

PERFORMING PARTY	FRIENDS OF THE RIVER SAN BERNARD
AGREEMENT NUMBER	2010-001
SEP TITLE	FRIENDS OF THE RIVER SAN BERNARD NATURAL AREA ACQUISITION AND CONSERVATION PROGRAM

AGREEMENT CONCERNING SUPPLEMENTAL ENVIRONMENTAL PROJECT FUNDS

This Agreement Concerning Supplemental Environmental Project Funds (hereinafter "Agreement") is entered into by and between the Texas Commission on Environmental Quality (hereinafter "TCEQ"), an agency of the State of Texas, and the Friends of the River San Bernard (hereinafter "Performing Party"), a non-profit organization under U.S. Internal Revenue Code, § 501(c), (hereinafter the "Parties").

General Conditions

1. Contact Information

Each Party hereby designates the following person as its representative for implementing this Agreement and for receipt of notice or other information pursuant to the Agreement:

Contact Information for Performing Party:	Name:	Susan Alford, Environmental Chair	
	Telephone:	(281) 589-0898	
	Facsimile:	-----	
	Email:	salford@BergOliver.com	
	Address:	Friends of the River San Bernard P.O. Box 93 Brazoria, Texas 77422	
Contact Information for TCEQ:	Name:	Becky Combs, SEP Attorney	
	Telephone:	(512) 239-6939	
	Facsimile:	(512) 239-3434	
	Email:	bcombs@tceq.state.tx.us	
	Address:	Mail:	Overnight or Courier:
		Litigation Division Attn: SEP Attorney Mail Code 175 Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087	Litigation Division Attn: SEP Attorney Mail Code 175 Texas Commission on Environmental Quality 12100 Park 35 Circle, Bldg. A Austin, Texas 78753

2. Definitions & Clarifications

2.1 “Effective Date” refers to the date this Agreement begins and is the date of the last signatory below.

2.2 “Includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and the use of the terms does not create a presumption that components not expressed are excluded.

2.3 “Party” or “Parties” refers to one or all of the signatories to this Agreement, respectively.

2.4 “SEP” refers to Supplemental Environmental Project.

2.5 “SEP Funds” means funds that, with the TCEQ approval, are contributed to Performing Party by respondents in enforcement actions brought by the TCEQ to offset the administrative penalty due to the State of Texas General Revenue Fund. The term includes interest earned on the original contribution.

2.6 “Project” refers to the project that is approved by the TCEQ as a SEP and described in the exhibits in this Agreement.

2.7 Computation of Times. When any period of time is referred to in the Agreement by days, it will be computed to exclude the first and include the last day of such period. A calendar day of twenty-four hours measured from midnight to the next midnight constitutes a day. A period referred to as a “month” is the period ending on the same numerical day in the subsequent calendar month as the day on which the period began, e.g., from the 9th to the 9th, provided that if the numerical day for calculation of a period of months is greater than the number of actual days in the concluding month, the period will end on the last day of that month. A period referred to as a “week” is a period of seven days. A period referred to as a “year” is a period of 365 days. If the last day of any period described above falls on a Saturday or Sunday or on a state or federal holiday and action is required of the Performing Party on that day, such day will be omitted from the computation and the required day for action will move forward to the next day that is not a Saturday or Sunday or on a state or federal holiday.

3. Exhibits

The following exhibits are attached to this Agreement and incorporated herein by reference:

Exhibit A, entitled “Friends of the River San Bernard Natural Area Acquisition and Conservation Program”.

Exhibit B, entitled “Estimated Budget: Friends of the River San Bernard Natural Area Acquisition and Conservation Program”.

Exhibit C, entitled “**Friends of the River San Bernard-Location Map 1 and Map 2**”.

Exhibit D, entitled “**WETLANDS AMERICA TRUST, INC. Model Conservation Easement**”.

4. Approvable SEP

The Parties agree that the Project meets the definition of a SEP pursuant to Texas Water Code § 7.067 and the TCEQ guidance on SEPs.

5. SEP Funds

5.1 Estimated Project Budget. TCEQ has approved an estimated Project budget, which is attached as Exhibit B. Although TCEQ and Performing Party understand that the final Project costs may vary from Exhibit B, it will be used as guidance for all expenditures of SEP Funds for this Project. If the Project costs for any phase increase by more than ten percent of the estimated cost, Performing Party shall notify the TCEQ prior to expenditure. If Performing Party does not receive TCEQ approval for the increased cost expenditure, SEP Funds shall not be used for that increased cost expenditure. The Parties acknowledge that there may be other Project costs that are not in Exhibit B that may be paid for with non-SEP funds.

5.2 Maintenance of SEP Funds. Performing Party shall maintain SEP Funds in an interest-bearing account used exclusively for such funds at a financial institution that is insured by the Federal Deposit Insurance Corporation (FDIC) and provides regular accounting statements. All earned interest on SEP Funds must be accounted for and it becomes part of the SEP Funds under this Agreement.

5.3 Use of SEP Funds. For any SEP Funds received, Performing Party shall only expend such funds directly on the Project for expenses that are reasonable, necessary, actual, and authorized by Exhibit B of this Agreement. Performing Party shall ensure that the expenditure of SEP Funds results in the performance of adequate and timely work and that purchases are made in accordance with this Agreement. Performing Party shall not use any SEP Funds, nor interest from such funds, for administrative, advertising, or travel expenses associated with the implementation of the Project without prior express written approval from the TCEQ. Performing Party may expend SEP Funds for work being performed by or for Performing Party, by Performing Party’s employees, independent contractors, or volunteers. Performing Party shall not act as a third-party administrator granting funds or funding projects for the benefit of other parties

5.3.1 In addition to the requirements that expenses be reasonable, necessary, actual, and authorized, TCEQ may also require that expenses for work or a specific portion of the work to be performed under this Agreement be allowable under the appropriate cost principles specified in the Texas Uniform Grant management Standards (UGMS) established by the Office of the Governor of Texas under 1 Texas Administrative Code §§ 5.141-5.167.

5.4 Accounting. Performing Party shall specifically account for the receipt and expenditure of SEP Funds, including all interest earned on such funds, on the approved TCEQ reporting form. Failure to provide required reports shall constitute grounds for termination of this Agreement; however, an extension of time may be granted at the sole discretion of the TCEQ.

5.5 Timely Expenditure. Performing Party must expend SEP Funds within one year of receiving the contribution. In the TCEQ's sole discretion, this time period may be extended upon request from Performing Party. Any request for extension must be on the approved TCEQ form, include reasonable justification for the extension, and be received thirty (30) days prior to the end of the required performance period.

5.6 No Guarantee of Funding. Funding under this Agreement is limited to voluntary SEP contributions through the TCEQ enforcement process. Performing Party understands that there is no guarantee that it will receive any SEP Funds under this Agreement.

5.7 Refund of SEP Funds. If at any time the TCEQ determines that SEP Funds were spent in a manner that is not in accordance with this Agreement or that Performing Party failed to spend SEP Funds in a timely manner, as required by this Agreement, Performing Party shall, on request from the TCEQ, account for all SEP Funds and return all unused SEP Funds to the TCEQ within thirty (30) days of demand by TCEQ. Return of SEP Funds will be accompanied by a detailed written accounting connecting the funds to specific docket numbers in a manner acceptable to the TCEQ. These remaining SEP Funds must be in the form of a check or money order made out to "Texas Commission on Environmental Quality" and sent to the TCEQ address in Section 10 of this Agreement. In lieu of the return of unused SEP Funds and with the approval of TCEQ, Performing Party shall transfer the unused SEP Funds to another TCEQ SEP as directed by TCEQ. This obligation survives termination of the Agreement.

6. Other Contributions

Nothing in this Agreement is to be construed to prevent Performing Party from accepting funds from charitable contributors or other sources to the extent permitted by law.

7. TCEQ Enforcement Actions

This Agreement does not create any rights on behalf of Performing Party or contributing respondents in TCEQ enforcement actions. Performing Party shall have no role in the TCEQ enforcement process other than to receive approved, voluntary SEP contributions from respondents and perform the Project according to the terms of this Agreement.

8. Compliance

Performing Party shall perform the Project in accordance with this Agreement as well as applicable state and federal laws, rules, and regulations. In so doing, Performing Party shall obtain all necessary permits and licenses.

9. Term of Agreement

The Agreement begins on the Effective Date and automatically renews in one year increments unless terminated by either Party in accordance with this Agreement.

10. Termination

Upon thirty (30) days prior written notice to the other Party, either Party may terminate this Agreement with or without cause. Within thirty (30) days of the effective date of the termination, Performing Party shall make a written accounting to the TCEQ of all SEP Funds received, expended, and remaining under this Agreement. This accounting must associate SEP Funds to specific docket numbers and must utilize the TCEQ SEP Third Party Administrator Final Report form. With this written accounting, Performing Party shall also return all remaining SEP Funds to the TCEQ that have not been expended. The return of remaining SEP Funds must be in the form of a check or money order made out to "Texas Commission on Environmental Quality" and sent to the TCEQ address listed below. These obligations survive termination of the Agreement.

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

11. Amendments

With the exception of contact information, changes to this Agreement may only be made by written amendment, signed, and agreed to by all Parties. Changes to Section 1, Contact Information, may be made by written notice from one Party to the other Party.

12. Notices and Other Information

12.1 Effective Delivery. All notices and other information will be deemed to be delivered on the date they are received if they are: 1) hand-delivered, as evidenced by a signed acknowledgement of receipt; 2) delivered by a nationally recognized courier service, as evidenced by the confirmation of delivery rendered by the courier service; 3) or mailed through the U.S. Postal Service by certified or registered mail, return receipt requested, as evidenced by the acknowledgement of receipt returned to the sender by the postal authorities. Electronic transfer by facsimile or email is not effective for notice unless acknowledged by the other Party.

12.2 Bankruptcy and/or Business Closing. In the event that Performing Party closes its business and/or files a petition for bankruptcy protection, Performing Party shall provide written notice to the TCEQ within twenty-four (24) hours of such closure and/or filing. Notice must be sent to the designated TCEQ contact under this Agreement as well as the TCEQ Bankruptcy Program. Notice to the TCEQ Bankruptcy Program must include contact information and be sent to: TCEQ Bankruptcy Program, P.O. Box 13087, Mail Code 205, Austin, Texas 78711.

12.3 Notice of Change. Performing Party agrees that all information it provided to the TCEQ remains correct and that in entering into this Agreement, the TCEQ has materially relied on all information provided by Performing Party, regardless of whether such information is incorporated into this Agreement. Performing Party agrees to give prompt written notice to the TCEQ if there is any material change in the information.

13. Records and Reporting

13.1 Records. Performing Party shall maintain organized and legible financial records, books, documents and other evidence reasonably pertinent to its performance under this Agreement for a minimum of three (3) years from the date of receipt of each contribution. Performing Party shall maintain all financial records in accordance with generally accepted accounting principles. This obligation survives termination of the Agreement.

13.2 Quarterly Reports. Performing Party shall submit quarterly reports, within the timelines contained therein, to the TCEQ on the approved TCEQ SEP Third Party Administrator Quarterly Report form ("QR"). The QRs must contain the following information:

13.2.1 A list of the amount of SEP Funds received during the previous quarter with each respondent name, corresponding docket number, and dollar amount received;

13.2.2 A list of actual expenditures on the Project paid for with SEP Funds and any necessary accompanying explanation;

13.2.3 The total balance of the SEP Funds with interest separately noted;

13.2.4 A description of the Project to which SEP Funds were allocated and progress made to date;

13.2.5 Projected expenditures of remaining SEP Funds;

13.2.6 Any additional information Performing Party believes would demonstrate compliance with this Agreement; and

13.2.7 Any additional information requested by the TCEQ or the QR.

13.3 Final Reports. Within thirty (30) days after the conclusion of the Project, Performing Party shall submit a final report on the approved TCEQ SEP Third Party Administrator Final Report form ("FR"). This obligation survives termination of the Agreement. The FR shall contain the following information:

13.3.1 A detailed SEP summary, including pictures, describing the completed Project;

13.3.2 The initial estimated Project budget amount;

13.3.3 A list of the amount of SEP Funds applied to the Project with each respondent name, corresponding docket number and dollar amount received, including the total amount received with interest separately noted;

13.3.4 A list of actual expenditures on the Project that were paid for with SEP Funds, including the total amount spent;

13.3.5 A list of remaining SEP Funds not used for the Project (such funds must be returned to TCEQ within thirty (30) days);

13.3.6 Any additional information Performing Party believes would demonstrate compliance with this Agreement; and

13.3.7 Any additional information requested by the TCEQ or the FR.

13.4 Additional Reporting. Performing Party agrees to provide additional information requested by the TCEQ under this Agreement within thirty (30) days of receipt of the request.

14. Access

14.1 Inspection and Audit. Performing Party shall permit TCEQ as well as authorized state and federal agencies to have unrestricted access to all records, data, and facilities as necessary to review, inspect, and audit all activities and services associated with SEP Funds under this Agreement. Performing Party shall provide appropriate accommodations for such access and inspection.

14.2 Access to Project. Performing Party agrees to allow access by the TCEQ and its representatives to the site of any work performed in whole or in part utilizing SEP Funds and it shall require its contractors to provide the same access.

14.3 These obligations survive termination of this Agreement.

15. Insurance

Unless prohibited by law, Performing Party shall require its contractors and suppliers to obtain and maintain adequate insurance coverages sufficient to protect the Performing Party from all claims and liability for injury to persons and for damage to property arising under the Agreement. If Performing Party is performing work under this Agreement using its own employees and resources, then (unless Performing Party is a governmental entity or this requirement is waived by TCEQ) Performing Party shall obtain and maintain insurance coverages sufficient to protect the Performing Party from all claims and liability for injury to persons and for damage to property arising out of Performing Party's performance of the work under this Agreement.

16. Assumption of Risk.

The Project is performed at Performing Party's sole risk as to the means, methods, design, processes, procedures, and conduct of the Project.

17. Independent Entity

Performing Party is an independent entity and performs the Project as part of its own authorized functions. Performing Party agrees that it undertakes performance in accordance with this Agreement as its own work and does not act in any capacity on behalf of the TCEQ or as a TCEQ-hired contractor or vendor of goods or services.

18. Acknowledgement of Financial Support

Performing Party shall acknowledge the financial support of the TCEQ SEP program in any publication involving the use of SEP Funds or whenever work funded in whole or in part by this Agreement is publicized or reported in news media. All publications or news releases shall contain the following notation (or its equivalent if approved by the TCEQ):

Performed with penalty monies from a
Texas Commission on Environmental Quality enforcement action.

19. Publicity

Performing Party shall not publicize the name of contributors of SEP Funds without consent of the contributor and notice to the TCEQ.

20. Public Information

The Texas Public Information Act (Texas Government Code, Chapter 552) applies to all information delivered to the TCEQ in the course of performance under this Agreement. The TCEQ assumes no obligation to make legal arguments in support of any claims pertaining to confidentiality, patents, trade secrets, or copyright.

21. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the remainder of the Agreement shall be construed to conform to the intent of the Parties.

22. Conflict of Interest

Performing Party shall notify the TCEQ in writing of any actual, apparent, or potential conflict of interest regarding Performing Party or any related entity or individual performing or having involvement with any portion of the Project. At the TCEQ's request, Performing Party shall ensure that any entity with an organizational conflict of interest or an individual with a personal conflict of interest will not take part in any way in the performance of the Project. Performing Party agrees that the TCEQ has sole discretion to determine whether a conflict exists.

23. Governing Law

This Agreement shall be governed by, construed, and interpreted under the laws of the State of Texas, as well as any applicable federal law.

24. Venue

Performing Party agrees that the Agreement is being performed in Travis County, Texas because this Agreement has been solicited and is being administered in Travis County, Texas. Performing Party agrees that any permissible cause of action involving this Agreement arises solely in Travis County. This provision does not waive the TCEQ's sovereign immunity.

25. Sovereign Immunity

The Parties agree that this Agreement does not waive the State of Texas' sovereign immunity or official immunity to which TCEQs officers, employees, or agents are entitled relating to suit, liability, and the payment of damages.

26. Assignment

No delegation, transfer, or assignment of duties, obligations, or rights under or interests in the Agreement will be binding on the TCEQ without its express written consent. Any such delegation, transfer, or assignment made without the written consent of TCEQ is void. No delegation, transfer, or assignment will release or discharge Performing Party from any duty or responsibility under this Agreement.

27. Survival of Obligations

All representations, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Agreement, will survive beyond the termination or completion of the Agreement.

28. Indemnification

To the fullest extent permitted by law, Performing Party shall indemnify and hold harmless TCEQ and its representatives from and against all losses, liabilities, damages, and other claims of any type arising from the performance of the Project by the Performing Party or its contractors, subcontractors, suppliers and agents, including those arising from workmanship, materials, or from a breach of applicable laws, regulations, safety standards, or directives regardless of whether such acts or omissions are negligently or recklessly performed. This covenant survives the termination of the Agreement.

29. Full Integration

This Agreement, including all exhibits, merges any prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding the Project.

30. Counterparts

This Agreement may be signed in any number of counterparts, and as signed, shall constitute one Agreement binding on the Parties hereto, even though the Parties do not sign the same counterpart.

31. Authorized Signatories

The Parties agree that the signatories to this Agreement are authorized to enter into this Agreement on behalf of the entities indicated below each respective signature. Furthermore, the Parties agree that each is bound by the terms and conditions of this Agreement after it is signed by each Party.

32. Conflicting Conditions

There are Special Conditions and a Project Description to this Agreement which may be more restrictive than the General Conditions to this Agreement. If there is a conflict between the Special and the General Conditions, the Special Conditions and the Project Description control.

Exhibit A

Friends of the River San Bernard Natural Area Acquisition and Conservation Program

Project Description

Summary: This is a land and water preservation project aimed at preserving approximately 645 acres of a contiguous wetland corridor along the San Bernard River in lower Fort Bend County. Ducks Unlimited has protected an adjacent 114 acre tract with two conservation easements, but the contiguity of this wetland corridor greatly depends on the acquisition and preservation of the remaining acreage.

Definitions:

1. "Acquisition Cost" includes only the cost per acre of the San Bernard Conservation Easements; it does not include miscellaneous real estate closing costs associated with the purchase of the San Bernard Conservation Easements.
2. "Conservation Easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations designed to: (A) retain or protect natural, scenic, or open-space values of real property or assure its availability for agricultural, forest, recreational, or open-space use; (B) protect natural resources; (C) maintain or enhance air or water quality; or (D) preserve the historical, architectural, archeological, or cultural aspects of real property. TEX. NAT. RES. CODE ANN. §183.001(1) (Vernon 2010).
3. "Holder" means: (A) a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or (B) a charitable corporation, charitable association, or charitable trust created or empowered to: (i) retain or protect the natural, scenic, or open-space values of real property; (ii) assure the availability of real property for agricultural, forest, recreational, or open-space use; (iii) protect natural resources; (iv) maintain or enhance air or water quality; or (v) preserve the historical, architectural, archeological, or cultural aspects of real property. TEX. NAT. RES. CODE ANN. § 183.001(2) (Vernon 2010).
4. "Phases" refers to Phase One, Two and Three of the acquisition of the San Bernard Conservation Easements, as referenced in the exhibits.
5. "San Bernard Conservation Easements" refer to the conservation easements on three (3) tracts of land comprising approximately 645 acres in the wetland corridor on the north side of the San Bernard River and west of Armstrong Road, as referenced below.

Requirements: This SEP will focus on three (3) tracts of land comprising approximately 645 acres in the wetland corridor on the north side of the San Bernard River and west of Armstrong Road. (See Exhibit C Location Maps). Performing Party shall use SEP Funds to acquire conservation easements on these tracts to provide permanent protection and stewardship of these lands and waters. All tracts acquired in whole or in part with SEP Funds shall be preserved in

perpetuity through conservation easements that comply with Subchapter A, Chapter 183, Texas Natural Resources Code. The Holder of the San Bernard Conservation Easements shall be WETLANDS AMERICA TRUST, INC. (affiliated with Ducks Unlimited) which Performing Party certifies is an entity that meets the definition of "holder" under Section 183.001(2), Texas Natural Resources Code. Performing Party shall utilize conservation easement documents that are substantially similar to the model in Exhibit D, unless it receives specific written authorization from TCEQ.

1. **Performance Initiation.** Performing Party shall initiate the Project when funding is sufficient to purchase the Phase One San Bernard Conservation Easement. In the event sufficient funds are not received to perform the SEP within the first year of this Agreement, Performing Party may request an extension of time under Section 5.5.
2. **Agreement for Permanent Protection of Property.** Performing Party has an agreement with WETLANDS AMERICA TRUST, INC. (aka Ducks Unlimited) that Performing Party shall transfer at no cost to WETLANDS AMERICA TRUST, INC. the San Bernard Conservation Easements. WETLANDS AMERICA TRUST, INC. has agreed that it will accept the transfer from Performing Party, and, as Holder of the San Bernard Conservation Easements, will protect the property in perpetuity. Performing Party shall provide documentation of said agreement to TCEQ within thirty (30) days of the effective date of this Agreement. If for any reason WETLANDS AMERICA TRUST, INC. does not accept the transfer of the San Bernard Conservation Easements, then Performing Party shall transfer them to another qualified Holder approved by TCEQ, within a reasonable time frame as determined by TCEQ. If the Parties cannot agree on another qualified organization within sixty (60) days from TCEQ's receipt of notice from Performing Party that WETLANDS AMERICA TRUST, INC. has failed to accept the donation, then all SEP Funds must be returned to TCEQ upon demand in compliance with this Agreement.
3. **Transfer.** Within thirty (30) days of acquisition, Performing Party shall transfer ownership of the San Bernard Conservation Easements to WETLANDS AMERICA TRUST, INC. for permanent protection of the property. Performing Party shall handle all processes required for these transfers and shall provide documentation of each transfer as outlined below. Prior to transfer, Performing Party shall not cause, suffer or allow any activities on the property that could damage the property's conservation value.
4. **Phased Acquisition.** Performing Party may purchase the San Bernard Conservation Easements according to a phased schedule. Phase One, containing 30.1 acres, must be completed before initiation of Phase Two. In the Performing Party's discretion, Phase Two and Three parcels, containing approximately 615 acres, may be subdivided into additional or smaller tracts for acquisition purposes.
5. **Property Inspection.** WETLANDS AMERICA TRUST, INC. has completed a principal property inspection on the land subject to the San Bernard Conservation Easements. Performing Party shall provide TCEQ a copy of this principal property inspection within thirty (30) days of the effective date of this SEP Agreement. Performing Party shall also

provide TCEQ with copies of all baseline documentation reports for the San Bernard Conservation Easements within thirty (30) days of completion.

6. Due Diligence. Performing Party must obtain a current metes and bound land survey, appraisal, and title commitment for each tract (or subtract) for the San Bernard Conservation Easements prior to closing and provide TCEQ with copies within thirty (30) days after receipt. Although a title commitment dated March 4, 2010, has been provided to the TCEQ for Phase One, Performing Party must update this document prior to closing. Performing Party shall ensure that any properties to be covered by a Conservation Easement do not already have encumbrances that adversely affect conservation values.
7. Purchase Price Documentation. Performing Party shall provide the TCEQ with a copy of all closing documents for each San Bernard Conservation Easement purchase using SEP Funds within thirty (30) days of closing.
8. Recorded San Bernard Conservation Easements. Performing Party shall record a copy of each San Bernard Conservation Easement in the county deed records within fifteen (15) days after closing and provide the TCEQ a recorded copy of the Conservation Easement within thirty (30) days after closing.
9. No Mitigation Bank. Performing Party certifies that this land subject to the San Bernard Conservation Easements is **not** part of a mitigation project. If TCEQ staff becomes aware that this is a mitigation project, TCEQ will immediately terminate this Agreement.

Environmental Benefit

Permanently protecting this land through the use of conservation easements will prevent pollution, enhance the quality of the environment, and may reduce the amount of pollutants reaching the environment. The land is located within the Central Flyway on the Upper Texas Coast; where approximately 10 million ducks and geese winter each year. Conservation of habitat for migratory birds and other wetland dependent wildlife is critical for maintaining the rich diversity of bird life in this area. Wetlands also benefit people by recharging groundwater supplies, reducing coastal storm surges, retaining flood waters during storm events and improving water quality. By protecting this land and preventing development, water quality, air quality and wildlife habitat will be protected.

Eligible Areas and Counties

Brazos-Colorado Coastal River Basin and Austin, Brazoria, Colorado, Fort Bend, Matagorda, and Wharton Counties.

Minimum Contribution Amount

\$500.

Exhibit B

**Estimated Budget for Friends of the River San Bernard
Natural Area Acquisition and Conservation Program**

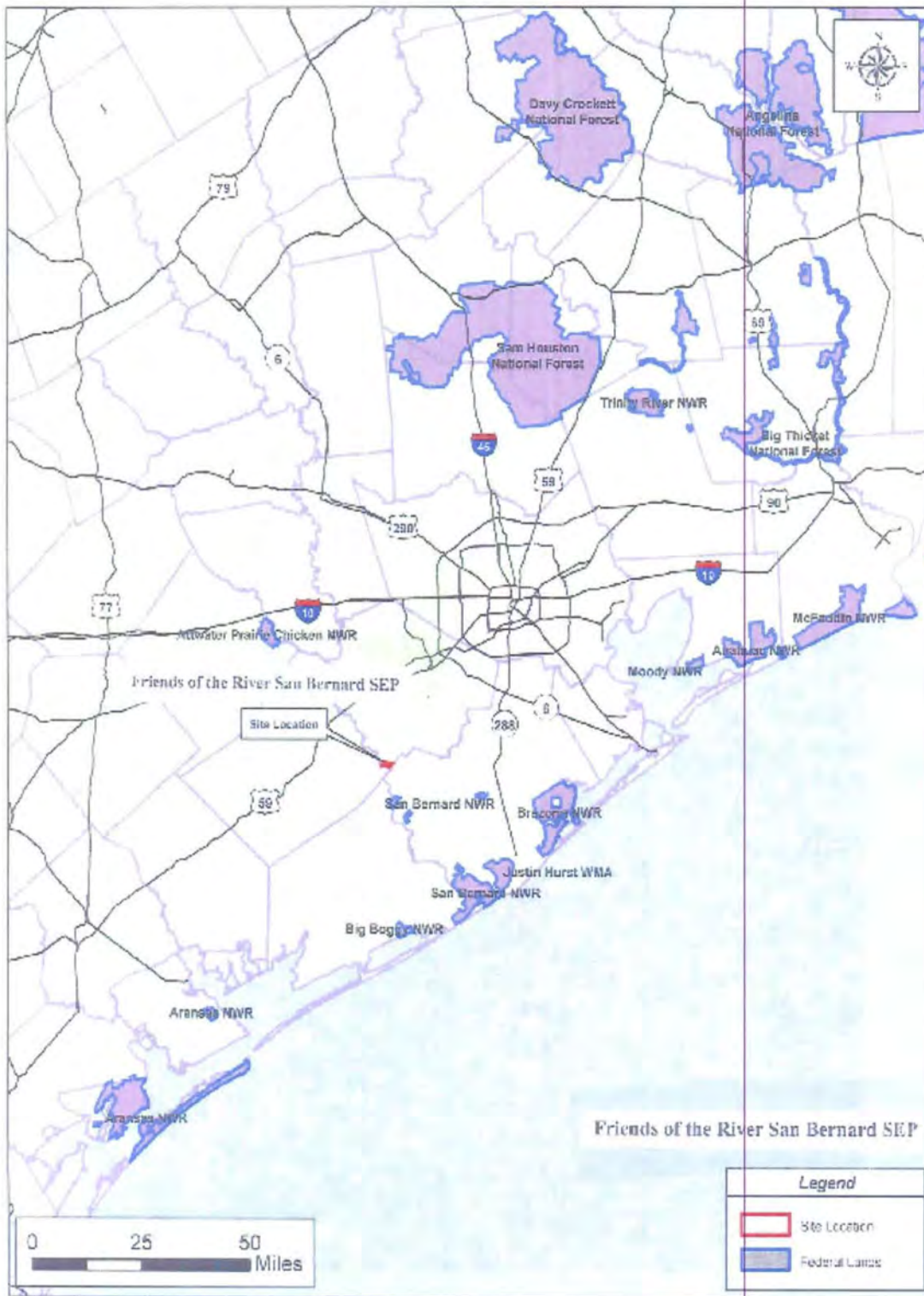
The planned San Bernard Conservation Easements acquisition is for the entire 645 acre project, for a total cost of \$1,278,750. This SEP plans for a phased acquisition starting with Phase One containing 30.1 acres directly adjacent to the San Bernard River. Phases Two and Three, containing approximately 614 acres and may be broken down into multiple purchases for acquisition feasibility purposes.

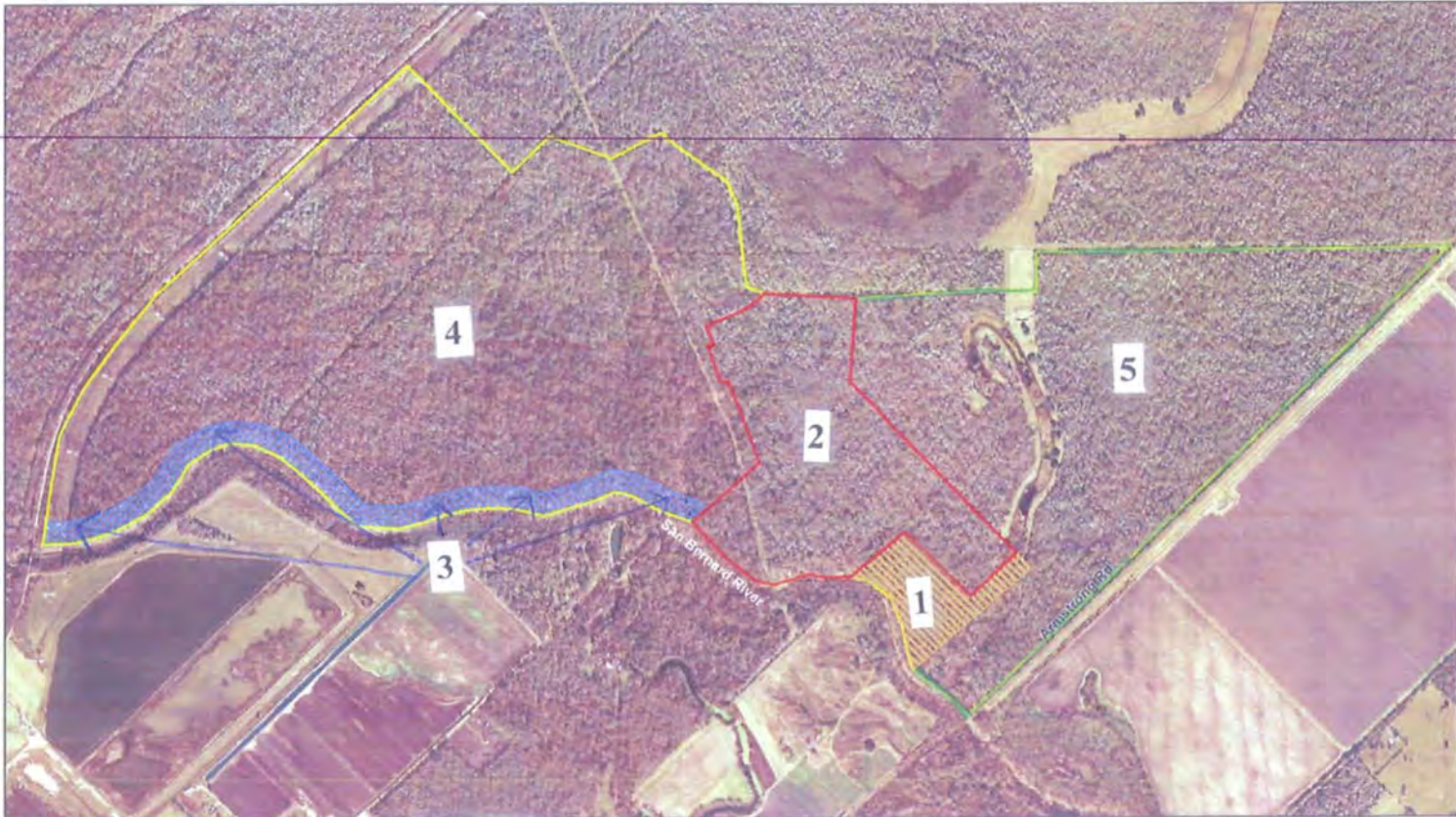
No.	Expense Item	Acreage	Cost per Acre				Total
1	San Bernard Conservation Easement Acquisition – Phase One	30.1 acres	\$2,475*				\$74,250
2	San Bernard Conservation Easement Acquisition – Phase Two	415 acres	\$1,900				\$788,500
3	San Bernard Conservation Easement Acquisition – Phase Three	200 acres	\$2,000				\$400,000
4	Metes and Bounds Land Surveys	2	\$5,000				\$10,000
5	Appraisals	2	\$3,000				\$6,000
	Total Estimated Budget						\$1,278,750

* Exact cost is slightly less.

Exhibit C

Location Map 1





0 400 800 1 600 Feet



1-WETLANDS AMERICA TRUST, INC. 2002 Conservation Easement

2-WETLANDS AMERICA TRUST INC. 2000 Conservation Easement

3-Friends of the River San Bernard, SEP Conservation Easement Acquisition Phase One

4-Friends of the River San Bernard, SEP Conservation Easement Acquisition Phase Two

5-Friends of the River San Bernard, SEP Conservation Easement Acquisition Phase Three



Exhibit D

WETLANDS AMERICA TRUST, INC.
Model Conservation Easement

CONSERVATION EASEMENT

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (this "Easement") is made as of this ____ day of _____ 2010, by _____, an individual (together with his heirs, personal representatives, successors, and assigns hereinafter collectively referred to as "Grantor") and WETLANDS AMERICA TRUST, INC., a non-profit corporation organized under the laws of the District of Columbia, One Waterfowl Way, Memphis, Tennessee 38120 (together with its successors and assigns hereinafter collectively referred to as "Grantee");

WHEREAS, Grantor is the owner in fee simple of certain real property ("Protected Property") known as the Easement Area in Fort Bend County, Texas, which is ____ acres, more or less, and more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Protected Property consists of natural areas of significant ecological, scenic, and aesthetic value, and has substantial value and potential as open space, and a natural, ecological, and scientific resource; and,

WHEREAS, the Easement protects land in a relatively natural state that contains bottomland hardwood along the San Bernard River in an area where such habitat is disappearing; and

WHEREAS, the Easement is adjacent to a conservation easement held by WETLANDS AMERICA TRUST, INC. and

WHEREAS the Easement will protect the scenic view of the Protected Property as it is viewed by the public from the San Bernard River; and

WHEREAS, the Grantee is a non-profit, 501(c)(3) "qualified conservation organization" as defined in Section 170(h) of the Internal Revenue Code of 1986, as amended and the regulations thereunder ("the Code") whose purpose is to preserve, enhance, and conserve natural areas as for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Uniform Conservation Easement Act of 1981 as adopted by the State of Texas in Texas Natural Resources Code Sections 183.001-183.005, as amended, permits the creation of conservation easements for the purposes of, among other things, retaining or protecting natural, scenic, historical or open space values of real property, assuring its availability for agricultural, forest, recreational, educational or open space use, protecting natural features and resources, maintaining or enhancing air and water quality or preserving the natural, historical, architectural, archeological or cultural aspects of real property, (the "Conservation Values");

WHEREAS, Grantor and Grantee recognize the natural, scenic, aesthetic, and special character and opportunity for enhancement of the Protected Property, and have the common purpose of the conservation and protection in perpetuity of the Protected Property as "a relatively natural habitat of fish, wildlife or plants or similar ecosystem" as that phrase is used in 26 U.S.C. Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986, as amended ("the Code"), and in regulations promulgated thereunder by placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer from the Grantor to the Grantee of affirmative rights for the protection of the Protected Property; and so as to qualify as a contribution of a "qualified conservation contribution" as that term is defined under Section 170(h)(2)(C) of the Code; and

WHEREAS, the specific Conservation Values of the Protected Property on the date of this Easement are documented in the Baseline Documentation Report dated _____ (referred to as "Report"), a copy of which is on file with both the Grantor and the Grantee. Both parties agree the Report provides an accurate representation of the Protected Property and the condition of the same as of the date of this Easement as required by Treasury Reg. 1.170A-14(g)(5), and is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement, and may include:

The appropriate survey maps from the United States Geological Survey, showing the property line of the Protected Property and other contiguous or nearby protected areas;

A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification

of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);

An aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date the donation is made; and

On-site photographs taken at appropriate locations on the Protected Property; and other documentation possessed (at present or in the future) by the Grantor which the Grantor shall make available to the Grantee, its successors and assigns, which documentation establishes the conditions of the Protected Property at the date of this Easement as required by Treasury Reg. 1.170A-14(g)(5).

WHEREAS, Grantor represents that the Protected Property is free and clear of any liens or encumbrances, except as contained and disclosed in the real property records of Fort Bend County, Texas, and that as owner of the Protected Property, Grantor has access thereto, the right to convey to the Grantee, and the right to preserve and protect the Conservation Values of the Protected Property in perpetuity; and

NOW, THEREFORE, the Grantor, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions and restrictions herein set forth and, subject to such restrictions and reservations herein, as an absolute and unconditional gift, does hereby freely give, grant, bargain, donate and convey unto the Grantee, and its successors and assigns, the Easement over the Protected Property subject to the covenants, conditions and restrictions hereinafter set forth which will run with the land and burden the Protected Property in perpetuity.

Purpose: It is the purpose of this Easement ("the Purpose") to assure that the Protected Property will be retained in perpetuity predominantly as a wetland. The Protected Property shall be protected for conservation purposes and to prevent any use of the Protected Property which will significantly impair or interfere with the wetland functions, as well as its educational, aesthetic, scientific, ecological, and Conservation Values, its wildlife and wetland habitat, natural resources or associated ecosystem, and to ensure that the objectives set out in the Report are met.

SECTION I.
GRANTEE'S AFFIRMATIVE RIGHTS

1.1 Visual Access. The Grantee shall have the right of visual access to and view of the Protected Property in its natural, scenic, and open and undisturbed condition, provided however, that said right shall not be construed to permit general public access over or upon the Protected Property.

1.2 Right of Entry and Access. The Grantee shall have the right with prior notice to Grantor to enter the Protected Property no more frequently than four (4) times per year for the purposes of inspecting same to determine compliance herewith. The right of entry and access herein described does not extend to the public or any person or entity other than the Grantee, its agents, employees, successors, and/or assigns. In the event of an emergency and/or any circumstances which may cause immediate harm to the Conservation Values, the Grantee may seek immediate injunctive relief to mitigate such harm. The Grantee shall provide to the Grantor a copy of any report generated as a result of such inspection within 90 days after the inspection, and Grantee shall provide a copy of such report to the Friends of the River San Bernard, a Texas non profit organization.

1.3 Management Plan. The right of the Grantee at its discretion to develop a management plan for rare or endangered plant or animal species in the event that they are found to exist on the Protected Property and to implement said plan with the permission of the Grantor, which permission shall not be unreasonably withheld or delayed. Costs for such a plan shall be paid by Grantee.

1.4 Value Used as Match. Grantee reserves the right to use the value of this Easement donation as match for any state, local, or federal conservation grant. Should it be used for a match for a North American Wetlands Conservation Act ("NAWCA") grant, Grantee hereby agrees to be bound by the terms of any NAWCA grant as it relates to the Protected Property.

1.5 Right of First Refusal. The Grantor hereby gives the Grantee the right of first refusal to purchase the Protected Property in the event that the Grantor shall elect to sell the Protected Property to anyone other than a relative by blood or marriage of the Grantor. If the Grantor receives a bona-fide offer to purchase the Protected Property other than from a relative as stated above, and is willing to accept the offer then, before acceptance, the Grantor shall offer Grantee,

in writing, the right to buy the Protected Property, at the same price and on the same conditions as the bona-fide offer. Such offer shall include the price, terms, and conditions of the bona-fide offer which the Grantor is prepared to accept. The Grantee shall notify the Grantor within thirty (30) days following such notice if it intends to exercise its right to purchase the Protected Property on such terms provided by the Grantor.

SECTION II.

GRANTOR'S RESERVED RIGHTS AND RESTRICTIONS

The Grantor's exercise of all Reserved Rights will be in full accordance with all applicable local, state and federal laws and regulations, as well as in accordance with the Purpose of this Easement. Grantor hereby agrees to give written notice to the Grantee prior to exercising any Reserved Rights.

2.1 Uses. There shall be no agricultural, commercial or industrial activity undertaken or allowed on the Protected Property nor shall any rights of passage across or upon the Protected Property be allowed or granted to third parties other than Grantor's successors and assigns.

2.2 Subdivision. The Protected Property may not be subdivided, partitioned, or otherwise divided from the whole for residential development, notwithstanding that the Protected Property may have been acquired in separate parcels or lots or may be subject to an approved subdivision; for sale or transfer in multiple undeveloped parcels.

2.2(a) Exceptions. The Grantor may enter into boundary line agreements that result in conveyances of parcels smaller than the whole to resolve bona fide boundary disputes, so long as such conveyances are:

- (i) for legally necessary purposes;
- (ii) accomplished via deed and recorded pursuant to State of Texas conveyancing regulations;
- (iii) given prior, written consent by the Grantee, which shall not be unreasonably withheld, provided that any conveyances have a *de minimis* effect on the total acreage of land protected under this Easement;

- (iv) subject to the terms and conditions of this Easement including, but not limited to, provisions restricting conveyed parcels from development and the building of structures on the conveyed parcels; and
- (v) any portion of the Protected Property may be conveyed to an entity that meets the qualification set forth in this Easement for permanent conservation ownership by such a qualified entity, so long as said transfer meets the requirements of this Section.

2.3 Structures. There are no structures on the Protected Property. There shall be no construction or placing of buildings, docks, bridges, or other structures including, but not limited to, transmission or receiving towers, energy facilities, billboards, or water tanks on the Protected Property. There will be no mobile homes, house trailers, temporary shelters or vehicles of any sort providing living quarters on the Protected Property. This restriction is not intended to apply to temporary parking of recreational vehicles so long as no commercial use is made of such recreational vehicles.

2.4 Roads. There shall be no building of any new roads, nor widening of existing roads; however, the Grantor reserves the following rights:

2.4(a) the right to maintain and replace existing roads at the same location with roads of like size and composition;

2.4(b) the right to widen existing roads for utility rights-of-way; and

2.4(c) the right to maintain roads which shall be limited to normal practices for non-paved roads, such as the removal of dead vegetation, necessary pruning or removal of hazardous trees and plants, application of permeable materials necessary to correct erosion, placement of culverts, water control structures, and bridges, and maintenance of roadside ditches.

2.5 Hunting and Fishing. The Grantor reserves the right for himself (his heirs, beneficiaries, and assigns, as a covenant running with the land), Grantor's family members and Grantor's guests to hunt and fish on the Protected Property.

2.6 Leases. Grantor reserves the right to lease, or grant other less-than-fee interests in all or a portion of the Protected Property for any use permitted to the Grantor under this Easement, provided that such lease or other interest is consistent with and subject to the terms of this Easement, and is not of a nature or terms as to constitute an impermissible subdivision of the

Protected Property. A sporting and/or hunting club shall be specifically allowed, and the club and its members shall comply with the terms of this Easement.

2.7 Water Resources. The Grantor reserves the right to develop and maintain those water resources and wetlands on the Protected Property necessary to wildlife, so long as such development and maintenance does not impair any of the water resources or wetlands. Permitted activities shall include, but are not limited to:

2.7(a) the right to develop, restore and enhance water resources for fisheries and wildlife improvement;

2.7(b) the right to undertake bank stabilization measures and stream and watercourse restoration;

2.7(c) the right to repair, replace or maintain existing and/or historic wetland impoundments and water control structures; and

2.7(d) the right to construct new impoundments and water control structures. The impoundments are recognized by both Grantor and Grantee as beneficial to waterfowl, and other wetland dependent plants and animals. The impoundments shall be managed primarily for waterfowl. To the greatest extent feasible and practical, management of the impoundments will be carried out in a manner that is conducive to providing feeding and nesting habitat for waterfowl, shorebirds, wading birds and birds of prey. Within the existing impoundments internal ditching and diking will be allowed.

2.8 Clearing. The Grantor reserves the right to maintain and cultivate the wildlife food plots that exist on the Protected Property as shown in the Report. The Grantor also reserves the right to cultivate additional wildlife food plots on the Protected Property which do not impair the Conversation Values or the Purpose of this Easement. The Grantor reserves the right to construct firebreaks as necessary.

2.9 Vegetation Maintenance. The Grantor reserves the right to cut and remove grass or other vegetation, including the elimination of invasive species and, to the extent customary, to perform routine upkeep, maintenance, landscaping, including the planting of trees, shrubs, flowers, and other native plant species, consistent with the Purpose of this Easement. Subject to other provisions of this Easement, the Grantor reserves the right to selectively cut, burn, mow and clear trees and vegetation in existing fields for waterfowl habitat enhancement and

protection. The Grantor reserves the right to undertake activities for fire protection, road maintenance, tick and mosquito control. All such activities shall be undertaken in order to preserve water quality and protect the present condition of the Protected Property.

2.10 Timber. There shall be no cutting or harvesting of timber on the Protected Property, however, the Grantor reserves following rights:

2.10(a) the right to cut and/or harvest dead or diseased trees and trees that present hazards to persons or property and to clear brush; and

2.10(b) the right to conduct timber harvests in accordance with a Forest Management Plan. Prior to conducting any timber harvest, Grantor must secure Grantee's written approval of a Forest Management Plan for the affected area. Grantee may withhold approval or conditionally approve the Plan if that Plan does not adequately protect the Conservation Values of the Protected Property and comply with the requirements of Section 2.10(b)(i) below.

(i) Forest Management Plan: A primary goal of the Forest Management Plan shall be the protection and/or enhancement of the Protected Property's waterfowl habitat and if possible, the other Conservation Values protected by the Easement, as determined by the Grantee. The Plan must be prepared by a licensed and/or registered forester utilizing best management practices that are designed to achieve compliance with the terms of this Easement and to protect the Conservation Values of the Protected Property, giving first priority to the protection and/or enhancement of waterfowl habitat. The Grantor may rely upon the advice or recommendations of such foresters, wildlife experts, ecologists, conservation biologists, or other experts as Grantor may select to determine whether activities and practices proposed by the plan are consistent with the terms hereof, or would otherwise not be detrimental to the conservation purposes of this Easement. Such Forest Management Plan may be amended from time to time by the mutual written consent of the Grantor and Grantee and as needed to adequately protect the Conservation Values of the Protected Property, with priority given to the protection of waterfowl habitat.

2.11 Agrichemicals. The Grantor reserves the right to use agrichemicals, including, but not limited to, fertilizers, biocides, herbicides pesticides and rodenticides, but only as approved by the United States and the State of Texas as necessary to accomplish permitted activities and according to applicable government regulations.

2.12 Minerals. All minerals, gas, oil and other hydrocarbon rights are reserved by Grantor and not conveyed by this Easement; provided that Grantor reserves to himself, his heirs and assigns and to all predecessors in title, their heirs, Grantees, personal representatives and assigns who have reserved or conveyed title to such mineral, gas, oil and other hydrocarbon rights, all interest in minerals, gas, oil and other hydrocarbon products found or to be found in, on or under the Protected Property; provided that any lessee of Grantor who leases the minerals, gas, oil and related products for the purpose of exploring for, developing or extracting minerals, gas, oil or related hydrocarbon products on or under the Protected Property shall be subject to the following restrictions and covenants:

2.12(a) no water shall be utilized on the Protected Property which would cause interference with surface water rights of Grantor, the wells and streams which exist on the Protected Property, or other sources of water on the Protected Property;

2.12(b) whenever possible, access to exploration and/or extraction sites of minerals, gas, oil, or related hydrocarbons products shall be by existing roads and the use of land adjacent thereto for pipelines and gathering systems;

2.12(c) any new road shall conform to the standards of this Easement;

2.12(d) any surface disturbance resulting from permitted subsurface exploration or extraction activities shall be restored upon completion to a condition similar or equivalent to its state prior to the disturbance, by restoring soils and replanting suitable domestic vegetation;

2.12(e) any wastewater resulting from such activities which is of materially poorer quality than the existing water supplies shall be treated so that its quality is substantially equivalent to existing water supplies;

2.12(f) there shall be no exploration or extraction of minerals, gas, oil or related hydrocarbons by any surface mining method, within the meaning of Section 170 (h)(5)(B) of the Code and the regulations promulgated thereunder, nor shall there

be any exploration or extraction by any surface mining. Exploration or extraction of the subsurface mineral rights may occur on two drill sites located off of the Protected Property. These two sites are not encumbered by this Easement and the location of each is described in the real property records of Fort Bend County, Texas;

2.12(g) The Grantor shall provide Grantee with advance written notice at least sixty (60) days prior to engaging in any exploration for or extraction of minerals, gas, oil and other hydrocarbon products from beneath the Protected Property whether or not such exploration or extraction could result in any surface disturbance. Grantor shall provide Grantee with advance written notice at least ten (10) days prior to leasing, selling, or otherwise disposing of the rights to minerals, gas, oil, and other hydrocarbon products from beneath the Protected Property; and

2.12(h) There may not be at any time extraction or removal of minerals, gas, oil and other hydrocarbon products by any surface strip mining method.

2.13 Signs. The Grantor reserves the right to construct, place and maintain directional signs, signs indicating and identifying occupancy and signs advertising the sale of the Protected Property. Signs may not exceed 14 inches by 18 inches in size.

2.14 Consistent Uses. The Grantor has the right to engage in any and all acts or uses not expressly prohibited herein that are not inconsistent with the Purpose of this Easement.

2.15 Environmental Credits and Government Programs. The Grantor reserves the right to participate in private, federal, state, or county conservation and/or preservation contracts, programs, or leases existing now or permitted in the future for any activity or use permitted on the Protected Property under this Easement, including but not limited to the Farm Bill Conservation Programs, and the Partners for Wildlife Program.

SECTION III

GENERAL COVENANTS

3.1 Baseline Documentation Report. Grantor and Grantee intend that the Report shall be used by Grantee to monitor Grantor's future uses of the Protected Property and practices thereon.

They further agree that, in the event a controversy arises with respect to the condition of the Protected Property or a particular resource thereof, they shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Grantor and Grantee recognize that changes in forest management practices may result in an evolution of such activities on the Protected Property. Such evolution shall be permitted so long as it is consistent with the Purpose of this Easement, and does not in any way materially impair or interfere with the Conservation Values of the Protected Property.

3.2 Cost of Ownership. Grantor, his heirs, successors, and assigns, shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. This includes the payment of any and all real estate taxes or assessments levied on the Protected Property by authorized local, county, state or federal officials. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement. Nothing in this Easement shall be construed as giving rise, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the corresponding state statutes.

3.3 Indemnification. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee, as well as Ducks Unlimited, Inc, their members, directors, officers, employees, agents, and contractors and their heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation, reasonable attorney's fees, and arising from or in any way connected with: (a) injury to or the death of any person who is entitled to access the Protected Property or physical damage to any property authorized to be on the Protected Property resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, caused by the Grantor; (b) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitations, CERCLA and the corresponding state

statutes by Grantor other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Protected Property; and (c) the presence or release in, on, from, or about the Protected Property, at any time, or any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment; unless any such events described in (a), (b) or (c) are caused solely by any of the Indemnified Parties.

3.4 Public Access. No right of access to the general public to any portion of the Protected Property is conveyed by this Easement.

3.5 Subsequent Conveyances. The Grantor shall include reference to all terms and conditions of this Easement in any subsequent deed, or legal instrument by which the Grantor divests itself of either the fee simple in all or part of the Protected Property, or its possessory interest in any portion of the Protected Property. The Grantor shall notify the Grantee in writing of any changes in ownership, transfer of title or other conveyance of the Protected Property within thirty (30) days of the change in title.

3.6 Subsequent Liens. No provision of this Easement should be construed as impairing the ability of the Grantor to use this Protected Property as collateral for a subsequent monetary loan or other form of borrowing.

3.7 Notices/Approvals. Any notices or approval requests required in this Easement will be sent by registered or certified mail, or commercial overnight carrier, to the following addresses below or to such address as may be hereafter specified by notice in writing.

GRANTEE

Wetlands America Trust, Inc.
One Waterfowl Way
Memphis, TN 38120-2351
Attn.: Director of Land Protection

With copy to:

Ducks Unlimited
Southern Regional Office
193 Business Park Drive, Suite E
Jackson, MS 39157

GRANTOR:

3.8 Severability. In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms will remain valid and binding.

3.9 Perpetuity. The burdens of this Easement will run with the Protected Property and will be enforceable against the Grantor and all future owners in perpetuity during the period of such ownership.

3.10 Assignment by Grantee. The benefits of this Easement shall be in gross and shall be assignable by the Grantee, only upon the following conditions: (a) the Grantee must require that the Purpose of this Easement continues to be carried out, and (b) the assignee, at the time of the assignment, must qualify under Section 170 (h) of the Code, and applicable regulations thereunder, and under Texas law and must be eligible to receive this Easement directly. In the event Grantee ceases to exist or exists but no longer as a tax exempt, non-profit organization, qualified under Section 501 (c) (3) of the Code, this Easement shall automatically become vested in a tax exempt, non-profit organization qualified under Section 501 (c)(3) and 170 (h)(3) of the Code and which has experience in holding similar conservation easements as designated by the then owner of the Protected Property.

3.11 Judicial Extinguishment. If a subsequent, unexpected change in the conditions of the Protected Property or the surrounding property, make impossible or impractical the continued use of the Protected Property for conservation purposes, the Easement shall be extinguished by judicial proceeding and all the Grantee's proceeds, if any, from a subsequent sale or exchange of the Protected Property shall be used for conservation purposes.

3.12 Compensation. This section is applicable only to the determination of compensation payable to Grantee in the event of a termination or extinguishment of this Easement. The value of the Protected Property at the date of execution of this Easement, shall be the value established by the Grantor's qualified appraisal taken for that purpose (pursuant to Treasury regulation Section 1.170A-14 or its successor regulation) for federal income tax purposes ("Appraisal"). Grantor and Grantee agree that the compensation payable to Grantee in the event of termination

or extinguishment of this Easement shall be the amount determined by dividing the fair market value of the Easement shown in the Appraisal by the fair market value of the Protected Property, prior to this Easement, shown in the Appraisal. That figure is then multiplied by the fair market value of the Protected Property at the time of termination or extinguishment, minus improvements made after the date of the Appraisal.

3.13 Eminent Domain/Condemnation. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Easement, Grantor shall take appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds (including, for purposes of this section, proceeds from any lawful sale of the Protected Property unencumbered by the restrictions hereunder) will be distributed between the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Protected Property on the date of the execution of this Easement. The Grantee shall use its share of the net proceeds for conservation purposes.

3.14 Amendments. This Easement shall not be amended, modified, or terminated except in writing in a document signed by Grantor and Grantee. No amendment shall be allowed that would adversely affect the qualifications of this Easement as a charitable gift or the status of the Grantee under any applicable laws, including Section 170 (h) of the Code or the laws of Texas. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall not permit additional development other than development permitted by this Easement on its effective date, and shall not permit any impairment of the significant Conservation Values of the Protected Property. Any such amendment shall be recorded in the land records of the County of Fort Bend, Texas. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment.

3.15 Notice of Breach. In the event there is a breach of the terms of this Easement by the Grantor or by a third party acting at the direction of, with the permission of, or under control of the Grantor, the Grantee shall have the right to notify the Grantor in writing of such a breach, and the right to enforce by proceedings at law or in equity the covenants hereinafter set forth, including, but not limited to the right to require the restoration of the Protected Property to its condition on the date of this Easement as evidenced by the Report. Upon such notice, the Grantor shall have thirty (30) days to undertake actions, including restoration of the Protected

Property, that are reasonably calculated to correct swiftly the conditions constituting such breach. If the Grantor fails to take such corrective action, the Grantee may, at its discretion, undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections by Grantor. The cost of such corrections, including Grantee's expenses, court costs and legal fees will be paid by the Grantor, provided it is determined that the Grantor or a third party acting at the direction of, with the permission of or under the control of the Grantor, is responsible for the breach. Nothing herein shall be construed to entitle the Grantee to institute any proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control such as changes occurring due to natural causes or unauthorized wrongful acts of third parties.

3.16 Waiver of Rights. Grantee, its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act. The rights hereby granted will be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Easement.

3.17 Resolution of Disputes. Grantor and Grantee shall promptly and in good faith attempt to resolve any dispute arising out of or relating to this Easement. If those negotiations are not successful, they shall in good faith attempt to resolve the dispute through mediation. Grantor and Grantee shall appoint a mutually acceptable person. If Grantor and Grantee cannot agree on who should serve as mediator, each shall submit to the other a list of three potential mediators acceptable to them. Each shall then strike two names from the list provided by the other. The two people remaining in the lists shall confer and jointly name a mediator. The mediation will be held no later than ninety days after the dispute has arisen, and the costs of the mediation shall be shared equally by the Grantor and Grantee. Except as provided in the Section related to Grantee's Right of Entry and Access (emergency legal action) of this Easement, no judicial action may be instituted by either Grantor or Grantee until after such mediation has been held. If the mediation is not successful and a judicial action is instituted, Grantor and Grantee shall not assert the defense of the statute of limitations or laches based upon the time devoted to attempting to resolve the dispute in accordance with this Section.

3.18 Warranty of Title. Grantor hereby warrants and represents that the Grantor is seized of the Protected Property in fee simple and has the right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances, except easements of record

and prescriptive easements, and mineral right reservations, if any, and that the Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

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

3.20 Filing. The Grantor shall file this Easement and any amendment in the official land records within thirty (30) days after all signatures have been obtained and the Grantee may re-file it and any amendments to the Easement at any time as may be required to preserve its rights in this Easement.

3.21 Counterparts. This Easement may be executed in multiple counterparts.

3.22 Entire Agreement. This instrument sets forth the entire agreement of Grantor and Grantee with respect to the Easement and supercedes 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 the terms of this Easement.

3.23 Vendor's Lien. This Deed of Conservation Easement is issued by Grantor pursuant to that certain Conservation Easement Purchase and Dedication Agreement by and between Grantor and Friends of the River San Bernard. Part of the consideration for this Deed of Conservation Easement is the issuance by Friends of the River San Bernard of that one certain promissory note in the original principal sum of \$74,500.00, and it is expressly agreed that a vendor's lien is retained by Grantor until the aforesaid note is paid in full.

HABENDUM CLAUSE. TO HAVE AND TO HOLD this Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has set his hand and seal on this ____ day of _____, 2010 and the Grantee has caused this Easement to be signed in its name by its Assistant Secretary, and its corporate seal to be affixed hereto.

SIGNED, SEALED AND

DELIVERED IN THE PRESENCE OF:

GRANTOR:

STATE OF TEXAS §
 §
COUNTY Of _____ §

I, a Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this ____ day of _____, 2010.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

**Continuation of Signature Page For
Deed of Conservation Easement**

GRANTEE:

DELIVERED IN THE PRESENCE OF: WETLANDS AMERICA TRUST, INC.

By: Randy L. Graves
Its: Assistant Secretary Officer

STATE OF TENNESSEE §
 §
COUNTY OF SHELBY §

I, a Notary Public, do hereby certify that Randy L. Graves, on behalf of WETLANDS AMERICA TRUST, INC., as its Assistant Secretary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this _____ day of _____, 2010.

NOTARY PUBLIC IN AND FOR
THE STATE OF TENNESSEE

EXHIBIT A
PROPERTY DESCRIPTION

HENRY STEINKAMP, JR. INC.
Land Boundary & Topographic Surveying
909 Fifth Street
Rosenberg, Texas 77471
281/342-2241

Franklin R. Schodek
Registered Professional Land Surveyor

James L. Syptak, Sr.
Registered Professional Land Surveyor

June 16, 2009

A Field Note Description of the Westerly line of a 30.1 Acre Tract of Land, more or less, in the Edwin Dyer Moore call 765.35 Acres of Land (FBC 2000003063) out of that certain 2331.725 Acre Tract, more or less, described in deed of Trust dated April 23, 1980, executed by John M. Moore III and Hilmar G. Moore, et al to Thomas H. Benson, Trustee for the Benefit of the Federal Land Bank of Texas and recorded May 1, 1980 in County Clerk's File No. 13553 of the Deed Records of Fort Bend County, Texas, and known as Cedar Creek Ranch, and being in the James Beard League, Abstract 10, Fort Bend County, Texas.

For Connection Beginning at a point of the intersection of the Southeast line of said James Beard League, Abstract 10, same being the Southeast line of Fort Bend County and Northwest line of Brazoria County, with the Northeast Water's Edge of the San Bernard River; said corner being the South corner of said J.M. Moore, et al Lands known as Cedar Creek Ranch; THENCE, Westerly following the Northeast Water's Edge of the San Bernard River along its meanders as surveyed by our firm on the ground in August/October, 1961 with the following courses and distances:

North 43deg.58' West, 268.1 feet to a point;
North 47deg.35' West, 157.9 feet to a point;
North 63deg.49' West, 222.9 feet to a point;
North 45deg.27' West, 109.1 feet to a point;
North 25deg.31' West, 177.0 feet to a point;
North 14deg.10' West, 311.4 feet to a point;
North 24deg.33' West, 281.8 feet to a point;
North 54deg.54' West, 268.0 feet to a point;
North 79deg.59' West, 163.4 feet to a point;
South 81deg.59' West, 197.1 feet to a point;
North 81deg.37' West, 174.0 feet to a point;
South 69deg.54' West, 324.5 feet to a point;
North 81deg.09' West, 175.4 feet to a point;
North 54deg.19' West, 325.7 feet to a point;
North 43deg.09' West, 221.0 feet to a point;
North 47deg.14' West, 181.37 feet to the point of beginning for this Tract;

SanBernard_e5.wps

Page 2.

James Beard League, Ab. 10
Fert Bend County, Texas

THENCE, Westerly, following the Northeast water's edge of said San Bernard River along its meanders as surveyed by our Firm on the ground in August/October, 1961 marking the Southwest line of a strip of land 200.0 feet in width North of and adjoining the following courses and distances:

North 47deg.14' West, 170.53 feet to a point;
North 59deg.15' West, 379.0 feet to a point;
South 84deg.52' West, 268.0 feet to a point;
South 67deg.47' West, 139.7 feet to a point;
South 81deg.56' West, 303.3 feet to a point;
South 66deg.03' West, 118.5 feet to a point;
South 85deg.55' West, 193.5 feet to a point;
North 73deg.32' West, 219.4 feet to a point;
South 86deg.34' West, 275.0 feet to a point;
South 69deg.07' West, 129.6 feet to a point;
South 76deg.08' West, 503.6 feet to a point;
North 84deg.04' West, 355.9 feet to a point;
North 60deg.47' West, 151.0 feet to a point;
North 36deg.49' West, 276.4 feet to a point;
North 55deg.26' West, 535.7 feet to a point;
North 65deg.59' West, 319.0 feet to a point;
South 80deg.01' West, 294.7 feet to a point;
South 48deg.27' West, 354.87 feet to a point;
South 30deg.05'10" West, 282.1 feet to a point;
South 61deg.36'10" West, 222.3 feet to a point;
South 48deg.18' West, 180.3 feet to a point;
South 64deg.41'30" West, 351.2 feet to a point;
South 77deg.46'46" West, 258.96 feet to a point;
North 85deg.15'10" West, 78.26 feet to a point;
South 77deg.04'50" West, 131.54 feet to the West corner of this tract and point of termination of this description.

Signed:

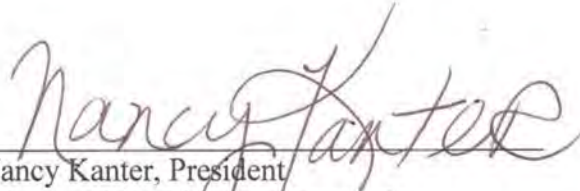
Franklin R. Schodek
Registered Professional Land Surveyor No. 1535

NOTE: Not a field survey this date, prepared from available information.

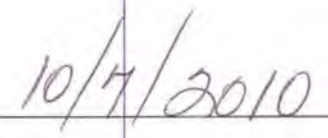


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Signature Page for Performing Party

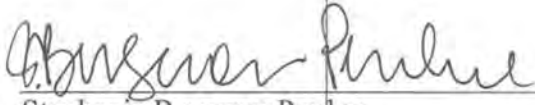


Nancy Kanter, President
Friends of the River San Bernard



Date

Signature Page for the TCEQ



Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality

^{gmp}
10/4/2010

Date