

**COMPLETE SUMMARY
APPRAISAL REPORT
and
VALUATION ANALYSIS
Of**

**THE MARKET VALUE OF A CONSERVATION EASEMENT ON 131 ACRES
ISAAC PRATER SURVEY, A-239 AND RICHARD BANKHEAD SURVEY, A-70
SAN JACINTO COUNTY, TX**

Inspection Date	January 13, 2003
Effective Date	November 7, 2002
Date of Report	April 10, 2003

prepared for

**KENNETH AND MARJORIE H. RUSSELL
1401 19th Street
Huntsville, TX 77340**

by

THE RLM FINANCIAL GROUP, INC.

**P.O. Box 570
Brenham, Texas 77834-0570**

THE RLM FINANCIAL GROUP, INC.

ROBERT L. MOORMAN, ASA
President

April 10, 2003

Kenneth and Marjorie H. Russell
1401 19th Street
Huntsville, TX 77340

SUBJECT: A conservation easement encumbering 131 acres of land out of the Isaac Prater Survey, A- 239, and the Richard Bankhead Survey, A- 70, San Jacinto County, Texas. This tract is known as the "Russell-Fritz Westernmost Longleaf Pine Preserve."

Dear Mr. and Mrs. Russell:

As requested, we have personally inspected and prepared a complete, self-contained appraisal report of the above-described property. The purpose of the appraisal is to develop an opinion of market value of the fee simple estate of the property before the easement was given and after the easement was given, based on market conditions prevailing on November 7, 2002.

The function of the appraisal is for federal income tax purposes.

We certify that, to the best of our knowledge and belief:

1. The statements of fact contained in this report and upon which the opinions herein are based are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.
4. Our compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
5. The analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of*

REAL ESTATE APPRAISAL & CONSULTATION
INVESTMENT ADVICE & MANAGEMENT
FINANCIAL PLANNING

PO Box 570 Brenham, Texas 77834-0570 mailing 2211 South Day St., Suite 415 Brenham, Texas 77833 physical
979/836-7237 ofc 979/836-3299 fax rlm@rlmfinancial.com email

Professional Appraisal Practice of the Appraisal Foundation, and the *Code of Professional Ethics* of the American Society of Appraisers and the Appraisal Institute.

6. I have made a personal inspection of the property that is the subject of this report.

7. No one provided professional assistance in gathering and confirming data and report preparation to the persons signing this report.

It is our opinion and conclusion that the market value of the effect of the conservation easement on the subject tract as of November 7, 2002 is

\$1,170,000

ONE MILLION ONE-HUNDRED SEVENTY THOUSAND DOLLARS

The value estimated in this report was based on market data and conditions as of November 7, 2002, that are projected to remain stable. It is impossible to accurately anticipate future conditions that may influence the values. It is projected that market conditions should continue to improve at a moderate rate. Any substantial changes in market conditions could have a favorable or unfavorable influence on the value. The RLM Financial Group, Inc. accepts no responsibility regarding future changes in the market that could not be anticipated as of the date of the report.

This transmittal letter and certification of appraisal precede the narrative appraisal report, further describing the subject property and containing the reasoning and pertinent data leading to the estimated value. Your attention is directed to the "General Underlying Assumptions" and "Limiting Conditions" which are considered usual for this type assignment and have been included at the beginning of the report.

Respectfully submitted,

THE RLM FINANCIAL GROUP, INC.

BY:


ROBERT L. MOORMAN, ASA



TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

BE IT KNOWN THAT

ROBERT LAWSON MOORMAN

*HAVING PROVIDED SATISFACTORY EVIDENCE OF THE QUALIFICATIONS REQUIRED BY
THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT,
ARTICLE 6573a.2, VERNON'S TEXAS CIVIL STATUTES,
IS AUTHORIZED TO USE THE TITLE*

**STATE CERTIFIED
GENERAL REAL ESTATE APPRAISER**

Number: TX-1321786-G

Date of Issue: December 20, 2001

Date of Expiration: December 31, 2003

In Witness Whereof



A handwritten signature in black ink, appearing to read "James M. Synatzske".

James M. Synatzske, Chair

A handwritten signature in black ink, appearing to read "Renil C. Liner".

Renil C. Liner, Commissioner

James M. Synatzske, Chair
Benjamin E. Barnett
Debra S. Runyan

L. W. (Wayne) Mayo, Vice-Chair
Patrick H. Cordero, Jr.
William A. Faulk, Jr.

Elroy Carson, Secretary
Douglas Oldmixon
Dona S. Scurry

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SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Property Appraised	A conservation easement granted on a tract of land that is part of the Waterwood Subdivision.	
Purpose of the Appraisal	To develop an opinion of the market value of the effect of the conservation easement to the fee simple estate of the subject property as of November 7, 2002.	
Extent of Data Collection Process	Comprehensive study of the subject property, subject neighborhood, comparable sales, and current market conditions.	
Site Data	131 acres out of the Isaac Prater Survey, A- 239, and the Richard Bankhead Survey, A- 70, San Jacinto County, Texas	
Highest and Best Use	Before the Granting: Future Residential/Recreational After the Granting: Wildlife and timberland preserve	
Important Dates	Inspection Date:	January 13, 2003.
	Effective Date:	November 7, 2002
	Date of Report:	April 10, 2003
Real Estate Taxes	\$4,382	
Estimates of Market Value - Fee Simple Estate		
Land Value	Before the Granting:	\$1,240,000
	After the Granting:	\$ 70,000
	Market Value of Easement:	\$1,170,000
Cost Approach	NA	
Income Capitalization Approach ..	NA	
Improved Sales Comparison Approach ...	NA	
Final Estimate of Market Value of the Conservation Easement, 11/07/02	<u>\$1,170,000</u>	



SUBJECT

INSTRUCTIONS TO THE APPRAISER

The values herein contained were developed and this report has been prepared in accordance with the Uniform Standards of Professional Practice (USPAP). This report does not depart from the USPAP requirements. Please refer to the *General and Underlying Assumptions* and the *Contingent and Limiting Conditions* found on the following pages.

GENERAL UNDERLYING ASSUMPTIONS

Legal Matters

The legal description used in this report is assumed to be correct, and has been confirmed by survey. No responsibility is assumed in connection with a survey or for encroachments or overlapping or other discrepancies that might be revealed thereby. Any sketches included in the report are only for the purpose of aiding the reader in visualizing the property and are not necessarily a result of a survey.

No responsibility is assumed for an opinion of legal nature such as to ownership of the property or condition of title.

Title to the property is assumed to be marketable: that, unless stated to the contrary, the property is appraised as an unencumbered fee which is not used in violation of acceptable ordinances, statutes or other governmental regulations.

Unapparent Conditions

The appraiser assume that there are no hidden or unapparent conditions of the property, subsoil, or structures, which would render it more or less valuable than otherwise comparable property. During the inspection, we looked for the possibilities of the presence of hazardous substances, defined as all hazardous or toxic materials, waste, pollutants or contaminants (including, but not limited to, asbestos, PCB, UFFI, or other raw materials or chemicals) used in construction or otherwise present on the property. No such substances were observed.

However, the appraiser assume no responsibility for the studies or analysis that would be required to conclude the presence or absence of such substances or for loss as a result of the presence of such substances. The client is urged to retain an expert in this field, if desired. The value estimate is based on the assumption that the subject property is not so affected.

Information and Data

Information, estimates and opinions furnished to the appraiser and contained in this report, were obtained from sources considered reliable and believed to be true and correct. However, the appraiser cannot assume responsibility for accuracy of such items furnished.

All mortgages, liens, encumbrances and servitudes have been disregarded unless so specified within the appraisal report. The subject property is appraised as though under responsible ownership.

GENERAL UNDERLYING ASSUMPTIONS/Continued

Zoning and Licenses

The appraiser assumes that all applicable zoning and use regulations and restrictions have been complied with, unless a non-conforming use has been stated, defined and considered in the valuation.

It is assumed that the subject property complies with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined and considered in the valuation.

It is assumed that the information relating to the location of or existence of public utilities that has been obtained through a verbal inquiry from the appropriate utility authority, or has been ascertained from visual evidence is correct. No warranty has been made regarding the exact location or capacities of public utility systems.

It is assumed that all licenses, consents or other legislative or administrative authority from local, state or national governmental or private entity or organization have been, or can be, obtained or renewed for any use on which the value estimate contained in the valuation report is based.

GENERAL LIMITING CONDITIONS

The appraiser will not be required to give testimony or appear in court due to preparing the appraisal with reference to the subject property in question, unless prior arrangements have been made.

Possession of the report does not carry with it the right of publication. Out-of-context quoting from or partial reprinting of this appraisal report is not authorized. Further, neither all nor any part of this appraisal report shall be disseminated to the general public without the prior written consent of the RLM Financial Group, Inc.

The Bylaws and Regulations of the American Society of Appraisers and the Appraisal Institute govern disclosure of the contents of this report. Neither all nor any part of the contents of this report (especially any conclusions as to value, the appraiser's identity or any reference to the associations or to the appraisal designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without the appraiser's prior written consent.

The distribution of the total valuation in this report, between land and improvements, is applicable only as a part of the whole property. The land value, or the separate value of the improvements, must not be used in conjunction with any other appraisal or estimate and is invalid if so used.

No environmental or concurrency impact studies were either requested or made in conjunction with this appraisal report. The appraiser, thereby, reserve the right to alter, amend, revise, or rescind any of the value opinions based upon any subsequent environmental or concurrency impact studies, research or investigation.

GENERAL LIMITING CONDITIONS/Continued

An appraisal related to an estate in land that is less than the whole fee simple estate applies only to the fractional interest involved. The value of this fractional interest plus the value of all other fractional interests may or may not equal the value of the entire fee simple estate considered as a whole.

The appraisal report related to a geographical portion of a larger parcel is applied only to such geographical portion and should not be considered as applying with equal validity to other portions of the larger parcel or tract. The value for such geographical portions may or may not equal the value of the entire parcel or tract considered as an entity.

Although this appraisal will not be used for mortgage loan purposes, your attention is invited to the fact that (1) the equity cash requirements of the sponsor have not been analyzed, (2) the loan ratio has not been suggested, and (3) the amortization method and term have not been suggested.

The function of this report is not for use in conjunction with a syndication of real property. This report cannot be used for said purposes and, therefore, any use of this report relating to syndication activities is strictly prohibited and unauthorized. If such an unauthorized use of this report takes place, it is understood and agreed that the appraiser has no liability to the client and/or third parties.

Acceptance of and/or use of this appraisal report constitutes acceptance of the foregoing General Underlying Assumptions and General Limiting Conditions. The duties of the appraiser, pursuant to the employment to make the appraisal, are complete upon delivery and acceptance of the appraisal report. However, any corrections or errors should be called to the appraiser's attention within 60 days of the delivery of the report

The Americans with Disabilities Act (ADA) became effective January 26, 1992. We have not made a specific compliance survey and analysis of the property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of the ADA in estimating the value of the property.

PURPOSE/INTENDED USE OF THE APPRAISAL

The objective of this appraisal is to develop an opinion of market value of the effect on the fee simple estate of granting a conservation easement to the Natural Area Preservation Association. The easement encumbers a tract of land located within the Waterwood Development in San Jacinto County, TX. The client has donated the easement and desires a valuation for federal income tax purposes.

EXTENT OF COLLECTION, CONFIRMATION, AND REPORTING

This section of the appraisal requires compliance with the Uniform Standards of Professional Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. The Standards contain binding requirements and specific guidelines that deal with the procedures to be followed in developing appraisal, analysis, or opinion. These uniform standards set the requirements to communicate the appraiser's analyses, opinions, and conclusions in a manner that will be meaningful and not misleading in the marketplace.

This section of the appraisal relates to the nature of the appraisal assignment and the extent of the process of collecting, confirming, and reporting the data that provide the basis for the valuation estimate. This is a summary of the appraiser's findings regarding the availability and quality of applicable comparable data, and is summarized as follows:

1. Robert L. Moorman, ASA inspected the subject property on January 13, 2003. George Russell provided specific information regarding the subject property. We made a thorough review of the subject along with an inspection of the general and immediate neighborhoods.
2. Gathered information from various secondary data sources regarding regional and local economic and demographic data specifically relating to the regional, city, and neighborhood analyses.
3. Analyzed trends in the current market by consulting other professionals in this market.
4. Researched the flood plain relative to the property.
5. Analyzed the highest and best use of the site. We analyzed supply, demand, and absorption potential relative to the subject. We also analyzed alternative uses that were possible for the subject site.
6. Analyzed the anticipated tax burden of the subject property.
7. We did not utilize the *Income Approach* or the *Cost Approach* to value. The subject is unimproved, so the departure provision is not invoked in omitting the cost approach. While the tract has timber potential, we did not analyze this in the traditional income approach. This is due to the highest and best use of the subject tracts and the type of comparable sales we used because of that highest and best use.
8. Researched and analyzed comparable sales within the general neighborhood. The specific unit of comparison was the sales price/acre of land area. We used this data in estimating the value of the subjects for the *Sales Comparison Approach*.
9. Estimated reasonable exposure and marketing periods associated with the Market Value Opinion.

IMPORTANT DEFINITIONS AND ABBREVIATIONS

MARKET VALUE

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. Buyer and seller are typically motivated;*
- b. Both parties are well-informed or well- advised and acting in what they consider their own best interests;*
- c. A reasonable time is allowed for exposure in the open market;*
- d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,*
- e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.¹*

The factors of utility, scarcity, desire and effective purchasing power are apparent in the definition. The implication that buyer and seller are working under equal pressure is seldom completely true, although typical motivation for each does imply a reasonable balance for a market value transaction.

Market prices do not necessarily follow all of these concepts and are often affected by salesmanship and the urgency and need of the buyer and/or seller. The central difference

¹USPAP, Appraisal Standards Board (1993): 7,8.

IMPORTANT DEFINITIONS AND ABBREVIATIONS/Continued

between market price and market value lies in the premise of knowledge and willingness both of which are contemplated in market value, but not in market price. Stated differently, at any given moment of time, market value denotes what a property is actually worth under certain specified conditions, while market price denotes the actual sale price.

Probability of Value Change: The market value of the property appraised in the report is estimated as of the aforementioned date. Constantly changing economic, social, political and physical conditions have varying effects upon real property values. Even after the passage of a relatively short period of time, property values may change substantially and require a review of the appraisal and recertification.

FEE SIMPLE ESTATE OR INTEREST

Absolute ownership unencumbered by any other interest or estate subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.²

LEASED FEE ESTATE

An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.³ Leased fee interests are frequently valued by considering their income components and comparing them with other leases.

LEASEHOLD INTEREST OR POSITION

The most important obligation associated with the rights to the use and occupancy of a leasehold interest is the payment of rent. Contract rent is the actual rental income specified in a lease. The tenant commonly pays rent to the lessor according to a specified schedule. A leasehold interest usually has value when contract rent is less than market rent. If the lessee has a rent advantage, the leasehold interest has positive value. This, in turn, may affect the value of the leased fee. A leased fee encumbered with a fixed rent that is below market rates may be worth less than the unencumbered fee estate. Market rent is the rental income that a property would most probably command in the open market. Only in an ideally negotiated lease would contract rent equal market rent. When contract rent exceeds market levels, the leasehold may have a negative value⁴.

LEASEHOLD ESTATE

The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions.⁵

²*The Dictionary of Real Estate Appraisal, Third Edition*, The Appraisal Institute (1993): 140.

³*Ibid.*: 204.

⁴*The Appraisal of Real Estate, Eleventh Edition*, The Appraisal Institute (1996): 535.

⁵*The Dictionary of Real Estate Appraisal, Third Edition*, The Appraisal Institute (1993): 204

IMPORTANT DEFINITIONS AND ABBREVIATIONS/Continued

HIGHEST AND BEST USE

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility and maximum profitability.⁶

EXPOSURE

The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.⁷

ABBREVIATIONS

SF = Square Foot	/Year = Per Year
/SF = Per Square Foot	GI = Gross Income
FF = Front Foot	NI = Net Income
/FF = Per Front Foot	GRM = Gross Rent Multiplier
LF = Linear Foot	EGIM = Effective Gross Income Multiplier
/LF = Per Linear Foot	ROW = Right of Way
/Ac. = Per Acre	RR = Railroad
/Month = Per Month	

⁶Ibid.: 171.

⁷ Ibid: 126.

LAKE LIVINGSTON AREA DATA

Analysis of the market area where a particular property is located is an essential part of every appraisal. The subject property's market is considered to be the Lake Livingston Area.

Lake Livingston is located about 80 miles north of Houston between Huntsville and Livingston. You will find great fishing, camping, boating, and water sports. Lake Livingston is filled with black bass, crappie, white bass, striped bass, Florida bass, and four kinds of catfish

Lake Livingston is managed by the Trinity River Authority, which keeps the lake at a constant level. This makes it perfect as the largest live-around lake in Texas. It is the 2nd largest lake lying completely within the borders of Texas. The lake has approximately 450 miles of shoreline. The shore has many creeks, bays and protected coves.

The subject tracts are located within San Jacinto County. San Jacinto County is located in southeastern Texas on the Trinity River, 70 miles north of Houston, TX. The 2000 population for San Jacinto County was 22,246, a 35% increase from the 1990 population of 16,372. The county government consists of a county judge and 4 commissioners. San Jacinto County lies directly between two major highways, US 59 and IH 45. US 59 (soon to be the 69 Corridor) is a four-lane divided highway that stretches across the state from Texarkana to Laredo. IH 45 runs from Galveston to Dallas. Texas FM 150 and FM 190 also provide transportation east and west across the area.

The average per capita personal income for San Jacinto County is \$17,733, with an available labor force of 8,061. The median household income is \$28,337. Unemployment for the year 2000 was 3.8%. The county has two school districts, Coldspring/Oakhurst CISD and the Shepherd ISD, with a total enrollment of 3,576 students. The teacher/student ration for the both districts combined is 14:1. Both school districts had "Acceptable" ratings by the TEA for the 2000 school year.

The county's center is at latitude 30°41' north and longitude 95°00' west. San Jacinto County comprises 628 square miles of the East Texas Timberlands and is heavily wooded with longleaf and loblolly pine, cedar, oak, walnut, hickory, gum, ash, and pecan. Sixty percent of the county is in the Sam Houston National Forest. Gently rolling hills characterize the area, and the soils are reddish with a loamy surface and mostly clayey subsoils that are high in iron. Along the Trinity River, there are dark loamy to cracking clayey subsoils. Between 20 and 30 percent of the land is considered prime farmland.

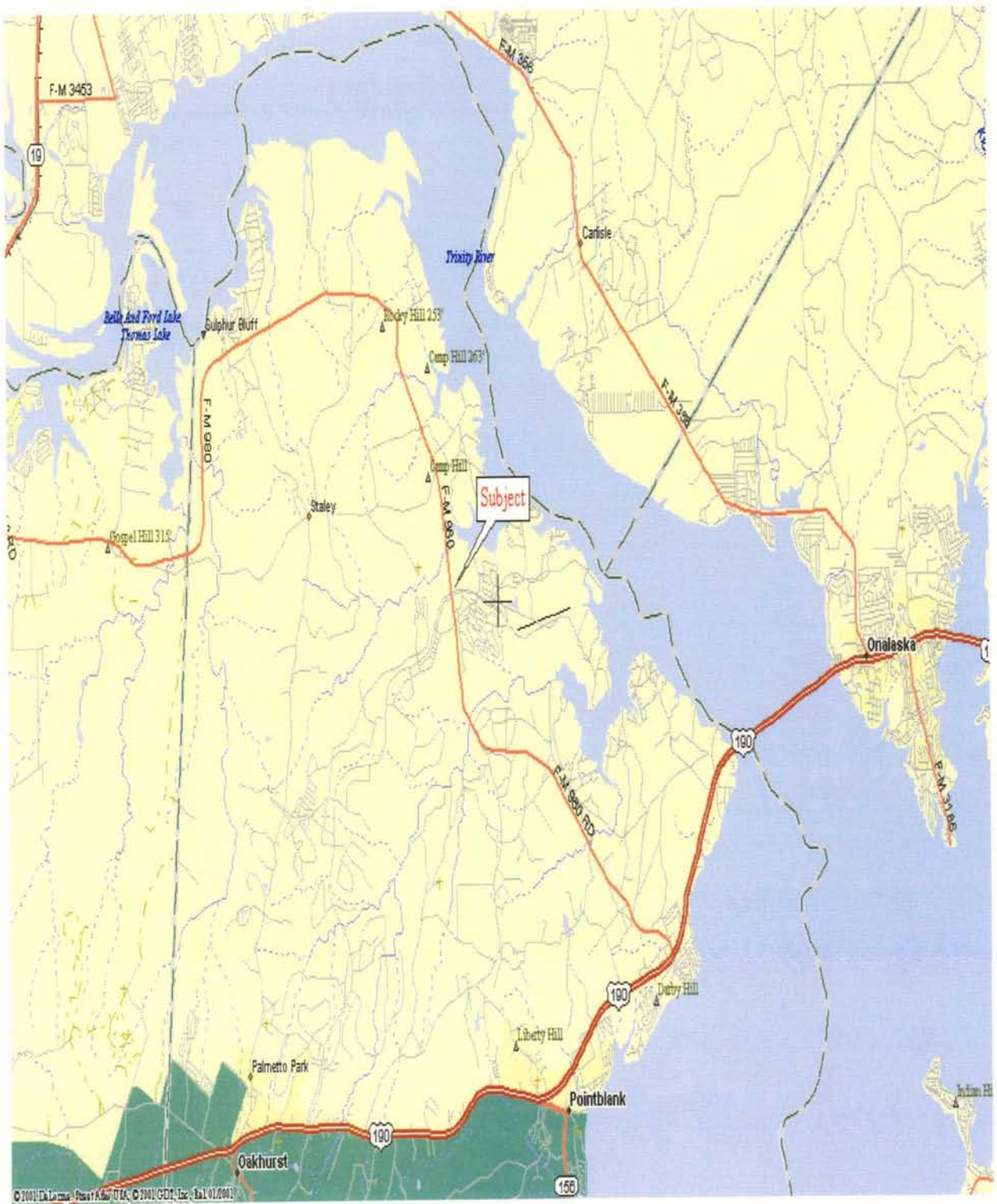
The Trinity River serves as the eastern boundary of the county. The San Jacinto River, Big Creek, Winter Bayou, and Stephen Creek also flow through the county, and Peach Creek flows along the southwestern boundary. The elevation ranges from 374 to 386 feet. Average annual precipitation is forty-eight inches, and the temperature ranges from an average low of 36° F in January to an average high of 94° in July. The average growing season extends 261 days.

The demand for real estate in San Jacinto County is primarily for timberland, recreational and single family residential. East Texas was hit particularly hard by the economic downturn of the late 1980s. There are two large recreational developments, Cape Royale and Waterwood,

LAKE LIVINGSTON AREA DATA/Continued

located within the county. Both of these developments offer excellent golf courses and other recreational facilities. There are existing homes for sale, as well as vacant lots suitable for building in both of these developments. As mentioned, both of these developments suffered from the economic downturn, but activity has increased from 1995 – 2000, as is evidenced by the population growth of the county.

Conclusions. San Jacinto County has a fundamentally healthy, viable economic base with relatively low unemployment. All real estate markets, as well as population growth, have shown significant increases in activity since 1995. The outlook for the next few years is positive. The continued migration from Houston to outlying areas will continue to be a large factor in the county's growth, as well as the recreational aspects offered by Lake Livingston.



Area Map

NEIGHBORHOOD ANALYSIS

Within a community, there is a marked tendency toward the grouping of land uses. The areas devoted to these various uses are physical neighborhoods. A neighborhood is "a group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises."⁸

A neighborhood may be characterized by such as residential, commercial, industrial, recreational, agricultural, cultural, any civic activities, or a mixture of these uses. Analysis of the neighborhood in which a particular property is located is important due to the fact that the various economic, social, physical, and political forces which affect the neighborhood also directly influence the individual properties located within it. A discussion of these various factors as they affect the value of the subject property is presented as follows.

Neighborhood Boundaries

The subject neighborhood is the Waterwood National Resort and the immediate surrounding area. Waterwood is a retirement/resort community consisting of primary residences, second homes, and the Waterwood National Resort and Country Club.

Transportation

U.S. Highway 190 East provides the major access to the Waterwood area, along with Texas FM 980. US 190 connects from Huntsville, TX to Deridder, LA and is a four-lane, asphalt-covered highway. FM 980 connects from Riverside, TX to the shore of Lake Livingston and is a two-lane, asphalt highway.

Major Developments

The subject neighborhood is residential/recreational in nature. The primary draw is the golf course and the residential development. There is timber, petroleum and natural gas production in the area as well, but the primary draw is residential/recreational.

The major development in the area is the 18 - hole Waterwood National Golf Course. Adjoining it is the multi-story clubhouse and conference center.

Education

The Coldspring/Oakhurst CISD provides public education.

Utilities

Electricity is by Sam Houston electric cooperative, water is either by the Waterwood Municipal Utility District or private well, telephone by Alltel-Sugarland Telephone, and fire protection by the Waterwood MUD and police protection by the San Jacinto County Sheriffs Department. Adequate shopping, employment, medical, and religious facilities are available.

⁸Ibid.: 242.

NEIGHBORHOOD ANALYSIS/Continued

Stage of Development

Because neighborhoods and districts are perceived, organized, constructed, and used by human beings, each has a dynamic quality of its own. Appraisers describe this quality as the *life cycle* of a neighborhood or district. The complementary land uses that comprise neighborhoods and the homogenous land uses that comprise districts typically evolve through four stages.

- 1. Growth - a period during which the neighborhood gains public favor and acceptance.*
- 2. Stability - a period of equilibrium without marked gains or losses.*
- 3. Decline - a period of diminishing demand*
- 4. Revitalization - a period of renewal, modernization, and increasing demand.⁹*

The subject neighborhood is considered to be in the growth stage of the life cycle. This growth is primarily in the form of single-family residential development. However, this residential development will keep pressure on area commercial needs. Since this increase is fueled by the flight of urban dwellers to a more suburban area, the growth is projected to continue for the foreseeable future.

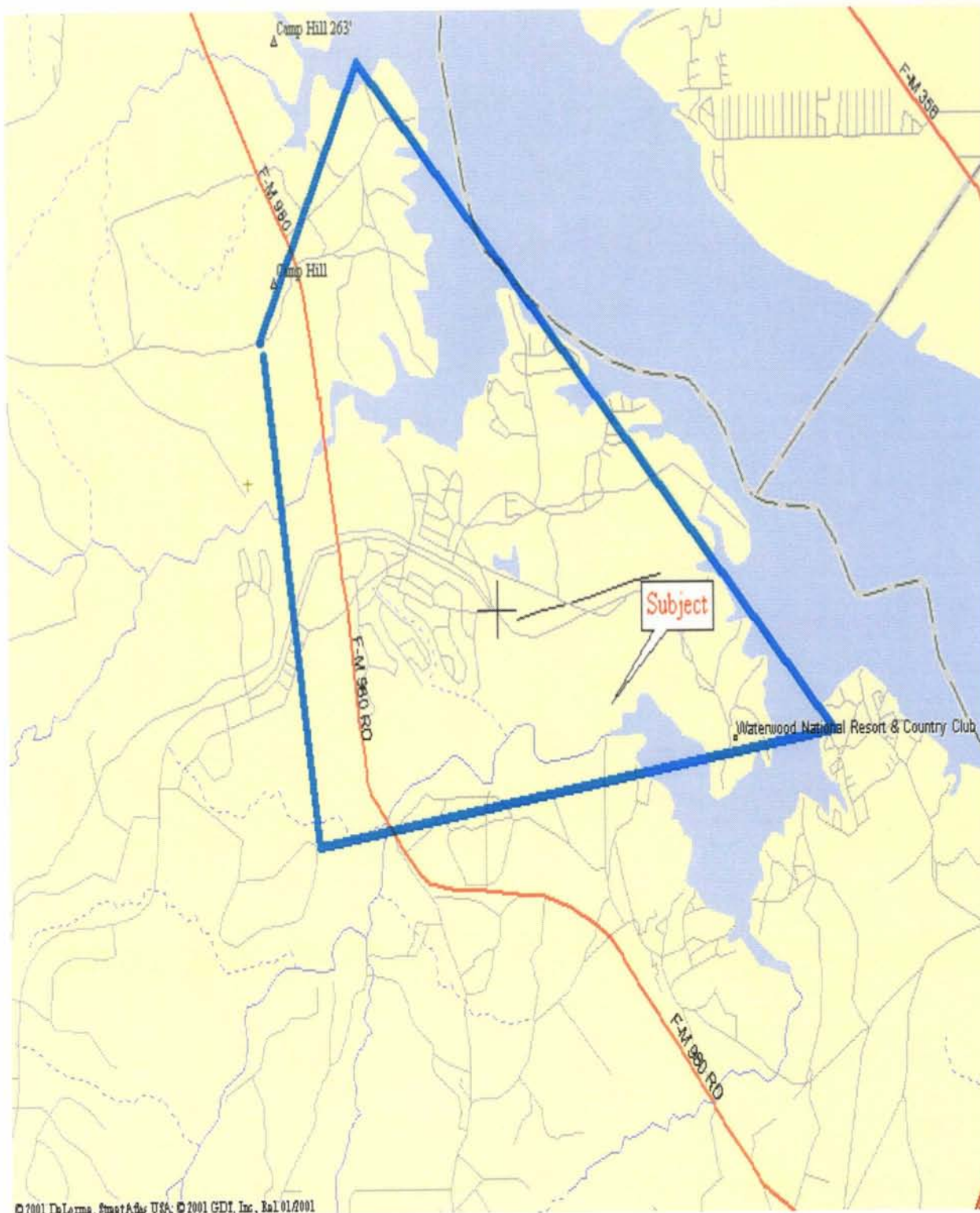
TREND ANALYSIS

AREA: As previously reported, the area has rebounded from the slump of the early 1990s and is experiencing solid growth. This continued growth and diversification should continue for the next several years.

NEIGHBORHOOD: As previously noted, the neighborhood is in the northern area of San Jacinto County, Texas. The neighborhood is in the growth stage. Property values are expected to increase steadily over the next several years.

CONCLUSION: The immediate and longer-term prospects are positive.

⁹The Appraisal of Real Estate, Eleventh Edition, The Appraisal Institute (1996): 192.



Neighborhood Map

SITE ANALYSIS

The following site analysis is based upon a personal inspection of the subject property.

Property Location:	Located on the northeast corner of Waterwood Parkway and FM 980.
Legal Description:	Isaac Prater Survey, A- 239, and the Richard Bankhead Survey, A-70, San Jacinto County, Texas
Size:	131 acres
Shape:	Irregular
Street Improvements:	Both Waterwood Parkway and FM 980 are asphalt-paved and state-maintained roads.
Access:	The access is considered good.
Easements:	There were no adverse easements shown on the metes and bounds legal description included in the addenda.
Utilities:	Electricity: Sam Houston Electric Co-op Telephone: Alltel-Sugarland Telephone. Water & Sewer Waterwood MUD #2
Adjacent Properties:	Adjacent properties consist of the Waterwood Bay and Waterwood Marina, single-family residential lots and houses, and the Ethician Chapel.
Amenities:	The property has road frontage, lake frontage with deep-water shores, swampland, and native trees and other vegetation.
Topography:	The topography of the subject is a slope in the direction of the lake. Drainage is adequate.
Flood Hazard:	According to the Flood Hazard Boundary Map community panel number 480530002A, dated September 1, 1987 for San Jacinto County, the subject is not located in any zone. This indicates that the property is not located within in the 100-year flood plain.
Zoning:	No zoning
Utility/Adaptability:	After considering the size, location, availability of utilities, topography and absence of flood plain, we consider the subject to have very good utility for improvement.

Please refer to the flood map of the subject property that follows this section.

TAXES

Alligator Preserve: The San Jacinto County Appraisal District has given this property an identification number of R92033. The assessed value is \$248,000. The data sheet indicates that this tract is 261.057 acres. The subject is 131 acres, so we will use an assessed value of \$124,448. Taxes for the year 2002 on that valuation would have been \$4,382.

Research Natural Area: The San Jacinto County Appraisal District has given this property an identification number of R87460. The assessed value is \$300,640. Taxes for the year 2001 were \$6,920.00.

The current tax rates for the entities that tax the subject tracts are shown in the following table.

Taxing Authority	2002 Tax Rate/\$100
County General Fund	0.4511
Road & Bridge Fund	0.0588
Lateral Road	0.1464
Waterwood M.U.D. #2	1.260
Coldspring/Oakhurst CISD	1.6050
Total	3.5213

The taxes are not delinquent as of the date of this report.

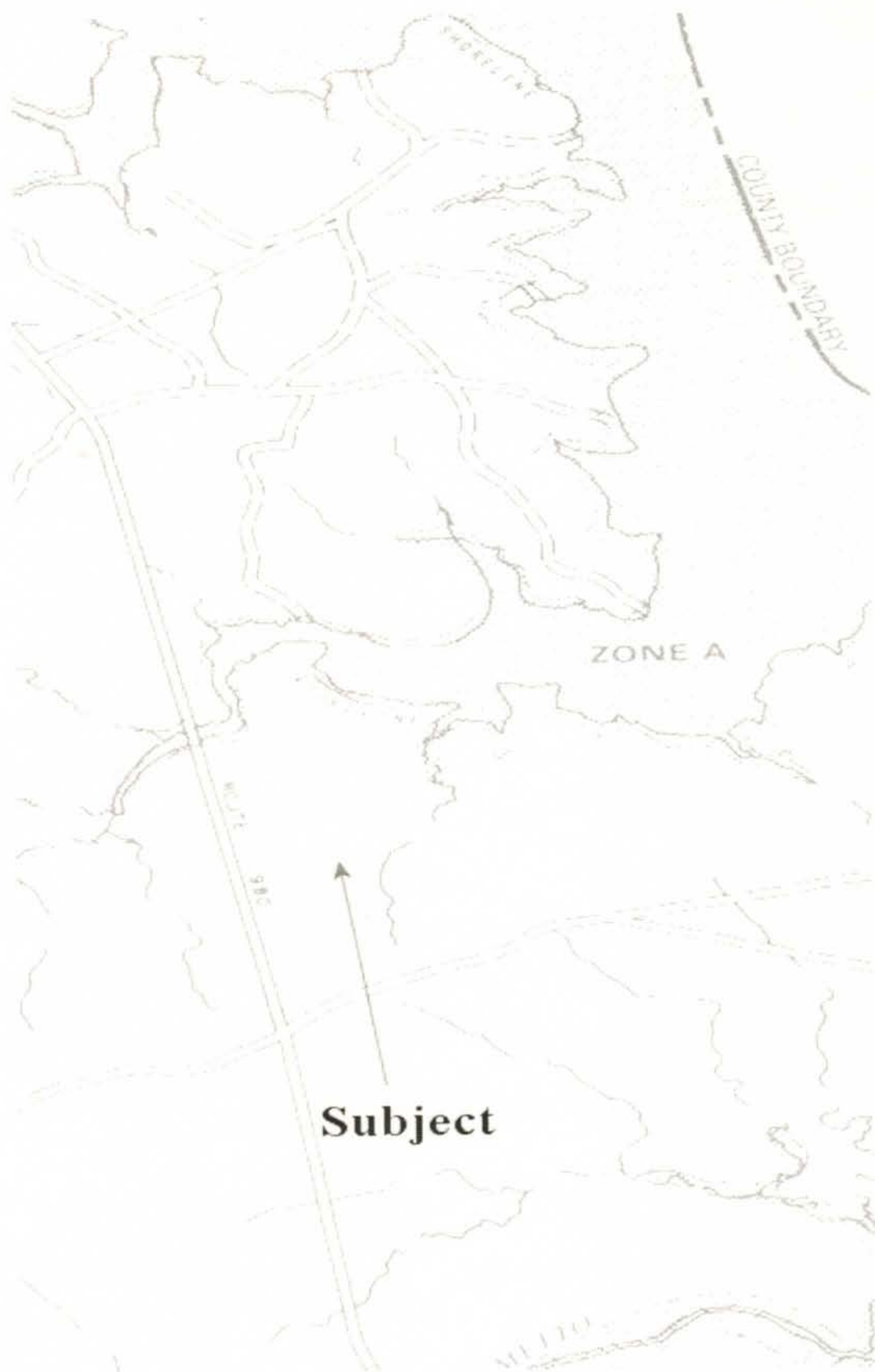
OWNERSHIP HISTORY

This section is made in accordance with the USPAP Standards Rule 1-5(b)(ii), which requires a three-year sales history reported on the subject property.

We made a search of the San Jacinto County Deed Records and found that the subject has been in the name of Kenneth and Marjorie Russell since June 11, 1998.

MARKETING/EXPOSURE TIME

Assuming adequate exposure and normal conditions, the estimated exposure time (i.e., the length of time the proposed subject property would have been exposed for sale had it sold at the market value concluded to in this analysis as of the date of this valuation) would have been within 18 months; the estimated marketing time (i.e., the amount of time it would probably take to sell the subject property if exposed in the market beginning on the date of this valuation) is estimated to be within 12 months. Based on our analysis of the real estate market and discussions with brokers and other knowledgeable individuals in this industry, we believe a reasonable period of time to market the subject property at the previously derived market value is approximately 12 months.



Flood Map



Waterfront at the Subject



Subject



Subject – Next to Marina Condominiums

HIGHEST AND BEST USE

The highest and best use definition is included at the beginning of the report in the *Important Definitions* section. The physical characteristics of the land such as size, shape, location, and topography have been considered. In addition, the analysis has included the surrounding developments, access to major transportation routes, availability of utilities, current trends and demand for property of this type in the real estate market. Income property acquires value if it is capable of rendering services and/or producing income. The property must be able to satisfy a desire of a buyer in the marketplace. The income of a property depends upon its utility and whether or not improvements are an adequate property improvement, over-improvement, or an under-improvement. In other words, the property will not command a price unless there is a demand for it.

The land value is based on the premise of the highest and best use "as though vacant". There are four tests that are taken into consideration in developing an opinion of highest and best use. These four tests include an examination of those uses that are physically possible, legally permissible, financially feasible, and maximally productive. Each criterion is considered cumulatively and provides the best analysis for the highest and best use of the subject property "as though vacant."

PHYSICALLY POSSIBLE

Size, shape, area, soils, and topography affect the uses to which a site may be physically developed. The utility of a parcel may depend on its frontage and depth. Irregularly shaped parcels may cost more to develop, and, when developed, may have less utility than a regular parcel.

LEGALLY PERMISSIBLE

After considering those uses that are physically possible, the uses that are legally permissible were considered. As mentioned, there are no zoning regulations governing the subject tract. Therefore, any use that is legal under state laws would be legal for the subject site.

Thus, based on this premise of legally permissible usage and considering the size and physical attributes of the property, it is concluded that a residential or commercial use of the property is permissible.

FINANCIALLY FEASIBLE

The next analysis involves consideration of those uses that have been determined to be physically possible and legally permissible to determine which are financially feasible. As outlined under legally permissible, all uses are permissible. In analyzing real estate, the significance of the relationship between the supply and demand in the area for any type property is taken into account. The demand level is a primary concern, particularly in a recovering economy, because when a market segment is severely overbuilt, vacant land for that use is not in demand, but must be held until the demand level increases. Therefore, an analysis of the current market conditions for the possible uses is provided.

HIGHEST AND BEST USE/Continued

MAXIMALLY PRODUCTIVE

Among financially feasible uses, the use that produces the highest price or value consistent with the rate of return warranted by the market is the maximally productive use.

As If Vacant

Before the Granting: This tract is located within the Waterwood Resort, and is bounded by single-family residential deed-restricted properties as well as vacation homes on unrestricted tracts, both improved and vacant. Based on the surrounding land uses, it is our opinion that the highest and best use as if vacant is for future single-family residential development.

After the Granting: The conservation easement, which is located in the addenda of this report, is very restrictive. It allows for no logging, mineral extraction, hunting (except for white tailed deer or non-native predators), fishing, or camping. The language is very specific, as well as restrictive, as to the allowed activities. As a result, the highest and best use as if vacant, is for a wilderness preserve.

SALES COMPARISON APPROACH

The Sales Comparison Approach is one of the three approaches used to estimate market value.

In the sales comparison approach, market value is estimated by comparing properties similar to the subject property that have recently been sold, are listed for sale, or are under contract (i.e., for which purchase offers and a deposit have been recently been submitted). A major premise of the sales comparison approach is that the market value of a property is directly related to the prices of comparable, competitive properties.¹⁰

The comparative analysis in sales comparison approach focuses on differences in legal, physical, locational, and economic characteristics of similar properties and the subject property on: differences in the real property rights conveyed, and dates of sale; the motivations of buyers and sellers; and the financing arrangements for each sales transaction which can account for variations in prices.

This approach is applied in the following steps:

1. *Research the market information on sales transactions, listings, and offerings to purchase or sell properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and zoning.*
2. *Verify the information by confirming that the data obtained are factually accurate and that the transactions reflect arms'-length, market considerations.*
3. *Select relevant units of comparison (e.g., price per acre, price per square foot, or price per front foot) and develop a comparative analysis for each unit.*
4. *Compare comparable sales properties with the subject property using the elements of comparison and adjust the price of each comparable to the subject property or eliminate the sale property as a comparable.*
5. *Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values. In an imprecise market subject to varying occupancies and economies, a range of values may be a better conclusion.¹¹*

Listed on the following pages are several comparable sales that are believed to be similar to the subject in one or more factors. Following these sales is a summary that summarizes the important factors of comparison that will be used in our analysis.

¹⁰ *The Appraisal of Real Estate, Eleventh Edition*, The Appraisal Institute (1996): 397

¹¹ *Ibid*: 401 - 402

COMPARABLE SALE NUMBER ONE

Date: August 24, 2001

Size: 12,466 SF or 0.29 acres

Legal Description: Lot 6, Block 8, Lakeview Addition

Recording Data: Volume 01-5859, Page 21347, Official Records, San Jacinto County, TX

Grantor: J.A. Anderson

Grantee: J.H. & Mallery Sue Andries

Location: Oakland Hills Drive

Consideration: \$8,000 or \$27,586/acre or \$0.64/SF

Flood Zone: None.

Restrictions: Residential lot

Financing Terms: Cash to seller

Easement: Standard Utility

Use at Sale Date: Vacant, part of Waterwood Development

Comments: Interior lot with average access.

Confirmation: Waterwood MUD

COMPARABLE SALE NUMBER TWO

Date:	September 11, 2001
Size:	3.0 acres
Legal Description:	John Calvin Survey, A-10, San Jacinto County, TX
Recording Data:	Volume 01-6067, Page 22106, Official Records, San Jacinto County, TX
Grantor:	Robert G. & Tina Rowe
Grantee:	W.E. and wife, Carolyn C. Downs
Location:	Foxwood Run
Consideration:	\$55,000 or \$18,333/acre
Flood Zone:	Minimal.
Restrictions:	Mineral rights reserved, surface conveyed
Financing Terms:	\$11,000 down, \$44,000 owner financed
Easement:	Telephone and electricity
Use at Sale Date:	Recreational/Investment
Comments:	Inferior access, inferior topography, inferior shoreline. Adjacent to the subject.
Confirmation:	Mr. Pounders, listing broker

COMPARABLE SALE NUMBER THREE

Date: May 3, 2002

Size: 13,237 SF or 0.31 acres

Legal Description: Lots 17, 18, & 19, Block 1, Waterwood Bay Hill

Recording Data: Volume 02-3302, Page 13727 Official Records, San Jacinto County, TX

Grantor: Bill & Joan Fife

Grantee: Edgar & Gerry Barnett

Location: Bay Hill Road

Consideration: \$68,000 or \$223,773/acre or \$5.14/SF or \$755/FF

Flood Zone: Minimal.

Restrictions: Residential lot.

Financing Terms: Cash to seller

Easement: Standard Utility

Use at Sale Date: Vacant, part of Waterwood Development

Comments: Waterfront lot with good access to the lake. No bulkhead

Confirmation: Waterwood MUD

COMPARABLE SALE NUMBER FOUR

Date: September 16, 2002

Size: 35,824 SF or 0.822 acres

Legal Description: Lot 13, Block 1, Waterwood Country Club Estates, Block 1

Recording Data: Vol. 03-14, Page 62, Official Records, San Jacinto County, TX

Grantor: James Homco

Grantee: Chris & Julie Jakubson

Location: 20421 Doral Drive

Consideration: \$82,500 or \$100,316/acre or \$2.30/SF or \$1375/FF

Flood Zone: Minimal.

Restrictions: Residential Lot

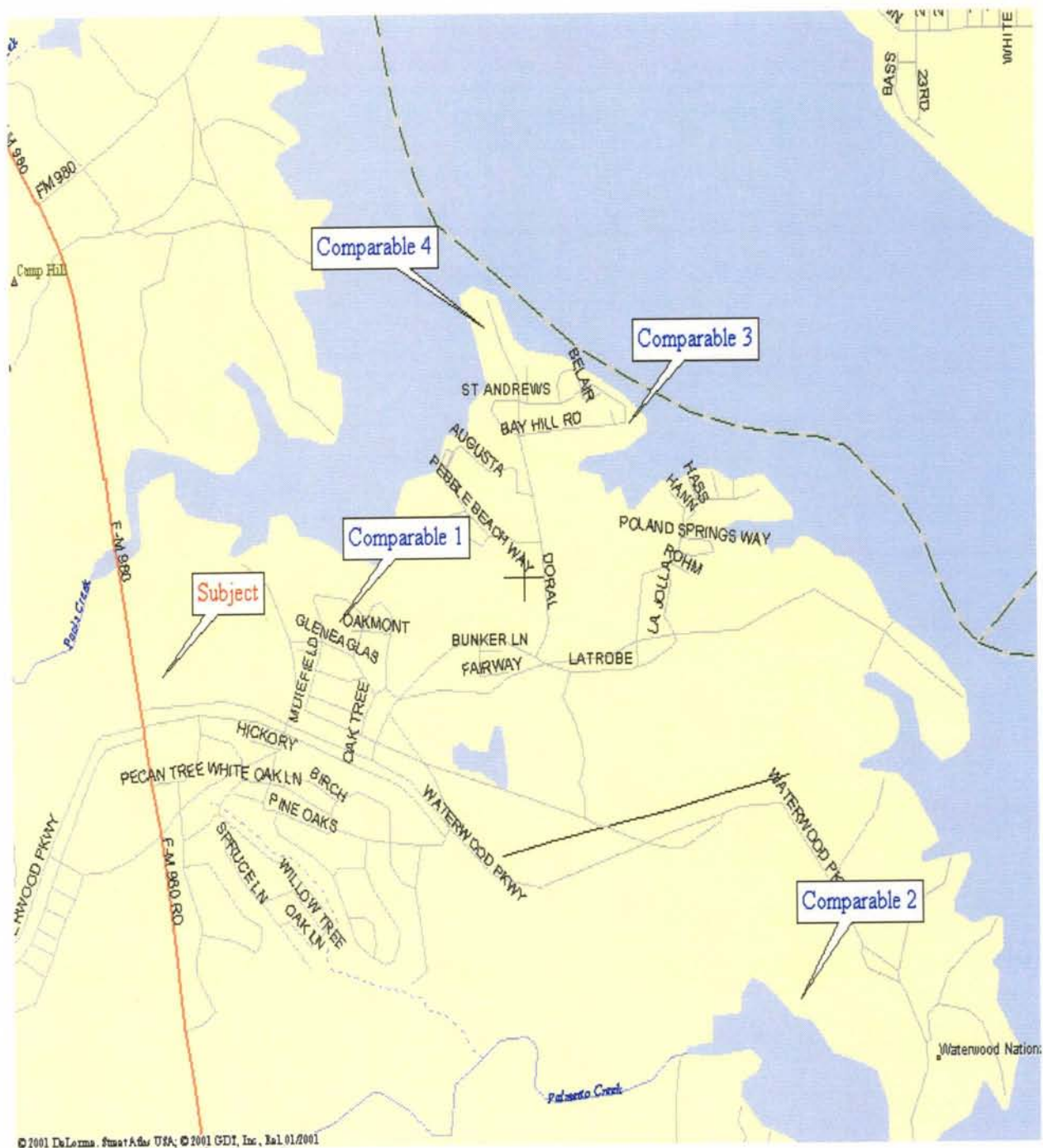
Financing Terms: Cash to seller

Easement: Standard Utility

Use at Sale Date: Vacant Waterwood waterfront lot

Comments: This is a waterfront lot with good access from the lake. No bulkhead.

Confirmation: Waterwood MUD



Land Sales Map

COMPARABLE LAND SALES SUMMARY AND ANALYSIS – Before the Granting

The vacant land sales listed on the previous pages are the most comparable vacant land sales in the past year. The following chart summarizes the sales that are perceived as most comparable to the subject property and applicable to the land value estimate.

SALES SUMMARY CHART

Sale Number	Date	Size (Acre)	Price/Acre
1	08/01	0.29	\$27,856
2	09/01	3.0	\$18,333
3	05/02	0.31	\$223,773
4	09/02	0.822	\$100,316

Sales 1, 3, and 4 were all residential tracts within the Waterwood Subdivision, while sale 2 was part of a larger tract that was close to Waterwood. The adjustments we made were for market conditions, size, development costs, and amenities.

Sale 4 sold in May 2001 for \$50,000. This indicates a 65% increase in market conditions for waterfront lots since 2001. We applied this adjustment to sale 2, since it was a waterfront lot. We found the size adjustment to be 10% per doubling up to a 75% adjustment. We estimated development costs after consulting with O'Malley Engineers. They said the typical loss of land for streets, etc. is 20%. We used 23% to count for the land loss and other expenses. The amenities adjustment is for the country club membership, etc. for the Waterwood lots. The amenities adjustment for sale 2 is for the lack of timber and the shallow lake depth at the shoreline. The utilities adjustment is for the cost to bring utilities to the lots.

The adjustments are shown in a grid format on the following page.

COMPARABLE LAND SALES SUMMARY AND ANALYSIS/Continued

ADJUSTMENT GRID – Before The Granting

Sale No	1	2	3	4
Sales Price/Acre	\$27,856	\$18,333	\$223,773	\$100,316
Financing	0.00%	0.00%	0.00%	0.00%
Adjusted Price/Acre	\$27,856	\$18,333	\$223,773	\$100,316
Conditions of Sale	0.00%	0.00%	0.00%	0.00%
Adjusted Price/SF	\$27,856	\$18,333	\$223,773	\$100,316
Market Conditions	0.00%	65.00%	0.00%	0.00%
Adjusted Price/SF	\$27,856	\$30,249	\$223,773	\$100,316
Size	(75.00%)	(51.70%)	(75.00%)	(70.00%)
Development Cost	(23.00%)	0.00%	(23.00%)	(23.00%)
Access & Amenities	0.00%	50.00%	0.00%	0.00%
Utilities	(1.15%)	0.00%	(1.15%)	(1.15%)
Total Adjustments	(99.15%)	(1.70%)	(99.15%)	(94.15%)
Indicated Value	\$237	\$29,735	\$1,902	\$5,868

Mean \$9,436

As indicated from the chart above, the indicated values range from \$237/Acre to \$29,375/Acre with a mean of \$9,436/Acre. All of the sales provided some market support for a conclusion of the land value for the subject property. Since the subject is made up of both waterfront and interior lots, we used the mean for our value opinion.

Therefore, based upon the previous analyzed data, it is our opinion that the market value of the subject, before the granting of the easement, as of November 7, 2002, is \$9436/acre, and results in a total value of:

$$\begin{aligned} 131 \text{ acres} \times \$9,436/\text{acre} &= \$1,236,116 \\ &\$1,240,000 \text{ rounded} \end{aligned}$$

After studying the easement, we could find no sales of any land that sold with a conservation easement existing on the land. It is our opinion that the uses after the granting of the easement are less than those associated with property that is predominantly in the 100-year flood plain. No construction is permitted on this property unless it is built-up to non-flood levels. However, these flood plain lands have more uses than the subject. In the Lake Livingston area, flood plain tracts are purchased for their timber, gravel production, livestock grazing or hay production. We searched the area for sales that were either totally in the flood plain, or had partial flood plain as part of the parcel. These sales are described on the following pages.

COMPARABLE SALE NUMBER ONE – After the Granting

Date: July 19,2001

Size: 44.267 acres

Legal Description: Vital Flores Survey, Abstract 14, San Jacinto County

Recording Data: Volume 01-4746, Page 17336

Grantor: Julia Ellisor

Grantee: Ed Stewart

Location: Pumpkin Church Road

Consideration: \$80,000 or \$1,810/acre

Flood Zone: 30 acres, according to the seller's husband.

Restrictions: None

Financing Terms: Cash to seller

Easement: Standard Utility

Use at Sale Date: Vacant

Comments: Frontage on Winters Bayou. Seller's husband purchased the flood plain acreage at an auction. He said he placed a value of \$750 on the flood plain acreage in this sale.

Confirmation: Randy Ellisor

COMPARABLE SALE NUMBER TWO – After the Granting

Date: October 30, 2000

Size: 1,628 acres

Legal Description: J. Grissett Survey A- 429, R.D. Rice Survey A-892, and J. Miller Survey A-719, Houston County, TX

Recording Data: County Clerk File #004046

Grantor: Alicante Corporation, NV

Grantee: Crockett Sand and Gravel

Location: State Highway 7, 11 miles west of Crockett

Consideration: \$1,018,057 or \$625acre

Flood Zone: 100%.

Restrictions: None

Financing Terms: Cash to seller

Easement: Standard Utility

Use at Sale Date: Agricultural

Comments: The buyer intends to use this for a gravel pit and a livestock pasture.

Confirmation: Texas Land Office

COMPARABLE SALE NUMBER THREE – After the Granting

Date:	September 12, 1997
Size:	39.22 acres
Legal Description:	William Bugsby Survey, A-6
Recording Data:	Volume 263, Page 891
Grantor:	Charles Norwood
Grantee:	Loretta Childress
Location:	Lower Vann Road
Consideration:	\$53,600 or \$1,367/acre
Flood Zone:	Approximately 50%.
Restrictions:	None
Financing Terms:	Cash to seller
Easement:	Standard Utility
Use at Sale Date:	Agricultural
Comments:	Rural property used for agricultural purposes partially in the flood plain.
Confirmation:	Texas General Land Office



Land Sales – After the Granting

COMPARABLE LAND SALES SUMMARY AND ANALYSIS – After the Granting

The vacant land sales listed on the previous pages are the most comparable vacant land sales in the past year. The following chart summarizes the sales that are perceived as most comparable to the subject property and applicable to the land value estimate.

SALES SUMMARY CHART

Sale Number	Date	Size (Acres)	Price/Acre
1	7/01	44.267	\$1,810
2	10/00	1,628	\$625
3	09/97	39.22	\$1,367

All of the sales had a large portion in the flood plain.

We found the size adjustment to be 10% per doubling up to a 75% adjustment. We believe the subject's location to be superior to all three comparables as well as the topography. We didn't adjust for those to be conservative. We discounted these sales 50% due to the severity of the restrictions imposed by the conservation easement.

The adjustments are shown in a grid format on the following page.

COMPARABLE LAND SALES SUMMARY AND ANALYSIS/Continued

ADJUSTMENT GRID – After the Granting

Sale No	1	2	3
Sales Price/Acre	\$1,810.00	\$625.00	\$1,367.00
Financing	0.00%	0.00%	0.00%
Adjusted Price/Acre	\$1,810.00	\$625.00	\$1,367.00
Conditions of Sale	0.00%	0.00%	0.00%
Adjusted Price/SF	\$1,810.00	\$625.00	\$1,367.00
Market Conditions	0.00%	0.00%	0.00%
Adjusted Price/SF	\$1,810.00	\$625.00	\$1,367.00
Size	(15.00%)	35.00%	(16.70%)
Flood Plain	0.00%	0.00%	0.00%
Easement Restrictions	(50.00%)	(50.00%)	(50.00%)
Total Adjustments	(65.00%)	(15.00%)	(66.70%)
Indicated Value	\$633.50	\$531.25	\$455.21

Mean \$ 539.99

As indicated from the chart above, the indicated values range from \$455/Acre to \$634/Acre with a mean of \$540/Acre. All of the sales provided some market support for a conclusion of the land value for the subject property and we gave each sale equal weight.

Therefore, based upon the previous analyzed data, it is our opinion that the market value of the subject, after the granting of the easement, as of November 7, 2002, is \$540/acre, and results in a total value of:

$$\begin{aligned} &131 \text{ acres} \times \$540/\text{acre} = \$70,740 \\ &\quad \quad \quad \$70,000 \text{ rounded} \end{aligned}$$

RECONCILIATION AND FINAL VALUE ESTIMATE

We did not utilize the cost approach to value since the subject tract was unimproved. Although there is the potential for timber production on both tracts, we did not include the income capitalization approach. Since the subject tract has a highest and best use as recreational/residential, we used comparables with no timber production. This would be common among appraisers and does not invoke departure. Therefore, the sales comparison approach is the only approach applicable to the derivation of an opinion of value for the subject property.

We derived the market value of the conservation easement by subtracting the value after the granting from the value before the granting. This calculation is shown following.

Value before the Granting	\$1,240,000
Value after the Granting	<u>\$ 70,000</u>

VALUE OF THE CONSERVATION EASEMENT \$1,170,000

This value is as of November 7, 2002.

Robert L. Moorman

QUALIFICATIONS OF ROBERT L. MOORMAN, ASA

Robert L. Moorman, ASA, is an independent, State Certified General Real Estate Appraiser for the RLM Financial Group, Inc., P.O. Box 570, Brenham, TX 77834-0570 as well as a lecturer in the Finance Department at Texas A&M University. He has been active in Real Estate since 1983, was staff appraiser for Brenham National Bank in Brenham, TX from 1983-1985, and First National Bank of Navasota in Navasota, TX from 1985-1987. The scope of his work includes the appraisal of all types of real estate, business appraisal, and expert testimony.

A partial resume of specific qualifications is outlined as follows:

1. **Accredited Senior Appraiser - Urban Property (ASA)** - American Society of Appraisers.
2. **Associate Member** - The Appraisal Institute (MAI Candidate)
3. **Appraisal Education:** Course #627 - Principles of Real Estate Appraisal and Course #636 - Practice of Real Estate Appraisal; Lincoln Graduate Center. Course #8-3 - Standards of Professional Practice, credit for Courses #8-1 -Real Estate Appraisal Principles, #1A-2 - Basic Valuation Procedures, #8-2 -Residential Valuation, 310 - Basic Income Capitalization, 510 - Advanced Income Capitalization, 540 - Report Writing and Valuation Analysis, 550 - Advanced Applications; The Appraisal Institute. Real Estate Appraisal; AIB. Feasibility Analysis and Highest and Best Use - Non-Residential and Appraisal Practices for Litigation Seminars; Appraisal Institute.
4. **Other education:** MS-Finance, Texas A&M University, 1990. BBA, Southern Methodist University, 1973. College for Financial Planning, Graduate, 1993. Courses for Real Estate Broker's License.
5. **List of clients:** As staff appraiser for two banks, he was approved by RFC, ABMS, Meracor Mortgage, Ft. Worth Mortgage and MMSI, and did all of the appraisals for these banks. As an independent, he has done appraisals or consulting for: The City of Brenham; Channelview Bank - Washington County, Texas National Bank, Bank One-Brenham, and Brenham National Bank, Brenham, TX; Chappell Hill Bank, Chappell Hill, TX; Citizens State Bank, Somerville, TX; First State Bank of Smithville, TX; First Federal Savings and Loan of Bryan, Victoria Bank & Trust, and First American Bank, Bryan/College Station, TX; Merchants Bank - Houston, Langham Creek Bank, First City, Texas, Cullen Center Bank, and First Bank LPO, Houston, TX; Texas Independent Bank, Dallas, TX; Austin Co. State Bank and First National Bank of Bellville, Bellville, TX; AT&T; Texas Homeplace Mortgage; Amoco, Inc.; Texaco Inc.; Mapco, Inc.; Aquila Energy; Kelly Lindelien, Atty.; Karl Hoppes, Atty.; Moorman, Tate, Moorman, Urquhart, and Haley, Attorneys; Ehlert, Weisler and Betts, Attorneys; Conner, Cantey, and Clover, Attorneys; Johnny Lacina, Attorney; Gilpin, Paxson & Bersch, Attorneys;

QUALIFICATIONS OF ROBERT L. MOORMAN, ASA/Continued

David Beall, Attorney; Shannon, Martin, Finkelstein & Sayre, Attorneys; David Black & Associates, Attorneys, and several individuals. He has been approved by PNC (formerly Sears) Mortgage, TRW, Empire of America, Norwest Mortgage, LSI, General American Corporation and other mortgage companies, HUD, FHA, Texas Department of Transportation, LCRA, and his commercial appraisals have been accepted by the SBA.

7. **Range of Assignments:** Real Estate: regional medical clinic; neighborhood and regional shopping centers; office buildings; apartment complexes; international manufacturing plant; industrial use buildings; convenience stores; fast-food restaurants; restaurants; service stations; bank buildings; pipeline and highway right-of way condemnation; subdivision analysis; raw land; and 1-4 family residential. Business Appraisal – convenience stores; automotive shop; bowling alley; lawnmower repair shop; printing shop. Expert Testimony – Seminole Pipeline on property diminution due to an explosion; General Homes on property diminution due to a building line dispute; State Farm Insurance on property diminution due to a fire; contamination lawsuit for Texical Petroleum due to an alleged oil spill; and several divorce trials.
8. **Professional Memberships:** ASA, Society of Texas A&M Real Estate Professionals; South Central Board of Realtors.

ADDENDA

CONSERVATION EASEMENT

STATE OF TEXAS §

COUNTY OF SAN JACINTO§

This Grant of Conservation Easement ("Conservation Easement") is made on this 7th day of Nov, 2002, by Marjorie H. Russell and Kenneth L. Russell, with an address of 1620 Woodland Lane, Huntsville, Texas 77340 ("Grantor"), and Natural Area Preservation Association, a non-profit corporation organized and existing under the laws of the State of Texas, with an address of P. O. Box 162481, Austin, Travis County, Texas 78716-2481 ("Grantee").

RECITALS:

A. The Grantor is the sole owner in fee simple of certain real property legally described in Exhibit A, attached hereto and incorporated by this reference, consisting of approximately 131 acres located in San Jacinto County, State of Texas, hereinafter referred to as the "Protected Property" and known as the RUSSELL-FRITZ WESTERNMOST LONGLEAF PINE PRESERVE, which is legally described in Exhibit A, attached hereto and incorporated by this reference.

B. The Protected Property is an undeveloped area in relatively natural condition that qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder; specifically the Protected Property protects a tract of undeveloped, mature forest which provides habitat for numerous native plants and animals.

C. The characteristics of the Protected Property, its current use and state of improvement, are described in a Baseline Report to be prepared by Grantee for the Grantor within four months. The Grantor will work with the Grantee to ensure that the Report is a complete and accurate description of the Protected Property at the time of

donation of this Conservation Easement. The Report will be used by the Grantor and Grantee to assure that any future changes in the use of the Protected Property will be consistent with the terms of this Conservation Easement. However, the Baseline Report is not intended to preclude the use of other evidence to establish the present condition of the Protected Property if there is a controversy over its use.

D. The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity, and the State of Texas has authorized the creation of Conservation Easements pursuant to The Texas Natural Resource Code Chapter 183 and the Grantor and Grantee wish to avail themselves of the provisions of that law.

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

1. **PURPOSE.** The purpose of this Conservation Easement is to ensure that the Protected Property will be retained forever predominantly in its natural and scenic condition; to protect native plants, animals, and plant communities on the Protected Property; to prevent any use of the Protected Property that will impair or interfere with the conservation values of the Protected Property described herein, while allowing for uses on the Protected Property that are compatible with and not destructive of the conservation values of the Protected Property, such as hunting of white-tailed deer and feral hogs, and other compatible commercial and recreational uses.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the purposes of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Protected Property after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on uses of the Protected Property imposed by law.

2. **PROPERTY USES.** Any activity on or use of the Protected Property inconsistent with the purposes of this conservation easement is prohibited. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed. Grantor and Grantee have determined that the allowed activities do not impair the conservation values of the Protected Property. Additional retained rights of Grantor are set forth in Paragraph 3 below.

2.1 Subdivision. The Protected Property may not be further divided, subdivided or partitioned. This provision does not apply to the two areas that are excluded from the Conservation Easement as described in Exhibit A.

2.2 Construction. There shall be no further construction of buildings, structures, wells, roads, dams, or other improvements on the Protected Property, except that perimeter fencing may be built and maintained if necessary to prevent unauthorized entry to the preserve. Existing soft-surface roads may be stabilized as necessary to prevent erosion. Additional hiking, equestrian, and interpretive trails may be added as well as hard surface pathways for the passage of electric powered vehicles for visitation by the handicapped, so long as said construction or improvement maintains the ecological integrity of the Protected Property to the greatest possible extent. Said trails, paths, and roads may be mowed or trimmed for minimal width maintenance. Shrines or memorials may be constructed at the edge of trails, paths or roads.

2.3 Mineral Extraction. Minerals shall not be extracted by any surface mining methods. Extraction of subsurface minerals should be accomplished by means of extraction methods that will have a limited and localized impact on, and not significantly impair or interfere with, the conservation values of the Protected Property and the purposes of this Easement. Grantor shall give written notice to Grantee thirty (30) days prior to beginning any extraction of minerals.

2.4 Excavation. Except as necessary to accommodate the activities expressly permitted under this easement, there shall be no ditching, draining, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, mining,

drilling or removal of minerals, nor any building of roads except as described in Paragraph 2.2 above, or change in the topography of the Protected Property.

2.5 Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Protected Property that require no surface alteration or other development of the land. Pursuit of wildlife by any form of motorized transportation is not allowed. White-tailed deer are the only native species of wildlife that may be hunted under any circumstances. All other native species are to be strictly protected, including but not limited to native insects, microorganisms, venomous snakes, alligators, and all other native creatures, except under certain scientifically verifiable circumstances as described in Paragraph 2.12. Feral hogs, dogs, cats, and other non-native species are to be controlled, removed, or humanely killed as possible.

2.6 Destruction of Plants, Disturbance of Natural Habitat. Grantor shall have the right to cut and remove exotic trees, shrubs, or plants, and to cut firebreaks in case of emergency. Grantor shall also have the right to cut and remove trees, shrubs, or plants to accommodate the activities expressly permitted under this easement in Paragraphs 2.2, 2.3, and 2.4. There shall be no additional removal, harvesting, destruction, or cutting of native trees, shrubs, or plants. There shall be no planting of invasive or non-native trees, shrubs, or plants on the Protected Property. Except to accommodate the activities expressly permitted under this Easement, there shall be no use of plowing or other disturbance that would lessen native biological diversity or alter the native species composition of habitat areas on the Protected Property.

As native plant and animal communities and species are subject to human-induced modification of the life support systems of the biosphere, rapid changes in climate may occur that could adversely affect the native species and ecological balance of the Protected Property. Due to fragmentation of most of the world's biomes, it is now impossible for native gene pools to ebb and flow and evolve as in past epochs. Therefore, it is recognized that the native species composition of the Protected Property may change due to factors beyond the control of either Grantee or Grantor. Catastrophic environmental changes may require that Grantee, using the best available science, aid the introduction of native species that, in a non-fragmented landscape, would enter the Protected Property to fill the ecological changes left by extirpated native

species. Scientifically supported artificial intervention may prove to be necessary on a case-by-case basis to protect or preserve an endangered native species or community using methods scientifically established as having occurred in areas of non-fragmented habitat. Any human modification of the Protected Property should be conducted with extreme caution and under adequate monitoring by the scientific community, and any such intervention must be approved by both Grantor and Grantee.

2.6a Longleaf Pine Protection and Propagation. Notwithstanding the foregoing, Grantor may conduct experimental activities on parts of the Protected Property to promote the natural growth and regeneration of longleaf pines (*Pinus palustris*), subject to approval by Grantee and the stewardship committee. Should it be determined by the Grantee and the stewardship committee that planting of longleaf pines through artificial means is necessary in order to mitigate the loss of pines from past harvesting that eliminated many mature longleaf pines from the subject property, and thus created an unbalance in the relative abundance of species, only seed or seedlings from the local *Pinus palustris* gene pool may be used.

2.7 Hydrology. Except as necessary to accommodate allowed activities, there shall be no alteration, depletion or extraction of surface or subsurface water on the Protected Property. Grantor shall not sell or otherwise transfer water rights associated with the Protected Property.

2.8 Signage. No signs or billboards or other advertising displays are allowed on the Protected Property, except for those signs whose placement, number and design do not significantly diminish the scenic character of the Protected Property.

2.9 Biocides. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides.

2.10 Dumping. There shall be no new storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, except as permitted elsewhere in this Easement.

2.11 Pollution. There shall be no pollution of surface water, natural watercourses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Protected Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Protected Property.

2.12 Predator Control. Grantor shall attempt to eliminate non-native feral hogs, dogs, cats, and any other non-native predatory or problem animals by humane methods approved by the Grantor. No native predators, including bears, cougars, coyotes, red wolves, red wolf-coyote crosses, hawks, eagles, foxes, alligators, or snakes, may be killed under any circumstances except under immediate danger of loss of life or serious injury in the case of an attack by a bear, cougar, rattlesnake, or other predator capable of killing humans. However, if it is determined through scientific study that a threat to a rare or endangered species, to the native ecological balance, to the relative abundance of native species, or to the ecological integrity is occurring or is likely to occur from an overpopulation of a native species, then control, removal or elimination of the damaging species may be conducted subject to approval by Grantor and Grantee.

2.13 Commercial Development. Any industrial use of or activity on the Protected Property is prohibited. Commercial development or use that is compatible with wildlife preservation is permitted, provided such development or use does not undermine the conservation values of the Protected Property.

3. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** Grantor retains the following additional rights:

3.1 Existing Uses. The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Easement. Prior to making any change in use of the Protected Property, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Protected Property subject to the terms of this Conservation Easement.

4. **GRANTEE'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to Grantee by this Conservation Easement:

4.1 Right to Enforce. The right to preserve and protect the conservation values of the Protected Property and enforce the terms of this Conservation Easement.

4.2 Right of Entry. The right of Grantee's staff, contractors and associated natural resource management professionals to enter the Protected Property one or more times a year after reasonable notice to Grantor, for the purposes of: (a) inspecting the Protected Property to determine if Grantor is complying with the covenants and purposes of this Conservation Easement; and (b) monitoring of plant and wildlife populations.

4.3 Discretionary Consent. The Grantee's consent for activities otherwise prohibited or requiring Grantee's consent under paragraph 2 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in paragraph 2 are deemed desirable by both the Grantor and Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring the Grantee's consent shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement.

5. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor or in any way to modify any existing

obligation of the Grantor as owners of the Protected Property. Among other things, this shall apply to:

(a) *Taxes* - The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Protected Property.

(b) *Management, Upkeep and Maintenance* - The Grantor shall be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Protected Property.

6. **ACCESS.** No right of access by the general public to any portion of the Protected Property is conveyed by this Conservation Easement. As these properties are to serve as native gene pool repositories and as part of worldwide biological and ecological conservation, controlled access by biologists, ecologists, botanists, and other scientists and their students shall be allowed for academic research. Media may be given tours so that the Protected Property may be described to the general public. Other entry may be allowed by special arrangement. Under no circumstances are any biological or mineral materials to be disturbed or removed for off-site study or any other purposes except by mutual consent of the Grantor and Grantee.

7. **ENFORCEMENT.** The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. With reasonable notice, the Grantee may enter the Protected Property for the purpose of inspecting for violations. If the Grantee determines that a violation has occurred, is occurring, or is threatened, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the conservation values of the Protected Property, the Grantee shall give the Grantor written notice of the violation and sixty (60) days to correct it (or to begin good faith efforts to correct in the event the violation is something which cannot be reasonably corrected in sixty days), before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Protected Property to its

condition prior to the violation. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

8. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this easement are in gross and assignable. The Grantee shall have the right to transfer or assign this Conservation Easement to any private nonprofit organization that at the time of transfer is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code, and the organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility.

9. **TRANSFER OF PROPERTY.** The Grantor shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Protected Property, or any interest therein, to any third party, and the document of conveyance shall expressly refer to this Conservation Easement.

10. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Texas Natural Resources Code 183.001 *et seq.*, or any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would adversely affect the enforceability of this Conservation Easement.

11. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Protected Property have changed so much that it is impossible to fulfill the conservation purposes set forth above, this Conservation Easement may be terminated only by a court with jurisdiction at the joint request of both the Grantor and Grantee.

If condemnation of all or part of the Protected Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings. At the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee. If the easement is terminated and the Protected Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Grantor) equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Protected Property, as these values are determined at the time of donation of this Conservation Easement. The Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement by expending said funds for the purchase of fee simple protected lands or conservation easements which will mitigate the damage to the immediate geographic vicinity of the Protected Property.

12. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of Texas, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

13. **INDEMNIFICATION.** Each party agrees to hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Protected Property that causes injury to a person(s) or damage to property.

14. **TITLE.** The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey this Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

15. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:

Marjorie and Kenneth Russell
1620 Woodland Lane
Huntsville, Texas 77340

To the Grantee:

Natural Area Preservation Association
P. O. Box 162481
Austin, Texas 78716-2481

16. **ENVIRONMENTAL CONDITION.** The Grantor warrants that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

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

18. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

19. **PERPETUAL DURATION.** This Conservation Easement runs with the land and binds all successive owners of the Protected Property.

20. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

21. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.

22. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as

EXHIBIT A: DESCRIPTION OF PROTECTED PROPERTY

Being 151 acres of land, more or less, situated in the ISAAC PRATER SURVEY, A-239 and the RICHARD BANKHEAD SURVEY, A-70, San Jacinto County, Texas, and being all of undeveloped land bounded on the West by FM Highway 980, on the South by Waterwood Parkway, on the East and Easterly side by Waterwood Bay Road, along the Northerly side by (i) a 9.451 acre tract of land described a Parcel 4 in a deed from Horizon Properties Corporation to Waterwood Holdings, L.P., dated April 3, 1998, recorded in Volume 278, Page 394 of the Official Public Records, San Jacinto County, Texas, (ii) Bass Boat Village of Waterwood, a subdivision in San Jacinto County, Texas as shown by the plat of recorded in Volume 5, Page 28 of the Plat Records, San Jacinto County, Texas and (iii) the fee taking line of the Livingston Reservoir.

SAVE AND EXCEPT:

- 1) A 10 acre tract, more or less, situated in the southwest corner of the called 151 acre tract, being described as: beginning at the intersection of the North right-of-way line of Waterwood Parkway at its intersection with the East right-of-way line of FM 980. Thence N14-07 W, 660' along the East right-of-way line of FM 980 to a point, thence N75-53E 660' to a point, thence S14-07E 660' to a point on the North right of way line of Waterwood Parkway, thence S75-53W along the North right of way line of Waterwood Parkway to the place of beginning.
- 2) A 10 acre tract, more or less, situated on the Easterly boundary of the called 151 acre tract also being the west right of way line of the Marina Road, being described as beginning at a point shown on sheet two of The Beach plat, filed in Vol. 6, pg. 9 of the deed records of San Jacinto County. Said beginning point being the southern most point of the said west right of way line of the Marina Road that measures 653.48 feet with a bearing of N29-38-36W. Thence along the west right of way line of the Marina Road N29-38-36W 653.48 feet to a point, thence continuing along the west right of way line of the Marina Road and along the arc of the curve to left 56.15 feet to a point, thence S38-37-25W 361.58 feet to a point, thence S86-14-54W 157.21 feet to a point, thence S29-38-36E 878.61 feet to a point, thence N60-21-24E 489.41 feet to a point on a curve of the west right of way line of the Marina Road, thence in a northwesterly direction along the arc of the curve 242.17 feet to the place of beginning.

collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

23. **EXHIBITS.** The following Exhibit is incorporated within this Easement:

Exhibit A: Description of Protected Property

24. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the signature of its authorized representative affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective on the date recorded in the San Jacinto County Registry of Deeds.

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

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands and seals on the date first written above.

GRANTORS:

Kenneth L Russell J L Russell (SEAL)

Marjorie A. Russell (SEAL)

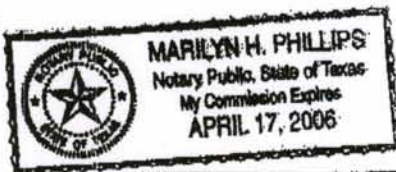
STATE OF Texas §

COUNTY OF Walker §

34663

BEFORE ME, the undersigned authority, on this day personally appeared Reneetha & Margorie Russell, known to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he executed the same for the purposes and consideration therein stated, individually and in the capacity above stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 7 day of Nov, 2002.



(SEAL)

NOTARY PUBLIC

My commission expires:

04-17-06

GRANTEE:

NATURAL AREA PRESERVATION ASSOCIATION

By: Edward Carney (SEAL)

Its: Secretary

STATE OF

Texas

§

COUNTY OF

Dallas

§

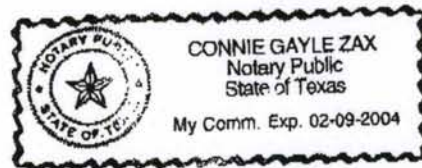
34664

BEFORE ME, the undersigned authority, on this day personally appeared Edward G. Pace, known to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he executed the same for the purposes and consideration therein stated, individually and in the capacity above stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 8 day of November 2002.



NOTARY PUBLIC (SEAL)



My commission expires:

CLERK'S NOTICE: ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE, IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

RETURN TO:

Phil Palmer

100 WATERWOOD

HUNTSVILLE, TX 77320

FILED FOR
RECORD

02 DEC -5 PM 3:03

Charlene Vann
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF SAN JACINTO
I, Charlene Vann, hereby certify that this instrument was FILED in file number sequence on the date and at the time stamped hereon by me and was duly RECORDED, in the official public records of San Jacinto County, Texas as stamped hereon by me on

DEC 5 - 2002



CHARLENE VANN
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS

