

Sponsored by: Rosasco

**CITY OF MARATHON, FLORIDA
RESOLUTION 2010-15**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING AND ACCEPTING A GRANT OF CONSERVATION EASEMENT FROM CHARLES HOTZ FOR PROPERTY IDENTIFIED BY REAL ESTATE NUMBER 00358230-000101; AUTHORIZING ITS RECORDING IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 106.02 of the City Code, when land development involves a parcel that contains regulated natural resources, the City of Marathon's open space requirements shall be fulfilled first with regulated natural resources. These natural resources shall be protected as conservation management areas through a Grant of Conservation Easement.

WHEREAS, Charles Hotz has received an allocation through the Residential BPAS allocation process for the construction of a single family residence on a parcel identified by Real Estate number 00358230-000101 that contains moderate quality tropical hardwood hammock.

WHEREAS, Table 106.16.1 of the City Code states that the open space requirement for moderate quality tropical hardwood hammock is 70%.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true and correct and incorporated herein by this reference.

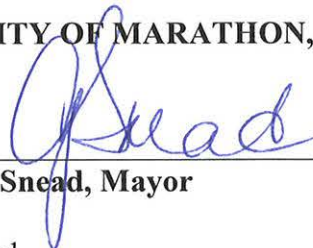
Section 2. Subject to the Grant of Conservation Easement submitted by Charles Hotz attached as Exhibit "A," identified by Real Estate number 00358230-000101, is approved and accepted by the City.

Section 3. Charles Hotz shall record, at his sole expense, the Grant of Conservation Easement in the public records of Monroe County, Florida.

Section 4. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 26th day of January, 2010.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Cinque, Keating, Ramsay, Worthington, Snead
NOES: None
ABSENT: None
ABSTAIN: None

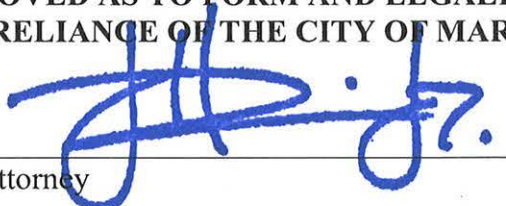
ATTEST:



Diane Clavier
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



City Attorney

Prepared by and return to:
John J. Wolfe
2955 Overseas Highway
Marathon, FL 33050

Doc# 1777946
Bk# 2453 Pgm 751

GRANT OF CONSERVATION EASEMENT AGREEMENT

THIS AGREEMENT is made this 25th day of January, 2010 by and between Charles L. Hotz whose address is P.O. Box 179, Medford, New Jersey 08055, County of Burlington, State of New Jersey, ("Grantor") and the City of Marathon, a Florida municipal corporation, whose address is 9805 Overseas Highway, Marathon FL 33050 ("Grantee")

The parties recite and declare:

The Grantor is the owner of a portion of Lot 1, MARINA HOMES AT SEAWATCH Subdivision as more particularly described on Exhibit A attached hereto and made a part hereof (the "servient estate"),

The Grantor desires to develop the servient estate as a single family residential dwelling unit.

The servient estate contains 17,617 square feet of moderate quality hammock, a portion of which must be protected in accordance with the City's land development regulations.

The Grantee is a Florida municipal corporation authorized and required to regulate and control the use of real property through land development regulations in order to protect the public health, safety and welfare. Sec. 106.02 A of the Grantee's land development regulations requires that certain areas of the servient estate be retained as open space and preserved in their natural condition if the servient estate is be developed as a single family residential dwelling unit.

The parties agree as follows:

1. Grant of Easement.

In consideration for a development permit for a single family residential dwelling unit and in order to comply with Sec. 106.02 A of the City of Marathon Code, the Grantor hereby grants to Grantee the easement described below.

2. Character of the easement and governing law.

The easement is a conservation easement under Sec. 704.06, Fla. Stat. and is governed by, construed and enforced in accordance with that statute and with the applicable laws of the State of Florida.

3. Location of the easement

- a. The conservation easement is described on Exhibit B attached hereto and made a part hereof.
- b. The location of the easement is also described in the sketch attached hereto on Exhibit B as sheet 2 of 2 and made a part hereof.

4. Restraints imposed by the Conservation Easement.

The conservation easement granted by this instrument imposes certain requirements as set forth in Sec.106.58 of the City of Marathon Code. A management plan will not be required in connection with this conservation easement, provided, however, that Grantee must comply with the Minimum Requirements set forth in Sec. 106.58 B of the City of Marathon Code, a copy of which is attached hereto as Exhibit C and made a part hereof. The conservation easement granted by this instrument also imposes the following restrictions on the future use of the servient estate within the easement area:

- a. No construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above ground.
- b. No dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.
- c. No removal or destruction of native trees, shrubs, or other vegetation.
- d. No excavation, dredging, or removal of loam, peat gravel, soil, rock, or other material substances in such a manner as to affect the surface.
- e. No surface use except for purposes that permit the land or water to remain predominantly in its natural condition
- f. No activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- g. No acts or uses detrimental to such retention of land or water areas.
- h. No acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

5. Terms and persons bound.

This conservation easement is perpetual, runs with the land and is binding on all present and subsequent owners and mortgagees of the servient estate. Grantor represents that the mortgagee(s), if any, whose consent is attached hereto, is (are) the only mortgagee(s) having a security interest in the servient estate.

6. Entire Agreement

This agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement is not binding upon either party except to the extent incorporated in this Agreement.

7. Modification of Agreement.

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement is binding only if evidenced in writing and signed by an authorized representative of each party and by any mortgagee.

8. Attorney's fees.

In the event of any controversy, claim, or dispute arising under this instrument, the prevailing party is entitled to recover reasonable attorney's fees and costs.

9. Entry of Grantee's representative on the servient estate.

The Grantee's representative on the servient estate, after first furnishing the Grantor no less than 24 hours notice for purposes of inspection to determine the Grantor's compliance with this Agreement.

10. Limitation on Liability for Personal Injury or Injury to Property

The Grantor waives any rights the Grantor may have to bring a claim against Grantee for personal injury or injury to property that is caused by the negligent action or inaction of Grantee or an employee or agent of Grantee during the course of Grantee's activity related to this Grant of Easement and further Grantor holds Grantee harmless from the claims of all persons for action, inactions or activities occurring on the servient estate.


11. Notice

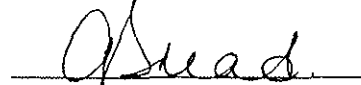
Any notice provided for or concerning this Agreement must be in writing and is sufficiently given when sent by certified or registered mail, or via an equivalent service furnished by a private carrier, to the respective address of each party as set forth at the beginning of this Agreement.

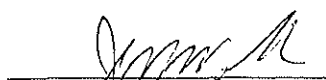
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

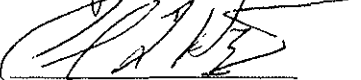
ATTEST: DIANE CLAVIER

CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA (Grantee)

BY 
City Clerk

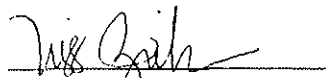

Ginger Shead, Mayor


Signature of witness


Grantor

John J. Wolfe
Printed name of witness

Charles L. Hotz
Printed name of Grantor


Signature of witness

Lisa Ziets
Printed name of witness


STATE OF FLORIDA
COUNTY OF MONROE

BEFORE ME, the undersigned authority, personally appeared Charles L. Hotz
who is personally know to me or has produced _____ as identification.

Sworn and subscribed before me this 25 day of January, 2010.

LISA ZIELS

Typed Notary Name and Number



Notary Signature and Seal



A CONSERVATION EASEMENT OVER AND UPON A PARCEL OF LAND LYING IN A PART OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 2204, PAGE 1397 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, BEING A PART OF LOT 1, "MARINA HOMES AT SEAWATCH", A SUBDIVISION AS RECORDED IN PLAT BOOK 7, PAGE 62, SECTION 32, TOWNSHIP 65 SOUTH, RANGE 33 EAST, VACA KEY, MONROE COUNTY, FLORIDA, PUBLIC RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1, BEAR NORTH 89 DEGREES 28 MINUTES 09 SECONDS EAST, ALONG THE SOUTHERLY LINE OF SAID LOT, FOR A DISTANCE OF 40.00 FEET, TO THE SOUTHWEST CORNER OF THOSE LANDS DESCRIBED IN SAID OFFICAL RECORDS BOOK, SAID POINT ALSO TO BE KNOWN AS THE POINT OF BEGINNING OF THE EASEMENT HEREINAFTER DESCRIBED; FROM SAID POINT OF BEGINNING BEARING ALONG THE WESTERLY SIDE OF SAID LANDS ON THE FOLLOWING 10 COURSES:

- 1) NORTH 00 DEGREES 31 MINUTES 51 SECONDS WEST, 10.00 FEET;
- 2) NORTH 89 DEGREES 28 MINUTES 09 SECONDS EAST, 25.00 FEET;
- 3) NORTH 00 DEGREES 31 MINUTES 51 SECONDS WEST, 25.00 FEET;
- 4) NORTH 89 DEGREES 28 MINUTES 09 SECONDS EAST, 41.87 FEET;
- 5) NORTH 37 DEGREES 07 MINUTES 25 SECONDS EAST, 29.68 FEET;
- 6) NORTH 39 DEGREES 41 MINUTES 47 SECONDS WEST, 20.58 FEET;
- 7) NORTH 00 DEGREES 31 MINUTES 51 SECONDS WEST, 96.26 FEET;
- 8) NORTH 26 DEGREES 01 MINUTES 50 SECONDS WEST, 74.35 FEET;
- 9) NORTH 76 DEGREES 31 MINUTES 35 SECONDS WEST, 15.45 FEET;
- 10) NORTH 00 DEGREES 31 MINUTES 51 SECONDS WEST, 10.68 FEET;

THENCE DEPARTING SAID WESTERLY LINE BEARING SOUTHEASTERLY, SOUTHERLY AND WESTERLY ON THE FOLLOWING 27 COURSES

- 1) SOUTH 85 DEGREES 25 MINUTES 46 SECONDS EAST, 6.94 FEET;
- 2) NORTH 76 DEGREES 46 MINUTES 07 SECONDS EAST, 16.02 FEET;
- 3) SOUTH 01 DEGREES 04 MINUTES 54 SECONDS EAST, 8.10 FEET;
- 4) SOUTH 76 DEGREES 04 MINUTES 52 SECONDS EAST, 19.68 FEET;
- 5) SOUTH 48 DEGREES 29 MINUTES 54 SECONDS EAST, 19.59 FEET;
- 6) SOUTH 73 DEGREES 10 MINUTES 03 SECONDS EAST, 17.41 FEET;
- 7) SOUTH 54 DEGREES 49 MINUTES 09 SECONDS EAST, 24.12 FEET;
- 8) SOUTH 78 DEGREES 29 MINUTES 07 SECONDS EAST, 13.93 FEET;
- 9) SOUTH 16 DEGREES 25 MINUTES 27 SECONDS EAST, 37.69 FEET;
- 10) SOUTH 60 DEGREES 21 MINUTES 23 SECONDS EAST, 15.88 FEET;
- 11) SOUTH 27 DEGREES 04 MINUTES 56 SECONDS EAST, 15.35 FEET;
- 12) SOUTH 44 DEGREES 16 MINUTES 58 SECONDS WEST, 12.03 FEET;
- 13) NORTH 85 DEGREES 37 MINUTES 30 SECONDS WEST, 16.47 FEET;
- 14) SOUTH 77 DEGREES 09 MINUTES 48 SECONDS WEST, 18.92 FEET;
- 15) SOUTH 42 DEGREES 31 MINUTES 44 SECONDS WEST, 50.91 FEET;
- 16) SOUTH, 14.14 FEET;
- 17) SOUTH 42 DEGREES 02 MINUTES 17 SECONDS EAST, 42.09 FEET;
- 18) SOUTH 46 DEGREES 11 MINUTES 28 SECONDS WEST, 15.47 FEET;
- 19) SOUTH 00 DEGREES 36 MINUTES 30 SECONDS EAST, 22.04 FEET;
- 20) SOUTH 12 DEGREES 14 MINUTES 05 SECONDS WEST, 7.40 FEET;
- 21) SOUTH 43 DEGREES 34 MINUTES 03 SECONDS WEST, 7.79 FEET;
- 22) SOUTH 77 DEGREES 55 MINUTES 57 SECONDS WEST, 7.06 FEET;
- 23) WEST, 19.79 FEET;
- 24) SOUTH 61 DEGREES 11 MINUTES 46 SECONDS WEST, 8.65 FEET;
- 25) SOUTH 89 DEGREES 29 MINUTES 34 SECONDS WEST, 25.09 FEET;
- 26) SOUTH 83 DEGREES 58 MINUTES 58 SECONDS WEST, 9.89 FEET;
- 27) SOUTH 77 DEGREES 50 MINUTES 49 SECONDS WEST, 15.67 FEET, TO THE SOUTHERLY LINE OF SAID LOT 1; THENCE SOUTH 89 DEGREES 28 MINUTES 09 SECONDS WEST, FOR A DISTANCE OF 8.71 FEET, BACK TO THE POINT OF BEGINNING.

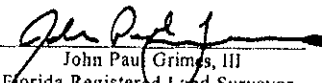
CONTAINING AN AREA OF 12,135.998, PLUS OR MINUS, SQUARE FOOT, 0.279 ACRES, MORE OR LESS.

According to attached SKETCH OF LEGAL DESCRIPTION by John Paul Grimes, III, REGISTERED FLORIDA SURVEYOR AND MAPPER Number 4906, dated 01/13/10 and by this reference made a part hereof.

Prepared 01/13/10 BY:

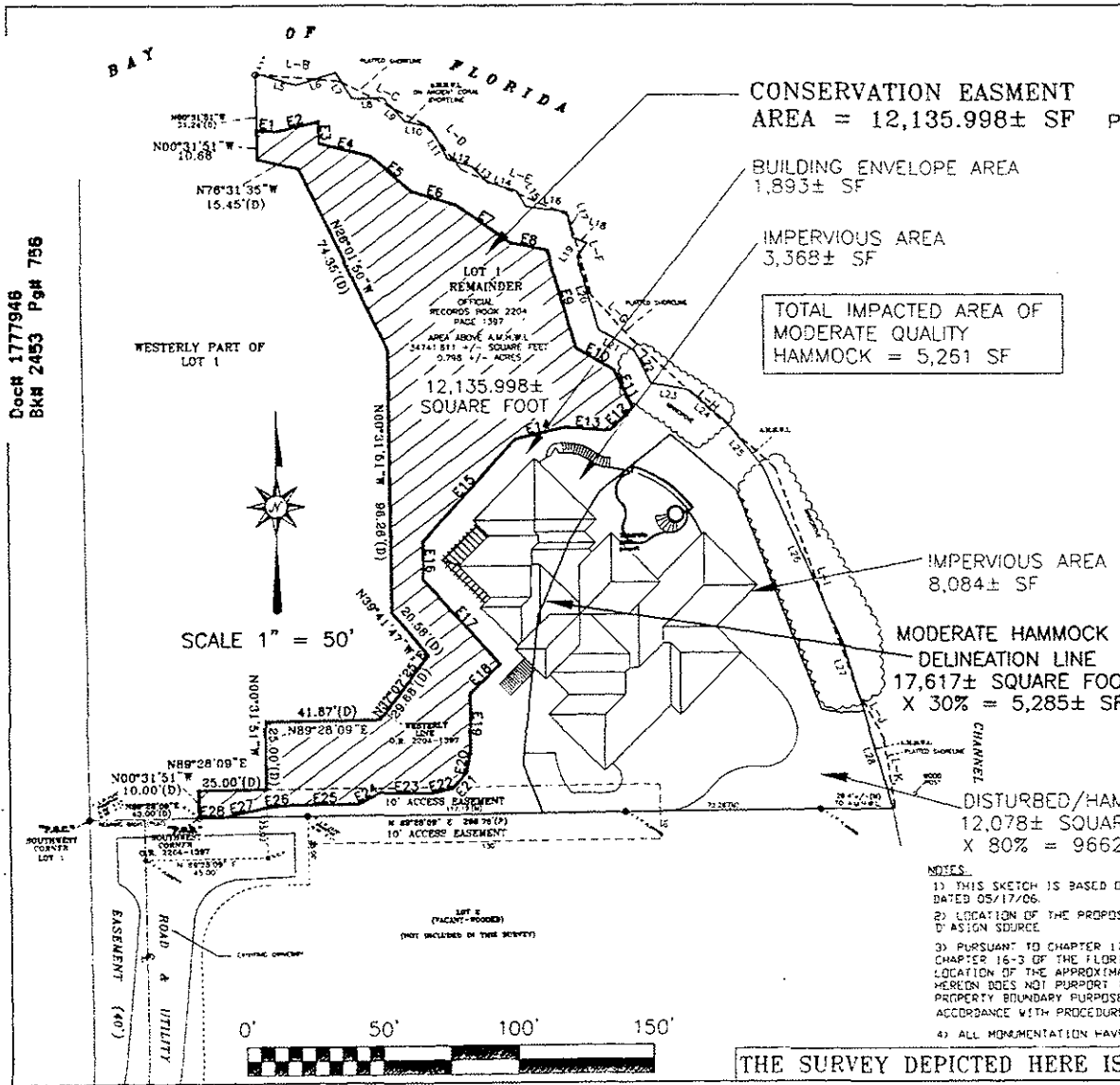
FOR:
JOHN C. HOTZ

P.N. 091003R5WL.doc


John Paul Grimes, III
Florida Registered Land Surveyor
Number 4906
P.O. BOX 510403 # 14 6th STREET
Key Colony Beach, Fl., 33051-0403
PH. (305) 743-4510 FAX (305) 743-3277

**SKETCH OF LEGAL DESCRIPTION
OF CONSERVATION EASEMENT AREA**

CITY OF MARATHON



PARTIAL EASEMENT DELINEATION

LINE	BEARING	DISTANCE
E1	S85°25'46"E	6.94'
E2	N76°46'07"E	16.02'
E3	S01°04'54"E	8.10'
E4	S76°04'52"E	19.68'
E5	S48°29'54"E	19.59'
E6	S73°10'03"E	17.41'
E7	S54°49'09"E	24.12'
E8	S78°29'07"E	13.93'
E9	S16°25'27"E	37.69'
E10	S60°21'23"E	15.88'
E11	S27°04'56"E	15.35'
E12	S44°16'58"W	12.03'
E13	N85°37'30"W	16.47'
E14	S77°09'48"W	18.92'
E15	S42°31'44"W	50.91'
E16	S00°00'00"E	14.14'
E17	S42°02'17"E	42.09'
E18	S46°11'28"W	15.47'
E19	S00°36'30"E	22.04'
E20	S12°14'05"W	7.40'
E21	S43°34'03"W	7.79'
E22	S77°55'57"W	7.06'
E23	N90°00'00"W	19.79'
E24	S61°11'46"W	8.65'
E25	S89°29'34"W	25.09'
E26	S83°58'58"W	9.89'
E27	S77°50'49"W	15.67'
E28	S89°28'09"W	8.71'

LEGEND

- = FOUND CONTROL POINT 40# NAIL OR AS NOTED
- = SET CONTROL POINT STAINLESS STEEL SCREW/DISC #4906
- = FOUND 3/4" IRON PIPE OR AS NOTED
- = SET 3/4" IRON PIPE /LS#4906
- = FOUND 5/8" IRON REBAR OR AS NOTED

ABBREVIATIONS

- (P) = PLAT
- (M) = MEASURED
- (C) = CALCULATED
- (D) = DEED/DESCRIPTION
- P.O.C. = POINT OF COMMENCEMENT
- P.O.B. = POINT OF BEGINNING
- C = CENTERLINE
- TYP. = TYPICAL
- ERYL = EARLY
- SF = SQUARE FOOT
- A.K.A. = ALSO KNOWN AS
- A.M.H.W.L. = APPROXIMATE MEAN HIGH WATER LINE

This certifies that a survey of the above furnished description was made under my supervision and the survey meets the "Minimum Technical Standards" set forth by the Florida Board of Professional Land Surveyors in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.
Date SKETCH completed 01/13/10
SKETCH OF LEGAL DESCRIPTION FOR THE BENEFIT OF:
JOHN C. HOTZ
John Paul Grimes III
JOHN PAUL GRIMES III, J. & M., No. 4906
SURVEY NOT VALID WITHOUT SIGNATURE & ORIGINAL RAISED SEAL
THIS SURVEY IS NOT ASSURED BY THE SURVEYOR'S PROFESSIONAL LIABILITY INSURANCE.
THIS SURVEY SUBJECT TO A TITLE SEARCH.

J.P. GRIMES, REGISTERED FLORIDA SURVEYOR AND MAPPER
P.O. BOX 510403 • #14 5th STREET
KEY COLONY BEACH, FL. 32951-0403
PH (305) 743-4510
FAX (305) 743-3277
P.N. 091003R5 JG
SHEET 2 OF 2

- NOTES:**
- 1) THIS SKETCH IS BASED ON PRIOR SURVEY BY THIS OFFICE DATED 05/17/06.
 - 2) LOCATION OF THE PROPOSED RESIDENCE AS FURNISHED BY DESIGN SOURCE.
 - 3) PURSUANT TO CHAPTER 177 OF THE FLORIDA STATUTES AND CHAPTER 16-3 OF THE FLORIDA ADMINISTRATIVE CODE, THE LOCATION OF THE APPROXIMATE MEAN HIGH WATER LINE, AS SHOWN HEREIN DOES NOT PURPORT TO LOCATE SAID LINE FOR TIDAL PROPERTY BOUNDARY PURPOSES, AND WAS NOT LOCATED IN ACCORDANCE WITH PROCEDURES SPECIFIED IN THE ACT/RULES.
 - 4) ALL MONUMENTATION HAVE NO IDENTIFICATION EXCEPT AS NOTED

THE SURVEY DEPICTED HERE IS NOT COVERED BY PROFESSIONAL LIABILITY INSURANCE

Section 106.58. - Management Requirements.

Conservation management areas shall be maintained in compliance with standards set forth in this chapter and any required management plan.

A.

Responsibility: Unless otherwise agreed by the City, the cost and responsibility of managing the protected area shall be borne by the owner or responsible entity.

B.

Minimum Requirements: Management shall maintain or enhance the ecological value of the protected area and support the survival of listed species. Management shall include, but not be limited to the following:

1.

Non-native vegetation shall not be introduced into the protected area. Invasive vegetation shall be removed if possible, or reduced to a level of noninterference with the growth of native vegetation. Removal shall be accomplished utilizing ecologically sound techniques, including manual removal, and hand-held power equipment. Trees which are actually used as nest or perch trees shall be retained but controlled. All vegetative debris must be disposed of outside the protected area.

2.

Dead trees that are not a hazard to humans and that provide habitat for wildlife shall remain in the protected area.

3.

Where removal occurs, replacement with appropriate native species may be required.

4.

Future owners, tenants, or other users of the protected area and resource shall be informed of the specific requirements of the approved management plan, and relevant state and federal laws. Information shall consist of tangible materials, including, but not limited to, deed or title notes, brochures and signage.

5.

Fencing may be required to control access to the protected area.