

RECEIVED FOR RECORD 2-15-05 AT 5:10 P.M.
RECORDER CRAWFORD COUNTY
BOOK# 68 PAGE# 121
#105306

RECEIVED FOR RECORD 12-10-04 AT 1:41 P.M.
RECORDER CRAWFORD COUNTY
BOOK# 67 PAGE# 965
#104815

FOREST MANAGEMENT AND CONSERVATION EASEMENT

This is a FOREST MANAGEMENT AND CONSERVATION EASEMENT granted this 15 day December, 2004 by Alvin Leo Stephenson and Ricky W. Stephenson (the "Grantors"), to THE NATURE CONSERVANCY, a non-profit corporation existing under and by virtue of the laws of the District of Columbia, operating through its Forest Bank program (hereinafter the "Forest Bank").

RECITALS:

A. PROTECTED PROPERTY. Grantors are the owners in fee simple of approximately 13.96 acres of real property in Crawford County, Indiana, which is legally described in Exhibit A attached hereto and incorporated by reference herein ("Protected Property").

B. FOREST AND ECOSYSTEM MANAGEMENT VALUES. The Protected Property, in its present state, has significant value as working forest and as part of a functional forest ecosystem of the Interior Low Plateau. Forests here are important because they contribute to watershed protection for the Blue River, an ecoregional priority aquatic site. Blue River is a "B"-ranked 4th order warm water stream. It contains several globally rare species including spotted darter (*Etheostoma maculatum*), hellbender salamander (*Cryptobranchus alleganiensis*), green-faced clubtail (*Gomphus viridifrons*), and the handsome clubtail (*Gomphus crassus*). These animals require clean, abundant water that a forested landscape is most likely to sustain. In addition, over 30% of the global population of Indiana bats (*Myotis sodalis*) hibernate in the Blue River basin, foraging and roosting in woodlands found throughout the watershed during a period of weeks that bracket hibernation.

The Protected Property in particular consists of upland oak and yellow-poplar forest types, and is within the headwaters of Whiskey Run, a tributary of Blue River. The Protected Property adjoins the Crawford-Harrison State Forest on its western boundary. As such, the property is important for its contribution to the overall integrity of this ecosystem by helping to secure habitat for the animals listed above as well as many others.

C. **EXISTING USES AND IMPROVEMENTS.** The Protected Property is being used and has been used for recreational hiking, bird and wildlife observations, and general nature studies. The Conservation Values of the Protected Property have not been and are not likely to be adversely affected to any substantial extent by uses of the Protected Property for the uses which presently exist on the Protected Property or which are authorized under this Easement.

D. **QUALIFIED ORGANIZATION.** The Nature Conservancy is a non-profit charitable corporation created to preserve plants, animals and natural communities and the lands and waters they need to survive and is organized for aesthetic, scientific, charitable and educational purposes and is an organization qualified under Section 170(h) of the Internal Revenue Code.

GRANT OF FOREST CONSERVATION AND MANAGEMENT EASEMENT:

For and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained and pursuant to the laws of the State of Indiana and in particular Indiana Statutes Chapter 32-5-2.6, the Grantors hereby grant and convey unto The Nature Conservancy, its successors and assigns forever this Forest Conservation and Management Easement in perpetuity over the Protected Property consisting of the following terms and conditions ("Easement"):

1. **Purpose.** It is the purpose of this Easement to secure the retention of the Protected Property forever in its condition as a working forest, to assure the availability of the Protected Property for forest use, and to prevent any use of the Protected Property that will significantly impair or interfere with the forest and ecosystem management values of or associated with the Protected Property.
2. The Forest Bank shall use the Protected Property for forest and ecosystem conservation and management, and for forestry, and for no other purposes. This easement grants to The Forest Bank a right to any carbon sequestration benefits arising from its forestry practices.
3. Grantors shall use the Protected Property for recreation and open space purposes, and for any purpose not inconsistent with the management and retention of the Protected Property for forest and ecosystem conservation and management and forestry purposes as specified herein.
4. Grantors and the Forest Bank acknowledge that the principal objective of this grant of easement is to conserve and utilize the productive forestry resources on the Protected Property and to encourage the long-term, professional management of those resources, pursuant to the following objectives (recognizing that the resource values of the Protected Property,

and the state of knowledge as to responsible forest management standards will evolve over time):

- a. Facilitate economically and ecologically sustainable, commercially viable management and production of forest and timber resources without significantly compromising surface water quality, wildlife habitat and other values.
 - b. Manage forest stands for long rotations, which allow the opportunity for harvesting, sustained over time, of high quality timber while maintaining a healthy, and biologically diverse, forest.
 - c. Conduct forest management and harvesting activities (including the establishment, maintenance and reclamation of log landings and skid roads) using the best available management practices in order to prevent soil erosion and to protect water quality.
5. On or before the date of the grant of this Easement, and not less than every ten years thereafter, the Forest Bank will develop a Stewardship Plan for the Protected Property (hereinafter, "Stewardship Plans"). Each such Plan shall be consistent with the purposes of this Easement and may include at least the following elements:
- a. Environmental attributes (topography, soils, wetlands and streams).
 - b. A description of the units into which the Protected Property will be divided by the Forest Bank for management purposes ("Treatment Units").
 - c. Forest management objectives.
 - d. Forest stand descriptions (forest types, descriptions, goals and treatments).
 - e. Tract information (history, timber growth rates, tree quality, insects and disease problems, future potential, access and operability).
 - f. Wildlife and biodiversity considerations (identifications of species and management recommendations).
6. To accomplish the purpose of this Easement, Grantor grants to the Forest Bank the exclusive rights to do the following, in the sole discretion of the Forest Bank:
- a. Manage, preserve and protect the forest and ecosystem conservation and management values of the Protected Property.
 - b. Perform and contract for the performance of forest management activities; harvest timber, wood and other forest products existing at the time of this grant and that may grow on the Protected Property in

the future; replant trees and seedlings on the Protected Property to regenerate forest growth for future harvesting and management; conduct prescribed burns as warranted for ecosystem management. All of such activities shall be performed in accordance with a Stewardship Plan as set forth in Paragraph 5 above, provided that, prior to commencing timber harvesting activity, the Forest Bank shall provide Grantors with not less than thirty (30) days' prior written notice. Nothing in this clause shall be interpreted to require the Forest Bank to harvest any Treatment Unit or portion of the Protected Property, but only to require that any such harvest be in accordance with the approved Stewardship Plan should the Forest Bank elect to harvest. A timber royalty of five percent (5%) of the proceeds received by the Forest Bank on any timber sale conducted pursuant to this easement will be paid to the owner of the Protected Property at the time of any timber sale.

- c. Construct, maintain, repair, place and use timber haul roads, log landings, and skid trails; construct, maintain and use timber extraction structures, together with necessary access drives and utilities and extract sand and/or gravel, provided such activities are exclusively for uses related to the forestry or Protected Property maintenance activities permitted under this Grant; provided further that such activities are in furtherance of the Stewardship Plan prepared pursuant to paragraph 5 above, and provided further that any such construction and the extraction site(s) will be operated, maintained and closed in a manner that minimizes site disturbance and aesthetic views and to the extent possible prevents soil erosion and surface water degradation.
 - d. Erect a sign identifying the Protected Property as a property that is managed by the Forest Bank.
 - e. Enter upon the Protected Property (including, if required, the right to obtain access through other property owned by the Grantor but not subject to this Easement) at reasonable times in order to carry out the purposes and activities of this Easement and otherwise enforce the terms of this Easement; provided that such entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property; and
 - f. Prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement.
7. Any activity on or use of the Protected Property inconsistent with the forest and ecosystem management purpose of this Easement is prohibited.

Without limiting the generality of the foregoing, Grantors shall not permit or knowingly allow other to engage in the following activities and uses, which are expressly prohibited by this Easement:

- a. No building, road, billboard, fence, utility or other structure of any kind shall be erected or placed on the Protected Property by the Grantors unless such structure replaces a pre-existing structure of similar size. Notwithstanding the foregoing, if Grantors propose to construct a new residence or building outside the Protected Property, but which is accessible only through the Protected Property, Grantors may install a driveway, utilities, underground pipes and wires or overhead wires necessary for the use and enjoyment of the new residence or building across the Protected Property, provided that Grantors have received the prior written approval of the Forest Bank for the proposed activity. Such approval shall not be unreasonably withheld. Also notwithstanding the foregoing, the Forest Bank may construct roads as set forth in paragraph 6.c. of this Easement.
- b. The Protected Property may not be divided, partitioned, subdivided or conveyed except in its current configuration as an entity.
- c. No spoils, trash, waste or other similar material shall be placed or dumped on the Protected Property nor shall there be activities conducted on the Protected Property that would be detrimental to water purity in adjacent water courses, or that would alter natural water levels and/or flow in or over the Protected Property.
- d. There shall be no excavation, dredging or removal of loam, peat, gravel, soil, rock, sand, or other material nor any building of roads or other change in the general topography of the land, excepting the maintenance of existing foot trails, fire lanes or logging roads authorized by the Forest Bank. Notwithstanding the foregoing, Grantors may enter only into non-surface disturbance natural gas and oil leases.
- e. There shall be no introduction of non-native plant or animal species and no grazing of domestic animals on the Protected Property.
- f. The removal, destruction or reintroduction of trees, shrubs, or other vegetation by the Grantors is prohibited, except as may be necessary for: (a) the maintenance of existing foot trails, fire lanes or other accesses, (b) waterfowl and wildlife habitat or wetland enhancement to the extent that such activities do not interfere with the forestry and conservation purposes of this Easement, or (c) the collection and removal of dead and downed timber for firewood for non-

commercial personal use by the Grantors. Such activities may be undertaken by the Grantors, but only after consulting with the Forest Bank representative.

- g. No other acts or uses will be permitted which will adversely affect the Forest Bank's ability to carry out its forestry activities or that will diminish the value of the timber resource including but not limited to tapping trees for syrup production.
 - h. Nothing shall be done to deny legal right of way to representatives of the Conservancy/Forest Bank across other portions of Grantors' property to the portion of the Grantor's property, which is covered by this Easement. This same legal right of way maybe used by Forest Bank to access other Conservancy lands and other Forest Bank holdings.
8. Grantors reserve to themselves, their representatives, successors and assigns, all rights accruing from its ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement. The prohibited uses shall not affect Grantor's current hiking, mushroom-gathering, seasonal hunting or outdoor recreational use being made of the Protected Property (excepting that the creation and maintenance of permanent deer stands on the Protected Property shall be prohibited) and the right to continue such seasonal hunting or recreational uses, which shall be reserved to the Grantor, its representatives, successors or assigns. Grantors also retain all responsibilities, costs, and liabilities of any kind related to the rights retained under this Easement for its ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage;
9. The Forest Bank shall keep the Grantors' interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by the Forest Bank; the Forest Bank shall retain all responsibilities, costs, and liabilities of any kind related to the rights granted to and exercised by it under this Easement, including the maintenance of adequate liability insurance coverage.
10. The Forest Bank agrees to release, hold harmless defend and indemnify Grantors from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantors may suffer or incur as a result of or arising out of the activities of the Forest Bank on the Protected Property. Grantors agree to release, hold harmless, defend and indemnify the Forest Bank from any and all liabilities

including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which the Forest Bank may suffer or incur as a result of or arising out of the activities of Grantors on the Protected Property.

11. The Grantors agree to pay any real estate taxes or other assessments, which may be levied on the Protected Property.
12. The Grantors covenant and represent that the Grantors are the sole owners and are seized of the Protected Property in fee simple and have good right to grant and convey this Easement; that the Protected Property is free and clear of any and all encumbrances. The Forest Bank shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.
13. The Grantors covenant and represent that, to the best of their knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that, to the best of their knowledge, there are not now any underground storage tanks on the Protected Property.
14. In the event of a violation of this Easement, the Forest Bank shall give written notice to Grantors or other violator of such violation and require corrective action sufficient to cure the violation and restore the portion of the Protected Property so injured. In the event the violation continues or the injury to the Protected Property is not cured within thirty (30) days of the written notice from the Forest Bank, the Forest Bank, or its successor or assign, may institute a suit to enjoin by ex parte, temporary and/or permanent mandatory or prohibitive injunction such violation, to require the restoration of the premises to their prior condition, or in the alternative sue for damages for breach of covenant. The Forest Bank shall have the right to seek any legal action or remedy at law or in equity, including specific performance, to enforce the provisions set forth herein without the necessity of proving either actual damages or the inadequacy of other available legal remedies. The Forest Bank's remedies described herein shall be cumulative and shall not impair or be construed as a waiver to such right or remedy. Nothing contained herein shall be construed to entitle the Forest Bank to bring any action for any injury or change in the Protected Property resulting from causes beyond Grantor's control including fire, flood or storm.
15. Definitions. The term "Grantor" as used in this Easement shall mean and include the owners of the Protected Property at the time of this Easement and their personal representatives, heirs, successors and assigns who come to hold Grantor's interest in the Protected Property. The term "Forest Bank" includes The Nature Conservancy and its successors and assigns.

- 16 **Notices.** Any notices required by this Easement shall be sent by registered or certified mail, return receipt requested, to the following address or such address as may be hereafter specified in writing:

The Nature Conservancy
4245 North Fairfax Drive
Suite 100
Arlington, VA 22203
ATTN: General Counsel

Grantor:
Alvin Leo Stephenson
2375 Highway 64 NW
Ramsey, IN 47130

Ricky W. Stephenson
36 15 Alyn Court
Jeffersonville, IN 47130

cc:

The Nature Conservancy
Midwestern Resource Office
1101 West River Parkway
Suite 200
Minneapolis, MN 55415-1291
ATTN: Legal Department

17. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, the Forest Bank as well as Grantors shall be entitled to compensation for their respective interests in accordance with applicable law.
18. Grantors agree that these restrictions will be inserted or referenced in any subsequent deed or other legal instrument which conveys either the fee simple title or possessory interest in the subject Protected Property.
19. The grant of this Easement in no way grants the public the right to enter said Protected Property for any purpose.
20. This Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement. 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.
21. 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 the Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

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

TO HAVE AND TO HOLD unto The Nature Conservancy, its successor and assigns forever.

IN WITNESS WHEREOF, Grantors have set their hands this 6th day of December, 2004.

GRANTORS

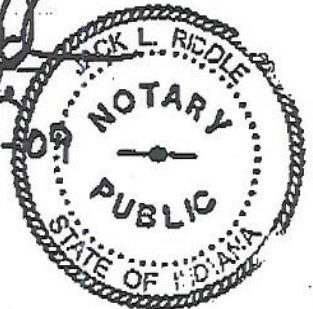
x Alvin Leo Stephenson
Alvin Leo Stephenson

Ricky W. Stephenson
Ricky W. Stephenson

STATE OF Indiana)
COUNTY OF Crawford)ss

The foregoing instrument was acknowledged before me this 6th day of December, 2004 by Alvin Leo Stephenson.

Jack L. Riddle
Notary Public Jack L. Riddle
My Commission Expires: 6-21-09



STATE OF Indiana)
COUNTY OF Crawford)ss

The foregoing instrument was acknowledged before me this 6th day of December, 2004 by Ricky W. Stephenson.

Jack L. Riddle
Notary Public Jack L. Riddle
My Commission Expires: 6-21-09



ACCEPTANCE

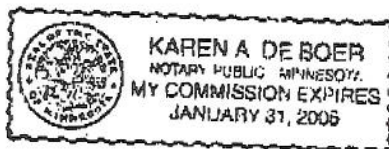
The foregoing Conservation Easement is hereby duly accepted by The Nature Conservancy this 6th day of December, 2004.

THE NATURE CONSERVANCY

By: Diane B RayTitle: Assistant Secretary

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 22nd day of October, 2004 by Diane B. Ray, the Assistant Secretary of The Nature Conservancy, a non-profit corporation under the laws of the District of Columbia, on behalf of said corporation.



Karen de Boer
Notary Public
My Commission Expires: 1-31-2005

EXHIBIT A
LEGAL DESCRIPTION OF PROTECTED PROPERTY

A part of the east half of the southeast quarter of Section 17, Township 2 South, Range 2 East, Crawford County, Indiana, and being more particularly described as follows:

Beginning at the southwest corner of said east half; thence North 0 degrees 46 minutes 12 seconds East 978.72 feet on the west line of said east half; thence South 89 degrees 27 minutes 16 seconds East 637.52 feet; thence South 22 degrees 55 minutes 56 seconds West 85.70 feet; thence South 34 degrees 06 minutes 05 seconds West 351.94 feet; thence South 60 degrees 45 minutes 04 seconds West 434.90 feet; thence South 89 degrees 15 minutes 21 seconds East 233.77 feet; thence South 63 degrees 26 minutes 06 seconds East 156.12 feet; thence North 90 degrees 00 minutes 00 seconds East 318.74 feet; thence North 52 degrees 25 minutes 53 seconds East 199.15 feet; thence South 32 degrees 00 minutes 19 seconds East 114.55 feet; thence South 19 degrees 21 minutes 29 seconds East 366.05 feet to the south line of the aforesaid east half of the southeast quarter; thence North 89 degrees 46 minutes 31 seconds West 1072.51 feet on said south line to the POINT OF BEGINNING; said described tract containing 13.96 acres, more or less.