damages recovered toward habitat protection or restoration on the Easement Area, then the Grantee and Third Parties shall use the remaining damages recovered to either acquire or improve property on at least a 1:1 acreage basis of nearby land possessing equivalent conservation values;

7.4 Scope of Relief. Grantor acknowledges that actual or threatened events of non-compliance under this Easement constitute immediate and irreparable harm. Grantee and/or Third Parties are entitled to invoke the equitable jurisdiction of the courts to enforce this Easement. Grantor also acknowledges that Grantee's and Third Parties' right to monetary relief may not be adequate for all types of violations and that Grantee and/or Third Parties are entitled to injunctive relief described in paragraph 6.2 in addition to such other relief and remedies now or hereafter existing at law or in equity. Further, Grantee's and Third Parties' remedies described in this section 6 shall be cumulative;

7.5 Forbearance. Forbearance by Grantee or Third Parties to exercise their rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee or Third Parties of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's or Third Parties' rights under this Easement. No delay or omission by Grantee or Third Parties in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver;

7.6 Waiver of Certain Defenses. Grantor hereby waives any defense of laches (i.e., undue delay), estoppel (i.e., prior statement or act that is deceptively inconsistent with the claim being asserted), or prescription (i.e., adverse possession) with respect to Grantee's or Third Parties' rights to enforce the terms of this Easement. Grantor acknowledges Grantee's and Third Parties' requirement for this provision due to Grantee's and Third Parties' limited presence on the Easement Area;

7.7 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee or Third Parties to bring any action against Grantor for any injury to or change in the Easement Area resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, or earth movement;

7.8 Third Party Enforcement. The Third Parties are authorized to enforce any of the terms of this Easement and may exercise that authority at their sole discretion; and

7.9 Establishment of an Easement Stewardship Fund for Easement Area. GB Biosciences has provided for an Annual Monitoring Easement Stewardship Fee of \$6,000.00 and Conservation Easement Legal Defense Fee of \$5,000.00 for the Easement Area, both one-time fees paid to Grantee at time of closing.

8. Representations and Warranties. Grantor represents and warrants that, to the best of its actual knowledge,

8.1 There are not now any underground storage tanks located on the Easement Area, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Easement Area in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

8.2 There is no pending or threatened litigation in any way affecting, involving, or relating to the Easement Area; and

8.3 No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Easement Area or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

9. Remediation. If, at any time, there occurs a release in, on, or about the Easement Area of any substance which would present an imminent or substantial endangerment to human health or the environment, and for which Grantor is a responsible party under applicable state or federal law, Grantor agrees to take all steps necessary to assure its containment and remediation. Nothing in this section shall be interpreted as creating any rights for any third party not a signatory to this easement. In the event of an emergency, Grantor may carry out an otherwise prohibited use or activity on the Easement Area if necessary to reduce a threat to human health or the environment, provided the action is consistent with applicable federal and state laws and regulations. Actions taken shall minimize damage to conservation values to the extent practicable. However, notice of any such use or activity shall be provided to Grantee and Third Parties in a manner that is as expeditious as is practical under the circumstances.

10. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee or Third Parties to exercise physical or managerial control over the day-to-day operations of the Easement Area, or any of Grantor's activities on the Easement Area, or otherwise to become an operator with respect to the Easement Area within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Texas Solid Waste Disposal Act (Texas Health and Safety Code Annotated, Section 361); or any other federal, state or local law or regulation.

11. Extinguishment and Condemnation.

11.1 Extinguishment. If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. In this event, Grantor shall take steps to sell the Easement Area. The proceeds of such sale shall be placed in a trust account for the purpose of conducting conservation activities or acquiring alternate property. Grantee and Third Parties shall be named as co-trustees on the account with rights to fund the conservation activities or acquire alternate property;

11.2 Condemnation. If all or any part of the Easement Area is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, or altered in any way so as to terminate this Easement, Grantor and Grantee shall act

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jointly, and, at their option, Third Parties, shall act to take appropriate actions at the time of the taking according to the following hierarchy:

1. avoiding taking of the property and preserving it in its present condition: the Grantor, Grantee and, at their option, the Third Parties shall jointly take actions to formally request that the intended proceeding completely avoid the taking of this Easement Area;
2. minimizing and supplementing the loss to the property: if the Easement Area cannot be wholly preserved as a result of the intended proceeding, the Grantor, Grantee and, at their option, Third Parties shall jointly take actions to formally request the intended proceeding minimize its taking of this Easement Area and supplement, on at least a 1:1 acreage basis of nearby land possessing equivalent conservation values, the loss of the Easement Area with a supplemental conservation easement conveyed to the Grantee and granting Third Parties rights of enforcement within one year of notice of the intended proceeding;
3. mitigating the loss of the property: if options (1) and (2) are not acceptable to the Grantee, the Grantor, Grantee and, at their option, Third Parties shall jointly take actions to formally request that the intended proceeding mitigate its taking of this Easement Area, on at least a 1:1 acreage basis of nearby land possessing equivalent conservation values, by conveying a replacement conservation easement to the Grantee and granting Third Parties rights of enforcement within two years of the intended proceedings; or
4. recover full value: if options (1) through (3) are not acceptable to the Grantee, both parties shall jointly take actions to recover full value of the interest in the Easement Area subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor, Grantee and Third Parties in connection with the taking or in lieu purchase shall be paid out of the amount recovered.

11.3 Application of Proceeds. Proceeds shall be placed in a trust account and shall be used to acquire alternate property or fund conservation activities consistent with the goals of the Restoration Plan. Third Parties and Grantee shall be named co-trustees on the trustee account. The acquisition of alternative property or the conduct of additional conservation activities shall be managed by the Trustees (in accordance with the Federal-State MOA) and the Grantee. If the Trustees elect to obtain alternative property to replace the portion of the Easement Area lost to eminent domain, the Trustees shall attempt to acquire similar additional property adjacent to the Easement Area if such acquisition can be accomplished under commercially reasonable terms. If the Trustees are unable to acquire property adjacent to the Easement Area under commercially reasonable terms, the Trustees shall attempt to acquire similar property within the Spring Creek Watershed. If the Trustees are unable to acquire property as described above under commercially reasonable terms, the proceeds from the eminent domain proceeding shall be made available to the Trustees for conservation activities in the Houston-Galveston area.

12. Amendment. Subject to the prior approval of the Third Parties (after consultation with the Federal Trustees), Grantor and Grantee may jointly agree to amend this Easement; provided that no amendment shall be allowed that will affect the validity or enforceability of this Easement or the status of Grantee as a proper holder under any applicable laws, including Chapter 183 of the Texas Natural Resources Code. Any amendment shall be consistent with the purposes of this Easement, shall result in a positive or neutral effect to the conservation values, and shall be approved by the Third Parties in writing prior to taking effect, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Montgomery County, Texas, and at the expense of the party initiating the amendment.

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13. Assignment. Grantee may assign its rights and obligations under this Easement to one of the Third Parties or any organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under Chapter 183 of the Texas Natural Resources Code (or any successor provision then applicable) and any applicable laws of the United States. As a condition of such transfer, Grantee shall (1) provide advance written notice to Grantor in accordance with Section 20, (2) require that the conservation purposes which this grant is intended to advance continue to be carried out, and (3) transfer to the assignee the balance of easement stewardship funds allocated to this Easement. Notwithstanding any other provision of this Easement, Grantee covenants and agrees that it will not assign this Easement without the express written consent of Grantor, which consent shall not be unreasonably withheld. Grantee shall provide written notice to Grantor and Third Parties of any such assignment at least ninety (90) days prior to the date of such assignment. In addition, at least thirty (30) days prior to the transfer, Grantee shall provide documentation to Grantor and Third Parties that the transferee was notified of, is capable of carrying out, and agrees to accept, the Easement's requirements and conditions. No such transfer shall be deemed effective unless and until notice is provided in accordance with Section 20 and this Section 16.

14. Transfers of Property. After the effective date of this Easement, Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Easement Area, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and Third Parties of the transfer of any interest at least thirty (30) days prior to the date of such transfer and the document of conveyance shall expressly refer to this Easement. The failure of Grantor to perform any act required by this section shall not affect the validity of this Easement or limit its enforceability in any way.

15. Reversion. If the Grantee ever ceases to exist or no longer qualifies as a "Holder" under Chapter 183 of the Texas Natural Resources Code or other applicable state law, and fails to make assignment to a qualified holder under paragraph 13 of this Easement, this Easement shall automatically revert to the Grantor. Grantor shall identify another qualified Holder approved in writing by the Third Parties and shall convey this Easement to such Holder within 180 days of reversion. Until Grantor conveys the Easement to a new Holder, Grantor shall manage the Easement Area in accordance with the terms and restrictions of this Easement.

16. Estoppel Certificates. Upon request by Grantor, Grantee shall, within twenty (20) days, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of the Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Easement Area as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefore.

17. Notices. Any notice or demand, request, consent, approval, or communication that any Party requests or is required to give to another shall be in writing and either served personally or sent by facsimile or by certified first class mail, return receipt requested, postage prepaid, addressed to the addresses below. Notice shall be deemed to have been received on the date that it is hand delivered or the date of receipt as shown on the return receipt, or the date of facsimile receipt or receipt as indicated by the Post Office, should delivery be refused. Grantor, Grantee, and the Third Parties may change their identified contact or address for notice or demand purposes by sending notice of such change to all other parties.

Grantor: Montgomery County
c/o Montgomery County Precinct 3
1130 Pruitt
Spring, TX 77380

Grantee: Legacy Land Trust, Inc.
10330 Lake Rd. Bldg. J
Houston, Texas 77070

THIRD PARTY -- Texas Commission on Environmental Quality:
Natural Resource Trustee Program, MC-225
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-1000
Facsimile: (512) 239-4814

THIRD PARTY -- Texas Parks and Wildlife Department:
Natural Resource Trustee Program Coordinator
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
Telephone: (512) 389-8754
Facsimile: (512) 389-8160

THIRD PARTY -- United States Fish and Wildlife Service
Field Supervisor
United States Fish and Wildlife, Ecological Services
c/o TAMU CC
6300 Ocean Drive
USFWS Unit 5837
Corpus Christi, Texas 78412
Phone: (361) 994-9005
Facsimile: (361) 994-8262

18. Recordation. Grantor shall record, at Grantor's expense, within fifteen (15) days of the execution of this instrument by all parties hereto, this instrument in the official records of Montgomery

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County, Texas. Pursuant to Section 10, any amendment to this Easement shall be recorded in the official records of Montgomery County, Texas, and at the expense of the party initiating the amendment. Grantor shall provide Grantee the original signed and recorded easement within fifteen (15) days of recording and shall also provide copies to the Third Parties within fifteen (15) days of recordation.

19. General Provisions.

19.1 Indemnification. Grantor, Grantee and Third Parties to the extent allowed by federal and state law, agree to release, hold harmless, defend and indemnify each other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Easement Area that causes injury;

19.2 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Texas;

19.3 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of Chapter 183 of the Texas Natural Resources Code (or any successor provision then applicable). If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid;

19.4 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby;

19.5 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 15;

19.6 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect;

19.7 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Easement Area. The terms "Grantor", "Grantee," and Third Parties wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its personal representatives, heirs, successors, and assigns, the above-named Grantee and its successors and assigns and the above-named Third Parties and their successors;

19.8 Termination of Rights and Obligations. Unless provided otherwise in the transfer agreement, a party's rights and obligations under this Easement terminate upon transfer of the party's

Spring Creek Bend Preserve Conservation Easement

interest in the Easement or Easement Area, except that liability for acts or omissions occurring prior to transfer shall survive transfer;

19.9 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation;

19.10 Counterparts. The parties will execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling;

19.11 Title. Grantor covenants and represents that Grantor is the sole owner of the Easement Area in fee simple and that the Easement Area is free and clear of any and all encumbrances, except as set forth in Exhibit B. Grantee agrees to monitor all encumbrances contained in Exhibit B and as shown in Exhibit A in accordance with conservation values and as outlined in this Easement; and

19.12 Effective Date. This Easement shall become effective upon the date of last signature below.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

EXECUTED by Grantor, Grantee and Third Parties on the day and year first above written.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Spring Creek Bend Preserve Conservation Easement

GRANTOR:

MONTGOMERY COUNTY, TX

Its authorized Agent
By decree on January 12, 2009
at Montgomery County Commissioners Court

By: Ed Chance
Ed Chance
County Commissioner Precinct 3
Special Commissioner

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 5th day of October, 2009, by Ed Chance, Montgomery County Commissioner Precinct 3, Special Commissioner on behalf of said County, and in the capacity therein stated.

Deborah Arrazate
NOTARY PUBLIC, STATE OF TEXAS



Spring Creek Bend Preserve Conservation Easement

GRANTEE:

LEGACY LAND TRUST, INC.

BY: Sandra Kantor
Sandra Kantor
Chair

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 5th day of October, 2009,
by SANDRA KANTOR, Chair of **LEGACY LAND TRUST, INC.**, on behalf of said corporation and in
the capacity therein stated.

Dania A. Cato
NOTARY PUBLIC, STATE OF TEXAS

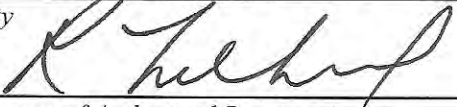


Spring Creek Bend Preserve Conservation Easement

THIRD PARTY

Texas Parks and Wildlife Department

Entity


Signature of Authorized Representative

Date

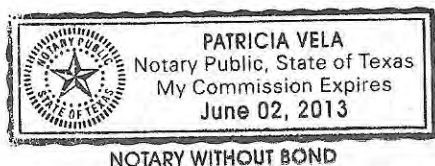
Sept. 29, 2009
Printed or Typed Name of Representative

Ross Melinchuk
Title of Authorized Representative

ACKNOWLEDGMENT

BEFORE ME, a Notary Public, on this day personally appeared ROSS MELINCHUK an authorized representative of the Texas Parks and Wildlife Department, known to be the person whose name is subscribed to the foregoing instrument concerning the property described in Exhibit A, and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 29th day of SEPTEMBER, 2009.





Notary Public

PATRICIA VELA

Typed or Printed Name of Notary

My commission expires the 2nd day of June, 2013.

Spring Creek Bend Preserve Conservation Easement

THIRD PARTY

Texas Commission on Environmental Quality

Entity

Mark Vickery

Signature of Authorized Representative

Date

Mark Vickery

Printed or Typed Name of Representative

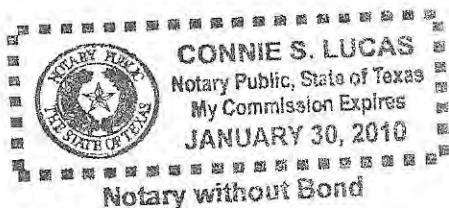
Executive Director

Title of Authorized Representative

ACKNOWLEDGMENT

BEFORE ME, a Notary Public, on this day personally appeared Mark Vickery an authorized representative of the Texas Commission on Environmental Quality, known to be the person whose name is subscribed to the foregoing instrument concerning the property described in Exhibit A, and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 4th day of September, 2009.



Connie S. Lucas
Notary Public

Connie S. Lucas
Typed or Printed Name of Notary

My commission expires the 30th day of January, 2010.

Spring Creek Bend Preserve Conservation Easement

THIRD PARTY

Department of the Interior United States Fish and Wildlife Service

Entity

Brian Millsap

Signature of Authorized Representative

OCT 02 2009

Date

/s/ Brian A. Millsap

Printed or Typed Name of Representative

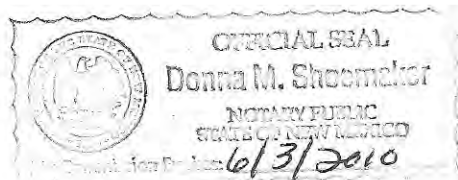
Acting Regional Director

Title of Authorized Representative

ACKNOWLEDGMENT

BEFORE ME, a Notary Public, on this day personally appeared Brian Millsap an authorized representative of the Department of the Interior, known to be the person whose name is subscribed to the foregoing instrument concerning the property described in Exhibit A, and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 2 day of October, 2009.



Donna M Shoemaker
Notary Public

Donna M Shoemaker
Typed or Printed Name of Notary

My commission expires the 3 day of June, 2010.

Spring Creek Bend Preserve Conservation Easement

SCHEDULE OF EXHIBITS

(attached hereto and made a part hereof)

Exhibit A	Legal Description of Easement Area
A-1	Boundary Survey Drawing
A-2	Aerial Boundary Map
Exhibit B	Baseline Inventory Report
B-1	Map of Encumbrances (held at Legacy Land Trust)
B-2	Soil Survey Map (held at Legacy Land Trust)
B-3	Floodway/Floodplain Map (held at Legacy Land Trust)
B-4	Wetland Inventory Map (held at Legacy Land Trust)
B-5	Topographic Map (held at Legacy Land Trust)
Exhibit C	Prohibited Uses and Practices
Exhibit D	Permitted Uses and Practices
Exhibit E	Management Plan

EXHIBIT A

LEGAL DESCRIPTION OF EASEMENT AREA Spring Creek Bend Preserve

METES AND BOUNDS
124.44 ACRES (5,420,557 SQUARE FEET)
IN THE
R.O.W. McMANUS SURVEY, ABSTRACT 346
MONTGOMERY COUNTY, TEXAS
450 Gears Road, Suite 200
Houston, Texas 77067

Being a 124.44 acre (5,420.557 square feet) parcel of land located in the R.O. W. McManus Survey. Abstract Number 346. Montgomery County, Texas, and being out of and a part of a certain tract of land called "Tract 4" conveyed by deed to Bahr Capital Interests, Ltd. as recorded under Clerk's File Number 2006-002182 of the Montgomery County Official Public Records of Real Property, said "Tract 4" being described as "Tract 2" a called 330.62 acre tract, recorded in Volume 500, Page 221. of the Montgomery County Deed Records, said 124.44 acre parcel being more particularly described by metes and bounds as follows with all bearings being referenced to the Texas State Plane Coordinate System, Central Zone, NAD 83;

COMMENCING at a 1-inch iron pipe found for the northwest corner of said called 330.62 acre tract, also being the northeast corner of a called 6.420 acre tract conveyed to Knights of Columbus Spring Council by General Warranty Deed recorded under Clerk's File No. 8009563 of the Montgomery County Official Public Records of Real Property, said iron pipe noted as being 5.3 feet south (found 4.6 feet) of the south line of Spring Forest Section One according to the map or plat thereof recorded under Volume 7, Page 379 of the Montgomery County Map Records;

THENCE, South 02 degrees 12 minutes 15 seconds East, 2287.44 feet along the east line of said 6.420 acre tract, the east line of a called 10.0000 acre tract conveyed to John Flanagan Memorial Home Associates by Special Warranty Deed recorded under Clerk's File No. 9402904 of the Montgomery County Official Public Records of Real Property, the east line of a called 14.00 acre tract conveyed to William R. Craig and Gwendolyn E. Craig by Cash Warranty Deed recorded under Clerk's File No. 2001-006047 of the Montgomery County Official Public Records of Real Property, at 2017.79 feet passing a 112 inch iron rod found 6.06 feet westerly, the east line of the residue of a called 26.2064 acre tract conveyed by Warranty Deed with vendor's lien to Rayford Crossing, Ltd., recorded under Clerk's File Number 2004-007582 of the Montgomery County Official Public Records of Real Property, and the east line of a tract of land called "Tract 1" and being a called 51 .81 acre tract conveyed by General Warranty Deed to Margaret J. Smolik as recorded under Clerk's File Number 2002-021167 of the Montgomery County Official Public Records of Real Property, to a 5/8 inch iron rod with cap stamped "Montgomery and Associates", from which a 112-inch iron rod found, bears North 31 degrees 54 minutes 28 seconds West, 13.30 feet, and

POINT OF BEGINNING of herein described parcel;

THENCE through the interior of said "Tract 4" the following thirteen (13) courses:
South 31 degrees 54 minutes 28 seconds East, a distance of 589.24 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
South 52 degrees 03 minutes 24 seconds East, a distance of 131.22 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
South 53 degrees 42 minutes 06 seconds East, a distance of 126.50 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
South 85 degrees 00 minutes 57 seconds East, a distance of 189.62 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
North 87 degrees 58 minutes 51 seconds East, or distance of 127.52 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;

Spring Creek Bend Preserve Conservation Easement
Exhibit A – Legal Description of Easement Area

South 69 degrees 07 minutes 20 seconds East, a distance of 88.25 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 56 degrees 17 minutes 48 seconds East, a distance of 308.13 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 29 degrees 58 minutes 46 seconds East, a distance of 260.90 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 23 degrees 55 minutes 28 seconds East, a distance of 695.06 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 37 degrees 18 minutes 54 seconds East, a distance of 181.14 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 60 degrees 10 minutes 48 seconds East, a distance of 213.38 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 69 degrees 39 minutes 59 seconds East, a distance of 200.67 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 North 87 degrees 03 minutes 39 seconds East, a distance of 422.53 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") in the west line of a called 9.7756 acre tract conveyed to Spring Creek Utility District, recorded under Clerk's File Number 7910641 of the Montgomery County Official Public Records of Real Property, for the northeast corner of the herein described tract;
 THENCE along the east line of herein described tract, the east line of said "Tract 4", and the west line of said 9.7756 acre tract the following eleven (11) courses:
 South 00 degrees 02 minutes 44 seconds East, a distance of 54.27 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 00 degrees 15 minutes 26 seconds East, a distance of 575.33 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 11 degrees 06 minutes 09 seconds West, a distance of 101.53 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 00 degrees 15 minutes 32 seconds East, a distance of 33.71 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for the beginning of a tangent curve to the right;
 Southwesterly along with an arc to the right having an arc length of 118.43 feet, a radius of 400.00 feet, a delta of 16 degrees 57 minutes 51 seconds with a chord bearing and distance of South 08 degrees 13 minutes 30 seconds West, 118.00 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") to a point;
 South 16 degrees 42 minutes 27 seconds West, a distance of 1075.06 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 62 degrees 22 minutes 13 seconds West, a distance of 143.05 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 North 71 degrees 58 minutes 00 seconds West, a distance of 424.40 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 North 44 degrees 39 minutes 16 seconds West, a distance of 108.97 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 North 71 degrees 58 minutes 00 seconds West, a distance of 433.49 feet to a set 5/8-inch iron rod (with cap stamped "Montgomery and Associates") for an angle point;
 South 03 degrees 01 minutes 59 seconds West, a distance of 36.60 feet to a point in the low bank of Spring Cypress Creek;

THENCE along the bank as it meanders on the north side of Spring Creek the following fourteen (14) courses:
 North 42 degrees 26 minutes 41 seconds West, a distance of 168.20 feet to a point;
 North 35 degrees 49 minutes 07 seconds West, a distance of 108.27 feet to a point;
 North 46 degrees 23 minutes 25 seconds West, a distance of 41.38 feet to a point;
 North 26 degrees 24 minutes 23 seconds East, a distance of 20.26 feet to a point;
 North 18 degrees 22 minutes 00 seconds West, a distance of 240.81 feet to a point;
 North 11 degrees 01 minutes 23 seconds West, a distance of 62.66 feet to a point;
 North 49 degrees 06 minutes 02 seconds West, a distance of 101.77 feet to a point;
 North 68 degrees 53 minutes 52 seconds West, a distance of 168.91 feet to a point;
 North 53 degrees 18 minutes 43 seconds West, a distance of 105.49 feet to a point;

Spring Creek Bend Preserve Conservation Easement
 Exhibit A – Legal Description of Easement Area

North 75 degrees 20 minutes 59 seconds West, a distance of 99.52 feet to a point;
North 78 degrees 43 minutes 24 seconds West, a distance of 101.72 feet to a point;
North 67 degrees 25 minutes 41 seconds West, a distance of 147.61 feet to a point;
North 72 degrees 02 minutes 49 seconds West, a distance of 83.52 feet to a point the west line of said "Tract 4", and the east line of said "Tract 1" for the southwest corner of the herein described tract;

THENCE North 02 degrees 12 minutes 15 seconds West, passing at a distance of 221.74 feet a Sycamore Tree which bears North 38 degrees 38 minutes 57 seconds West, a distance of 11.44 feet, for a total distance of 2834.47 feet along the common west line of herein described tract and said "Tract 4", and the east line of said "Tract 1", back to the **POINT OF BEGINNING, CONTAINING** 124.44 acres (5,420,557 square feet) of land in Montgomery County Texas.

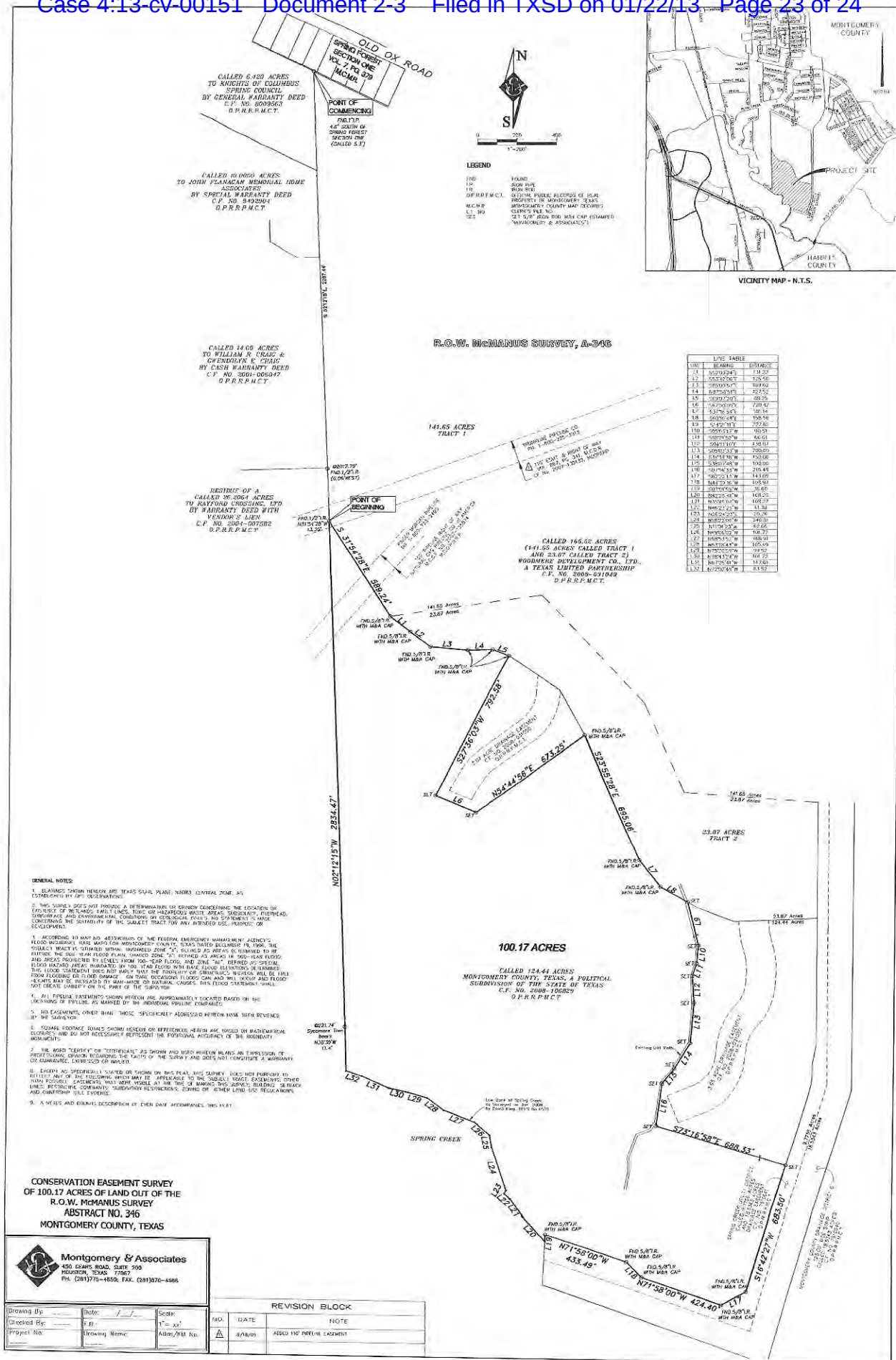


EXHIBIT A-1 Boundary Survey Drawing



Spring Creek Bend Preserve - Field Map
100.17 acres Montgomery County, Texas

Drawn By:
Stephanie Prosser
8-25-2009

Exhibit A-2
Imagery: 2009, True Color
Texas State Plane, South Central, NAD 83