



Coastal Bend Bays & Estuaries Program, Inc.

1305 N. Shoreline, Suite 205, Corpus Christi, Texas 78401 • 361-885-6202 • 361-881-5168 (fax)

Date: August 25, 2009

To: CBBEP Board of Directors

From: Jake Herring, Project Manager

RE: Donation of 36 acre ASARCO Property

On August 18th the CBBEP/CBLT received a packet of information from Baker Botts LLP on a 36 acre tract of land that is currently owned by ASARCO. ASARCO is currently going through bankruptcy and needs to transfer the property to a third party.

In 1999 a proposed management plan and a biodiversity assay was completed on the property. From these two documents a conservation easement was drafted and filed at the Nueces County courthouse. The conservation easement has some stringent language about developing a portion of the property as park space for the surrounding neighborhoods. From discussions with both the developer of the management plan and also Baker Botts LLP there are aspects of the conservation easement that they do not find pertinent to the overall conservation of the property. The main goal is that this property ends up in the hands of a conservation organization, municipality, or university.

CBBEP is seeking the Board's approval to continue working with Baker Botts LLP to try to structure an agreement that would allow the CBBEP to take ownership of the property under the terms that will allow CBBEP to hold the property without being obligated to develop the property into a public park. CBBEP will also request that the property be transferred with an endowment or management fund that will allow CBBEP to pay taxes on the property and perform any required annual maintenance.

BAKER BOTTS LLP

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98 SAN JACINTO BLVD.
AUSTIN, TEXAS
78701-4078

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WASHINGTON

August 17, 2009

Via Federal Express 7968-6646-7631

Mr. Jake Herring
Executive Director
Coastal Bend Land Trust
1305 N. Shoreline Blvd., Ste. 205
Corpus Christi, TX 78401

Aileen M. Hooks
512.322.2616
FAX 512.322.8314
aileen.hooks@bakerbotts.com

Re: 36 Acre Bath/Grant Property in Nueces County, Texas

Dear Mr. Herring:

As my colleague Amber MacIver previously indicated, ASARCO is currently exploring options for the disposition of the 36 acre Bath/Grant Property it owns in Nueces County, Texas including potential transfer to a third party. We are sending information to parties potentially interested in acquiring this property, and I understand that the Coastal Bend Land Trust previously expressed interest in it. Due to the timetable of the pending ASARCO bankruptcy proceedings, your prompt consideration of this opportunity is appreciated.

The property has been described as "a remnant tract of the natural biodiversity of the Texas Coastal Bend," and as "a unique opportunity to conserve and restore essential habitats." *ASARCO Property: Land Use Survey and Biodiversity Assay*, by G. Blount, Ph.D. and E. Smith, Ph.D. of Texas A&M University-Corpus Christi Center for Coastal Studies (the "Biodiversity Assay"), p. 1 (August 31, 1999); *Proposal, The ASARCO Conservation Area Management Plan: Restoration & Outreach Fall 2005*, by E. Smith, Ph.D. and L. Smith, M.S. of Texas A&M University-Corpus Christi Center for Coastal Studies ("2005 Proposal"), p. 1 (July 13, 2005). It is located within one of the major migratory pathways of birds that breed in Canada and the United States and winter in the neotropics. *Proposal, Biodiversity Assay, Land Use Survey and Proposed Management Plan* by G. Blount, Ph.D and E. Smith, Ph.D. of Texas A&M University-Corpus Christi Center for Coastal Studies ("1999 Proposal"), p. 3 (May 6, 1999). The Texas tortoise, a species of concern, has also been documented within the area boundaries. 2005 Proposal at 1. The Biodiversity Assay recommends using the property as a site for Texas tortoise research. Biodiversity Assay at 44.

ASARCO placed a conservation easement on the property as part of a settlement agreement with the Texas Natural Resources Conservation Commission (TNRCC, now TCEQ) in 1999. As part of the settlement, ASARCO was required to remediate the property and undertake certain activities to support the purpose of the easement. The TCEQ has confirmed completion of the required site remediation to residential standards ASARCO submitted its latest progress report on the conservation easement activities to the TCEQ in 2006. The letter, included as Attachment 5, details some of the work that has been completed to date, including installing fencing and a pad for a TCEQ air monitor. In addition, ASARCO had Texas A&M

University-Corpus Christi Center for Coastal Studies develop a conservation plan for long-term use of the property.

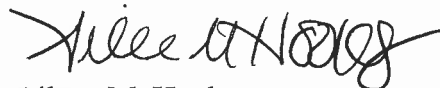
ASARCO is currently willing to consider transferring the property to a third party along with some funding to be applied towards the goals for which the easement was created. We have enclosed the following materials, which you may find helpful in evaluating the possible acquisition of the Bath/Grant Property:

- ◇ Attachment 1: An Aerial Map.
- ◇ Attachment 2: The Conservation Easement Agreement (1999) with Warranty Deed and Map.
- ◇ Attachment 3: The 1999 Proposal.
- ◇ Attachment 4: The Biodiversity Assay (1999), and the Proposed Management Plan (1999).
- ◇ Attachment 5: Final Semi-Annual Trust Report Submitted to TCEQ and EPA (2006), with the 2005 Proposal attached.

If you have any additional questions about the possible acquisition of the Bath/Grant Property, you can reach me at 512.322.2616 or Amber MacIver at 512.322.2597. If you would like to view the property, we would be happy to schedule a visit. As noted above, the nature of the bankruptcy proceedings require that any disposition of the property occur on a relatively short timeline. Therefore, we are asking all interested parties to contact us as soon as possible to discuss their possible interest in the site.

Thank you in advance for your consideration of this matter.

Sincerely,



Aileen M. Hooks

cc: Tom Aldrich

Portion of Conservation Easement

successors and assigns, forever, a Conservation Easement, to run with the land in perpetuity over the Property, consisting of the following:

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural condition, with certain adaptations for public use, and to prevent any use of the Property that will significantly impair or interfere with the Conservation and public enjoyment and education values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purposes of this Easement, including, without limitation, habitat conservation, public use, environmental research and monitoring, and education.

2. Obligations of Grantor. The Grantor agrees to manage and maintain the Property in accordance with the principles of environmental conservation, public use, environmental education, and research embodied in this Easement. The Grantor affirmatively agrees to:

(a) Provide for the rehabilitation and preservation of the Property as necessary to advance the goals of this conservation easement;

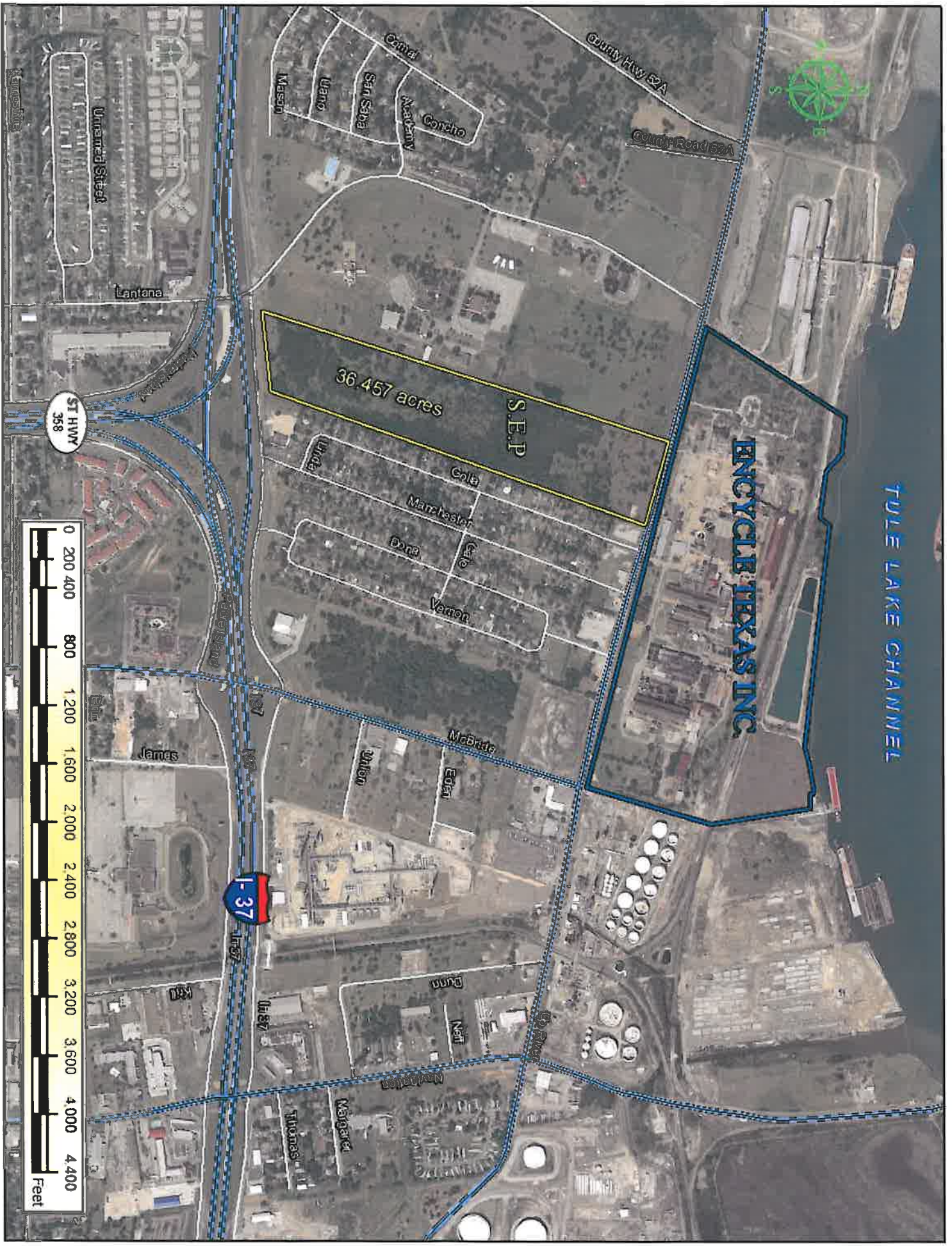
(b) Establish and maintain trails, provide and maintain environmental markers, develop, install, and maintain educational displays and other amenities necessary for the development of any outdoor environmental education area for the public, all to the extent reasonable and suitable within the objective of ecological preservation;

(c) Provide for easy, safe, daily, daytime public access to the Property for educational and passive recreational uses consistent with the conservation goals of this easement;

(d) Provide a location acceptable to the Texas Natural Resources Conservation Commission ("TNRCC") for the installation of a permanent air monitoring station that will be monitored and maintained by TNRCC personnel;

(e) Provide for the annual cost to the Grantee as necessary to provide for the terms of this easement.

(f) Grantor will convey ownership of the southern 30-acre parcel of the Property to Grantee, and retain ownership of the northern six acres of the Property subject to this Easement. The primary purpose of the northern six-acre parcel will be ecological, biological and environmental preservation, with extremely limited public access under regulations to be implemented by the Grantee.



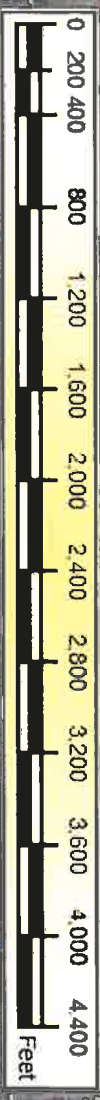
36.457 acres
S.E.P.

ENCYCLE TEXAS INC

TULE LAKE CHANNEL

ST HWY
358

I-37



Unnamed Street

Lantana

James

Mason
Uano
San Sara
Marilyn
Concho

County Hwy E2A

County Road 52A

Ulica
Gala
Manchester
Dora
Vamon

Madrone

Wilson

Eder

Dunn

Neil

Thomas

Margaret