

Excerpt from the Conservation Easement
6.07.04

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, and except as permitted in paragraph 4 or elsewhere herein, the following activities and uses are expressly prohibited:

(a) Subdivision. The Property shall not be subdivided differently than its current configuration allows. At present, the Property includes one approximately ___-acre parcel, in accordance with its status as a “legal lot of record,” (hereafter, “Legal Lot”). A Legal Lot may be separately held and/or conveyed, subject to the terms and restrictions of this Deed.

(b) No Structures and Improvements. Except as expressly provided for in paragraph 4 herein, no building, structure, or other improvements of any kind, temporary or permanent, shall be constructed or maintained on the Property including, but not limited to, houses, towers, commercial satellite dishes, sheds, tanks, mobile homes, dams, impoundments, and communication equipment. Permitted structures and improvements shall be sited so as to reduce as much as practical the visibility of buildings from County Road 42.

(c) Mineral Development. No surface mining shall be permitted. No sub-surface minerals owned by Grantor or over which Grantor has executory rights may be mined or removed. Grantor makes no representations and enters into no restrictions or prohibitions binding upon third parties who may own rights in minerals on the Property and who may have rights to mine and remove same. Grantor agrees that Grantor will not, to the extent greater than legally required, cooperate with or assist any such third party seeking to exploit any such mineral, oil or gas interest.

(d) Topography Modification. Changes in the existing general topography of the landscape or land surface of the Property, excluding minor changes as a result of activities expressly permitted herein, are prohibited unless such changes are caused by the forces of nature or are expressly permitted in paragraph 4 herein.

(e) Waste Disposal and Hazardous Materials. No portion of the Property shall be used for dumps, landfills, or the storage or deposit of waste materials of any kind. Disposal of any waste materials generated by activities expressly permitted herein shall be in accordance with applicable federal and state laws.

(f) Industrial, Commercial and Residential Activities. Except for uses permitted in paragraph 4 herein, the Property shall not be used for industrial, commercial or residential activities.

(g) Signs and Billboards. No sign or billboard shall be placed on the Property, except to state the name of the real Property, or any portion thereof, and the purpose for which the property is being preserved and to control unauthorized entry or use of the Property. Signs shall be no larger than eight (8) square feet in area. Grantee may display such

signs as it may customarily use to identify lands under conservation easement and the terms of such conservation easement subject to receipt of Grantor's prior approval for same, including the location of any such signs.

(h) Utility Rights-of-way. Except as provided in the exceptions and notes attached to the Survey and Plat Map recorded on _____, 2004, no utility rights-of-way shall be located within the Property after the date of this instrument except as may be imposed pursuant to a valid power of condemnation or other process of law or as may be used by Grantor in connection with personal use of allowed structures and improvements on the Property, as permitted in paragraph 4.

(i) Timber Harvesting. No commercial timber harvesting, building of temporary or permanent logging roads or reforestation of trees shall be permitted, except that Grantor may remove juniper trees and reforest with other native trees to assist in the restoration of the natural grasslands for non-commercial purposes.

(j) Non-Native Species. No non-native plant species shall be introduced onto the Property, except as permitted in paragraph 4.

4. Reserved Rights. Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, those rights stated below are expressly reserved:

(a) Within a Legal Lot as noted in Section 3 (a), Grantor, their personal representatives, heirs, successors, and assigns may construct a single-family compound, which may include, but shall not include more than, a Main House and garage (hereafter, the "Main House"), Guest House (hereafter, the "Guest House"), barn (hereafter, the "Barn") and any other outbuildings compatible with rural living. The exterior finish of all buildings detached from the Main House must be consistent with the Main House.

(b) The interior floor area of the Main House shall not be less than 2,000 square feet and shall not exceed 7,500 square feet (including garage). The interior heated living space of the Guest House shall not be less than 400 square feet and shall not exceed 2,500 square feet. The interior workspace of the Barn, if any, shall not be less than 300 square feet and shall not exceed 2,500 square feet. Neither the Main House, the Guest House or the Barn shall be more than two stories in height.

(c) The maximum height of the Main House, Guest House, garage, non-commercial horse facilities or other outbuildings, at the highest point of such structure, excluding chimneys and antennas, shall not exceed 18 feet as measured from the natural grade of the building site below said highest point.

(d) The Main House and its associated structures, fencing or yard walls shall be confined to the boundary of the Legal Lot's development envelope (hereafter, "Development Envelope") as noted on the Plat map. Fences or yard walls (other than perimeter fencing) shall be no closer than 25 feet from the boundaries of the Legal Lot's Development Envelope.

(e) The Main House, Guest House, Barn, garage, parking areas, and any other outbuildings shall not extend beyond the surveyed boundaries of the Development Envelope. "Envelope" shall mean the developed area including the buildings and parking areas.

(f) All setbacks, height restrictions, and exterior finish restrictions are designed to minimize the visibility of the buildings from County Road 42 and from adjoining Legal Lots located within the West Basin Preserve.

(g) The exterior finish of the Main House, Guest House, garage, horse facilities and other outbuildings shall be of an earth tone or sage green stucco variety so as to blend easily into the surrounding colors of the landscape, or other such material as may be selected with the mutual approval of Grantor and Grantee.

(h) The roof color of the Main House, Guest House, garage, horse facilities and other outbuildings shall be of a brown/tan variety, or if developed with a pitched roof, a traditional unpainted non-reflective tin or steel roof is encouraged. A painted metal roof is permitted if non-reflective and in the following colors: gray, tan, and sage green, dark green, brown.

(i) The Development Envelope may be circumscribed by a fence. The fencing materials may include unpainted wood and/or metal varieties. The fence height shall not extend beyond a 6-foot height from surface grade. All walls or fences impermeable to wildlife to the Development Envelope and surrounding area must be adjacent to the Main House, Guest House, Barn or other outbuildings.

(j) All electrical power, telephone and other utility lines which serve the Property shall be buried underground. Any recreational vehicles (e.g., motor homes, boats, trailers) must be housed within an enclosed structure and entirely screened from other Legal Lots and from visibility from County Road 42. An improved driveway of a reasonable quality to adequately serve the improved property may be built.

(k) The improved landscaped area of the property, including the combined Development Envelope mentioned above, shall not exceed a total of four (4) acres. Landscaping materials shall be of a local native plant variety (e.g., fescue, buffalo grass, wildflowers, drought tolerant shrubs and trees). A maximum of 1,000 square feet of non-native plants is permitted if watered using conserved water from roof drains, collection cisterns or county certified gray water reclamation systems.

(m) Either the Main House or the Guest House may be built first but must be clearly designated by the owner as Main House or Guest House.

5. Review of Grantor Plans Pursuant to Prohibited Uses and Reserved Rights. Before undertaking to construct or build any fences, roads or other similar improvements pursuant to any reserved right under paragraph 4 above or any exception to a prohibited use under paragraph 3 above, Grantor shall submit to Grantee a detailed written plan describing the undertaking. Grantee shall have a period of thirty (30) days from receipt of said plan to review said plan and make objections to same. All such objections shall be based upon inconsistencies between the plan and the purpose of this Easement or the Conservation Values of the Property. If within said thirty (30) day period, Grantee makes no objections, then Grantee shall be deemed to have approved of said plan, but nothing else not contained in the plan. If Grantee raises objections, the parties agree to meet and resolve in good faith all such objections prior to Grantor undertaking such development. If no agreement can be reached between the parties regarding the plan despite use of the parties' best efforts to do so, either one of the parties may submit the matter to binding arbitration. Any matter submitted to arbitration shall be submitted to and heard in Santa Fe, New Mexico in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association.

6. Grantee's Facilitation and Enhancement of Conservation Values. Nothing set forth herein shall prevent Grantee from seeking to facilitate or enhance the Conservation Values of the Property or the purposes of this Easement. Before undertaking any such facilitation, improvement or enhancement of the Conservation Values, Grantee shall prepare and submit to Grantor a detailed written plan describing same. Grantor shall have a period of thirty (30) days from receipt of said plan to review said plan and make objections to same. All such objections shall be based upon inconsistencies between the plan and the purposes of this Easement and the Conservation Values of the Property; provided however, that such enhancements shall not be in derogation of the reserved rights or the exceptions to the prohibited uses reserved to Grantor in this Easement. If within said thirty (30) day period, Grantor makes no objections, Grantor shall be deemed to have approved said plan, but no other matters except those set forth in the plan. If Grantor raises objections, the parties agree to meet and resolve in good faith all such objections prior to Grantee undertaking such development. If no agreement can be reached between the parties regarding the plan despite use of the parties' best efforts to do so, either one of the parties may submit the matter to binding arbitration. Any matter submitted to arbitration shall be submitted to and heard with the then current Commercial Arbitration Rules of the American Arbitration Association in Santa Fe, New Mexico.

7. General Agreed Parameters for Certain Types of Improvements and Uses. The parties agree to the following matters with regard to particular types of possible improvements or uses of the Property:

(a) Roads. Grantor shall not have the right to pave any road or driveway with pavement, concrete, or any other hard impervious material. It is expressly understood that gravel and similar road bases are not "impervious" and shall be allowed.

(b) The parties agree that any road which is permitted will be repaired, maintained or improved in such a fashion and manner so as to:

i. minimize the width and length of such road;

ii. not exceed the original dimensions of the existing road;

iii. maximize the ability of the road to be reclaimed and returned to a natural state when it is no longer required or needed; and

iv. minimize the road's impact on the Conservation Values of the Property.

8. Access. This Easement does not grant rights of access to the Legal Lot to the general public except as provided on the Survey and Plat Map recorded on _____, 2004, but such access may in the future be arranged by mutual agreement of Grantor and Grantee.