

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION FOR A TEMPORARY WATER USE PERMIT

APPLICATION NO. 13890

Peckerwood Gardens Conservation Foundation, Inc. seeks a temporary water use permit to divert and use not to exceed 60 acre-feet of water, within a period of three years, from a point on an unnamed tributary of Clear Creek, Brazos River Basin for agricultural purposes in Waller County. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Peckerwood Gardens Conservation Foundation, Inc., Applicant, 20559 FM 359 RD, Hempstead, TX 77445, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Temporary Water Use Permit pursuant to Texas Water Code § 11.138 and TCEQ Rules Title 30 Texas Administrative Code (TAC) §§ 295.1, et seq. Notice is being mailed to the downstream water right holders of record in the Brazos River Basin pursuant to Title 30 TAC § 295.154(a).

Peckerwood Gardens Conservation Foundation, Inc seeks a temporary water use permit to divert and use not to exceed 60 acre-feet of water, within a period of three years, from a point on an unnamed tributary of Clear Creek, tributary of the Brazos River, Brazos River Basin, at a maximum diversion rate of 0.22 cfs (100 gpm), for agricultural purposes to irrigate within 18.27 acres of land located in the Charles Donoho Survey, Abstract No. 24, in Waller County.

Water will be diverted from a point located at Latitude 30.058770° N, Longitude 96.038367° W in Waller County within ZIP Code 77445.

Ownership of the land to be irrigated is evidenced by a *Correction Gift Deed with Reservation of Life Estate*, recorded as Document Number 1704788 in the official public records of Waller County.

The application and partial fees were received on December 29, 2022. Additional information and fees were received on January 31, February 21, February 27, and March 16, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 24, 2023.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by June 26, 2023. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by June 26, 2023. The Executive Director may approve the application unless a written request for a contested case hearing is filed by June 26, 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRTP 13890 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.texas.gov>.

Issued: June 8, 2023

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TEMPORARY WATER USE PERMIT

PERMIT NO. 13890

TYPE § 11.138

Permittee: Peckerwood Gardens Conservation Foundation, Inc. Address: 20559 FM 359 RD
Hempstead, TX 77445

Received: December 29, 2022 Granted:

Watercourse: Unnamed tributary of Clear Creek, tributary of the Brazos River County: Waller

Watershed: Brazos River Basin

WHEREAS, after considering the recommendation of the staff relative to the above identified application, the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. The application is in proper form and accompanied by all necessary fees.
2. Sufficient water is available at the proposed diversion point to satisfy the requested diversion and use of not to exceed 60 acre-feet of water, within a period of three years, from a point on an unnamed tributary of Clear Creek, tributary of the Brazos River, Brazos River Basin for agricultural purposes to irrigate within 18.27 acres of land located in the Charles Donoho Survey, Abstract No. 24, in Waller County.
3. The water will be diverted at a maximum diversion rate of 0.22 cfs (100 gpm), from a point located at Latitude 30.058770° N, Longitude 96.038367° W in Waller County.
4. Notice of this application was mailed to the downstream water right holders of record.

CONCLUSIONS OF LAW

- A. Jurisdiction is vested to consider this application under Texas Water Code § 11.138 and Title 30 Texas Administrative Code §§ 295.174 and 297.13.
- B. Applicant has complied with the particular requirements of the Texas Commission on Environmental Quality.
- C. The Executive Director recommends that special conditions be included.

NOW, THEREFORE, Temporary Water Use Permit No. 13890 is issued to Peckerwood Gardens Conservation Foundation, Inc. subject to the following terms and conditions:

1. USE

- A. Permittee is authorized to divert and use not to exceed 60 acre-feet of water, within a period of three years, from a point on an unnamed tributary of Clear Creek, Brazos River Basin for agricultural purposes to irrigate within 18.27 acres of land located in the Charles Donoho Survey, Abstract No. 24, in Waller County.
- B. Ownership of the land to be irrigated is evidenced by a *Correction Gift Deed with Reservation of Life Estate*, recorded as Document Number 1704788 in the official public records of Waller County.

2. DIVERSION

Permittee is authorized to divert:

- A. From a point on an unnamed tributary of Clear Creek, Brazos River Basin located at Latitude 30.058770° N, Longitude 96.038367° W in Waller County.
- B. At a maximum diversion rate of 0.22 cfs (100 gpm).

3. SPECIAL CONDITIONS

- A. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
- B. Diversions shall be restricted based on the following streamflows at USGS Gage No. 08114000 - Brazos River at Richmond, TX, as set forth in Paragraphs 3.C. - 3.G. below.

Season	Subsistence	Hydrologic Condition	Base
Winter	550 cfs	Dry	990 cfs
		Average	1,650 cfs
		Wet	3,310 cfs
Spring	550 cfs	Dry	1,190 cfs
		Average	2,140 cfs
		Wet	3,980 cfs
Summer	550 cfs	Dry	930 cfs
		Average	1,130 cfs
		Wet	2,190 cfs

cfs=cubic feet per second

- C. Seasons are defined as follows: Winter (November through February), Spring (March through June), Summer (July through October).
- D. Permittee shall determine the hydrologic condition once per season. The Palmer Hydrologic Drought Index (PHDI) value present on the last day of the month of the preceding season, as reported by the National Weather Service, shall be used to determine the hydrologic condition for the following season as set out in Paragraph 3.D.(1) - (3) below.

1. Permittee shall determine the PHDI Index for a season based on the following formula: $(0.619 \times \text{North Central PHDI}) + (0.147 \times \text{East Texas PHDI}) + (0.057 \times \text{Edwards Plateau PHDI}) + (0.132 \times \text{South Central PHDI}) + (0.045 \times \text{Upper Coast PHDI})$.
2. The PHDI Index and corresponding hydrologic conditions that govern diversions under this permit are:

Dry	Average	Wet
Less than -1.73	-1.73-2.13	Greater than 2.13

3. Permittee may utilize an interim PHDI value to determine the hydrologic condition until the value for the month preceding the start of the season is published. The interim PHDI value shall be based on the latest published monthly value PHDI value that is available on the last day of the month of the preceding season. When a value for the month preceding the season is published, Permittee shall update the hydrologic condition determined based on the interim value if the final value results in a change to the calculated hydrologic condition. Any updated hydrologic condition shall then be applicable to diversions under this permit.

Subsistence Flow Special Conditions and 50% rule

- E. Permittee shall not divert water if the average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX is less than or equal to the applicable subsistence flow. The “average adjusted streamflow” at the gage is the average of adjusted streamflows measured at the gage for the previous 24 hours. The “adjusted streamflow” at the gage at any time is the measured streamflow that would occur at the gage at that time in the absence of any diversions by Permittee. Unless informed otherwise by the Brazos Watermaster, Permittee may assume that under all conditions, measured stream flow plus the rate at which water is being diverted at that time by Permittee under this water right equals adjusted streamflow.
- F. If average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX, is greater than the applicable subsistence flow but less than the applicable base flow, Permittee shall not divert in excess of the rate that would reduce average streamflow at the gage to the applicable subsistence flow plus 50% of the difference between average adjusted streamflow at the gage and the applicable subsistence flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

Base Flow Special Condition

- G. If average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX, is greater than the applicable base flow for the applicable hydrologic condition, Permittee shall not divert in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

- H. Permittee shall maintain records of the calculated hydrologic condition for the season and the streamflow values at the time of the diversion and make those records available for the Brazos Watermaster upon request.
- I. This temporary water use permit is junior to all existing water rights in the Brazos River Basin.
- J. Upon diversion and use of the water authorized herein, this temporary water use permit shall expire and be of no further force and effect.
- K. This temporary water use permit shall expire and become null and void three years from the date of issuance with no further Commission action. Permittee also waives the right to notice and hearing on cancellation of this water right.
- L. No diversion of water shall be made when such water is required to satisfy domestic and livestock demands downstream, or when necessary to satisfy senior and superior water rights and instream needs.
- M. Permittee shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point authorized above in Paragraph 2. DIVERSION and maintain measurement records.
- N. Permittee shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.
- O. Permittee shall contact the Brazos Watermaster prior to diversion of water authorized by this permit.
- P. The issuance of this temporary water use permit does not grant to the Permittee the right to use private or public property for diversion of water authorized by this permit. This includes property belonging to but not limited to any individual, partnership, corporation or public entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to make any diversion authorized by this permit.

This temporary water use permit does not vest in its holder a permanent right and shall in no event be construed as a commitment of the Commission to approve or disapprove any other application or request by the Permittee.

This temporary permit is subject to the requirements and orders of the Brazos Watermaster.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein, and such agreement is a condition precedent to the granting of this temporary water use permit.

All other matters requested in the application which are not specifically granted by this temporary water use permit are denied.

This temporary water use permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to its right of continuing supervision.

For the Commission

DATE ISSUED:

DRAFT

Jenna Rollins

From: Randy Twaddle [REDACTED]
Sent: Wednesday, May 31, 2023 10:09 AM
To: Jenna Rollins
Subject: Re: Peckerwood Gardens Conservation Foundation Inc. Application No. 13890

Hello Jenna,

We are in receipt of the draft temporary water use permit and public notice for Peckerwood Gardens Conservation Foundation Inc., Application No. 13890.

We have no comments so please proceed with processing the permit.

Thank you,
Randy

On Thu, May 18, 2023 at 10:53 AM Jenna Rollins <Jenna.Rollins@tceq.texas.gov> wrote:

Dear Mr. Twaddle,

Please review the attached draft temporary water use permit and public notice for Peckerwood Gardens Conservation Foundation Inc., Application No. 13890, and provide any comments by June 1, 2023.

Thank you,

Jenna Rollins, Project Manager

Water Rights Permitting Team

Water Rights Permitting and Availability Section

512-239-1845

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RANDY TWADDLE
Executive Director,
[The John Fairey Garden](#)
Conservation Foundation
832.656.8869



**Texas Commission on Environmental Quality
TELEPHONE MEMO TO THE FILE**

Call to: Mr. Randy Twaddle	Call from: Jenna Rollins
Date: 5/31/23	Project No: 13890
<i>Information for File follows:</i> This was a phone call with the applicant to discuss questions about the notice process and the application moving forward.	
Signed: <i>Jenna Rollins</i>	

**Texas Commission on Environmental Quality
TELEPHONE MEMO TO THE FILE**

Call to: Mr. Randy Twaddle	Call from: Jenna Rollins
Date: 5/23/23	Project No: 13890
<i>Information for File follows:</i> This was a phone call with the applicant to discuss questions about the notice process and the application moving forward.	
Signed: <i>Jenna Rollins</i>	

Jenna Rollins

From: Randy Twaddle [REDACTED]
Sent: Tuesday, May 23, 2023 2:35 PM
To: Jenna Rollins
Subject: Re: Peckerwood Gardens Conservation Foundation Inc. Application No. 13890

Hello Jenna,

Confirming receipt and I have a couple questions:

If we do not have any comments, when would this permit go into effect?

What are the consequences vis a vis our current year long temporary permit?

Thanks very much,
Randy

On Thu, May 18, 2023 at 10:53 AM Jenna Rollins <Jenna.Rollins@tceq.texas.gov> wrote:

Dear Mr. Twaddle,

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Thank you,

Jenna Rollins, Project Manager

Water Rights Permitting Team

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512-239-1845

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RANDY TWADDLE
Executive Director,
[The John Fairey Garden](#)
Conservation Foundation

832.656.8869



Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 18, 2023

Mr. Randy Twaddle
Peckerwood Gardens Conservation Foundation, Inc.
20559 FM 359 Rd.
Hempstead, Texas 77445

VIA E-MAIL

RE: Peckerwood Gardens Conservation Foundation, Inc.
WRTP 13890
CN605239490, RN111626339
Application No. 13890 for a Temporary Water Use Permit
Texas Water Code § 11.138, Requiring Limited Mailed Notice
Unnamed Tributary of Clear Creek, Brazos River Basin
Waller County

Dear Mr. Twaddle:

Drafts, subject to revision, of the public notice, proposed Temporary Water Use Permit No. 13890, and the related technical memoranda are attached.

Staff is recommending that the referenced application be granted in accordance with the attached drafts. Please review the drafts and contact me no later than June 1, 2023 with any comments or questions as the notice will be forwarded to the Office of the Chief Clerk for mailing after that date.

Please note this application requires a 15-day comment period and once the comment period has closed, the proposed Temporary Water Use Permit No. 13890 may be issued as drafted given no hearing requests are received.

If you have any questions concerning this matter, please contact me via email at jenna.rollins@tceq.texas.gov or at (512) 239-1845.

Sincerely,

A handwritten signature in cursive script that reads "Jenna Rollins".

Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

Attachments

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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APPLICATION NO. 13890

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To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

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Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TEMPORARY WATER USE PERMIT

PERMIT NO. 13890

TYPE § 11.138

Permittee: Peckerwood Gardens Conservation Foundation, Inc. Address: 20559 FM 359 RD
Hempstead, TX 77445

Received: December 29, 2022 Granted:

Watercourse: Unnamed tributary of Clear Creek, tributary of the Brazos River County: Waller

Watershed: Brazos River Basin

WHEREAS, after considering the recommendation of the staff relative to the above identified application, the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. The application is in proper form and accompanied by all necessary fees.
2. Sufficient water is available at the proposed diversion point to satisfy the requested diversion and use of not to exceed 60 acre-feet of water, within a period of three years, from a point on an unnamed tributary of Clear Creek, tributary of the Brazos River, Brazos River Basin for agricultural purposes to irrigate within 18.27 acres of land located in the Charles Donoho Survey, Abstract No. 24, in Waller County.
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CONCLUSIONS OF LAW

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- B. Applicant has complied with the particular requirements of the Texas Commission on Environmental Quality.
- C. The Executive Director recommends that special conditions be included.

NOW, THEREFORE, Temporary Water Use Permit No. 13890 is issued to Peckerwood Gardens Conservation Foundation, Inc. subject to the following terms and conditions:

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- A. Permittee is authorized to divert and use not to exceed 60 acre-feet of water, within a period of three years, from a point on an unnamed tributary of Clear Creek, Brazos River Basin for agricultural purposes to irrigate within 18.27 acres of land located in the Charles Donoho Survey, Abstract No. 24, in Waller County.
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Permittee is authorized to divert:

- A. From a point on an unnamed tributary of Clear Creek, Brazos River Basin located at Latitude 30.058770° N, Longitude 96.038367° W in Waller County.
- B. At a maximum diversion rate of 0.22 cfs (100 gpm).

3. SPECIAL CONDITIONS

- A. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
- B. Diversions shall be restricted based on the following streamflows at USGS Gage No. 08114000 - Brazos River at Richmond, TX, as set forth in Paragraphs 3.C. - 3.G. below.

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		Average	2,140 cfs
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cfs=cubic feet per second

- C. Seasons are defined as follows: Winter (November through February), Spring (March through June), Summer (July through October).
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1. Permittee shall determine the PHDI Index for a season based on the following formula: $(0.619 \times \text{North Central PHDI}) + (0.147 \times \text{East Texas PHDI}) + (0.057 \times \text{Edwards Plateau PHDI}) + (0.132 \times \text{South Central PHDI}) + (0.045 \times \text{Upper Coast PHDI})$.
2. The PHDI Index and corresponding hydrologic conditions that govern diversions under this permit are:

Dry	Average	Wet
Less than -1.73	-1.73-2.13	Greater than 2.13

3. Permittee may utilize an interim PHDI value to determine the hydrologic condition until the value for the month preceding the start of the season is published. The interim PHDI value shall be based on the latest published monthly value PHDI value that is available on the last day of the month of the preceding season. When a value for the month preceding the season is published, Permittee shall update the hydrologic condition determined based on the interim value if the final value results in a change to the calculated hydrologic condition. Any updated hydrologic condition shall then be applicable to diversions under this permit.

Subsistence Flow Special Conditions and 50% rule

- E. Permittee shall not divert water if the average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX is less than or equal to the applicable subsistence flow. The “average adjusted streamflow” at the gage is the average of adjusted streamflows measured at the gage for the previous 24 hours. The “adjusted streamflow” at the gage at any time is the measured streamflow that would occur at the gage at that time in the absence of any diversions by Permittee. Unless informed otherwise by the Brazos Watermaster, Permittee may assume that under all conditions, measured stream flow plus the rate at which water is being diverted at that time by Permittee under this water right equals adjusted streamflow.
- F. If average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX, is greater than the applicable subsistence flow but less than the applicable base flow, Permittee shall not divert in excess of the rate that would reduce average streamflow at the gage to the applicable subsistence flow plus 50% of the difference between average adjusted streamflow at the gage and the applicable subsistence flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

Base Flow Special Condition

- G. If average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX, is greater than the applicable base flow for the applicable hydrologic condition, Permittee shall not divert in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

- H. Permittee shall maintain records of the calculated hydrologic condition for the season and the streamflow values at the time of the diversion and make those records available for the Brazos Watermaster upon request.
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- J. Upon diversion and use of the water authorized herein, this temporary water use permit shall expire and be of no further force and effect.
- K. This temporary water use permit shall expire and become null and void three years from the date of issuance with no further Commission action. Permittee also waives the right to notice and hearing on cancellation of this water right.
- L. No diversion of water shall be made when such water is required to satisfy domestic and livestock demands downstream, or when necessary to satisfy senior and superior water rights and instream needs.
- M. Permittee shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point authorized above in Paragraph 2. DIVERSION and maintain measurement records.
- N. Permittee shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.
- O. Permittee shall contact the Brazos Watermaster prior to diversion of water authorized by this permit.
- P. The issuance of this temporary water use permit does not grant to the Permittee the right to use private or public property for diversion of water authorized by this permit. This includes property belonging to but not limited to any individual, partnership, corporation or public entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to make any diversion authorized by this permit.

This temporary water use permit does not vest in its holder a permanent right and shall in no event be construed as a commitment of the Commission to approve or disapprove any other application or request by the Permittee.

This temporary permit is subject to the requirements and orders of the Brazos Watermaster.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein, and such agreement is a condition precedent to the granting of this temporary water use permit.

All other matters requested in the application which are not specifically granted by this temporary water use permit are denied.

This temporary water use permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to its right of continuing supervision.

For the Commission

DATE ISSUED:

DRAFT

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Jenna Rollins, Project Manager
Water Rights Permitting Team

Date: May 2, 2023

Through: ~~K~~ ~~A~~ Kathy Alexander, Ph.D., Policy and Technical Analyst
Water Availability Division

TG Trent Gay, Team Leader
Surface Water Availability Team

From: Lauren Simmons, Hydrologist
Surface Water Availability Team

Subject: Peckerwood Gardens Conservation Foundation, Inc.
WRTP 13890
CN605239490
Unnamed Tributary of Clear Creek, Brazos River Basin
Waller County

HYDROLOGY REVIEW

Application Summary

Peckerwood Gardens Conservation Foundation, Inc. (Applicant) requests a temporary water use permit to divert a maximum of 60 acre-feet of water within a three-year period from a point on an unnamed tributary of Clear Creek, Brazos River Basin, at a maximum diversion rate of 0.22 cfs (100 gpm), for agricultural purposes in Waller County.

The application was declared administratively complete on 03/24/2023.

Hydrology Review

Pursuant to 30 Texas Administrative Code (TAC) §298 Subchapter G, Resource Protection staff recommended instream flow requirements for this application. Specific instream flow requirements are included in the Resource Protection staff's April 26, 2023 memorandum.

Staff reviewed current conditions in the Brazos River Basin to determine whether surplus water is available for this request. Staff notes that the most recent Drought Monitor (April 25, 2023) indicates that the portion of Waller County where the application is located is not experiencing any drought conditions.

TCEQ's environmental flow standards for the Brazos Basin in 30 TAC §298 Subchapter G (Brazos River and its Associated Bay and Estuary System) include a

hydrologic condition (§298.470 Calculation of Hydrologic Conditions). The hydrologic condition is based on the Palmer Hydrologic Drought Index (PHDI) and the PHDI Index as defined in §298.455 (6) and (7). Based on §298.455 (4), the application is located in the Lower Basin. The Climate Divisions included in the Lower Basin are the North Central (Climate Division 3) East Texas (Climate Division 4), Edwards Plateau (Climate Division 6), South Central (Climate Division 7), and Upper Coast (Climate Division 8). The values for the PHDI Index for the Lower Basin used to determine the hydrologic condition are calculated as follows (§298.470 (b)):

$(0.619 \times \text{North Central PHDI}) + (0.147 \times \text{East Texas PHDI}) + (0.057 \times \text{Edwards Plateau PHDI}) + (0.132 \times \text{South Central PHDI}) + (0.045 \times \text{Upper Coast PHDI})$

The determination of the hydrologic condition for a particular season shall be determined once per season. The PHDI value present on the last day of the month of the preceding season, as reported by the National Weather Service, and calculated for the geographic area as described in subsection (b) of the §298.470, will determine the hydrologic condition for the following season. The values for the PHDI are available at <http://www.ncdc.noaa.gov/cag/>. Under the adopted rules, PHDI values are based on the last day of the month before the start of a new season; however, final approved PHDI values for a month are typically available from the National Climatic Data Center (NCDC) near the middle of the following month. Therefore, in order to determine the hydrologic condition for a season, the latest published monthly value can be used on an interim basis until the final value for the month preceding the season is available. When the NCDC publishes the final value for the month preceding the season, the hydrologic condition applicable for the season can be updated if required.

The diversion requested in the application is for a short period of time (3 years). This temporary permit will be junior to all existing water rights, and subject to suspension if water is needed for those water rights. Staff's opinion is that existing water rights will not be affected by this short-term temporary permit.

In addition, the application is subject to the requirements and orders of the Brazos Watermaster. The Watermaster actively manages water rights on a daily basis and protects senior water rights in times of shortage. Therefore, existing water rights should not be affected by the application.

Conclusion

Staff can support granting the application provided the following special conditions are included in the permit:

1. Permittee shall determine the hydrologic condition once per season. The Palmer Hydrologic Drought Index (PHDI) value present on the last day of the month of the preceding season, as reported by the National Weather Service, shall be

used to determine the hydrologic condition for the following season as set out in paragraphs 1.(a) – (c) below.

- a. Permittee shall determine the PHDI Index for a season based on the following formula:

$$(0.619 \times \text{North Central PHDI}) + (0.147 \times \text{East Texas PHDI}) + (0.057 \times \text{Edwards Plateau PHDI}) + (0.132 \times \text{South Central PHDI}) + (0.045 \times \text{Upper Coast PHDI})$$

- b. The PHDI Index and corresponding hydrologic conditions that govern diversions under this permit are:

Dry	Average	Wet
Less than -1.73	-1.73 – 2.13	Greater than 2.13

- c. Permittee may utilize an interim PHDI value to determine the hydrologic condition until the value for the month preceding the start of the season is published. The interim PHDI value shall be based on the latest published monthly value PHDI value that is available on the last day of the month of the preceding season. When a value for the month preceding the season is published, Permittee shall update the hydrologic condition determined based on the interim value if the final value results in a change to the calculated hydrologic condition. Any updated hydrologic condition shall then be applicable to diversions under this permit.

2. Permittee shall maintain records of the calculated hydrologic condition for the season and the streamflow values at the time of the diversion and make those records available for the Brazos Watermaster upon request.

Note that the application is subject to the requirements and orders of the Brazos Watermaster.

Lauren Simmons

Lauren Simmons, Hydrologist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Jenna Rollins, Project Manager
Water Rights Permitting Team

Date: April 26, 2023

Through: Leslie Patterson Team Leader 
Resource Protection Team

From: Nathalie Montes, Aquatic Scientist
Resource Protection Team

Subject: Peckerwood Gardens Conservation Foundation, Inc.
WRTP 13890
CN605239490
Unnamed Tributary of Clear Creek, Brazos River Basin

Waller County

Environmental reviews of water right applications are conducted in accordance with applicable provisions of the Texas Water Code (TWC) and the administrative rules of the Texas Commission on Environmental Quality (TCEQ). The provisions applicable to environmental reviews can vary according to the type and the location of the authorization requested.

APPLICATION SUMMARY

Peckerwood Gardens Conservation Foundation, Inc. (Applicant) requests a temporary water use permit to divert a maximum of 60 acre-feet of water within a three-year period from a point on an unnamed tributary of Clear Creek, Brazos River Basin, at a maximum diversion rate of 0.22 cfs (100 gpm), for agricultural purposes in Waller County.

ENVIRONMENTAL ANALYSIS

On February 12, 2014, the TCEQ adopted environmental flow standards for the Brazos River and its Associated Bay and Estuary System (Title 30 Texas Administrative Code (TAC) Chapter 298 Subchapter G). These environmental flow standards are considered adequate to support a sound ecological environment (Title 30 TAC §298.460).

The Applicant is requesting the use of surplus water, which would be subject to the adopted standards. This review is conducted in accordance with §11.147(e-3) of the TWC and Title 30 TAC Chapter 298 Subchapter G (Brazos River and its Associated Bay and Estuary System). In Title 30 TAC §298.480(18), environmental flow standards were established at United States Geological Survey (USGS) Gage

No. 08114000 – Brazos River at Richmond, TX, and the applicable environmental flow standards are shown in Table 1.

Table 1. Environmental Flow Standards at USGS Gage No. 08114000 – Brazos River at Richmond, TX

Season	Subsistence	Hydrologic Condition	Base
Winter	550 cfs	Dry	990 cfs
		Average	1,650 cfs
		Wet	3,310 cfs
Spring	550 cfs	Dry	1,190 cfs
		Average	2,140 cfs
		Wet	3,980 cfs
Summer	550 cfs	Dry	930 cfs
		Average	1,330 cfs
		Wet	2,190 cfs

cfs = cubic feet per second

Base flow standards vary depending on the season and current hydrologic conditions. Seasons are defined in Title 30 TAC §298.455 as follows: Winter (November through February), Spring (March through June), and Summer (July through October). Hydrologic conditions will be addressed in the water availability analysis for this application.

No special conditions for high flow pulses are required because the proposed maximum diversion rate, 0.22 cfs, is less than 20% of the applicable pulse trigger level requirements of an applicable high flow pulse, as described in Title 30 TAC §298.485(b).

Resource Protection staff recommend that diversion of water under this proposed temporary permit should be limited to comply with the applicable environmental flow standards.

RECOMMENDATIONS

Resource Protection staff recommend the following Special Conditions be included in the proposed temporary permit, if granted:

1. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any diversion structure(s).
2. Diversions shall be restricted based on the following streamflows at USGS Gage No. 08114000 – Brazos River at Richmond, TX, as set forth in Special Conditions 3-6 below.

Season	Subsistence	Hydrologic Condition	Base
Winter	550 cfs	Dry	990 cfs
		Average	1,650 cfs
		Wet	3,310 cfs
Spring	550 cfs	Dry	1,190 cfs
		Average	2,140 cfs
		Wet	3,980 cfs
Summer	550 cfs	Dry	930 cfs
		Average	1,330 cfs
		Wet	2,190 cfs

cfs = cubic feet per second

3. Seasons are defined as follows: Winter (November through February), Spring (March through June), Summer (July through October).

Subsistence Flow Special Conditions and 50% rule

4. Permittee shall not divert water if the average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX, is less than or equal to the applicable subsistence flow. The “average adjusted streamflow” at the gage is the average of adjusted streamflows measured at the gage for the previous 24 hours. The “adjusted streamflow” at the gage at any time is the measured streamflow that would occur at the gage at that time in the absence of any diversions by Permittee. Unless informed otherwise by the Brazos Watermaster, Permittee may assume that under all conditions, measured streamflow plus the rate at which water is being diverted at that time by Permittee under this water right equals adjusted streamflow.
5. If average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX, is greater than the applicable subsistence flow but less than

the applicable base flow, Permittee shall not divert in excess of the rate that would reduce average streamflow at the gage to the applicable subsistence flow plus 50% of the difference between average adjusted streamflow at the gage and the applicable subsistence flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

Base Flow Special Condition

6. If average adjusted streamflow at USGS Gage No. 08114000 – Brazos River at Richmond, TX, is greater than the applicable base flow for the applicable hydrologic condition, Permittee shall not divert in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

Nathalie Montes

Nathalie Montes, Aquatic Scientist

Jenna Rollins

From: Randy Twaddle [REDACTED]
Sent: Friday, March 24, 2023 4:21 PM
To: Jenna Rollins
Subject: Re: Peckerwood Gardens Conservation Foundation Inc. Application No. 13890 is Admin Complete

Great. Thank you Jenna.
Randy

On Fri, Mar 24, 2023 at 4:02 PM Jenna Rollins <Jenna.Rollins@tceq.texas.gov> wrote:

Dear Mr. Twaddle,

The application process is split into two main processes. Administrative review, and technical review. Your application is now in technical review. The target time for the entire process to be completed is 300 days from when the application was initially received.

Best regards,

Jenna Rollins, Project Manager

Water Rights Permitting Team

Water Rights Permitting and Availability Section

512-239-1845

From: Randy Twaddle [REDACTED]
Sent: Friday, March 24, 2023 2:45 PM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: Re: Peckerwood Gardens Conservation Foundation Inc. Application No. 13890 is Admin Complete

Thank you Jenna,

Can you tell me how long it is typically between completion of application and approval or rejection of application?

Randy

On Fri, Mar 24, 2023 at 2:29 PM Jenna Rollins <Jenna.Rollins@tceq.texas.gov> wrote:

Dear Mr. Twaddle,

The Peckerwood Gardens Conservation Foundation Inc., Application No. 13890 for a temporary water use permit is admin complete today (copy of letter, attached).

Best,

Jenna Rollins, Project Manager

Water Rights Permitting Team

Water Rights Permitting and Availability Section

512-239-1845

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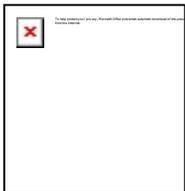
RANDY TWADDLE

Executive Director,

[The John Fairey Garden](#)

Conservation Foundation

832.656.8869



--

RANDY TWADDLE
Executive Director,
[The John Fairey Garden](#)
Conservation Foundation
832.656.8869



TCEQ Interoffice Memorandum

TO: Office of the Chief Clerk
Texas Commission on Environmental Quality

THRU: Chris Kozlowski, Team Leader
Water Rights Permitting Team

FROM: Jenna Rollins, Project Manager
Water Rights Permitting Team

DATE: March 24, 2023

SUBJECT: Peckerwood Gardens Conservation Foundation, Inc.
WRTP 13890
CN605239490, RN111626339
Application No. 13890 for a Temporary Water Use Permit
Texas Water Code § 11.138, Requiring Limited Mailed Notice
Unnamed Tributary of Clear Creek, Brazos River Basin
Waller County

The application and partial fees were received on December 29, 2022. Additional information and fees were received on January 31, February 21, February 27, and March 16, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 24, 2023. Mailed notice to downstream water right holders of record in the Brazos River Basin is required pursuant to Title 30 Texas Administrative Code § 295.154(a).

All fees have been paid and the application is sufficient for filing.

Jenna Rollins

Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

OCC Mailed Notice Required YES NO

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 24, 2023

Mr. Randy Twaddle
Peckerwood Gardens Conservation Foundation, Inc.
20559 FM 359 Rd.
Hempstead, Texas 77445

VIA E-MAIL

RE: Peckerwood Gardens Conservation Foundation, Inc.
WRTP 13890
CN605239490, RN111626339
Application No. 13890 for a Temporary Water Use Permit
Texas Water Code § 11.138, Requiring Limited Mailed Notice
Unnamed Tributary of Clear Creek, Brazos River Basin
Waller County

Dear Mr. Twaddle:

This acknowledges receipt, on January 31, February 21, February 27, and March 16, 2023, of additional information and fees in the amount of \$76.44 (Receipt No. M312284, copy attached).

The application was declared administratively complete and filed with the Office of the Chief Clerk on March 24, 2023. Staff will continue processing the application for consideration by the Executive Director.

Please be advised that additional information may be requested during the technical review phase of the application process.

If you have any questions concerning the application, please contact me via email at jenna.rollins@tceq.texas.gov or by phone at 512-239-1845.

Sincerely,

A handwritten signature in cursive script that reads "Jenna Rollins".

Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

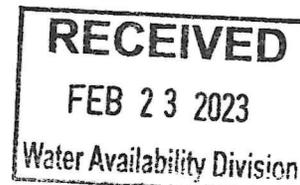
Attachment



21-FEB-23 03:02 PM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u> <u>Account Name</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
NOTICE FEES-WUP- WATER USE PERM	PTGU PTGU	M312284 13890	4923 022123	 N	BS00101152 D3801923	21-FEB-23	-\$76.44
	NOTICE FEES WUP WATER USE PERMITS	PECKERWOOD GARDEN CONSERVATIO N FOUNDATION	RHDAVIS	CK			
						Total (Fee Code):	-\$76.44



Jenna Rollins

From: Randy Twaddle [REDACTED]
Sent: Thursday, March 16, 2023 2:37 PM
To: Jenna Rollins
Subject: requested information
Attachments: 2023-03-16_142534.pdf

Hi Jenna,

I've attached a letter from my board president acknowledging my authority.

As for confirmation of the coordinates you gave me, when I enter those into Google Earth, it is a site on the correct tributary but it is on the east side of FM 359 Rd. Our property is on the west side.

I just now walked out to the creek and dropped a pin at the exact location where we are diverting. The coordinates Google Map listed for that dropped pin are 30.0587700 N 96.0383673 W.

Please let me know if you need anything else.

All best,
Randy

--

RANDY TWADDLE
Executive Director,
[The John Fairey Garden](#)
Conservation Foundation
832.656.8869



THE
JOHN FAIREY GARDEN

March 17, 2023

To Whom It May Concern,

I am writing to confirm that Randy Twaddle is the Executive Director of The John Fairey Garden Conservation Foundation and therefore has the authority under our bylaws to sign and execute agreements on behalf on the Foundation.

Sincerely,

A handwritten signature in cursive script that reads "Wally Wilkins". The signature is written in dark ink and extends across the width of the page.

Wally Wilkins

President of the Board

The John Fairey Garden Conservation Foundation

**Texas Commission on Environmental Quality
TELEPHONE MEMO TO THE FILE**

Call to: Mr. Randy Twaddle	Call from: Jenna Rollins
Date: 3/16/23	Project No: 13890
<i>Information for File follows:</i> This was a phone call to the applicant to discuss additional information needed for the application to be declared administratively complete.	
Signed: <i>Jenna Rollins</i>	

Jenna Rollins

From: Randy Twaddle [REDACTED]
Sent: Monday, February 27, 2023 7:45 AM
To: Jenna Rollins
Subject: Peckerwood Gardens Conservation Foundation, Inc., WRTP 13890
Attachments: TX_Hempstead_20190305_TM JFG diversion point copy.jpg; 20571 FM 359 Deed.pdf; Revised JFG Bylaws.pdf

Good morning Jenna,

I have attached the documents requested that I believe will complete our application for a water permit.

As for avoiding impingement and entrainment of aquatic organisms, we will take reasonable measures to do so, including an aluminum intake strainer with screen perforations < 1/4".

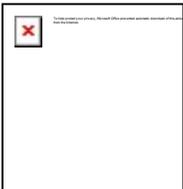
A check in the amount of \$76.44 has been sent to your office.

Just to note in case I haven't already done so, Peckerwood Gardens Conservation Foundation, Inc. is now DBA The John Fairey Garden Conservation Foundation.

Sincerely,
Randy

--

RANDY TWADDLE
Executive Director,
[The John Fairey Garden](#)
Conservation Foundation
832.656.8869





STATE OF TEXAS §
COUNTY OF WALLER §

R5659
R5661
200 ACCT

Gift Deed with Reservation of Life Estate

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: September 2, 2015

Grantor: John G. Fairey, an individual

Grantor's Mailing Address: 20571 FM 359, Hempstead, Waller County, Texas 77445

Grantee: Peckerwood Garden Conservation Foundation, Inc., a Texas not-for-profit corporation.

Grantee's Mailing Address: 20571 FM 359, Hempstead, Waller County, Texas 77445

Consideration: Grantor's intention to make a gift as a charitable contribution under applicable laws and regulations.

Property (including any improvements):

Being an 18.099 acre tract more or less, out of the Charles Donoho survey, Abstract No. 24, Waller County, Texas and being more particularly described by metes and bounds on Exhibit "A" attached hereto.

Reservations from Conveyance:

For Grantor, a reservation of the full possession, benefit and use of that portion of the Property described on Exhibit "B" for the remainder of the life of the Grantor, as a life estate.

The Grantor shall reserve the right to use the existing sewer facilities, located outside of the life estate.

The heirs of John G. Fairey will have a period of six (6) months during which the inherited contents of the house and gallery may be dispersed.

Exceptions to Conveyance and Warranty:

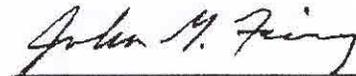
This conveyance is made and accepted SUBJECT TO any and all conditions, covenants, reservations, mineral and royalty reservations, easements, restrictions, encumbrances, regulations of governmental authority, and all other matters, if any, relating to the hereinabove described property, to the extent, and only to the extent, that the same may still be in force and effect, shown of record in the office of the County Clerk of Waller County, Texas.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the

S-2-b

Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.



John G. Fairey

AGREED AND ACCEPTED:

PECKERWOOD GARDEN CONSERVATION FOUNDATION, INC.

By: John G. Fairey
Name: JOHN G. FAIREY
Title: FOUNDER

Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

John G. Fairey

AGREED AND ACCEPTED:

PECKERWOOD GARDEN CONSERVATION FOUNDATION, INC.

By: *Sarah W. Newbery*
Name: *Sarah W. Newbery*
Title: *President*

THE STATE OF TEXAS §
§
COUNTY OF WALLER §

This instrument was acknowledged before me on the ____ day of September, 2015, by John G. Fairey.

Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 15 day September by SARAH W. NEWBERY, the PRESIDENT of Peckerwood Garden Conservation, Inc.

Betsy Jones Kirkgard

Notary Public, State of Texas

After recording return to:

John Roberson
311 Bowie Street, Apt. 1815
Austin, Texas 78703



EXHIBIT "A"

TRACT 1

FIELD NOTES FOR A 10.099 ACRE TRACT BEING OUT OF A 809.083 ACRE TRACT MADE UP OF A 128.840 ACRE TRACT, A 381.718 ACRE TRACT AND A 398.525 ACRE TRACT ALL RECORDED IN THE DGBD IN VOLUME 078, PAGE 911 OF THE WALLER COUNTY OFFICIAL RECORDS AND BEING LOCATED IN THE CHARLES DONHO SURVEY, ABSTRACT 24, WALLER COUNTY, TEXAS.

BEGINNING: At a 1/2 inch iron rod found at the intersection of the North right-of-way line of Farm-to-Market Road 3346 (varying width) with the West line of Warton Road for its Southeast corner of this 10.099 acre tract;

THENCE: Along the North right-of-way line of F.M. 3346 the following sets;

North 02° 27' 05" West a distance of 219.42 feet to a concrete monument found;

South 81° 00' 13" West a distance of 103.05 feet to a 1/2 inch iron rod set;

South 71° 08' 10" West a distance of 103.92 feet to a concrete monument found;

South 74° 41' 23" West a distance of 53.41 feet to a 1/2 inch iron rod set for the Southwest corner of this tract and the Southeast corner of a 75.207 acre tract (surveyed at the same time as this tract and not yet recorded).

THENCE: North 00° 49' 33" West a distance of 1202.67 feet along the West line of this 10.099 acre tract to a 1/2 inch iron rod set in the North line of the 120.840 acre tract and also being the Southwest corner of the 22,8704 acre tract (Volume 430, Page 043, Deed Records) for the Northwest corner of this 10.099 acre tract and the Northeast corner of said 25.207 acre tract.

THENCE: North 88° 18' 33" East with the common line of the 22,8704 acre tract and the 120.840 acre tract a distance of 800.00 feet to a 1/2 inch iron rod set for the Northeast corner of this 10.099 acre tract in the West line of Warton Road.

THENCE: South 00° 49' 33" East with the West line of Warton Road a distance of 1202.74 feet to the PLACE OF BEGINNING and containing 10.099 acres of land.




JONES & CARTER, INC.
 ENGINEERS • PLANNERS • SURVEYORS

JOHN G. FAIREY
0.709 ACRE TRACT

ALL THAT TRACT OR PARCEL OF LAND situated in Waller County, Texas out of the Charles Donoho Survey A-24 and being a portion of the tract of land called 11.039 acres in Warranty Deed with Vendor's Lien dated March 2, 1993 from Bonnie R. Pierceall to John G. Fairey as recorded in Volume 476, Page 386 of the Deed Records of Waller County; and being a portion of the tract of land called 6.27 acres in General Warranty Deed dated August 2, 1971 from Donald G. Crawford and wife, Mary Crawford to John G. Fairey as recorded in Volume 228, Page 509 of the Deed Records of Waller County; and lying within a 4.000 acre tract as described in Deed of Trust dated November 27, 2001 as recorded in Volume 769, Page 047 of the Official Public Records of Waller County, said 0.709 acre tract being more particularly described as follows:

COMMENCING at a found 5/8" iron rod lying in the West line of F.M. Highway 359 marking the Northeast corner of the Peckerwood Gardens Conservation Foundation, Inc. tract called 20.138 acres (1142/449 O.P.R.W.C.), the Southeast corner of the called 11.039 acre tract and the called 4.000 acre tract;

THENCE with the West line of F.M. Highway 359, the East line of the called 11.039 acre tract and the called 4.000 acre tract, N 03° 10' 40" E, 35.66 ft. to a point at the South edge of a gravel drive for most southerly Southeast corner and POINT OF BEGINNING of the 0.709 acre tract herein described;

THENCE departing from F.M. Highway 359 along the South edge of the gravel drive with the South line of this tract, N 89° 00' 20" W, 74.20 ft. to a point for angle and, S 86° 42' 22" W, 28.39 ft. to a point marking the beginning of a curve to the right;

THENCE continuing along the edge of the gravel drive with said curve, having a radius of 76.00 ft., a distance of 99.19 ft. (chord N 55° 54' 17" W, 92.30 ft.) to a point marking the end of curve;

THENCE along the Southwest edge of the gravel drive with the Southwest line of this tract, N 18° 30' 57" W, 26.59 ft. to a point marking the beginning of a curve to the right;

THENCE continuing along the edge of the gravel drive with said curve, having a radius of 56.00 ft., a distance of 77.14 ft. (chord N 20° 56' 52" E, 71.19 ft.) to a point for end of curve;

THENCE along the Northwest edge of the gravel drive with the Northwest line of this tract, N 60° 24' 41" E, 13.76 ft. to a point for interior corner;

THENCE departing from the Northwest edge of the gravel drive in a northerly direction, N 37° 19' 13" W, 30.31 ft. to a point for angle, N 31° 11' 23" E, 80.00 ft. to a point for angle and, N 15° 05' 14" W, 44.21 ft. to a point for angle;

THENCE with the West line of this tract, crossing the North line of the called 11.039 acre tract and the South line of the called 6.27 acre tract, then along an existing fence, N 01° 08' 59" W, 78.72 ft. to the intersection of said fence with the South edge of a roof overhang of an office building for corner;

THENCE with said roof overhang, S 88° 51' 01" W, 1.62 ft. to the corner of the roof overhang;

THENCE with the West edge of the roof overhang, N 00° 09' 57" W, 25.71 ft. to its intersection with the South edge of a building for corner;

THENCE with the South edge of said building, S 89° 50' 03" W, 3.10 ft. to a corner of the building;

THENCE with the West edge of the building, N 00° 07' 15" E, 3.01 ft. to a point for corner;

THENCE departing from the West edge of the building, running parallel with and 5 ft. from the Southwest edge of a gallery building, N 68° 49' 22" W, 31.58 ft. to a point for corner;

THENCE N 21° 07' 56" E, at 5.08 ft. pass the West corner of the gallery building and continuing with the Northwest edge of the gallery building for a total distance of 24.92 ft. to the North corner of the building;

THENCE with the Northeast line of the gallery building, S 69° 08' 43" E, 37.76 ft. to the East corner of the gallery building;

JC JONES & CARTER, INC.
ENGINEERS • PLANNERS • SURVEYORS

JOHN G. FAIREY
0.709 ACRE TRACT

ALL THAT TRACT OR PARCEL OF LAND situated in Waller County, Texas out of the Charles Donoho Survey A-24 and being a portion of the tract of land called 11.039 acres in Warranty Deed with Vendor's Lien dated March 2, 1993 from Bonnie R. Piercecall to John G. Fairey as recorded in Volume 476, Page 306 of the Deed Records of Waller County, and being a portion of the tract of land called 6.27 acres in General Warranty Deed dated August 2, 1971 from Donald G. Crawford and wife, Mary Crawford to John G. Fairey as recorded in Volume 228, Page 509 of the Deed Records of Waller County, and lying within a 4.000 acre tract as described in Deed of Trust dated November 27, 2001 as recorded in Volume 769, Page 047 of the Official Public Records of Waller County, said 0.709 acre tract being more particularly described as follows:

COMMENCING at a found 5/8" iron rod lying in the West line of F.M. Highway 359 marking the Northeast corner of the Peckerwood Gardens Conservation Foundation, Inc. tract called 20.138 acres (1142/449 O.P.R.W.C.), the Southeast corner of the called 11.039 acre tract and the called 4.000 acre tract;

THENCE with the West line of F.M. Highway 359, the East line of the called 11.039 acre tract and the called 4.000 acre tract, N 03° 10' 40" E, 35.66 ft. to a point at the South edge of a gravel drive for most southerly Southeast corner and POINT OF BEGINNING of the 0.709 acre tract herein described;

THENCE departing from F.M. Highway 359 along the South edge of the gravel drive with the South line of this tract, N 89° 00' 20" W, 74.20 ft. to a point for angle and, S 86° 42' 22" W, 28.39 ft. to a point marking the beginning of a curve to the right;

THENCE continuing along the edge of the gravel drive with said curve, having a radius of 76.00 ft., a distance of 99.19 ft. (chord N 55° 54' 17" W, 92.30 ft.) to a point marking the end of curve;

THENCE along the Southwest edge of the gravel drive with the Southwest line of this tract, N 18° 30' 57" W, 26.59 ft. to a point marking the beginning of a curve to the right;

THENCE continuing along the edge of the gravel drive with said curve, having a radius of 56.00 ft., a distance of 77.14 ft. (chord N 20° 56' 52" E, 71.19 ft.) to a point for end of curve;

THENCE along the Northwest edge of the gravel drive with the Northwest line of this tract, N 60° 24' 41" E, 13.76 ft. to a point for interior corner;

THENCE departing from the Northwest edge of the gravel drive in a northerly direction, N 37° 19' 13" W, 30.31 ft. to a point for angle, N 31° 11' 23" E, 80.00 ft. to a point for angle and, N 15° 05' 14" W, 44.21 ft. to a point for angle;

THENCE with the West line of this tract, crossing the North line of the called 11.039 acre tract and the South line of the called 6.27 acre tract, then along an existing fence, N 01° 08' 59" W, 78.72 ft. to the intersection of said fence with the South edge of a roof overhang of an office building for corner;

THENCE with said roof overhang, S 88° 51' 01" W, 1.62 ft. to the corner of the roof overhang;

THENCE with the West edge of the roof overhang, N 00° 09' 57" W, 25.71 ft. to its intersection with the South edge of a building for corner;

THENCE with the South edge of said building, S 89° 50' 03" W, 3.10 ft. to a corner of the building;

THENCE with the West edge of the building, N 00° 07' 15" E, 3.01 ft. to a point for corner;

THENCE departing from the West edge of the building, running parallel with and 5 ft. from the Southwest edge of a gallery building, N 68° 49' 22" W, 31.58 ft. to a point for corner;

THENCE N 21° 07' 56" E, at 5.00 ft. pass the West corner of the gallery building and continuing with the Northwest edge of the gallery building for a total distance of 24.92 ft. to the North corner of the building;

THENCE with the Northeast line of the gallery building, S 69° 08' 43" E, 37.76 ft. to the East corner of the gallery building;



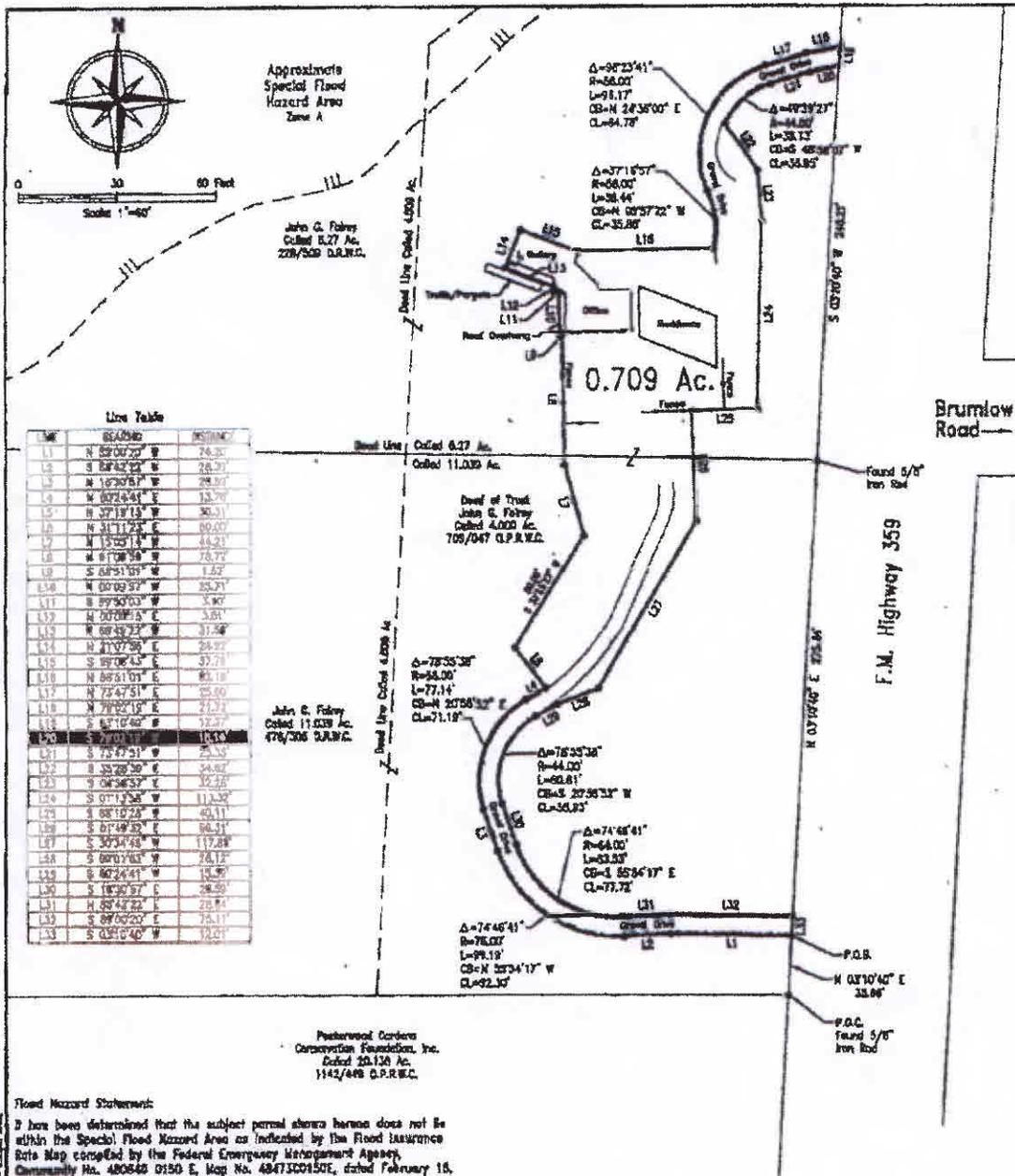
Use of this survey for any other purposes or by other parties shall be at their own risk and the undersigned surveyor is not responsible for any loss resulting therefrom.

This field note description is accompanied by plat of even date.

W.R. Krueger

William R. Krueger March 6, 2013
Registered Professional Land Surveyor No. 2835





Line Table

LINE	BEARING	DISTANCE	BEARING	DISTANCE
1.1	N 82°00'20"	74.34		
1.2	S 82°42'22"	74.30		
1.3	N 16°30'57"	28.97		
1.4	N 02°24'41"	13.79		
1.5	S 37°17'13"	30.51		
1.6	N 31°11'23"	60.00		
1.7	N 13°03'14"	44.21		
1.8	N 8°10'58"	78.72		
1.9	S 61°51'03"	1.52		
1.10	N 00°09'57"	23.71		
1.11	S 89°30'03"	3.90		
1.12	N 00°08'18"	3.81		
1.13	N 88°33'23"	31.54		
1.14	N 21°07'38"	24.72		
1.15	S 89°08'43"	37.71		
1.16	N 88°51'03"	80.18		
1.17	N 72°47'51"	25.00		
1.18	N 78°21'12"	27.74		
1.19	S 81°10'40"	12.27		
1.20	S 79°01'10"	10.10		
1.21	S 75°47'31"	25.33		
1.22	S 33°28'30"	34.62		
1.23	S 04°36'57"	32.25		
1.24	S 07°13'54"	11.43		
1.25	S 08°10'28"	40.11		
1.26	S 07°49'32"	64.31		
1.27	S 30°34'43"	17.24		
1.28	S 08°01'03"	74.12		
1.29	S 40°24'41"	13.95		
1.30	S 18°30'57"	28.50		
1.31	N 82°42'22"	74.31		
1.32	S 89°00'20"	74.11		
1.33	S 03°01'40"	12.01		

Flood Hazard Statement:
 It has been determined that the subject parcel shown herein does not lie within the Special Flood Hazard Area as indicated by the Flood Insurance Rate Map compiled by the Federal Emergency Management Agency, Community No. 480648 0150 E, Map No. 48473C0150E, dated February 18, 2002, Waller County, Texas and Incorporated Areas.

Surveyor Certifications:
 I, William R. Krueger, Registered Professional Land Surveyor, do hereby certify that the above plat represents the results of an on the ground survey made under my direction and supervision on 3/5/13, and that all corners are marked as shown hereon. There are no conflicts or protrusions apparent on the ground except as shown.
 This survey was performed without the benefit of a current title report which may indicate encumbrances or other encumbrances of record not apparent on the ground.
 Use of this survey for any other purposes or by other parties shall be at their own risk and the undersigned surveyor is not responsible for any loss resulting therefrom.
 This plat is accompanied by field note description of even data.

W.R.K.
 William R. Krueger March 8, 2013
 Registered Professional Land Surveyor No. 2213



**PARCEL SURVEY
 OF A PORTION OF THE
 JOHN G. FAIREY TRACT
 BEING
 0.709 ACRES
 OUT OF THE
 CHARLES DONOHO SURVEY A-24
 WALLER COUNTY, TEXAS
 MARCH 6, 2013**

JC JONES & CARTER, INC.
 ENGINEERS • PLANNERS • SURVEYORS

1500 South Day Street
 Brenham, Texas 77833-4600
 (979)834-6631 www.jonescarter.com

Austin • Brenham • Bryan • Dallas • Houston
 Roundberg • San Antonio • The Woodlands

FILED AND RECORDED

Instrument Number: 1600544

Filing and Recording Date: 01/27/2016 11:25:16 AM Pages: 11 Recording Fee: \$52.00

I hereby certify that this Instrument was FILED on the date and time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS of Waller County,



Debbie Hollan

Debbie Hollan, County Clerk
Waller County, Texas

ANY PROVISION CONTAINED IN ANY DOCUMENT WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE REAL PROPERTY DESCRIBED THEREIN BECAUSE OF RACE OR COLOR IS INVALID UNDER FEDERAL LAW AND IS UNENFORCEABLE.

Jenifer Deutch, Deputy

Returned To:
MARJORIE S SCHULTZ & ASSOCIATES
1200 BINZ STREET
STE 650
HOUSTON, TX 77004

BY-LAWS
OF
PECKERWOOD GARDEN CONSERVATION FOUNDATION, INC.,
D.B.A THE JOHN FAIREY GARDEN CONSERVATION
FOUNDATION

(formed under the Texas Not-for-Profit Corporation Law)

ARTICLE I

These bylaws constitute the code of rules adopted by The John Fairey Garden Conservation Foundation. ("the Corporation") for the regulation and management of its affairs.

ARTICLE II

Purpose

The purpose generally of the Corporation shall be to support The John Fairey Garden, an outstanding repository of rare and unusual plants. The Corporation shall seek in particular to preserve the existing plant collections; support continued plant explorations and trials; and develop, maintain and preserve the land and facilities of Peckerwood Garden.

ARTICLE III

Membership

The Corporation shall have no members.

ARTICLE IV

Board of Directors

Section 4.1. Power of Board and Qualifications of Directors. The Corporation shall be managed by its Board of Directors, in which all corporate powers shall vest. Each director shall be at least eighteen years of age.

Section 4.2. Number of Directors. The number of directors constituting the entire Board of Directors shall be such number as the Board of Directors shall designate. A majority of the total number of directors who would be entitled to vote prior to any increase or decrease and in the absence of any vacancy may amend this Section 4.2 to increase or decrease the number of directors, provided that no decrease shall shorten the term of any incumbent director, and provided further that the number of directors shall never be fewer than three.

Section 4.3. Term and Election of Directors. The Directors shall serve terms of three years with the option of continuing in service on the board for a single consecutive term thereafter. Upon serving two consecutive terms, a director must vacate his or her position for at least one year before seeking re-election to another term unless a waiver is granted by majority vote of the Board. In the event a director is elected to fill the uncompleted term of a departing board member, the partial term shall not count towards term limits.

New directors shall be elected by a simple majority of directors present, provided a quorum then exists.

Section 4.4. Quorum of Directors and Action by the Board. Unless a greater proportion is required by law or by the Certificate of Incorporation, a simple majority of

the entire Board of Directors, but in no case fewer than three directors, shall constitute a quorum for the transaction of business or of any specified item of business, and, except as otherwise provided by law or by the Certificate of Incorporation or these By-Laws, the vote of a majority of the directors present at the meeting at the time of such vote, if a quorum is then present, shall be the act of the Board.

The Certificate of Incorporation or these By-Laws may be amended to provide for a greater quorum or to provide for a greater number of directors than shall be necessary for the transaction of business or any specified item of business, provided such amendment is authorized by vote of two-thirds of the entire Board.

Section 4.5. Meetings of the Board. An annual meeting of the Board of Directors shall be held for the election of directors and the transaction of other business on such dates as may be fixed by the Board.

Regular meetings of the Board shall be held on such dates as may be fixed by the Board. Special meetings of the Board may be held at any time whenever called by the President of the Board, if any; the Vice-President of the Board, if any; or any two directors.

No notice need be given of annual or regular meetings of the Board of Directors. Notice of each special meeting of the Board shall be given to each director either by mail not later than noon, Houston time, on the tenth business day prior to the meeting, or by electronic mail, or written message hand-delivered director not later than noon, Houston time, on the fifth business day prior to the meeting. Notices shall be deemed to have been given by mail when deposited in the United States mail, by electronic mail when sent, and by messenger at the time of delivery by the messenger. Notices by mail, electronic mail or messenger shall be sent to each director at the address designated by him or her for that purpose, or, if none has been so designated, to the contact information for each director on file with the Secretary.

Notice of a meeting of the Board of Directors need not be given to any director who submits a waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at the commencement of such meeting, the lack of notice to him or her. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director by signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means, including a facsimile signature. If electronic, the transmission of the waiver must be sent by e-mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by said director.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting to another time or place shall be given in the manner described above to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

Section 4.6. Informal Action by Directors Meetings by Conference Telephone. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken by the Board may be taken without a meeting if all directors consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by each director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means, including a facsimile signature. If electronic, the transmission of the consent must be sent by e-mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by said director. The resolution and the written consents thereto by the directors shall be filed with the minutes of proceedings of the Board.

Any one or more of the directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment or by electronic video screen communication. Such participation shall constitute presence in person at a meeting, as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee.

Section 4.7. Attendance. Any member of the Board who misses three consecutive meetings will be considered officially to have resigned from the Board and

his or her seat will be ruled vacant, unless the Board excuses the absences by a majority vote.

Section 4.8. Resignations. Any director of the Corporation may resign at any time by giving written notice to the Board of Directors or to the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective.

Section 4.9. Removal of Directors. Any one or more of the directors may be removed with or without cause by an affirmative vote of two-thirds (2/3) of the Board of Directors, provided that, if such action is taken at a meeting of the Board rather than by consent in accordance with Section 4.6, a quorum of not less than a majority of the entire Board must be present.

Section 4.10. Newly-Created Directorships and Vacancies. Newly-created directorships, resulting from an increase in the number of directors, and vacancies occurring in the Board of Directors for any reason, may be filled by vote of a majority of the directors then in office, provided there shall be three or more directors in office. If there shall be fewer than three directors serving at any time, the directors then in office shall promptly by unanimous vote name at least such number of directors as shall be necessary to have three directors in office. A director elected to fill a vacancy shall hold office until the next annual meeting of the Board and until his or her successor is elected and qualified.

Section 4.11. Purchase, Sale, Mortgage or Lease of Real Property. The Corporation shall not purchase, sell, mortgage or lease real property, unless authorized by the vote of two-thirds of the entire Board of Directors.

Section 4.12. Annual Report. The Board of Directors shall direct the President and Treasurer, if any, of the Corporation to present at the annual meeting of the Board a report showing in detail the following:

- (1) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve-month fiscal period terminating not more than six months prior to said meeting;
- (2) the principal changes in assets and liabilities, including trust funds, during said fiscal period;
- (3) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and
- (4) the expenses or disbursements of the Corporation, for both general and restricted purposes during said fiscal period.

The annual report shall be filed with the records of the Corporation, and a copy or abstract thereof entered in the minutes of the proceedings of the annual meeting of the Board.

At the discretion of the board, but at a frequency no less than once each three years, such annual report shall be accompanied by an annual financial statement which includes an independent certified public accountant's review report in accordance with "statements on standards for accounting and review services" issued by the American Institute of Certified Public Accountants. The annual financial statement shall be prepared in conformity with generally accepted accounting principles, including compliance with all pronouncements of the financial accounting standards board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for profit organizations. Such financial report shall be filed with the Attorney General, upon forms prescribed by the Attorney General on an annual basis or before the fifteenth day of the fifth calendar month after the close of such fiscal year, which shall include a financial report covering such fiscal year in accordance with such requirements as the Attorney General may prescribe. The financial report shall be signed by the President or other authorized officer and the chief fiscal officer of the Corporation who shall certify under penalties for perjury that the statements therein are true and correct to the best of their knowledge.

Section 4.13. Audit and Financial Reporting Oversight. The Board, or a designated Treasurer of the Board, shall oversee the accounting and financial reporting process of the Corporation and the audit of the Corporation's financial statements.

The Board, or the Treasurer, shall, at the Attorney General's request, retain an independent auditor to conduct an independent certified public accountant's audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor.

Section 4.14. Compensation of Directors. Directors and members of committees may receive reimbursement of such expenses as may be determined by resolution of the Board of Directors to be just and reasonable. Directors shall not otherwise be compensated for service in the capacity of Director.

Section 4.15. Conflict of Interest Policy. The Board, or a designated audit committee of the Board, shall oversee the adoption, implementation of, and compliance with a conflict of interest policy adopted by the Corporation if this function is not otherwise performed by another committee of the Board comprised solely of independent directors.

ARTICLE V

Committees

Section 5.1. Executive Committee. The President, Vice President, Treasurer, and Secretary of the Corporation shall constitute the executive committee. The executive committee shall have the authority to direct the activities of the corporation as authorized by the Board of Directors. The President shall act as chairperson of the executive committee. A majority of the Executive Committee shall constitute a quorum for the transaction of business, and all decisions shall be by majority vote of those present.

Section 5.2. Other Committees of the Board. The Board of Directors, by resolution adopted by a majority of the entire Board, may designate other committees of the Board, each of which, to the extent provided in the resolution, shall have all the authority of the Board, except that no such committee shall have authority as to the following matters:

- (1) filling vacancies in the Board of Directors or in any committee;
- (2) amending or repealing the By-Laws or adopting new By-Laws;
- (3) amending or repealing any resolution of the Board which by its terms cannot be amended or repealed; or
- (4) removing directors.

Each committee shall consist of two or more members, who shall be appointed by the President, and may include persons who are not directors. The President may designate one or more persons as alternate members of any committee, who may replace any absent member or members at any meeting of such committee.

Section 5.3. Committees Other Than Committees of the Board. Committees other than committees of the Board shall be committees of the Corporation. Such committees of the Corporation may be elected or appointed in the same manner as officers of the Corporation. No such committee shall have the authority to bind the Board. Provisions of these By-Laws and the Not-for-Profit Corporation Law applicable to officers generally shall apply to members of such committees.

Section 5.4. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may make, alter and repeal rules for

the conduct of its business.

In the absence of a contrary provision by the Board of Directors or in rules adopted by such committee, a majority of the entire authorized number of members of each committee shall constitute a quorum for the transaction of business, the vote of a majority of the members of a committee present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and each committee shall otherwise conduct its business in the same manner as the Board of Directors conducts its business under Article IV of these By-Laws.

Section 5.5. Informal Action by Committees. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken by such committee may be taken without a meeting if all members of such committee consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by each member of such committee by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means, including a facsimile signature. If electronic, the transmission of the consent must be sent by e-mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by such member of the committee. The resolution and the written consents thereto by the members of the committee shall be filed with the minutes of proceedings of such committee.

Any one or more members of any committee may participate in a meeting of such committee by means of conference telephone or similar communications equipment or by electronic video screen communication. Such participation shall constitute presence in person at a meeting, as long as all persons participating in the meeting can hear each other at the same time and each member of the committee can participate in all matters before the committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the committee.

Section 5.6. Service of Committees. Each committee of the Board shall serve at the pleasure of the Board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his or her duty under the law to the Corporation.

Section 5.7. Advisory Bodies. The President or the Board of Directors may create and appoint persons to one or more commissions, advisory bodies or other such bodies which may or may not have directors as members; provided, however, that such commissions or bodies shall serve and act only in an advisory capacity to consult with and advise the Board of Directors and its officers, and shall have no authority to act on behalf of or as agent for the Corporation's duly elected Board of Directors or in any manner bind the Corporation.

Section 5.8. Honorary Directors. The President or the Board of Directors may from time to time select and appoint one or more persons as Honorary Directors in the manner and for such duties as determined by the Board of Directors; provided, however, that such Honorary Directors shall constitute only an advisory board to consult with and advise the Board of Directors and shall have no authority to act on behalf of or as agent for the Corporation's duly elected Board of Directors or in any manner bind the Corporation.

ARTICLE VI

Officers

Section 6.1. Officers. The Board of Directors shall elect or appoint a President and a Secretary, and may elect or appoint a Treasurer. The Board may also, if it so decides, choose a Chairperson of the Board and a Vice-Chairperson of the Board from among its members. In addition, the Board may elect or appoint one or more Vice-Presidents, Assistant Vice-Presidents, Assistant Secretaries, Assistant Treasurers and other officers and may give any of them such further designation or alternate titles as it considers desirable. Any two or more offices may be held by the same person except the offices of President and Secretary. No employee of the Corporation shall serve as Chairman of the Board or hold any other title with similar responsibilities.

Section 6.2. Term of Office and Removal. Each officer shall hold office for the term for which he or she is elected or appointed and until his or her successor has been

elected or appointed and qualified. All officers shall be elected or appointed annually.

Any officer elected or appointed by the Board of Directors may be removed by the Board with or without cause at any time. Removal of an officer without cause shall be without prejudice to his or her contract rights, if any, and the election or appointment of an officer shall not of itself create contract rights.

Section 6.3. Powers and Duties of Officers. Subject to the control of the Board, all officers as between themselves and the Corporation shall have such authority and perform such duties in the management of the Corporation as may be provided by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices. The Board may require any officer to give security for the faithful performance of his or her duties.

ARTICLE VII

Executive Director

The Board of Directors may choose to employ an Executive Director to serve as chief executive officer of the corporation. Subject to control of the Board, the Executive Director shall have the authority to perform such duties required to lead the operations of the corporation. The Board of Directors, by resolution adopted by a majority of the entire Board may grant the Executive Director the right to the vote on actions of the board. However, the presence of the Executive Director will not be considered when determining if a Quorum is present as stipulated in Section 4.4.

ARTICLE VIII

Indemnification and Insurance

Section 8. I. Indemnification. The Corporation shall indemnify each person made, or threatened to be made, a party to any action or proceeding, other than one by or in the right of the Corporation to procure a judgment in its favor, whether civil or criminal, by reason of the fact that such person or such person's testator or intestate is or was a director or officer of the Corporation, or serves or served at the request of the Corporation any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, penalties, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, provided that such officer or director acted in good faith for a purpose which he or she reasonably believed to be in (or in the case of service to any other corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, not opposed to) the best interests of the Corporation, and, in criminal actions or proceedings, in addition had no reasonable cause to believe that his or her conduct was unlawful; and provided further that no such indemnification shall be required with respect to any settlement or other non-adjudicated disposition of any threatened or pending action or proceeding unless the Corporation has given its prior consent to such settlement or other disposition.

The Corporation shall indemnify any person, as above provided, in connection with an action by or in right of the Corporation to procure a judgment in its favor, except that

no such indemnification shall be made in respect of a threatened action or a pending action which is otherwise disposed of, or any claim, issue or matter as to which such person shall have been adjudged liable to the Corporation, unless, and only to the extent that, the court in which the action was brought (or, if no action was brought, any court of competent jurisdiction) determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

The Corporation shall advance or promptly reimburse, upon request, any person entitled to indemnification hereunder for all expenses, including attorneys' fees, reasonably incurred in defending any action or proceeding in advance of the final disposition thereof upon receipt of any undertaking by or on behalf of such person to

repay such amount if such person is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced, reimbursed or allowed by the court exceed the amount to which such person is entitled; provided, however, that such person shall cooperate in good faith with any request by the Corporation that common counsel be utilized by the parties to an action or proceeding who are similarly situated unless to do so would be inappropriate because of actually or potentially differing interests between or among such parties.

Nothing herein shall limit or affect any right of any person otherwise than hereunder to indemnification or expenses, including attorneys' fees, under any statute, rule, regulation, certificate of incorporation, by-law, insurance policy, contract or otherwise.

In case any provision in this By-Law shall be determined at any time to be unenforceable in any respect, the other provisions shall not in any way be affected or impaired thereby, and the affected provision shall be given the fullest possible enforcement in the circumstances, it being the intention of the Corporation to afford indemnifications and advancement of expenses to its directors and officers, acting in such capacities or in the other capacities mentioned herein, to the fullest extent permitted by law.

A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in the first two paragraphs of this By-Law shall be entitled to indemnification as authorized in such paragraphs. Except as provided in the preceding sentence and unless ordered by a court, any indemnification under this By-Law shall be made by the Corporation if, and only if, authorized in the specific case:

(1) By the Board of Directors acting by a quorum consisting of directors who are not parties to such action or proceeding ("disinterested directors") upon a finding that the director or officer has met the standard of conduct set forth in the first, and pursuant to the second, paragraph of this By-Law, or,

(2) If such a quorum is not obtainable or, even if obtainable, a quorum of disinterested directors so directs, by the Board of Directors upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the standard of conduct set forth in this By-Law has been met by such director or officer.

The rights provided to any person by this Article shall survive the termination of such person as any such director or officer.

Section 8.2. Insurance. The Corporation shall have the power to purchase and maintain insurance (i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of Section 7.1,

(ii) to indemnify directors and officers in instances in which they may be indemnified by the Corporation under the provisions of Section 7.1, and (iii) to indemnify directors and officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of Section 7.1, provided that, in this latter case, all legal requirements be met with regard to the contract of insurance.

No insurance so purchased and maintained may provide for any payment, other than the cost of defense, to or on behalf of any director or officer (i) if a judgment or other final adjudication adverse to the insured director or officer establishes that his or her acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that the person personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or (ii) in relation to any risk the insurance of which is prohibited under Texas insurance law.

Section 8.3. Conditions for Indemnification and Insurance. Notwithstanding anything herein to the contrary, in no case shall the Corporation indemnify, reimburse, or insure any person for any taxes imposed on such individual under Chapter 42 of the Internal Revenue Code of 1986, as amended (the "Code"). Further, if at any time the Corporation is deemed to be a private foundation within the meaning of Section 509 of the Code, then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or taxable expenditure, as defined in Section 4941(d) or 4945(d), respectively, of the Code. Moreover, the Corporation shall not indemnify, reimburse, or insure any person in any instance where such

indemnification, reimbursement, or insurance is inconsistent with Section 4958 of the Code, any other provision of the Code applicable to corporations described in Section 501(c)(3) of the Code, the Texas Not-for-Profit Corporation Law, or any other applicable law. Any application to a court for indemnification must be made upon notice to the Attorney General.

ARTICLE IX

Provisions Affecting Directors and Officers

Section 9.1. Related Party Transactions. The Corporation shall not enter into any related party transaction except as approved pursuant to the procedures set out in the Corporation's Conflict of Interest Policy. A related party transaction is any transaction, agreement or other arrangement in which a related party has a financial interest and in which the corporation or any affiliate is a participant. A related party includes any director, officer or key employee of the corporation, any relative of such person, or any entity in which any such person or relative of such person has a 35% or greater ownership interest, as these are defined in the Corporation's Conflict of Interest Policy.

Section 9.2. Loans to Directors and Officers. No loans, other than through the purchase of bonds, debentures or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its directors or officers, or to any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers or hold a substantial financial interest, except that the Corporation may make a loan to any corporation which is a "charitable corporation" under the Not-for-Profit Corporation Law of the State of Texas. A loan made in violation of this paragraph shall be a violation of the duty to the Corporation or of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

Section 9.3. Conditions for Loans or Other Transactions. This Article shall, in no event, be construed to authorize any act of self-dealing within the meaning of Section 4941 of the Code, or any other act expressly prohibited by the Code, the Texas Not-for-Profit Corporation Law, or any other applicable law.

ARTICLE X

Miscellaneous

Section 10.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year or such other period as may be fixed by the Board of Directors.

Section 10.2. Corporate Seal. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 10.3. Books and Records to be Kept. The Corporation shall keep at its principal office in the State of Texas, (a) correct and complete books and records of account, (b) minutes of the proceedings of the Board of Directors and any committee of the Corporation, and (c) a current list of the directors and officers of the Corporation and their residence addresses. Any of the books, minutes and records of the Corporation may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 10.4. Amendment of By-Laws. By-Laws of the Corporation may be adopted, amended or repealed by the Board of Directors.

CERTIFICATION

I hereby certify that these bylaws were adopted by the Board of Directors of Peckerwood Garden Conservation Foundation, Inc. at its meeting held on this 15th day of February, 2023.

Secretary

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 30, 2023

Mr. Randy Twaddle
Peckerwood Gardens Conservation Foundation, Inc.
20559 FM Rd
Hempstead, Texas 77445

VIA E-MAIL

RE: Peckerwood Gardens Conservation Foundation, Inc.
WRTP 13890
CN605239490, RN111626339
Application No. 13890 for a Temporary Water Use Permit
Texas Water Code § 11.138, Requiring Limited Mailed Notice
Unnamed Tributary of Clear Creek, Brazos River Basin
Waller County

Dear Mr. Twaddle:

This acknowledges receipt, on December 29, 2022, of the referenced application, and fees in the amount of \$311.25 (Receipt No. M307484, copy attached).

A temporary permit may only be issued if there is surplus water available for use on a short-term (temporary or ephemeral) basis in the source supply. During low flow conditions, which occur during a drought or periods of limited rainfall, all water in the basin will be required for existing senior water rights and there is no presumption of any surplus flows.

Additional information and fees are required before the application can be declared administratively complete.

1. Confirm the location of the diversion point on the unnamed tributary of Clear Creek, Brazos River Basin. The latitude and longitude provided in the application does not plot on a watercourse. Staff has calculated coordinates to be Latitude 30.059233° N, Longitude 96.037374° W.
2. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on any new diversion structure that is not already authorized in a water right). Refer to pages 28-29 from the Instructions for Completing the Water Right Permitting Application (Form TCEQ-10214A-inst) for assistance in developing your response.
3. Provide a USGS 7.5-minute topographic map (or equivalent) with the location of the diversion point clearly marked. Staff notes that a map was not provided.
4. Provide a recorded copy of the deed(s) for the property where the proposed land to be irrigated is located. The deed should include the legal description of the land (metes and bounds). Please note that the application must be in the name(s) of all landowners as shown on the deeds; otherwise, proper consent of the application must be provided pursuant to Title 30 Texas Administrative Code (TAC) § 295.32(a)(5).

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

How is our customer service? tceq.texas.gov/customersurvey
printed on recycled paper

PTAU

Mr. Randy Twaddle
Application No. 13890
January 30, 2023
Page 2 of 2

PAY TO THE ORDER
OF STATE COMPTROLLER
TCEQ

312284 2218

5. Provide recorded copies of legal documents establishing ownership of the proposed diversion point, or a copy of a duly acknowledged written easement, consent, or license from the landowner(s) whose land is associated with the proposed diversion point, pursuant to Title 30 TAC § 295.10.
6. Provide written evidence that Mr. Randy Twaddle is authorized to sign the application for Peckerwood Gardens Conservation Foundation, Inc. pursuant to Title 30 TAC § 295.14(5), which states:

If the applicant is a corporation, public district, county, municipality, or other corporate entity, the application shall be signed by a duly authorized official. Written evidence in the form of bylaws, charters, or resolutions which specify the authority of the official to take such action shall be submitted. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

7. Remit fees in the amount of **\$76.44**, as described below. Please make the check payable to the Texas Commission on Environmental Quality.

Filing Fee (Temporary Permit > 10 acre-feet)	\$ 250.00
Recording Fee (\$1.25 x 1 page)	\$ 1.25
Use Fee (\$1.00 x 60 acre-feet)	\$ 60.00
<u>Notice Fees (\$2.94 x 26 water right holders)</u>	<u>\$ 76.44</u>
TOTAL FEES	\$ 387.69
<u>FEES RECEIVED</u>	<u>\$ 311.25</u>
TOTAL FEES DUE	\$ 76.44

Please provide the requested information and fees by March 1, 2023 or the application may be returned pursuant to Title 30 TAC § 281.18.

If you have any questions concerning this matter, please contact me via email at jenna.rollins@tceq.texas.gov or by telephone at (512) 239-1845.

Sincerely,

Jenna Rollins

Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

Attachment

Jenna,
I will send the other materials via email before March 1st. Thank you,
Randy



22-DEC-22 03:55 PM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u> <u>Account Name</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PERMITS	WUP	M307484	4909		BS00099812	22-DEC-22	-\$311.25
	WUP		122222	N	D3801238		
	WATER USE PERMITS	PECKERWOOD GARDEN CONSERVATIO N FOUNDATION	VHERNAND	CR			
Total (Fee Code):							-\$311.25

RECEIVED
 DEC 29 2022
 Water Availability Division

RECEIVED
 FEB 23 2023
 Water Availability Division

Jenna Rollins

From: Jenna Rollins
Sent: Wednesday, February 1, 2023 9:33 AM
To: Randy Twaddle
Subject: RE: another question for you

Good morning Mr. Twaddle,

Once we receive a complete response to the RFI letter, not including fees, our tech staff will review the response, and we will let you know if any additional information is needed.

Thank you,
Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section
512-239-1845

From: Randy Twaddle [REDACTED]
Sent: Tuesday, January 31, 2023 2:57 PM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: another question for you

Hi Jenna,

I'm sorry to bother you but I thought it would make sense to get your approval on this before I actually submit everything.

I've attached a corrected gift deed. Will this satisfy #4 of the additional information needed?

4. Provide a recorded copy of the deed(s) for the property where the proposed land to be irrigated is located. The deed should include the legal description of the land (metes and bounds). Please note that the application must be in the name(s) of all landowners as shown on the deeds; otherwise, proper consent of the application must be provided pursuant to Title 30 Texas Administrative Code (TAC) § 295.32(a)(5).

Thank you,
Randy

--
RANDY TWADDLE
Executive Director,
[The John Fairey Garden](#)
Conservation Foundation
832.656.8869



Jenna Rollins

From: Randy Twaddle [REDACTED]
Sent: Tuesday, January 31, 2023 2:57 PM
To: Jenna Rollins
Subject: another question for you
Attachments: 1704788 Correction Gift Deed.pdf

Hi Jenna,

I'm sorry to bother you but I thought it would make sense to get your approval on this before I actually submit everything.

I've attached a corrected gift deed. Will this satisfy #4 of the additional information needed?

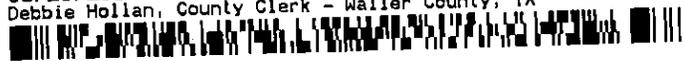
4. Provide a recorded copy of the deed(s) for the property where the proposed land to be irrigated is located. The deed should include the legal description of the land (metes and bounds). Please note that the application must be in the name(s) of all landowners as shown on the deeds; otherwise, proper consent of the application must be provided pursuant to Title 30 Texas Administrative Code (TAC) § 295.32(a)(5).

Thank you,
Randy

--

RANDY TWADDLE
Executive Director,
[The John Fairey Garden](#)
Conservation Foundation
832.656.8869





NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

CORRECTION GIFT DEED
WITH RESERVATION OF LIFE ESTATE

THE STATE OF TEXAS §
 §
COUNTY OF WALLER §

This Deed (referred to herein as "this Correction Deed") is made as a Correction Deed in full substitution of the Deed titled "Gift Deed with Reservation of Life Estate", executed by JOHN G. FAIREY, as grantor (herein referred to as "Grantor"), to PECKERWOOD GARDEN CONSERVATION FOUNDATION, INC., as grantee (herein referred to as "Grantee"), dated September 2, 2015, but held in escrow until January 27, 2016, and becoming effective for all purposes on, and recorded on, said January 27, 2016 date, under Instrument No. 1600544 in the real property records of Waller County, Texas (such September 2, 2015 deed is herein referred to as the "Original Deed").

This Correction Deed is executed by Grantor and Grantee to correct and replace Exhibit "A" of the Original Deed. By mutual mistake, Grantor and Grantee provided that the Property conveyed by the Original Deed was an 18.099 acre tract, which is described on Exhibit "A" to the Original Deed. Such Exhibit "A" is deleted from the Original Deed. Grantor and Grantee intended that the following two tracts be conveyed in the Original Deed as the Property:

- A. a 6.27 acre tract of land, more or less, being out of and a part of the Charles Donoho Survey, Abstract No. 24, as further described in Deed from Donald G. Crawford and wife, Mary Crawford, to Grantor, dated August 2, 1971 and filed under Clerk's File No. 71941 and recorded in Volume 228, Page 509 of the Deed Records of Waller County, Texas, and further described on Exhibit "A-1" attached hereto and made a part hereof; and
- B. a 12 acre tract of land, more or less, located in the Charles Donoho Survey, Abstract 24, Waller County, Texas, as further described in Deed from Bonnie R. Pierceall to Grantor, dated March 2, 1993, and filed under Clerk's File No. 182531, and recorded under Volume 476, Page 306 of the Waller County Deed Records, and further described on Exhibit "A-2" attached hereto and made a part hereof.

Accordingly, effective as of January 27, 2016, for and in consideration of Grantor's intention to make a gift as a charitable contribution under applicable laws and regulations, and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty (as defined below), Grantor GRANTS, GIVES and CONVEYS to Grantee the Property (being the Property described on Exhibit "A-1" and "A-2" attached to this Correction Deed), together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold to Grantee and Grantee's heirs, successors and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and Exceptions to Conveyance and Warranty.

The "Reservations from Conveyance" are:

For Grantor, a reservation of the full possession, benefit and use of that portion of the Property described on Exhibit "B" for the remainder of the life of the Grantor, as a life estate. (Exhibit "B" to the Original Deed correctly identifies such property, and such Exhibit "B" is also attached to this Correction Deed.)

The "Exceptions to Conveyance and Warranty" are:

This conveyance is made and accepted SUBJECT TO any and all conditions, covenants, reservations, mineral and royalty reservations, easements, restrictions, encumbrances, regulations of governmental authority, and all other matters, if any, relating to the hereinabove described property, to the extent, and only to the extent, that the same may still be in force and effect, shown of record in the office of the County Clerk of Waller County, Texas.

When the context requires, singular nouns and pronouns include the plural.

Other than the stated correction as to Exhibit "A" to the Original Deed, this Correction Deed is intended to restate in all respects the Original Deed.

EXECUTED by Grantor and Grantee on the dates identified in the acknowledgments below, but effective for all purposes as of January 27, 2016, as set forth in the first subparagraph of this Deed.

GRANTOR:



JOHN G. FAIREY

AGREED AND ACCEPTED:

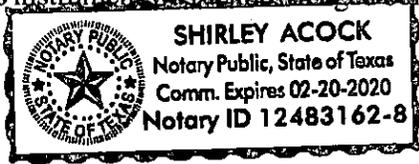
GRANTEE:

PECKERWOOD GARDEN CONSERVATION
FOUNDATION, INC.

By: *Sarah W. Newbery*
Sarah W. Newbery,
President

THE STATE OF TEXAS §
 §
COUNTY OF Waller §

This instrument was acknowledged before me on ^{MAY} April 3, 2017, by JOHN G. FAIREY.



Shirley Acock
Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on ^{MAY} April 22, 2017, by Sarah W. Newbery, President of PECKERWOOD GARDEN CONSERVATION FOUNDATION, INC., a Texas non-profit corporation, on behalf of said corporation.

Betsy Jones Kirkgard
Notary Public in and for the State of Texas



Address of Grantor:

20571 FM 359
Hempstead, Texas 77445

Address of Grantee:

20571 FM 359
Hempstead, Texas 77445

AFTER RECORDING, RETURN TO:

Jim Avant
1800 Bering Drive, Suite 310
Houston, Texas 77057

EXHIBIT "A-1".

All of that certain tract or parcel of land being out of and a part of the Charles Donoho Survey, Abstract No. 24, lying in Waller County, Texas, and being more particularly described as follows, to-wit:

Being the same 5 acres conveyed to Ora V. Bramlow by deed dated June 18, 1954, from C. T. Garrett, of record in Volume 136, Page 209 of the Deed Records of Waller County, Texas, and 1-1/2 acres of the old Pine Island Road which was abandoned by Waller County, in 1941, and being described as follows, to-wit:

BEGINNING at a fence corner in the West line of Farm-to-Market Road No. 359, for the most Northeastly corner of this 6.27 acre tract, said corner bears North 2 deg. E., 187 feet and 40 feet West from where said center line of Farm-to-Market Road crosses center of bridge crossing Dry Creek;
 THENCE South 51 deg. West, along fence line, 718 feet to fence corner;
 THENCE South 8 deg. West, along fence line, 179.4 feet to fence corner;
 THENCE North 89 deg. West, along fence line, 204.6 feet to fence corner;
 THENCE South 16 deg. West, along fence line, 70.5 feet to a point in fence line, in near center of old abandoned road, which was abandoned by Waller County in 1941;
 THENCE East along said fence line, a distance of 862 feet to the PLACE OF BEGINNING, containing 6.27 acres of land, more or less, as surveyed by W. D. Kennedy, December 16, 1958, with a Magnetic Declination of 9 deg. 15 min. East, as surveyed by W. D. Kennedy, Registered Surveyor.

EXHIBIT "A -2"

Robert McCay, R.P.L.S.
409-826-8949

ROBERT McCAY SURVEYING INC.

DEED RECORDS
VOL 476 PAGE 308

Route 3, Box 181 F
Hempstead, Texas 77445

METES AND BOUNDS
11.039 ACRES
CHARLES DONOHO SURVEY A-24
WALLER COUNTY, TEXAS

BEING 11.039 acres of land situated in the Charles Donoho Survey A-24, Waller County, Texas, and being part of a call 39.0107 acre tract of land described by deed from Bonnie Ruth Pierceall and husband, Fred Pierceall Jr., to Eugene D. Wood recorded in Volume 326, Page 679, and also described in an Appointment of Substitute Trustee, recorded in Volume 414, Page 929, all of the Deed Records of Waller County, Texas, said 11.039 acres being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found on the north side of a creek, in the east line of Walton Road for the southwest corner of a call 0.9467 acre tract of land, (resurvey 0.961 acre) (but not included in this survey) being an old abandoned road, under fence with this property, the northwest corner of the call 39.0107 acre tract of land, and the POINT OF BEGINNING and the northwest corner of the herein described tract;

THENCE South 86 degrees 44 minutes 57 seconds East, along the north line of the call 39.0107 acre tract of land for the north line of this tract, a distance of 562.18 feet (call 562.03 feet) to a 1/2 inch iron rod found at fence corner post for an angle point of the call 39.0107 acre tract of land and an angle point of the herein described tract;

THENCE South 88 degrees 56 minutes 11 seconds East (call South 88 degrees 54 minutes 37 seconds East), generally along an old fence line, the south line of a call 6.27 acre tract of land described by deed to Frank S. Fairey et al, recorded in Volume 426, Page 191, Deed Records of Waller County, Texas, and the north line of this tract, a distance of 863.12 feet (call 863.29 feet) to a 1/2 inch iron rod found in the west line of F.M. Highway No. 359 for the northeast corner of the call 39.0107 acre tract of land and the northeast corner of the herein described tract;

THENCE South 03 degrees 10 minutes 42 seconds West, along the westerly right-of-way line of F.M. Highway No. 359 (100 ft. R.O.W.), a distance of 323.16 feet to a 5/8 inch iron rod set for the southeast corner of the herein described tract;

THENCE West, leaving the westerly right-of-way line of F.M. Highway No. 359, a distance of 1402.73 feet to a 5/8 inch iron rod set in the west line of Walton Road as fenced for the southwest corner of the herein described tract;

THENCE North 00 degrees 33 minutes 20 seconds West, along the east line of Walton Road and the west line of the call 39.0107 acre tract, a distance of 370.58 feet to the POINT OF BEGINNING, containing within these metes and bounds an 11.039 acre tract of land as surveyed by Robert McCay, Registered Professional Land Surveyor #4509, February 26, 1993.

DEED RECORDS
VOL 476 PAGE 309

EXHIBIT A



Robert McCay
Robert McCay R.P.L.S. #4509

Robert McCay, R.P.L.S.
409-826-8949

ROBERT McCAY SURVEYING INC.
METES AND BOUNDS
0.961 ACRES
CHARLES DONOHO SURVEY A-24
WALLER COUNTY, TEXAS

DEED RECORDS
VOL 476 PAGE 309
Route 3, Box 101 F
Hempstead, Texas 77445

BEING 0.961 acre tract of land situated in the Charles Donoho Survey A-24, Waller County, Texas, and being the same call 0.9467 acre tract of land (an old abandoned road) under fence with a call 39.0107 acre tract of land described by deed from Bonnie Ruth Pierceall and husband, Fred Pierceall Jr., to Eugene D. Wood recorded in Volume 326, Page 679, and also described in an Appointment of Substitute Trustee, recorded in Volume 414, Page 929, all of the Deed Records of Waller County, Texas; said 0.961 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found on the north side of a creek in the east line of Walton Road for the northwest corner of a call 39.0107 acre tract of land, the southwest corner of the call 0.9467 acre tract and the POINT OF BEGINNING and the southwest corner of the herein described tract;

THENCE North 01 degrees 21 minutes 20 seconds East, along the east fence line of Walton Road for the west line of this tract, a distance of 57.73 feet to a tree at a fence angle point;

THENCE North 20 degrees 54 minutes 02 seconds West, continuing along the current east fence line of Walton Road, a distance of 10.07 feet to a fence corner post in the south fence line of a call 83.276 acre tract of land described in Volume 416, Page 227, of the Deed Records of Waller County, Texas, for the northwest corner of the herein described tract;

DEED RECORDS
VOL 416 PAGE 310

THENCE in a easterly direction along the current occupied fence line of the call 83.276 acre tract and the north fence line of the old abandoned road, the following courses:

- (1) South 88 degrees 08 minutes 42 seconds East, a distance of 176.79 feet to a fence post at fence angle point;
- (2) South 88 degrees 42 minutes 15 seconds East, a distance of 126.06 feet to a tree at a fence angle point;
- (3) South 87 degrees 14 minutes 15 seconds East, a distance of 209.44 feet to a fence post at angle point;
- (4) South 79 degrees 37 minutes 18 seconds East, at approximately 36.76 feet pass the apparent deed line of the call 83.276 acre tract, at 44 feet pass the center of a creek, continuing a total distance of 73.99 feet to a 1/2 inch iron rod found at a corner of a call 6.27 acre tract described by deed recorded in Volume 426, Page 191, of the Deed Records of Waller County, Texas and the northeast corner of the herein described tract;

THENCE South 17 degrees 33 minutes 38 seconds West, along the most westerly fence line of the call 6.27 acre tract, for the east line of this tract a distance of 70.28 feet to a 1/2 inch iron rod found for an angle point of the call 39.0107 acre tract of land and the southeast corner of the call 0.9467 acre tract for the southeast corner of the herein described tract;

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VOL. 476 PAGE 311

THENCE North 86 degrees 44 minutes 57 seconds West, along the north line of the call 39.0107 acre tract for the south line of this tract, a distance of 562.18 feet (call 562.03 feet) to the POINT OF BEGINNING containing within these metes and bounds a 0.961 acre tract of land as surveyed by Robert McCay, Registered Professional Land Surveyor #4509, February 26, 1993.



Robert McCay
Robert McCay R.P.L.S. #4509

EXHIBIT B

Filed for Record Mar. 2 A.D., 1993 at 4:55 o'clock P. M.

RECORDED Mar. 8 A.D., 1993 at 2:02 o'clock P. M.

ELVA D. MATHIS, County Clerk, Waller County, Texas

By *Alva Nelson* Deputy

JC JONES & CARTER, INC.
ENGINEERS • PLANNERS • SURVEYORS

JOHN G. FAIREY
0.709 ACRE TRACT

ALL THAT TRACT OR PARCEL OF LAND situated in Waller County, Texas out of the Charles Donoho Survey A-24 and being a portion of the tract of land called 11.039 acres in Warranty Deed with Vendor's Lien dated March 2, 1993 from Bonnie R. Piercecall to John G. Fairey as recorded in Volume 476, Page 306 of the Deed Records of Waller County; and being a portion of the tract of land called 6.27 acres in General Warranty Deed dated August 2, 1971 from Donald G. Crawford and wife, Mary Crawford to John G. Fairey as recorded in Volume 228, Page 509 of the Deed Records of Waller County; and lying within a 4.000 acre tract as described in Deed of Trust dated November 27, 2001 as recorded in Volume 709, Page 047 of the Official Public Records of Waller County, said 0.709 acre tract being more particularly described as follows:

COMMENCING at a found 5/8" iron rod lying in the West line of F.M. Highway 359 marking the Northeast corner of the Peckerwood Gardens Conservation Foundation, Inc. tract called 20.138 acres (1142/449 O.P.R.W.C.), the Southeast corner of the called 11.039 acre tract and the called 4.000 acre tract;

THENCE with the West line of F.M. Highway 359, the East line of the called 11.039 acre tract and the called 4.000 acre tract, N 03° 10' 40" E, 35.66 ft. to a point at the South edge of a gravel drive for most southerly Southeast corner and POINT OF BEGINNING of the 0.709 acre tract herein described;

THENCE departing from F.M. Highway 359 along the South edge of the gravel drive with the South line of this tract, N 89° 00' 20" W, 74.20 ft. to a point for angle and, S 86° 42' 22" W, 28.39 ft. to a point marking the beginning of a curve to the right;

THENCE continuing along the edge of the gravel drive with said curve, having a radius of 76.00 ft., a distance of 99.19 ft. (chord N 55° 54' 17" W, 92.30 ft.) to a point marking the end of curve;

THENCE along the Southwest edge of the gravel drive with the Southwest line of this tract, N 18° 30' 57" W, 26.59 ft. to a point marking the beginning of a curve to the right;

THENCE continuing along the edge of the gravel drive with said curve, having a radius of 56.00 ft., a distance of 77.14 ft. (chord N 20° 56' 52" E, 71.19 ft.) to a point for end of curve;

THENCE along the Northwest edge of the gravel drive with the Northwest line of this tract, N 60° 24' 41" E, 13.76 ft. to a point for interior corner;

THENCE departing from the Northwest edge of the gravel drive in a northerly direction, N 37° 19' 13" W, 30.31 ft. to a point for angle, N 31° 11' 23" E, 80.00 ft. to a point for angle and, N 15° 05' 14" W, 44.21 ft. to a point for angle;

THENCE with the West line of this tract, crossing the North line of the called 11.039 acre tract and the South line of the called 6.27 acre tract, then along an existing fence, N 01° 08' 59" W, 78.72 ft. to the intersection of said fence with the South edge of a roof overhang of an office building for corner;

THENCE with said roof overhang, S 88° 51' 01" W, 1.62 ft. to the corner of the roof overhang;

THENCE with the West edge of the roof overhang, N 00° 09' 57" W, 25.71 ft. to its intersection with the South edge of a building for corner;

THENCE with the South edge of said building, S 89° 50' 03" W, 3.10 ft. to a corner of the building;

THENCE with the West edge of the building, N 00° 07' 15" E, 3.01 ft. to a point for corner;

THENCE departing from the West edge of the building, running parallel with and 5 ft. from the Southwest edge of a gallery building, N 68° 49' 22" W, 31.58 ft. to a point for corner;

THENCE N 21° 07' 56" E, at 5.00 ft. pass the West corner of the gallery building and continuing with the Northwest edge of the gallery building for a total distance of 24.92 ft. to the North corner of the building;

THENCE with the Northeast line of the gallery building, S 69° 08' 43" E, 37.76 ft. to the East corner of the gallery building;

THENCE departing from the Northeast corner of the Gallery building with the North line of this tract, N 88° 51' 01" E, 82.19 ft. to a point at the West edge of a gravel drive for an interior corner and the beginning of a curve to the left;

THENCE along the edge of the gravel drive with said curve, having a radius of 56.00 ft., a distance of 36.44 ft. (chord N 05° 57' 22" W, 35.80 ft.) to a point for the end of curve and the beginning of a curve to the right;

THENCE continuing along the edge of the gravel drive with said curve to the right having a radius of 56.00 ft., a distance of 96.17 ft. (chord N 24° 36' 00" E, 84.78 ft.) to a point for end of curve;

THENCE along the Northwest edge of the gravel drive with the Northwest line of this tract, N 73° 47' 51" E, 25.90 ft. to a point for angle and, N 79° 02' 19" E, 21.72 ft. to a point at its intersection with the West line of F.M. Highway 359, the East line of the called 6.27 acre tract and the called 4.000 acre tract for most northerly Northeast corner of this tract;

THENCE crossing the gravel drive with the West line of F.M. Highway 359, the East line of the called 6.27 acre tract, the called 4.000 acre tract and this tract, S 03° 10' 40" W, 12.37 ft. to a point at the Southeast edge of the gravel drive for most northerly Southeast corner of this tract, from which a found 5/8" iron rod marking the Northeast corner of the called 11.039 acre tract and the Southeast corner of the called 6.27 acre tract bears, S 03° 10' 40" W, 240.21 ft.;

THENCE departing from F.M. Highway 359 along the South edge of the gravel drive with the South line of this tract, S 79° 02' 19" W, 18.14 ft. to a point for angle and, S 73° 47' 51" W, 25.35 ft. to a point marking the beginning of a curve to the left;

THENCE continuing along the edge of the gravel drive with said curve having a radius of 44.00 ft., a distance of 38.13 ft. (chord S 48° 58' 07" W, 36.95 ft.) to a point for an interior corner;

THENCE departing from the edge of the gravel drive in a southerly direction, S 35° 28' 39" E, 34.62 ft. to a point for angle, S 04° 56' 57" E, 32.26 ft. to a point for angle and, S 01° 13' 58" W, 113.32 ft. to a point for an exterior corner;

THENCE with the South line of this tract, passing a fence corner and then following the fence, S 88° 10' 28" W, 40.11 ft. to a point for an interior corner;

THENCE departing from said fence, crossing the South line of the called 6.27 acre tract and the North line of the called 11.039 acre tract with the East line of this tract, S 01° 49' 32" E, 66.31 ft. to a point for angle;

THENCE with the Southeast line of this tract, S 30° 34' 46" W, 117.86 ft. to a point for angle and, S 69° 01' 03" W, 26.12 ft. to a point at the Southeast edge of the first mentioned gravel drive for angle;

THENCE along the Southeast edge of said gravel drive with the Southeast line of this tract, S 60° 24' 41" W, 15.39 ft. to a point marking the beginning of a curve to the left;

THENCE continuing along the edge of the gravel drive with said curve, having a radius of 44.00 ft., a distance of 60.61 ft. (chord S 20° 56' 52" W, 55.93 ft.) to a point for end of curve;

THENCE along the Northeast edge of the gravel drive with the Northeast line of this tract, S 18° 30' 57" E, 26.59 ft. to a point marking the beginning of a curve to the left;

THENCE continuing along the edge of the gravel drive with said curve, having a radius of 64.00 ft., a distance of 83.53 ft. (chord S 55° 54' 17" E, 77.72 ft.) to a point for end of curve;

THENCE along the North edge of the gravel drive with the North line of this tract, N 86° 42' 22" E, 28.84 ft. to a point for angle and, S 89° 00' 20" E, 75.11 ft. to a point at its intersection with the West line of F.M. Highway 359, the East line of the called 11.039 acre tract and the called 4.000 acre tract for most southerly Northeast corner of this tract, from which said found 5/8" iron rod marking the Northeast corner of the called 11.039 acre tract and the Southeast corner of the called 6.27 acre tract bears, N 03° 10' 40" E, 275.64 ft.;

THENCE crossing the gravel drive with the West line of F.M. Highway 359, the East line of the called 11.039 acre tract, the called 4.000 acre tract and this tract, S 03° 10' 40" W, 12.01 ft. to the POINT OF BEGINNING and containing 0.709 acres of land.

Surveyor Certification:

I, William R. Krueger, Registered Professional Land Surveyor, do hereby certify that the above description represents the results of an on the ground survey made under my direction and supervision on March 6, 2013 and that all corners are as shown hereon. There are no conflicts or protrusions apparent on the ground except as shown.

This survey was prepared without the benefit of a current title report which may indicate easements or other encumbrances of record not apparent on the ground.

W.O. No. B0038-567-00

PROJECTS\B0038 Fairway-Peckerwood\567 Part\00\Survey\Legal Desc\B0038-567-00.fr.709.doc

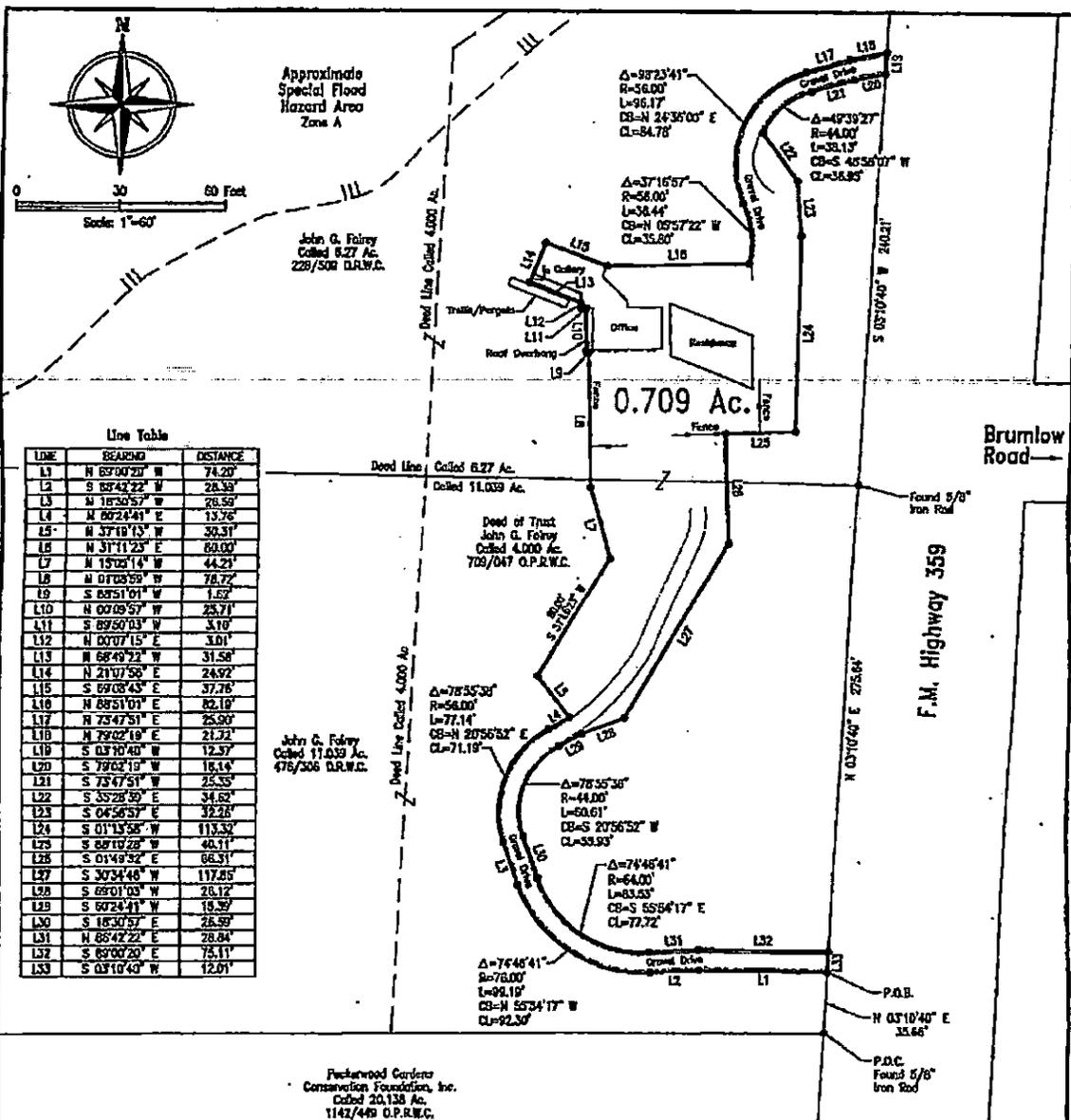
Page 2 of 3

Use of this survey for any other purposes or by other parties shall be at their own risk and the undersigned surveyor is not responsible for any loss resulting therefrom.

This field note description is accompanied by plat of even date.

W. R. Krueger
William R. Krueger March 6, 2013
Registered Professional Land Surveyor No. 2835





Line Table

LINE	BEARING	DISTANCE
L1	N 89°00'27" W	74.20'
L2	S 89°42'22" W	28.39'
L3	N 18°30'57" W	28.59'
L4	N 88°24'41" E	13.76'
L5	N 37°19'13" W	39.31'
L6	N 31°11'23" E	89.00'
L7	N 15°02'14" W	44.21'
L8	N 01°02'59" W	78.72'
L9	S 83°51'01" W	1.87'
L10	N 00°09'57" W	25.71'
L11	S 89°50'03" W	3.10'
L12	N 00°07'15" E	3.01'
L13	N 68°49'22" W	31.58'
L14	N 21°07'58" E	24.92'
L15	S 89°08'43" E	37.78'
L16	N 88°51'01" E	82.19'
L17	N 73°47'51" E	25.90'
L18	N 79°02'19" E	21.72'
L19	S 03°10'40" W	12.57'
L20	S 79°02'19" W	16.14'
L21	S 73°47'51" W	25.55'
L22	S 35°28'39" E	34.82'
L23	S 04°56'57" E	32.28'
L24	S 01°15'58" W	113.53'
L25	S 80°19'28" W	40.11'
L26	S 01°49'32" E	66.31'
L27	S 30°34'48" W	117.65'
L28	S 68°01'00" W	26.17'
L29	S 67°24'41" W	18.29'
L30	S 18°30'57" E	28.89'
L31	N 88°42'22" E	28.84'
L32	S 89°00'20" E	75.11'
L33	S 03°10'40" W	12.01'

Flood Hazard Statement:
 It has been determined that the subject parcel shown herein does not lie within the Special Flood Hazard Area as indicated by the Flood Insurance Rate Map compiled by the Federal Emergency Management Agency, Community No. 480640 0130 E, Map No. 48473C0130E, dated February 18, 2009, Waller County, Texas and Incorporated Areas.

Surveyor Certification:
 I, William R. Krueger, Registered Professional Land Surveyor, do hereby certify that the above plat represents the results of an on the ground survey made under my direction and supervision on 3/6/13, and that all corners are marked as shown herein. There are no conflicts or protrusions apparent on the ground except as shown.

This survey was performed without the benefit of a current title report which may indicate easements or other encumbrances of record not apparent on the ground.

Use of this survey for any other purposes or by other parties shall be of their own risk and the undersigned surveyor is not responsible for any loss resulting therefrom.

This plat is accompanied by field note description of even date.

William R. Krueger
 William R. Krueger March 6, 2013
 Registered Professional Land Surveyor No. 2835



**PARCEL SURVEY
 OF A PORTION OF THE
 JOHN G. FAIREY TRACT
 BEING
 0.709 ACRES.
 OUT OF THE
 CHARLES DONOHO SURVEY A-24
 WALLER COUNTY, TEXAS
 MARCH 6, 2013**

JC JONES & CARTER, INC.
 ENGINEERS • PLANNERS • SURVEYORS
 1500 South Day Street
 Brenham, Texas 77823-4969
 (979) 836-6831 www.jonescarter.com
 Austin • Brenham • Bryan • Dallas • Houston
 Beaumont • San Antonio • The Woodlands

FILED AND RECORDED

Instrument Number: 1704788

Filing and Recording Date: 06/23/2017 11:16:18 AM Pages: 14 Recording Fee: \$64.00

I hereby certify that this instrument was FILED on the date and time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS of Waller County,



Debbie Hollan

Debbie Hollan, County Clerk
Waller County, Texas

ANY PROVISION CONTAINED IN ANY DOCUMENT WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE REAL PROPERTY DESCRIBED THEREIN BECAUSE OF RACE OR COLOR IS INVALID UNDER FEDERAL LAW AND IS UNENFORCEABLE.

Jenifer Deutrich, Deputy

Returned To:
MARJORIE S SCHULTZ & ASSOCIATES
1200 BINZ
STE 650
HOUSTON, TX 77004

[Faint, illegible text or markings, possibly a stamp or signature, located on the right side of the page.]

Jenna Rollins

From: Randy Twaddle [REDACTED]
Sent: Tuesday, January 31, 2023 10:31 AM
To: Jenna Rollins
Subject: Re: Peckerwood Gardens Conservation Foundation, Inc., WRTP 13890

Great. Thank you.
Randy

On Tue, Jan 31, 2023 at 10:25 AM Jenna Rollins <Jenna.Rollins@tceq.texas.gov> wrote:

Good Morning Randy,

Your response can be submitted via email.

Best regards,

Jenna Rollins, Project Manager

Water Rights Permitting Team

Water Rights Permitting and Availability Section

512-239-1845

From: Randy Twaddle <[REDACTED]>
Sent: Tuesday, January 31, 2023 10:17 AM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: Re: Peckerwood Gardens Conservation Foundation, Inc., WRTP 13890

Hi Jenna,

Thank you for your email. I am working on completing the application.

Can the information you requested, excepting the fee, be submitted via email? Or do you require hard copies?

All best,

Randy

On Mon, Jan 30, 2023 at 11:32 AM Jenna Rollins <Jenna.Rollins@tceq.texas.gov> wrote:

Dear Mr. Twaddle,

Please see the attached request for information letter for Peckerwood Gardens Conservation Foundation, Inc., application No. 13890, and provide a response by 3/1/23.

Best regards,

Jenna Rollins, Project Manager

Water Rights Permitting Team

Water Rights Permitting and Availability Section

512-239-1845

--

RANDY TWADDLE

Executive Director,

[The John Fairey Garden](#)

Conservation Foundation

832.656.8869



--

RANDY TWADDLE
Executive Director,
[The John Fairey Garden](#)
Conservation Foundation
832.656.8869



Jenna Rollins

From: Jenna Rollins
Sent: Monday, January 30, 2023 11:32 AM
To: [REDACTED]
Subject: Peckerwood Gardens Conservation Foundation, Inc., WRTP 13890
Attachments: Peckerwood_Gardens_Conservation_Foundation_Inc_13890_RFI_Sent_1.30.23.pdf

Dear Mr. Twaddle,

Please see the attached request for information letter for Peckerwood Gardens Conservation Foundation, Inc., application No. 13890, and provide a response by 3/1/23.

Best regards,
Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section
512-239-1845

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 30, 2023

Mr. Randy Twaddle
Peckerwood Gardens Conservation Foundation, Inc.
20559 FM Rd
Hempstead, Texas 77445

VIA E-MAIL

RE: Peckerwood Gardens Conservation Foundation, Inc.
WRTP 13890
CN605239490, RN111626339
Application No. 13890 for a Temporary Water Use Permit
Texas Water Code § 11.138, Requiring Limited Mailed Notice
Unnamed Tributary of Clear Creek, Brazos River Basin
Waller County

Dear Mr. Twaddle:

This acknowledges receipt, on December 29, 2022, of the referenced application, and fees in the amount of \$311.25 (Receipt No. M307484, copy attached).

A temporary permit may only be issued if there is surplus water available for use on a short-term (temporary or ephemeral) basis in the source supply. During low flow conditions, which occur during a drought or periods of limited rainfall, all water in the basin will be required for existing senior water rights and there is no presumption of any surplus flows.

Additional information and fees are required before the application can be declared administratively complete.

1. Confirm the location of the diversion point on the unnamed tributary of Clear Creek, Brazos River Basin. The latitude and longitude provided in the application does not plot on a watercourse. Staff has calculated coordinates to be Latitude 30.059233° N, Longitude 96.037374° W.
2. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on any new diversion structure that is not already authorized in a water right). Refer to pages 28-29 from the Instructions for Completing the Water Right Permitting Application (Form TCEQ-10214A-inst) for assistance in developing your response.
3. Provide a USGS 7.5-minute topographic map (or equivalent) with the location of the diversion point clearly marked. Staff notes that a map was not provided.
4. Provide a recorded copy of the deed(s) for the property where the proposed land to be irrigated is located. The deed should include the legal description of the land (metes and bounds). Please note that the application must be in the name(s) of all landowners as shown on the deeds; otherwise, proper consent of the application must be provided pursuant to Title 30 Texas Administrative Code (TAC) § 295.32(a)(5).

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

How is our customer service? tceq.texas.gov/customersurvey

printed on recycled paper

Mr. Randy Twaddle
Application No. 13890
January 30, 2023
Page 2 of 2

5. Provide recorded copies of legal documents establishing ownership of the proposed diversion point, or a copy of a duly acknowledged written easement, consent, or license from the landowner(s) whose land is associated with the proposed diversion point, pursuant to Title 30 TAC § 295.10.
6. Provide written evidence that Mr. Randy Twaddle is authorized to sign the application for Peckerwood Gardens Conservation Foundation, Inc. pursuant to Title 30 TAC § 295.14(5), which states:

If the applicant is a corporation, public district, county, municipality, or other corporate entity, the application shall be signed by a duly authorized official. Written evidence in the form of bylaws, charters, or resolutions which specify the authority of the official to take such action shall be submitted. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

7. Remit fees in the amount of **\$76.44**, as described below. Please make the check payable to the Texas Commission on Environmental Quality.

Filing Fee (Temporary Permit > 10 acre-feet)	\$ 250.00
Recording Fee (\$1.25 x 1 page)	\$ 1.25
Use Fee (\$1.00 x 60 acre-feet)	\$ 60.00
<u>Notice Fees (\$2.94 x 26 water right holders)</u>	<u>\$ 76.44</u>
TOTAL FEES	\$ 387.69
<u>FEES RECEIVED</u>	<u>\$ 311.25</u>
TOTAL FEES DUE	\$ 76.44

Please provide the requested information and fees by March 1, 2023 or the application may be returned pursuant to Title 30 TAC § 281.18.

If you have any questions concerning this matter, please contact me via email at jenna.rollins@tceq.texas.gov or by telephone at (512) 239-1845.

Sincerely,



Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

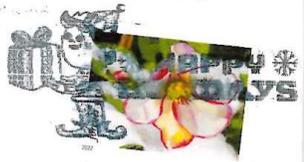
Attachment

THE
JOHN FAIREY
GARDEN
CONSERVATION FOUNDATION
20559 FM 359 ROAD
HEMPSTEAD, TX
77445



NORTH HOUSTON TX 773

14 DEC 2022 PM 6 L



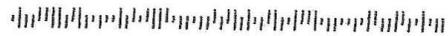
Texas Commission on Environmental Quality
P.O. Box 13087 MC-160
Austin, TX 78711-3087

RECEIVED

DEC 14 2022

TCOQ MAIL CENTER
DA

78711-308787



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087 MC-160, Austin, Texas 78711-3087
Telephone (512) 239-4600, FAX (512) 239-4770

RECEIVED
DEC 21 2022

Water Availability Division

APPLICATION FOR A TEMPORARY WATER USE PERMIT FOR MORE THAN 10 ACRE-FEET OF WATER, AND/OR FOR A DIVERSION PERIOD LONGER THAN ONE CALENDAR YEAR

This form is for an application for a temporary permit to divert water under Section 11.138, Texas Water Code. Any permit granted from this application may be suspended at any time by the applicable TCEQ Office if it is determined that surplus water is no longer available.

Notice: This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.

1. **Data on Applicant and Project:** Social Security or Federal ID No. [REDACTED]
- A. Name: The John Fairey Garden Conservation Foundation (PECKERWOOD GARDENS CONSERVATION FOUNDATION, INC)
- B. Mailing Address: 20559 FM 359 RD, Hempstead, TX 77445
- C. Telephone Number: 979-826-3232 Fax Number: _____ E-mail Address: [REDACTED]
- D. Applicant owes fees or penalties? Yes No
If yes, provide the amount and the nature of the fee or penalty as well as any identifying number:

- E. Describe Use of Water: Irrigation of a garden and greenhouses
- F. Description of Project (TDH Project No. if applicable): Diversion of water unnamed creek - called "Dry Creek"
- G. Highway Designation No. FM 359 Rd. County Waller

2. **Type of Diversion (check one):** From Stream From Reservoir
3. **Rate of Diversion:**
A. Maximum 100 gpm
(capacity of pump)

4. **Amount and Source of Water:**
60 acre-feet of water within a period of 36 months (specify term period not to exceed a three year term). The water is to be obtained from Dry Creek (unofficial name), tributary of Clear Creek, tributary of _____, tributary of lower Brazos River, Brazos River Basin.

5. **Location of Diversion Point:** Provide Latitude and Longitude in decimal degrees to at least six decimal places, and indicate the method used to calculate the diversion point location.
At Latitude 30.0588909 °N, Longitude 96.0373805 °W, (calculated with Google Earth) near the stream crossing of FM 359 Rd Highway, located in Zip Code 77445, located 3.63 miles in a SE direction from Hempstead (County Seat), Waller County, and 3.88 miles in a SW direction from Prairie View, a nearby town shown on County road map. Note: Distance in straight line miles.

Enclose a USGS 7.5 minute topographic map with the diversion point and/or the return water discharge points labeled. Owner's written consent is required for water used from any private reservoir, or private access to diversion point.

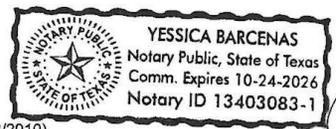
6. **Access to Diversion Point (check one):** Public right-of-way Private property (A letter of permission from landowner is attached) Other --We own the property where the diversion is occurring.
7. **Fees Enclosed:**
- | | | |
|---|-----------|-----------|
| Filing | \$ 100.00 | \$ 250.00 |
| Recording..... | \$ 1.25 | \$ 1.25 |
| Use (\$1.00 per ac-ft or fraction thereof) | \$ _____ | \$ 60.00 |
| (Note: 1 ac-ft = 325,851 gals. Total 1 ac-ft = 7758.35 bbls.) | \$ _____ | \$ 311.25 |

Upon completion of any project for which a temporary water permit is granted, the Permittee is required by law to report the amount of water used. This document must be properly signed and duly notarized before it can be accepted or considered by the Texas Commission on Environmental Quality.

Name (sign)

Randy Twaddle
Name (print)

Subscribed and sworn to me as being true and correct before me this 13 day of November, 2022



Notary Public, State of Texas