

TCEQ SEP Options for Habitat Acquisition

12.28.11

Number One of Three

Third-Party SEP Administrator: Friends of the River San Bernard (“FOR”)

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

See Project Description and Maps in PDF below.

Current Status

The acquisition of the conservation easement on Phase One, 30.1 acres, is complete.

FOR has a signed contract with the owner for purchase of these conservation easements, so no appraisal was necessary.

WETLANDS AMERICA TRUST, INC. (affiliated with Ducks Unlimited) will hold these conservation easements.

The survey was updated on 7/18/11 to show that Phase Two contains 363.724 acres and Phase Three contains 233.160 acres.

SEP Funds needed to complete the Project and purchase conservation easements on Phases Two and Three: \$ 1,157,395.

FOR is ready and can close on Phases Two and Three as soon as it receives the SEP Funds.

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Exhibit A

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

Project Description

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

Definitions:

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

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

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

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

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

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

Environmental Benefit

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

Eligible Areas and Counties

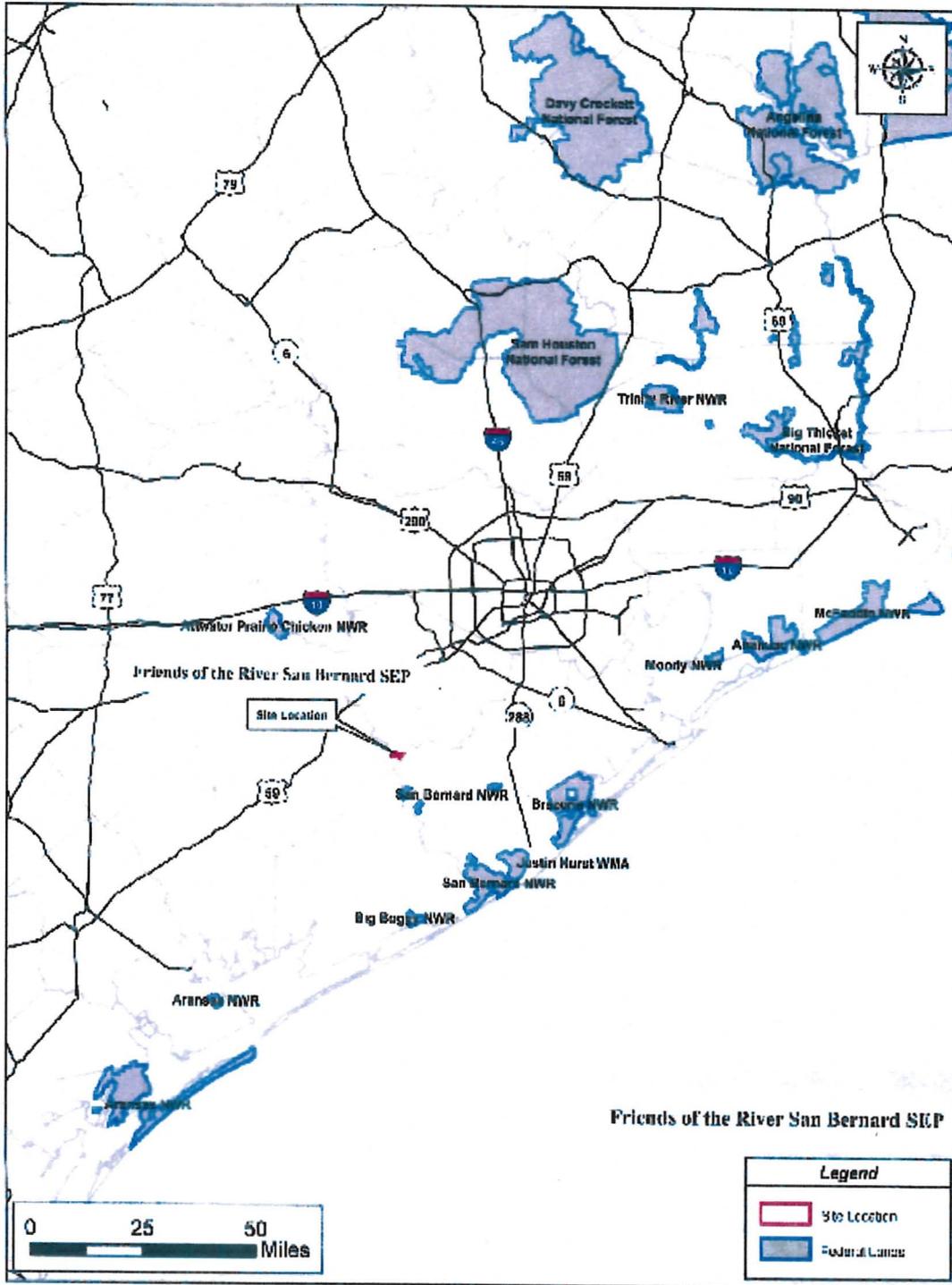
Brazos-Colorado Coastal River Basin and Austin, Brazoria, Colorado, Fort Bend, Matagorda, and Wharton Counties.

Minimum Contribution Amount

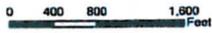
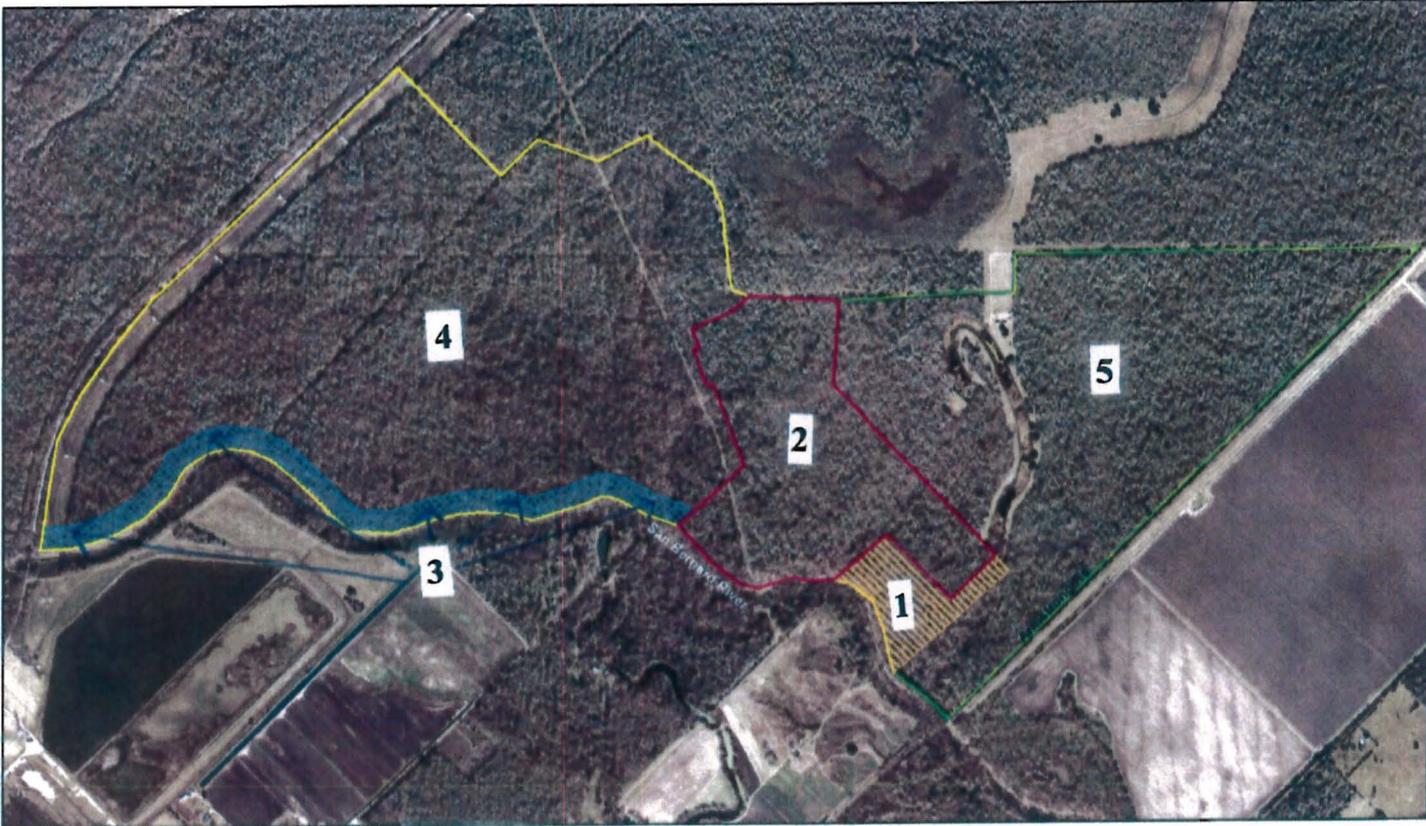
\$500.

Exhibit C

Location Map 1



**Exhibit C (cont.)
Location Map 2**



-  1-WETLANDS AMERICA TRUST, INC. 2002 Conservation Easement
-  2-WETLANDS AMERICA TRUST INC. 2000 Conservation Easement
-  3-Friends of the River San Bernard, SEP Conservation Easement Acquisition Phase One
-  4-Friends of the River San Bernard, SEP Conservation Easement Acquisition Phase Two
-  5-Friends of the River San Bernard, SEP Conservation Easement Acquisition Phase Three

