

Bear Creek Regional Park

Conservation Easement Project

El Paso County Commissioner Sallie Clark, as the representative for District 3 and the area of Bear Creek Regional Park, has been working with the El Paso County Parks Advisory Board and interested citizens in an effort to create a conservation easement over Bear Creek Regional Park. The conservation easement will help preserve and protect Bear Creek Regional Park as a park /open space into the future.

A conservation easement is a binding legal agreement between a landowner and a qualified conservation organization that protects land with conservation values. El Paso County Parks currently has approximately 25% of all County park property under conservation easement.

A citizens group appointed by the El Paso County Park Advisory Board has been meeting and researching the project since 2012 and has facilitated several community meetings where significant support was expressed for the project of a conservation easement.

The benefits of the conservation easement include the following:

- Helps ensure that Bear Creek Regional Park will be preserved as park land / open space in perpetuity
- Provides a balance between active and passive uses
- Provides storm water management benefits
- Helps maintain area property values
- Preserves:
 - Visual relief / scenic views
 - Open space buffer
 - Wetlands / riparian corridor habitat along Bear Creek
 - Continued opportunities for community recreation
 - Wildlife habitat

The conservation easement is proposed to utilize zones that determine the uses within the park. Please find below a description of the zones. Please also see the attached zone map.

Zone 1

Trails, benches, interpretive signage, and wildlife viewing

Zone 2

Improvements are limited to 10% of total acreage and may include picnic facilities, pavilions, playgrounds, parking, kiosks, interpretive signage, and access roads

Zone 3

Roads, parking lots, trailheads, trails, nature centers, dog parks, gardens, permitted athletic facilities, pavilions, park support facilities

* Proposed improvements with the respective zone must align with the updated Master Plan for Bear Creek Regional Park.

The El Paso County Board of Commissioners unanimously supports proceeding to the fundraising phase of this project which includes raising \$17,500 for the Palmer Land Trust's (PLT) one-time conservation easement administrative / stewardship fee. We are thankful for PLT's support by providing a discounted fee for our project.

If we are successful with the fundraising drive, please find below the next steps:

1. Prepare conservation easement documents in cooperation with the Palmer Land Trust.
2. Seek Park Advisory Board endorsement of the conservation easement documents.
3. Seek approval of the conservation easement documents from the Board of County Commissioners and the Palmer Land Trust Board of Trustees.

For more information, please contact:

Tim Wolken, Director
Community Services Department
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Bear Creek Regional Park

Conservation Easement Project Fundraising Drive

Frequently Asked Questions

1. How long will the fundraising drive last?

Our goal is to complete the fundraising drive this spring.

2. What if we do not collect enough funds?

We are confident that there is sufficient community support to raise the needed funds. However, if we are unsuccessful, all contributions will be returned.

3. What if we collect more funds than the fundraising goal?

If additional funds are collected above the \$17,500 goal for the Palmer Land Trust administrative / monitoring fees, the excess funds will be used for miscellaneous costs with the conservation easement process (baseline study,...) and for improvement projects at Bear Creek Regional Park based on input from the Friends of Bear Creek Regional Park.

4. How will donors be recognized?

Donor names will be posted on the Conservation Easement webpage and will be publicly thanked at upcoming Park Advisory Board and Board of County Commissioner meetings.

5. What are the next steps after we complete the fundraising drive?

- A. Prepare conservation easement documents in cooperation with the Palmer Land Trust.
- B. Seek Park Advisory Board endorsement of the conservation easement documents.
- C. Seek approval of the conservation easement documents from the Board of County Commissioners and the Palmer Land Trust Board of Trustees.

DEED OF CONSERVATION EASEMENT

(Bear Creek Park-El Paso County)

THIS DEED OF CONSERVATION EASEMENT (the "Easement") is made this 22nd day of December, 2014, by EL PASO COUNTY, Colorado, a body politic, acting by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, Colorado, having an address of 200 South Cascade, Colorado Springs, CO 80903 ("County"), in favor of THE PALMER LAND TRUST, a charitable nonprofit Colorado corporation, having an address at P.O. Box 1281, Colorado Springs, Colorado 80901 ("Grantee").

RECITALS

A. County is the sole owner in fee simple of approximately 545 acres of real property in El Paso County, Colorado, known as Bear Creek Regional Park, more particularly described in Exhibits A through G attached hereto (the "Property" or the "Park").

B. The Property possesses natural, scenic, open space, wildlife, historical, aesthetic, recreational, ecological and environmental values (collectively, "Conservation Values") of great importance to County, the Grantee, the people of El Paso County and the people of the State of Colorado which are worthy of protection in perpetuity. County and Grantee recognize that economic development of the Property would have an adverse impact on and greatly impair these Conservation Values.

C. Colorado Revised Statutes § 33-1-101, *et seq.*, provides in relevant part that "it is the declared policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced and managed for the use, benefit and enjoyment of the people of this state and its visitors." Additionally, Colorado Revised Statutes § 38-30.5-102, provides for the establishment of conservation easements to maintain land "in a

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natural scenic or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational ... or other use or condition consistent with the protection of open land having environmental quality or life-sustaining ecological diversity.”

D. In particular, the Property possesses at least the following Conservation Values:

1. Recreation and Education. Bear Creek Regional Park is a fully operational 566-acre recreational park located within the Colorado Springs city limits in El Paso County, Colorado. This park supports public recreational uses in the form of picnic pavilions, playing fields, equestrian activities, exercise course, tennis courts, playgrounds, archery range, horseshoe pit and volleyball and basketball courts. The park also provides over 10 miles of multi-purpose, non-motorized trails that wind throughout the park and along Bear Creek. Other amenities include a community garden, a dog park and community meeting rooms. The park also accommodates large groups and special events. In 2013, 80,775 visitors were accommodated through the registration system which does not account for considerable drop-in use.

Bear Creek Nature Center serves to connect people to their natural and cultural resources and inspire them to become stewards for our parks and environment. Bear Creek Nature Center offers quality environmental education programs for all ages. Each year, the Nature Center accommodates approximately 35,000 visitors providing 450 interpretative programs or special events. The Nature Center also accommodates field trips for all El Paso County School Districts averaging 6,000 students each year. Interpretive programs, special events, guided and self-guided tours, and media presentations are offered all year.

2. Relatively Natural Habitat. The Property supports Rocky Mountain (RM) Gambel Oak-Mixed Montane Shrubland, RM Lower Montane Riparian Woodland and Shrubland, Western Great Plains (WGP) Floodplain Herbaceous Wetlands, WGP Foothill and Piedmont Grasslands, WGP Riparian Woodland and Shrubland, and WGP Short-grass

Prairie land-cover types. Other land-cover types include Invasive Perennial Grassland, and Pinyon Juniper Woodland.

Nearly two and a half miles of Bear Creek flows through the park. These riverine wetlands provide valuable ecosystem services as they dissipate stream energy associated with high water flow, filter sediment, capture bedload and aid floodplain development and develop root masses that stabilize streambanks. The wetlands also develop diverse ponding and channel characteristics that provide the habitat and the water depth, duration and temperature necessary for fish production, waterfowl breeding and other uses, supporting overall greater diversity for the area.

The Bear Creek Nature Center has documented 204 birds, 77 mammals, 17 reptiles, and seven amphibian species that utilize the park at some point throughout the year. Although significant improvements to benefit public recreation have been made, a large portion of the Property remains in its natural state providing wildlife with habitat critical to their well-being.

The Property possesses significant ecotones between the Western Great Plains Short-grass Prairie and Rocky Mountain Gambel Oak-Mixed Montane Shrubland. These land-cover types in combination with the associated wetland systems represent rich habitat for mammals and birds. There is significant habitat for many declining prairie/riparian birds including the lark bunting, grasshopper sparrow, Cassin's sparrow, and McCown's longspur. The riparian corridor associated with Bear Creek will support non-breeding waterfowl and breeding Swainson's hawk, Lewis woodpecker, olive-sided flycatcher and orchard oriole.

3. Preservation of Open Space and Scenic Views

This Park preserves views of diverse ecological communities including coniferous woodlands, shrublands, prairie and wetlands which are situated on rolling hills at the base of the Colorado Front Range. Approximately 375 acres of the Park remain undeveloped. The entire park is visible to and accessible by the general public. Large portions of the Park are visible to motorists using Rio Grande, 8th Street, 21st Street/Cresta Rd. and Bear Creek Road. The Park presents a unique conservation opportunity as it preserves

recreation and education, relatively natural habitat, open space and scenic values within the Colorado Springs city limits.

E. The parties acknowledge that specific Conservation Values of the Property have been documented in an inventory (the "Baseline Documentation") of the natural features of the Property. A copy of the Baseline Documentation has been signed by both the County and the Grantee and is kept on file at the offices of both parties. The Baseline Documentation, prepared by Blue Mountain Environmental Consulting, dated June 2014, consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of this grant.

F. The Property has been used by the County as a regional public park since the early 1980s. The County desires that the Property be preserved to protect the Conservation Values stated above and managed as park and open space available to the public.

G. County further intends, as owner of the Property, to convey to Grantee the affirmative right to preserve and protect the Conservation Values of the Property in perpetuity for conservation purposes.

H. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition. Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code and is a state-certified, nonprofit conservation easement holder, having been certified by the Colorado Division of Real Estate as license number CE0028, effective January 1, 2014. Grantee

accepts the responsibility of enforcing the terms of this Conservation Easement and upholding its conservation purposes forever.

I. By accepting this grant, Grantee agrees to honor the intentions of County stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, the sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101 et seq., County hereby voluntarily grants and conveys to Grantee a Conservation Easement ("Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. PURPOSE. It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, forested, and open space condition, to preserve and protect in perpetuity the scenic, wildlife, aesthetic, educational, recreational, ecological and environmental values of the Property, to conserve wetlands and to allow the use and/or enhancement of the wetlands as mitigation for impacts caused by the County's projects located in El Paso County, and for banking to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property, and to extinguish any and all development rights and allocations and density rights and allocations of the Property, whether presently existing or arising in the future, excepting only the right to construct improvements and facilities as described in this Easement. County intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Easement.

2. AFFIRMATIVE RIGHTS OF GRANTEE. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

a. To identify, preserve, protect and enhance the Conservation Values of the Property;

b. To enter upon the Property at reasonable times upon prior notice to the County in order to monitor the County's compliance with and otherwise enforce the terms of this Easement and to observe, study and make educational and scientific observations on the Property; provided, however, that such right of entry shall not unreasonably interfere with either the County's or the Public's use and quiet enjoyment of the Property consistent with this Easement; and

c. To enjoin or prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

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, the following activities and uses are expressly prohibited:

a. New Structures and Improvements. New buildings, improvements, or other structures may not be built on the Property without the advance written permission of Grantee except as is permitted in Paragraphs 4 and 5.

b. Subdivision. Any division, subdivision or de facto subdivision of title to the Property, whether by physical or legal process, is prohibited and any and all rights, however designated, now or hereafter associated with the Property pursuant to governmental laws or regulations, to compute number of structures, development density, lot yield, or any similar development variable on or pertaining to the Property shall be surrendered and donated to the Grantee. County's intent herein is that all portions of the Property, even if identified in one or more separate parcels, shall remain under one ownership and shall not be separately sold or conveyed from one another.

c. Timber Harvesting. Timber harvesting is prohibited except that trees may be cut to control insects and disease, to control invasive, non-native species, to implement

appropriate tree thinning and fire mitigation plans as described under Paragraph 4(a), and as reasonably necessary to prevent personal injury and property damage.

d. Mining. To the extent allowed by law, the mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance, peat or other material is prohibited.

e. Road Construction and Trails. The County shall not construct any new roads or trails other than the roads and trails that are indicated on the Baseline Documentation or identified in an approved Master Plan as described in Paragraph 5. The County may utilize the borrow pits currently located on the Property to maintain the Park trails and roads.

f. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property, or the storage or any other deposit of abandoned or non-working vehicles, is prohibited.

g. Commercial or Industrial Activity. No commercial or industrial uses shall be allowed on the Property; however, any use or practice expressly permitted under paragraph 4 shall not be considered a commercial or industrial use. In addition, customary park uses which may have a commercial component such as races, sport clinics, concessions, concerts, weddings, recreational activities, special events, and fundraising activities shall not be prohibited by this restriction.

h. Motor Vehicles. The use of motor vehicles, including automobiles, snowmobiles, ATV's, four wheelers and motorcycles, which would in any way result in degradation of the Property and the wildlife habitat thereon is prohibited, except such vehicular use as is necessary for property and park management purposes, and other permitted uses and practices stated in Paragraph 4. Such degrading uses shall include, without limitation, those which increase susceptibility of the soil to erosion or disturb wildlife. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles or other motorized vehicles are prohibited.

i. Billboards. The construction, placing or erection of any commercial signs or billboards on the Property is prohibited. County may erect one or more signs identifying

to the public the Grantee's role in this Property. County may erect signs that are necessary for park management purposes including but not limited to directional, interpretive, informational, advertising, or prohibitive signs. Temporary banners may also be used to promote community events and activities. No signs shall significantly diminish or impair the Conservation Values of the Property. The County may erect signs within the Property to control access to sensitive areas of the Property.

j. Alteration of Watercourses and Topography. Except as may be described in an approved Master Plan, and except as may be necessary to protect public health, safety or welfare in case of an emergency including but not limited to flooding, drainage, and/or wildfire events, the County shall not change, disturb, alter, excavate, or impair any natural watercourse or wetland or alter the land surface through grading or soil dumping or trenching, except as may be necessary for activities related to the purpose of this Easement. Such purposes include, but are not limited to, water development projects related to permitted uses of the Property, construction of improvements related to recreational uses as permitted under paragraphs 4 and 5, wildlife enhancement, habitat restoration, wetlands mitigation, restoration, or enhancement, soil management, park purposes, or trail construction. For any activity described in this sub-paragraph 3(j) that is not described in the approved Master Plan, the County shall give Grantee written notice in accordance with Paragraphs 6 and 7 before any change, disturbance, alteration or excavation is commenced. Such notice shall be to ensure the location and nature of any such activity is consistent with the conservation purposes of this Easement. Grantee may withhold such permission, in its reasonable discretion, if Grantee determines that the proposed activity will diminish or impair one or more of the Conservation Values of the Property.

k. Water Pollution. The material degradation or pollution of any surface or sub-surface water on the Property is prohibited.

l. Hazardous Materials. The storage, dumping or other disposal of toxic and/or hazardous materials or of non-compostable refuse on the Property is prohibited, except for the above ground storage and use of fuels, fertilizers, treated lumber and legal

chemicals as necessary for the management of the Property. All materials shall be stored in accordance with all applicable laws and regulations, and in a manner which prevents spillage, leakage, and dumping, and which prevents soil, and surface water or groundwater contamination, and in a manner which is consistent with the preservation of the Conservation Values of the Property.

m. Wind and Solar Energy Generation. The construction of commercial wind and solar energy generation facilities is prohibited. With the Grantee's written consent, wind and solar energy generation facilities that are primarily for the generation of energy for use in conjunction with those activities permitted by this Easement may be constructed in locations on the Property that do not diminish or impair the Conservation Values.

n. Recreational Structures. Airstrips, golf courses or ranges, helicopter pads, race tracks, off-road vehicle courses, and shooting ranges (excluding archery ranges) are prohibited.

o. Cell Phone Towers: Transmission Towers. The construction of communication towers and transmission towers is prohibited in Zones 1 and 2, and permitted in Zone 3 with the written consent of the Grantee and if such towers will not diminish or impair one or more of the Conservation Values.

4. **RESERVED RIGHTS.** County reserves to itself for the benefit of the County and for any successors and assigns of the County, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others, including the general public, to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. County retains the right to control access to the Property by all persons, except that Grantee and its designated agents shall have the right of ingress and egress at reasonable times and upon giving prior notice to the County for the purpose of inspecting the Property to insure compliance with the terms of this Easement. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are permitted under this Easement, and these uses and practices are not to be precluded or prevented by this Easement:

a. Forestry. To conduct such forestry and rangeland management activities on the Property as are consistent with the overall purposes of this Easement, including, without limitation, tree thinning, fire mitigation measures, restoration, tree planting, pest control and/or other necessary forest and pasture maintenance in accordance with the recommendations from the Natural Resource Conservation Service and the Colorado State Forest Service or any other successor or governmental agency with similar interests and purposes.

b. Education and Recreation. To conduct outdoor education and recreational activities which are not inconsistent with the purposes of this Easement, to conduct activities either described herein or inherent to park purposes that are consistent with the overall purposes of this Easement, and to conduct open space management activities as are consistent with the overall purposes of this Easement. In all respects, such activities shall not violate the prohibited practices described above in paragraph 3.

c. Non-building-type Improvements. To use, maintain, repair, replace or eliminate existing trails, roads, fences, ditches and improvements (excluding buildings) on the Property and to construct such additional trails, roads, fences, ditches, or improvements on the Property (excluding buildings) as may be desirable to provide access for outdoor education and recreation, park purposes or activities, open space management, or other permitted uses on the Property as provided herein and consistent with the Conservation Values of the Property. County may install signage as needed to identify and delineate the boundary of the Property so as to deter encroachment by adjoining property owners into the Property. If the County should desire to install fencing for this purpose, any such fencing shall be consistent with fence standards approved by the Colorado Division of Wildlife. If new trails are required, all new trails shall be constructed so as to be sustainable and minimize impact to the Conservation Values of the Property. In the event of destruction, deterioration, or obsolescence of any said improvements, the County may replace such structures with structures in the same general location and having a similar function and capacity. For any improvements included in the approved Master Plan, the County may construct such improvements without providing notice to

Grantee. For any improvements not included in the approved Master Plan, the County shall give Grantee written notice in accordance with Paragraphs 6 & 7 before any construction is commenced to ensure the location and nature of any such new road or improvement is consistent with the conservation purposes of this Easement. Grantee may withhold such permission, in its reasonable discretion, if Grantee determines that the proposed improvement will diminish or impair one or more of the Conservation Values of the Property.

d. Building-type Improvements. To use, maintain, repair, and replace all existing structures and buildings (including sheds, shelters, pavilions, maintenance garages, barns, buildings, etc.), and to construct such new structures and buildings as may be desirable to conduct open space management, outdoor education and recreation, park purposes or activities (including active recreation activities, including but not limited to pavilions, restrooms, playgrounds, and athletic facilities) or other permitted uses on the Property provided that such structures and buildings are contained within Zone 2 or 3, and are consistent with the Conservation Values. None of the structures may be equipped with sleeping accommodations or be used for residential purposes. For any improvements included in the approved Master Plan, the County may construct such improvements without providing notice to Grantee. For any improvements not included in the approved Master Plan, the County shall give Grantee written notice in accordance with Paragraphs 6 & 7 before any construction is commenced to ensure the location and nature of any such improvement is consistent with the conservation purposes of this Easement. Grantee may withhold such permission, in its reasonable discretion, if Grantee determines that the proposed structure or improvement will diminish or impair one or more of the Conservation Values of the Property.

e. Trailhead Improvements. To use, construct, maintain, repair and replace structures and improvements such as benches, picnic facilities and tables, kiosks, restrooms, trail signs, trail head parking areas and trail shelters as may be desirable to conduct outdoor education and recreation, park purposes or activities, and open space management provided that such structures and improvements are identified and located in

the approved Master Plan. For any trailhead improvements included in the approved Master Plan, the County may construct such improvements without providing notice to Grantee. For any trailhead improvements not included in the approved Master Plan, the County shall give Grantee written notice in accordance with Paragraphs 6 & 7 before any construction is commenced to ensure the location and nature of any such new road or improvement is consistent with the conservation purposes of this Easement. Grantee may withhold such permission, in its reasonable discretion, if Grantee determines that the proposed structure or improvement will diminish or impair one or more of the Conservation Values of the Property.

f. Water Rights. The County reserves the right to construct, develop, maintain and operate existing and additional wells, ditches, tanks, water storage and pipeline facilities, and generally to appropriate, employ and use all surface and ground water that may be allowed under Colorado Water Law; provided, however, that the development and use of such water resources shall be compatible with the purposes of this Easement and shall be used to support park purposes and the uses permitted under this Easement and not for the benefit of any other property not owned or controlled by the County. Because of the potential for any new water structures or improvements to impair the Conservation Values of the Property, County and/or the County's successors shall give Grantee written notice in accordance with Paragraphs 6 and 7 before any appropriation or construction is commenced to ensure the purpose, nature and location of any such improvements is consistent with the conservation purposes of this Easement. Grantee shall not unreasonably withhold such permission and may withhold its permission only if Grantee determines that the purpose, nature or location of a proposed water structure or improvement will diminish or impair one or more of the Conservation Values of the Property. To the extent the County owns or acquires water rights associated with the Property, the County shall retain and reserve the right to use water rights to include but not limited to maintaining and improving the Conservation Values of the Property and shall not transfer, encumber, lease, sell or otherwise separate any water rights associated with the Property from title to the Property itself.

g. Conservation and Weed Control. To control soil erosion, conserve soil and existing desirable vegetation and control weeds, invasive and non-native plants and parasitic plants on the Property, including by use of biological means (goats), in a manner consistent with good conservation practices as established by the Natural Resource Conservation Service or any successor governmental agency with similar interests and purposes. Notwithstanding this reserved right, the County has the responsibility to control weeds in a manner consistent with state laws. Should Grantee determine that the Property requires additional weed management, Grantee may require the County to consult with an appropriate state or Federal agency on weed control efforts.

h. Transfer of the Property. To sell, mortgage, or donate the Property. Any transferor conveyance, whether by deed, gift, or operation of law, shall remain subject to the terms of this Conservation Easement and the subsequent Owner shall be bound by all obligations in this Easement.

i. Wetlands. The County hereby reserves any and all rights to use the wetlands currently contained on the Property. The County further retains the right to establish / create wetlands as mitigation for impacts caused by the County to wetlands as may be required pursuant to § 404 of the Clean Water Act ("CWA") and for The El Paso County Umbrella Wetland Mitigation Bank. It shall be the County's responsibility and not Grantee's to ensure that any uses do not result in harm to the wetlands. Any liability under the CWA resulting from the County's residual uses shall be County's and not Grantee's.

j. Preble's Meadow Jumping Mouse ("PMJM"). The County hereby reserves the right to establish / create PMJM habitat, if any, as mitigation for impacts caused by the County. It shall be the County's responsibility and not Grantee's to ensure that any uses do not result in harm to PMJM habitat. Any liability relating to PMJM habitat resulting from the County's use of the Property shall be County's and not Grantee's.

5. MASTER PLAN. Before constructing any new improvements on the Property (including without limitation, buildings, structures of any nature, trails or roads), the County shall prepare and submit to Grantee for its approval a Master Plan. Notwithstanding the foregoing, Grantee understands that El Paso County Parks will be required to develop the Master Plan through a public process, generally updated every seven to ten years, and that the County will require sufficient time to complete the public process and obtain County approval of the Master Plan. No improvements may be constructed under Paragraph 4 (c, d, or e) until Grantee has approved the Master Plan. In no event shall the Master Plan authorize any improvements or uses that are inconsistent with this Easement. The County may submit revisions to the Master Plan as circumstances may warrant. County and Grantee acknowledge and agree that there is intended to be, and the Master Plan shall provide for, a multi-use trail system through the Property that will allow pedestrian, horse, and bicycle access through the Property, but no motorized vehicles (including cars, trucks, motorcycles, motor bikes, ATV's, snowmobiles, etc.), except those used by maintenance or emergency response personnel for the Property under direction of the County, and for special events approved and as authorized by the County.

The Master Plan shall restrict public use and construction of improvements based on division of the Property into three zones as depicted on Exhibit H and as described as follows:

Zone 1 (Natural Areas Zone): Zone 1 includes sensitive wetlands, riparian corridors, areas with native flora and fauna and/or scenic areas having high conservation values. Improvements within this Zone are limited to the maintenance and/or development of unpaved trails, benches and interpretive signage.

Zone 2 (Mixed Use Zone): Zone 2 includes a passive recreation area consisting primarily of undeveloped open space, preserved in its natural state for the enjoyment of the public. Structures and improvements will be permitted in Zone 2, provided they do not exceed a cumulative surface area greater than 10 percent of the total acreage. Improvements that significantly impair the scenic qualities and relatively natural

environment or that are inconsistent with the passive use purpose of this zone, including but not limited to athletic courts, athletic fields, off-trail athletic use and other sports facilities, are prohibited within this Zone. Permissible structures and improvements include, but are not limited to, picnic facilities, pavilions, trailheads, trailhead related facilities (benches, restrooms, trailhead parking, shelters, and trail signs), kiosks, gardens, interpretive signs and access roads.

Zone 3 (Active Use Zone): Zone 3 includes flora and fauna, scenic areas, passive and active recreation areas and administration facilities designed to support public recreation, education, and park purposes. Improvements related to outdoor recreation and education, including, but not limited to, new structures, administration, maintenance or educational facilities and buildings; roads; paved and unpaved trails; trail heads; trailhead related facilities (benches, restrooms, trailhead parking, shelters, and trail signs); benches; parking; athletic courts, fields, courses and other sports facilities; dog parks; gardens; pavilions; picnic facilities; and playgrounds will be permitted within this Zone.

Grantee's approval of the County's exercise of reserved rights under this Easement shall be determined in part by evaluation of the nature of the proposed activity with regard to the Zone where the activity is proposed to occur. Grantee may withhold approval of a proposed activity or improvement within a Zone if Grantee determines that such activity would impair any of the Conservation Values located within such zone, or, in the exercise of its reasonable discretion, may approve an activity or improvement within a restricted Zone by imposing conditions to mitigate the adverse affects of the proposed activity on the Conservation Values located within such Zone.

6. NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS. The purpose of requiring the County to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, the County shall notify Grantee in writing not less than sixty (60) days prior to the date County intends to undertake the activity in question;

however, where emergency action is required, the County shall not be required to give advance notice but shall make best efforts to notify Grantee as soon as practicable thereafter. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. The Grantee may ask the County, as applicable condition hereof, to reimburse Grantee for its reasonable expenses incurred in evaluating a proposed activity including costs for staff, travel, consultants and attorneys.

7. GRANTEE'S APPROVAL. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of County's written request thereof. This sixty-day period shall be extended if winter weather should impede Grantee in its inspection of the Property, when such an inspection is necessary for such approval. In that event, the sixty-day period shall only be extended for the duration of such delay. Grantee's approval may be withheld upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

8. ENFORCEMENT. Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Easement. Grantee may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee shall immediately notify the County in writing of the nature of the alleged violation. Upon receipt of this written notice, the County shall either (a) immediately cease the activity constituting the violation and promptly restore the Property to its condition prior to the violation to the reasonable satisfaction of Grantee or (b) immediately provide a written explanation to Grantee of the reason why the alleged violation should be permitted.

If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. County shall discontinue any activity which

could increase or expand the alleged violation during this process. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute, but only if the County has ceased, and agrees in writing to postpone during such mediation, any further activity that constitutes the alleged violation. If either party believes that efforts to mediate the dispute will be futile or if the mediation efforts are unsuccessful, then either party may pursue legal action.

When, in Grantee's opinion, an ongoing or imminent violation could diminish or impair any of the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action without waiting to pursue the mediation process described above. If a court with competent jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may seek an injunction to stop the alleged violation, temporarily or permanently. A court may also issue an injunction to require County to restore the Property to its condition prior to the violation. County agrees that where Grantee's remedies at law for any violation of the terms of this Easement are inadequate, Grantee shall be entitled to the injunctive relief described in this Paragraph 8, both prohibitive and mandatory, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

Grantee may bring an action to recover any damages to which it may be entitled for violation of the terms of this Easement for injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values. Grantee's remedies described in this Paragraph 8 are cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

9. **COSTS OF ENFORCEMENT.** Any costs incurred by Grantee in enforcing the terms of this Easement against County, including, without limitation, costs of suit, expert witness fees and attorneys' fees, and any costs of restoration necessitated by County's violation of the terms of this Easement shall be borne by County. If County

prevails in any action to enforce the terms of this Easement, County's costs of suit, including, without limitation, expert witness fees and attorneys' fees, shall be borne by Grantee, but only if the court determines that the Grantee's position was frivolous or substantially without merit.

10. GRANTEE'S DISCRETION. Enforcement of the terms of this Easement shall be at the discretion of Grantee. Any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by the County shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by County shall impair such right or remedy or be construed as a waiver.

11. WAIVER OF CERTAIN DEFENSES. County hereby waives any defense of laches, estoppel, or prescription. County hereby specifically waives any defense available to County pursuant to C.R.S. Section § 38-41-119. Notwithstanding the foregoing, the County hereby asserts any defenses available under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

12. ACTS BEYOND COUNTY'S CONTROL. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against County for any injury to or change in the Property resulting from causes beyond County's control, including, without limitation, fire, including fire suppression activities, flood, storm, drought, and earth movement, or from any prudent action taken by County under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. County agrees to diligently protect and defend the Property from any violation of this Easement by any third party and agrees to diligently pursue immediate action against any

third party in which County has actual or constructive knowledge that a violation has occurred, is occurring, or will occur in the future.

13. PUBLIC ACCESS & OWNERSHIP. The Property is a public park. No existing right of access by the general public to any portion of the Property is eliminated by this Easement. The County may identify portions of the Property for seasonal or temporary closures to facilitate research or management of the Property. No areas designated herein to be open to the public shall be closed permanently or indefinitely to all public access unless such closure is specifically approved in the Master Plan and required to preserve the Property's conservation values.

14. COSTS AND LIABILITIES. County retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

15. HOLD HARMLESS. To the extent allowed by Colorado law, if any, County shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any Property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in Paragraphs 7, 8 and 14; (3) the presence or release of hazardous or toxic substances on, under or about the Property. (For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance which is regulated under any federal, state or local law); and (4) any claim against County's title or any defect in County's title that

threatens Grantee's interest in the Property, with the understanding the Grantee accepts encumbrances and restrictions of record referenced in Paragraph 24 and Exhibits A through G. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in the Grantee, nor shall the Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

16. **EXTINGUISHMENT.** If circumstances arise in the future such as to render the purpose of this Easement impossible to accomplish, this Easement can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction. The fact that the restrictions of this Easement may limit the economic profitability of the Property shall not constitute a factor supporting extinguishment of this Easement. Each party shall promptly notify the other when it first learns of such circumstances. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with Paragraph 17, below.

17. **PROCEEDS.** This Easement constitutes a real property interest immediately vested in Grantee. Grantee shall be entitled to a share of the proceeds of either the extinguishment award or condemnation award, based on the value, at the time of the extinguishment or taking of this Easement on the portion of the Property that is subject of the extinguishment or taking. The Parties agree that such fair market value shall be calculated by determining the value of the Property without this Easement at the time of extinguishment or taking and subtracting the value of the Property with this Easement at the time of the extinguishment or taking, thereby determining the fair market value of this

Easement relative to the value of the remaining fee interest. This ratio shall remain constant and shall be applied on a per acre basis to any extinguishment or condemnation award. Grantee shall use any such proceeds in a manner consistent with the Conservation Values of this Easement.

18. CONDEMNATION. If this Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to a share of the proceeds of the condemnation award in accordance with applicable law and in accordance with paragraphs 16 and 17 above.

19. SUBSEQUENT TRANSFERS.

a. With the prior written consent of the County (which consent shall not be unreasonably withheld), this Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that (i) is a "qualified organization" at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder; (ii) is authorized to acquire and hold conservation easements under Colorado law; and (iii) agrees to assume the responsibilities imposed on Grantee by this Easement and to carry out the conservation purposes that this grant is intended to advance.

b. County agrees to incorporate the terms of this Easement by reference into any deed or other legal instrument by which County divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. County further agrees to give written notice to Grantee of the transfer of any interest in the Property at least thirty (30) days prior to the date of such transfer. The failure of County to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

c. There shall be assessed by the Grantee and collected from any subsequent purchaser or purchasers of the Property, a transfer fee equal to one percent of the sales price or other consideration paid in connection with the transfer of any interest in

such Property, which transfer fee shall be paid to the Grantee at the time of the transfer. In the event of non-payment of such transfer fee, Grantee shall have the right to file a lien for such unpaid transfer fees which shall be a lien on the Property but which lien shall be subordinate to this Easement. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of Colorado. Grantee may require the County and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, and copies of deeds or other such evidence. Any transfer subsequent to the conveyance of this Easement without consideration, shall be exempt from the assessment of such transfer fee. These exempt transactions shall include any transfer by donation of the Property to a governmental entity. An exchange of properties pursuant to IRC Section 1031, or similar statute, shall be deemed to be for consideration based on the market value of the Property received at the time of such transfer. Market value shall be determined by agreement of the County and the Grantee, or in the absence of such agreement, by a MAI appraiser jointly selected by the County and Grantee, whose appraisal fee shall be paid by the subsequent purchaser.

20. SUBSEQUENT LIENS ON THE PROPERTY. No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing shall be subordinated to this Easement and shall encumber the entire Property.

21. NO EXTINGUISHMENT THROUGH MERGER. Should Grantee in the future own all or a portion of the fee interest in the Property, (a) Grantee as successor in title to County, shall observe and be bound by the obligations of County and the restrictions imposed upon the Property by this Easement, as provided herein; (b) this Easement shall not be extinguished, in whole or in part, through the doctrine of merger in view of the public interest in its enforcement; and (c) Grantee as promptly as practicable shall assign the Grantee interests in this Easement of record to another holder in conformity with the requirement of Paragraph 19.

22. NOTICES. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To County:

El Paso County Parks
2002 Creek Crossing
Colorado Springs, CO 80905

With a copy to:

El Paso County Attorney's Office
200 S. Cascade, Ste 150
Colorado Springs, CO 80903

To Grantee:

Palmer Land Trust
P.O. Box 1281
Colorado Springs, CO 80901

or to such other address as either party from time to time shall designate by written notice to the other.

23. RECORDING. County, at County's expense, shall record this instrument in a timely fashion in the real property records of El Paso County and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

24. WARRANTY OF TITLE. County warrants that it has good and sufficient title to the Property, that it has good right, full power and lawful authority to grant and convey this Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of this Easement and that the Property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature whatsoever, which are not subordinate to the terms of this Easement, and except those encumbrances and restrictions of record including but not limited to those identified in the Schedule B-2 Exceptions attached hereto as Exhibits

A through G, which are not subordinate to the terms of this Easement. If required, or if requested by Grantee, the County shall warrant and forever defend the title to the Easement in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

25. GENERAL PROVISIONS.

a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado. The parties agree that the statute of limitations applicable to contracts shall apply to any proceeding to enforce this Conservation Easement. County hereby specifically waives any defense available to County pursuant to C.R.S. § 38-41-119. It is agreed that any County liability shall not exceed any applicable limits set forth in the Colorado Governmental Immunity Act now existing, or as may hereafter be amended, nor confer any benefits to any person not a party to this Agreement. Nothing contained in this Agreement shall waive the limitations on liability which are provided to the County under the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of C.R.S. § 38-30.5-101 *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The Recitals at the beginning of this Easement are not mere surplusage but are an integral part of the Easement and are incorporated into the body of this Easement.

c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or

circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of County's title in any respect.

f. Successors; Covenants Running With the Land. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, and assigns and shall continue as a servitude running in perpetuity with the Property in perpetuity; provided, however, that either Party's rights and obligations under this Easement shall terminate (as to such Party, but not as to such Party's successor, who shall be bound as provided herein) upon a transfer of such Party's entire interest in the Easement or the Property, except that the liability of such transferring Party for the acts or omissions occurring prior to such transfer shall survive the transfer.

g. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. Amendment. If circumstances arise under which an amendment to or modification of this instrument would be appropriate, County and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this instrument under any applicable laws. Any amendment must be consistent with the conservation purposes of this instrument, may not affect its perpetual

duration and must not lessen the Conservation Values. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of El Paso County. The Grantee may require the County to reimburse Grantee for its reasonable expenses incurred in evaluating a proposed amendment including costs for staff, travel, consultants and attorneys.

j. Representation by Legal Counsel. The parties acknowledge that both the County and the Grantee have been represented in this transaction by their respective, independent legal counsel.

k. Counterparts. This Easement may be signed in counterparts which when combined shall constitute but a single document.

TO HAVE AND TO HOLD this Easement unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF County and Grantee have executed this Deed of Conservation Easement on this 16th day of December, 2014.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: Dennis Hisey
Dennis Hisey, Chair

Date: 12/16/14

Attest: [Signature]
County Clerk and Recorder 144816

State of Colorado)
) ss.
County of El Paso)

The foregoing instrument was acknowledged before me this 16th day of December 2014 by Dennis Hisey as Chair of the Board of County Commissioners of El Paso County, Colorado and attested to by Wayne W. Williams as Clerk and Recorder of El Paso County, Colorado.

Witness my hand and official seal.

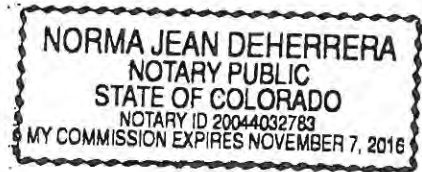
My Commission expires: 11-7-16

Norma Jean DeHerrera
Notary Public

Approved as to form:

OFFICE OF THE COUNTY ATTORNEY
OF EL PASO COUNTY, COLORADO

[Signature]
Assistant County Attorney



Date: 12/16/14

GRANTEE:

The Palmer Land Trust

By: Paul Gary Conover

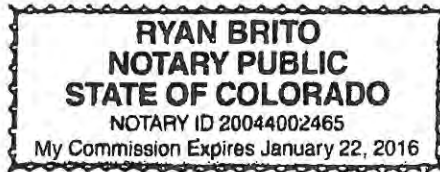
Title: Vice President

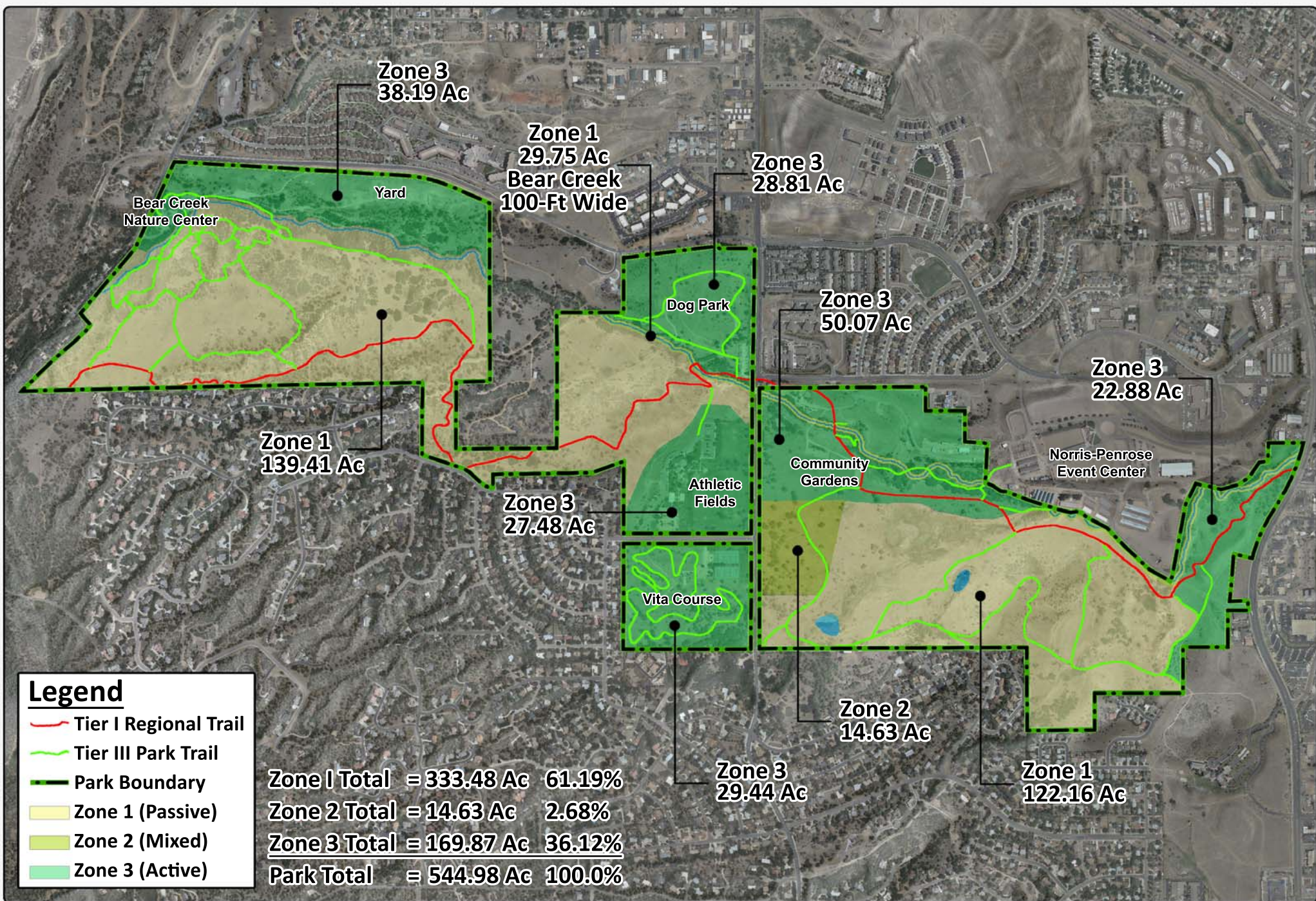
State of Colorado)
) ss.
County of El Paso)

The foregoing instrument was acknowledged before me on this 22 day of December, 2014, by Paul Gary Conover as ^{Vice} President of The Palmer Land Trust.

My Commission Expires: 1-22-16

Ryan Brito
Notary Public





0 500 1,000 2,000 3,000 Feet
1 inch = 1,250 feet

Bear Creek Regional Park

Draft Conservation Zones

El Paso County Community Services Department



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