



WHEN RECORDED RETURN TO:

Emerald Springs PUD
1610 West 100 North, #34
St. George, Utah 84770

THIS SPACE FOR RECORDER'S USE ONLY

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made as of the ~~19th~~ day of ~~Jan.~~, ~~2006~~ by **EMERALD SPRINGS PUD, HOME OWNERS ASSOCIATION**, ("Declarants").
2007, rd

WHEREAS, Declarants are the owners of certain real property located in the County of Washington, Utah, described in Exhibits "A" and "B" attached hereto and incorporated hereby by this reference (hereinafter the "Preserve Area"); and

WHEREAS, Declarants intend to preserve the above described property as wildlife habitat and a wetland conservation area, to be so held in perpetuity subject to restrictions in accordance with the provisions of the *Emerald Springs Wetland Preserve Area Management Plan* (Exhibit "C") (hereinafter the "Plan");

WHEREAS, the Preserve Area consists of both jurisdictional wetland features and associated natural upland areas;

WHEREAS, the Declaration will benefit all parties to the Declaration in that it will assist in preserving and maintaining the drainage and wildlife habitat in the Preserve Area;

NOW THEREFORE, Declarants declare as follows:

1. Covenant Running with Land. The Declarants do hereby covenant and agree to restrict, and do by this instrument intend to restrict, the future use of the Preserve Area as set forth below, by the establishment of this Declaration running with the land.

2. Restrictions Concerning the Preserve Area. Except for those actions necessary to accomplish preservation, maintenance, repair, fire prevention, or enhancement as has been, or in the future is authorized by the Corps, consistent with the Permits and The Plan, no person shall engage in any of the following restricted activities in the Preserve Area:

(a) No plowing or cultivation of the Preserve Area or any portion of such area, and no destruction or removal of any natural tree, shrub or other vegetation that exists upon the Preserve Area shall be done or permitted except by the Declarants or their successors and assigns to the Preserve Area, as described in the Plan for the purpose of mosquito abatement, thatch management or the removal/management of newly introduced noxious or dangerous plants as necessary to maintain the Preserve Area;

(b) No materials or debris shall be stored or placed (whether temporarily or permanently) within the Preserve Area or any portion of such area without prior written approval by the Declarants;

- (c) No discharge of any dredged or fill material shall be done or permitted within the Preserve Area or any portion of such area except as consistent with the terms and conditions of the Preserve Area Management Plan;
- (d) No discharge, dumping, disposal, storage or placement of any trash, refuse, rubbish, grass clippings, cuttings or other waste materials within the Preserve Area or any portion of such area shall be done or permitted;
- (e) No leveling, grading or landscaping within the Preserve Area or any portion of such area shall be done or permitted without prior written approval from the Declarants;
- (f) No destruction or removal of any natural tree, shrub or other vegetation that exists upon the Preserve Area shall be done or permitted except by the Declarants or their successors and assigns to the Preserve Area, for the purposes of mosquito abatement, thatch management or the removal of noxious or dangerous plants as necessary to maintain the Preserve Area;
- (g) No motorized vehicles shall be ridden, brought, used or permitted on any portion of the Preserve Area, except as provided for in (a) and (f) above or with prior written approval by the Declarants;
- (h) No roads, utility lines, trails, benches, equipment storage, or other structures or activities shall occur within the Preserve Area without prior written approval by the Declarants.
- (i) No grazing of animals is allowed.
- (j) No surface runoff (other than naturally occurring surface runoff) from any surrounding development shall be allowed to flow onto the protected area under normal conditions.
- (k) No storm water shall be allowed to discharge within the protected area other than naturally occurring storm water discharge.

3. Not an Offer to Dedicate: No Rights of Public Use. The provisions of this Declaration do not constitute an offer for public use. This instrument does not constitute an irrevocable offer to dedicate.

4. Successors and Assign Bound. Declarants hereby agree and acknowledge that the Preserve Area shall be held, sold, conveyed, owned and used subject to the applicable terms, conditions and obligations imposed by this Declaration relating to the use, repair, maintenance and/or improvement of the Preserve Area, and matters incidental thereto. Such terms, conditions and obligations are a burden and restriction on the use of the Preserve Area, as applicable.

The provisions of this Declaration shall (subject to the limitations contained in this Declaration and without modifying the provisions of this Declaration) be enforceable as equitable servitudes and conditions, restrictions and covenants running with the land, and shall be binding on the Declarants and upon each and all of their respective heirs, devisees, successors, and assigns, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries and administrators, and upon future owners of the Preserve Area and each of them.



5. Severability. The provisions of the Declaration are severable and the violation of any of the provisions of this Declaration by a Court shall not affect any of the other provisions which shall remain in full force and effect.

DECLARANTS:

**EMERALD SPRINGS PUD
HOME OWNERS ASSOCIATION**

Date: 1/19/07

By: Wm A. Christensen

Its: President

Doc

Declaration of Restrictions

STATE OF UTAH

COUNTY OF WASHINGTON

On the ^{2007th} day of ~~2006~~ before me,
SPRINGS, PUD, personally appeared.

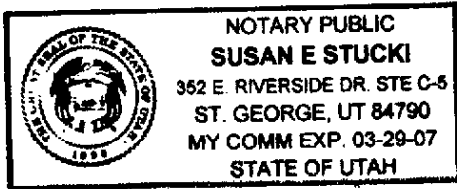
, PRESIDENT, of EMERALD

 personally known to me
 personally proved to me on the basis of
satisfactory evidence to be the person whose
name is subscribed to the within instrument
and acknowledged to me that he executed the
same in his authorized capacities, and that by
his signature on the instrument the entities
upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal above

Susan E Stucki
Signature of Notary Public



 Declaration of Restrictions

EXHIBIT "A"

LEGAL DESCRIPTION OF PRESERVE AREA



Declaration of Restrictions

L. R. POPE ENGINEERING, INC.

1240 East 100 South #15B • St. George, Utah 84790 • (435) 628-1676 • (435) 628-1788 Fax

3/24/2006

**BOUNDARY DESCRIPTION
EMERALD SPRINGS TOWNHOMES WETLANDS**

Beginning at a boundary corner of Emerald Springs Townhomes Phase II as recorded in the Washington County Recorder's Office, said point being S 89°39'15" W 752.31 feet along the Section line and N 00°20'45" W 34.01 feet from the South 1/4 corner of Section 23, Township 42 South, Range 16 West, Salt Lake Base & Meridian and running thence N 13°01'16" E 87.33 feet; thence N 76°58'44" W 8.92 feet; thence N 13°01'16" E 75.00 feet; thence S 76°58'44" E 8.92 feet; thence N 13°01'16" E 72.78 feet; thence N 28°01'42" E 74.83 feet; thence N 73°01'42" E 83.28 feet; thence N 00°20'45" W 148.09 feet; thence S 89°39'15" W 39.81 feet; thence N 00°20'45" W 79.00 feet; thence S 89°39'15" W 10.00 feet; thence N 00°20'45" W 80.00 feet; thence N 89°39'15" E 23.59 feet; thence N 00°20'45" W 69.54 feet; thence N 41°18'14" E 332.70 feet; thence S 10°26'28" W 5.83 feet to a point on the Boundary of Paradise Cove Townhomes Phase II as recorded in the Washington County Recorders Office and running along said boundary line and the boundary of phase III for the following three courses: S 10°26'28" W 180.10 feet; thence S 15°14'17" W 617.77 feet; thence S 00°48'35" E 166.94 feet to a point on the North right of way line for 100 North Street and running along said right of way for the following two courses: S 89°39'15" W 132.79 feet to the point of a 522.00 foot radius curve to the right; thence Northwesterly through a central angle of 3°33'33" and along the arc of said curve 32.43 feet to the point of beginning.

Containing 2.439 acres.

prepared by L. Ried Pope PE, PLS

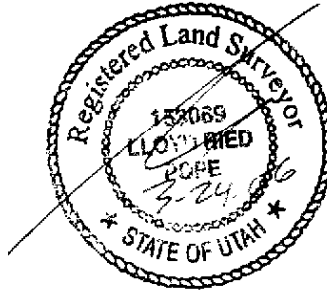


EXHIBIT "B"

MAP OF PRESERVE AREA



Declaration of Restrictions

Emerald Springs Wetland Preserve Area

Management Plan

Exhibit C

I. Introduction

Alpine Environmental Resources, LLC was contracted by Emerald Springs PUD to complete a site assessment of the Emerald Springs Wetland Preserve Area and consult on ways to manage and protect the wetland preserve area. Alpine personnel, Jill Hankins made numerous site visits to discuss goals, make observations and characterize the area. Site visits were made on January 5th, January 30th, February 9th, and March 15th, 2006. A Declaration of Restrictions, a legal description of the preserve area, a map of the preserve area, and this Management Plan is presented to the home owners association for approval. It is proposed that these approved documents be recorded on the property deed at the County Records Office, Washington County, Utah. The Declaration of Restrictions will run congruent with the said parcel of land. It provides a legally binding agreement on management objectives of the property.

II. Goals

The objective of this management plan is to sustain a functioning wetland for wildlife habitat, aesthetics and diversity in community, open space, water purification and filtration, and flood control.

Approximately 80 percent of all wildlife is dependant on wetlands. Urban wetlands provide food sources, shelter and other habitat needs for many fish and wildlife species. Urban wetlands are particularly important to sustain wildlife populations in urban settings. Many wildlife species will live among humans if vital habitat is provided and protected.

Studies show that residential and commercial developments that harmonize with natural landscapes and contain wildlife receive greater publicity, have higher resale value, have higher rental rates, and faster occupancy. The preserve area is designated as a natural buffer between development communities. The preserve area is designated open space that will not be developed as population density increases and as residential zoning changes in this area.

The preserve area has the ability to hold large volumes of water and release it slowly during heavy storms. This reduces the risk of property damage. The wetland filters and captures sediments, nutrients, fertilizers, heavy metals and other pollutants from heavy water flows, thereby improving water quality. The preserve area is hydro-logically

connected to the Santa Clara River, the Virgin River, and Lake Mead. These waters are habitat to many sensitive fish populations.

III. Management

It is recommended that the preserve area be managed to sustain vegetative and wildlife species diversity. In absence of human development wetlands are cleansed by way of flood and fire. Accumulated biomass is flooded during extremely wet years. This expedites decomposition of biomass and restricts new growth until water levels drop. After periods of drought wildfire burns off accumulated biomass allowing natural succession. Because both of these natural functions have been restricted on the preserve area it is necessary to remove the accumulated biomass to maintain a healthy ecosystem.

Artificial Removal of Biomass and Recommended Plantings

It is recommended that the preserve area be pruned and thinned annually or semiannually. Pruning should take place prior to April 15th or after September 30th. Any equipment brought onto the preserve area should be cleaned prior to entering the site to prevent spread of noxious plants. A shredder may be used on the site where it is cost prohibitive to haul off the overgrowth. However, removal of pruned material is preferred.

Over-story - Dead trees that are not hollow or obviously being used by wildlife should be hauled off or shredded. Live trees should be pruned for aesthetic value.

Black cottonwood (*Populus trichocarpa*), and Fremont cottonwood (*Populus fremontii*) could be planted.

Mid-story - Tamarisk should be cut at the base and hauled off. Freshly cut bases should be chemically treated with Rodeo. All Tamarisk removal is not necessary. However, the mid-story of the preserve area should not contain more than 10% cover of Tamarisk. Willow should not be pruned or removed. Approximately 50 to 75 % of the existing Cattails (*Typha latifolia*) should be cut and shredded or removed. The cattail stand could be burned every two years during the early spring if the fire department would issue a burn permit. Cattails regenerate quickly with the proper water regime. Cattails provide good habitat for red-winged blackbirds and provide nesting material for numerous avian species. Cattails are succulent and uptake toxins from water. However, cattails tend to invade and choke out other species. Rabbit brush (*Chrysanthomus viscidiflorus*) should not be removed from the preserve area. There is a small stand of Common reed grass (*Phragmites astragulus*) in the preserve area. This stand should be cut and treated with Rodeo.

Golden current (*Ribes aureum*), Peachleaf willow (*Salix amygdaloides*), yellow willow (*Salix lutea*), sandbar willow (*Salix exidua*), and silver buffaloberry (*Shepherdia argentea*) could be planted to improve wildlife habitat and replace Tamarisk.

Under-story - The under-story of the preserve area looks good. It should be monitored for invasive species. Grass seed mix of rabbitsfoot grass (*Polypogonum sp*), alkali grass (*Puchinella nuttalliana*), wiregrass (*juncus balticus*), and sedge (*Carex sp.*) could be seeded in the fall or spring if desired.

Pond - The pond at the south end of the preservation area is shallow and should be dredged to approximately 4 feet deep in the center of the pond. The edges could be sloped for safety and planted with bulrush (*Scirpus maritimus*, *Scirpus acutus*) and willow (*Salix sp.*) saplings.

Wildlife - Undesirable wildlife such as raccoon, rodent, insects, or mosquito may be trapped or exterminated within the preserve area.

IV. Monitoring

The preserve area will be monitored and a monitoring report will be submitted to the home owners association annually by Alpine Environmental Resources, LLC for five years. Bird counts, photo monitoring, water quantities, vegetation management, findings and recommendations will be submitted in the report. Annual reports will be submitted by February 28th each year for the previous year.

1. Wildlife

A Christmas bird count and a summer bird count will be conducted on the site annually. The bird counts will consist of pedestrian visual count of the number of birds seen within the boundaries of the wetland conservation area on December 24th and June 21st. Volunteers from the Emerald Springs and Paradise Cove communities will walk transects 40 feet apart for one pass across the wetland area. All birds seen will be counted. Species type will be recorded if it is known, however not necessary. Data from the bird counts will be used to detect change and identify any key avian species that utilize the site for habitat. If it is discovered that a particular desirable species is utilizing the site then the site can be managed to increase suitable habitat for that particular species.

2. Photo Monitoring

Six photo monitoring stations have been established around the wetland area. Photos will be taken twice a year from each station. The photos will be used to detect vegetative change of the wetland area. Vegetative species that tend to increase or invade the site will be targeted for control. It is important to maintain vegetative species diversity to sustain wildlife value of the site.

3. Water quantity

Water quantity will be calculated and recorded twice a year. On February 9th, 2006 it was estimated that the wetland was receiving 15 gallons per minute at the east inlet point on the south pond. No water was flowing into the wetland from the spring box at the north end of the preserve area. Water from the spring box was being diverted into the ponds at Paradise Cove. Approximately 25 gallons per minute was flowing into the south

pond at Paradise Cove. Water quantities were estimated by filling and timing gallons at the inlet points. On March 15th, 2006 it was estimated that outflow from the wetland was approximately 28 gallons per minute. Water quantity was estimated using a weir installed at the outlet from the south pond.

4. Vegetation Management

Actions involving vegetation management including, clearing, cutting, burning, chemical treatment and planting or seeding will be recorded.

V. Success Criteria

The preserve area should:

- Provide habitat for a variety of wildlife species.
- Provide quiet refuge for wildlife in an urban setting.
- 80% of vegetative cover should be desirable species.
- Noxious plants should not cover more than 20 % of the preservation area.