



## Coalition for Sonoran Desert Protection

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May 16, 2017

Arizona Center for Law in  
the Public Interest

Arizona Native Plant  
Society

Bat Conservation  
International

Cascabel Conservation  
Association

Center for Biological  
Diversity

Center for Environmental  
Ethics

Defenders of Wildlife  
Desert Watch

Environmental Law  
Society

Friends of Cabeza Prieta

Friends of Ironwood Forest

Friends of Madera Canyon

Friends of Saguaro  
National Park

Friends of Tortolita

Gates Pass Area  
Neighborhood  
Association

Genius Loci Foundation

Native Seeds / SEARCH

Protect Land and  
Neighborhoods

Safford Peak Watershed  
Education Team

Save the Scenic Santa Ritas

Sierra Club – Grand  
Canyon Chapter

Sierra Club – Rincon Group

Sky Island Alliance

Society for Ecological  
Restoration

Southwestern Biological  
Institute

Tortolita Homeowners  
Association

Tucson Audubon Society

Tucson Herpetological  
Society

Tucson Mountains  
Association

Wildlands Network

Mayor Ed Honea and Councilmembers  
Marana Town Council  
11555 W. Civic Center Drive  
Marana, AZ 85653

### RE: Lazy K Bar Ranch Rezoning and General Plan Amendment Applications

Dear Mayor and Councilmembers:

Thank you for the opportunity to provide comments on the Lazy K Bar Ranch Rezoning and General Plan Amendment applications. The Coalition has commented on this issue each time it came before the Mayor and Council for action.

Since this project was last before you, Coalition representatives have had numerous meetings with the owners' representatives, including a field visit to the property. During that field visit, we collectively observed a family of mule deer on the bajada, the saddles that span the north- and southwestern aspects of the parcel, and the rich ironwood-saguaro habitat in the northern section.

We worked with the applicant to site the development within an envelope that was designed to work with the constraints on the property. These constraints include the natural wash and flow corridor(s) through the property, the critical regional wildlife linkage connecting the northern portion of the Tucson Mountains to the Tortolita Mountain fan, and the richest habitat on portions of the property.

Specifically, this wildlife linkage connects Saguaro National Park west and Sanctuary Cove, through the White Stallion Ranch and the Lazy K, to parcels to the northeast, including the Marana-owned El Rio Open Space Preserve and county-owned (both flood control and open space land) parcels, to the Santa Cruz River, to the Tucson Electric Power easement, to Cascada open space, to the Tortolita Preserve and up to the Tortolita Mountains via areas in and around the Prospect Wash. Parcels within this linkage have long been identified by the Town and others as important lands to preserve and connect.

The purpose of open space set-asides is *preservation*. As such, we have been working cooperatively and productively with the applicants to develop an Open Space Covenant that will achieve this goal. Without assurances that this land will be preserved *as open space* and *in perpetuity*, the designated open space will have no assured permanent protection and will exist on paper only. As such, the Town's Planning Commission recommended this Rezoning Condition:

1. The owner(s) of the property subject to the Lazy K Bar Ranch Specific Plan shall enter into an open space covenant with a third party conservation entity to ensure that the open space areas approved within future development remain as open space in perpetuity.

Imagine our shock and dismay to see Staff's response to this recommendation:

***It should be noted that Town staff does not support the Commission's recommendation to add this condition, so it has not been included in the draft ordinance written by staff. A covenant regulating open space within a development approved by Town Council will restrict the Council's ability to make future land use decisions concerning the affected property.***

Town staff is stating that the designated open space on the parcel, which the developer has agreed to in principle, should *not be protected* but rather, that the Town needs the ability ***“to make future land use decisions concerning the affected property.”*** If the staff does not believe that the Town should honor

designated open space as open space, then whatever is included in the rezoning as protected open space is moot. It becomes meaningless.

Adding to the confusion and misinformation, the staff report states that the acreage *outside the rezoning area* will be protected as open space. From the staff report:

The entire property consists of approximately 138.2 acres; however, only 103.2 acres are subject to this rezoning application. The remaining 35 acres will remain zoned as RR (Recreation and Resort)...

The staff report states that Open Space will occupy 60% of the (overall 138.2 acre) property, when in fact only 46% of the property being rezoned will be open space.

The staff report goes on to state:

(The remaining 35 acres) will serve as open space for the future residential development.

Calculating acreage not subject to rezoning as open space or development is not only incorrect, but without a covenant to protect the remaining acreage, it can be developed under current zoning or be up-zoned in the future. This is a very misleading statement, especially when coupled with the staff's opposition to protecting *any* of the open space in perpetuity.

The Coalition opposes any constructed development in the southwestern, western and northern identified open space areas of this 138.2 acre portion of the already constrained, critical regional wildlife linkage, including retention/detention basins, recreation areas, trails, or other constructed features that might impact wildlife species sensitive to human presence and activities.

The Coalition has attempted to work honestly and in good faith with both the property owners and with Town staff. We have worked to address the owners' concerns in the attached document, and believe that this language will protect both the wildlife corridor and the ability of the property owners to develop their property.

The attached Open Space Covenant For Lazy K-Bar Ranch (Covenant) has been drafted to address all concerns that have been expressed by both the property owners and the Town Attorney (please note: the Covenant was submitted to the Town by Attorney Pat Lopez). Should the Council adopt the following Conditions, we can support the Lazy K Bar Ranch Rezoning and General Plan Amendment applications:

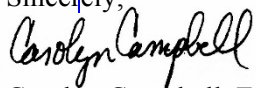
1. The owner(s) of the property subject to the Lazy K Bar Ranch Specific Plan shall enter into the Open Space Covenant For Lazy K-Bar Ranch (attached) with a third party conservation entity to ensure that the open space areas approved within future development remain as open space in perpetuity.
2. The Public Access Trail will not intrude into the western 300-feet of the Property.

We also understand that language in the Development Agreement will need to be modified to address issues in the Covenant, such as ending the Public Access Trail 300 feet east of the western property boundary.

Without this Condition and the attached Open Space Covenant for Lazy K-Bar Ranch and Development Agreement language consistent with the Covenant, the Coalition cannot support the Lazy K Bar Ranch Rezoning and General Plan Amendment applications before you.

Thank you for considering our comments on this issue.

Sincerely,



Carolyn Campbell, Executive Director

Attachment

## OPEN SPACE COVENANT FOR LAZY K-BAR RANCH

This Open Space Covenant for Lazy K-Bar Ranch (“**Covenant**”) is entered into by \_\_\_\_\_ (“**Owner**”) for the benefit of the Beneficiary defined in Section 2. The Owner and Beneficiary may be individually referred to as “**Party**” or Collectively as “**Parties**”. This Covenant is effective as of the date set forth below Owner’s signature (“**Effective Date**”).

### BACKGROUND AND PURPOSE

- A. The Owner owns the real property known as the Lazy K-Bar Ranch described on **Exhibit A** (“**Property**”). A map identifying the Property is attached as **Exhibit B**.
- B. As a condition to the establishment of appropriate zoning for the Property, the Town of Marana’s Planning Commission recommended that the portion of the Property outlined on **Exhibit C** (“**Restricted Area**”) be forever preserved as natural undisturbed open space (“**NUOS**”) for the conservation of natural habitat for wildlife, the protection of rare and unique native plants and animals, and the scenic enjoyment of the Beneficiary and the public. It should be noted that the Restricted Area and NUOS includes both the portion of the Property subject to the current rezoning and the 150-foot border of the Property which is not being rezoned. Additionally, as more fully set forth below, certain portions of the Restricted Area may be developed for hiking trails and the Eastern Boundary Improvements.
- C. The portion of the Property not included in the Restricted Area is referred to herein as the “**Unrestricted Area**.” The Unrestricted Area will include the portion of the historic Lazy K Bar buildings, along with such reasonable surrounding grounds, as may be designated for preservation or restoration by the Specific Plan (as defined below) adopted by the Town of Marana. The Unrestricted Area will encompass approximately 103 acres.
- D. The Parties also wish to establish a public access trail for non-vehicular access across the southern and eastern portions of the Restricted Area (“**Public Access Trail**”).
- E. The Parties have agreed that a detention basin, ~~and~~ utility crossings, ingress and egress improvements (including roadways), and related revegetation will be permitted in the portion of the Restricted Area along the eastern boundary of the Property (the “**Eastern Boundary Improvements**”).
- F. On or before 30 days after the recordation of this Covenant, a Beneficiary, for the benefit of the Beneficiary, has or will pay \$100 to the Owner as consideration for this Covenant.

### COVENANT

In consideration of the foregoing, the promises, representations, and warranties set forth in this Covenant, and good and other valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agrees as follows:

1. Background and Purpose. The Background and Purpose stated above are true and correct and constitute a part of this Covenant.

2. Beneficiary. The initial “**Beneficiary**” shall be the Coalition for Sonoran Desert Protection (“**Coalition**”). However, after the recordation of this Covenant, Beneficiary will form and qualify a tax-exempt entity to which the Beneficiary’s interest will be assigned. The expenses of forming and qualifying the tax-exempt entity will be borne by the Coalition. The Board of Directors of the tax-exempt entity will consist of three individuals, one of which will be appointed by the Coalition, one of which will be appointed by the Owner, and one of which will be appointed by the Arizona Land and Water Trust. Owner and the Coalition will cooperate in forming, qualifying for exempt purposes, and assigning the Beneficiary’s rights under this Covenant to the new tax-exempt entity.

3. Restrictions. The Restricted Area will be forever preserved as NUOS, excluding the Public Access Trail and the Eastern Boundary Improvements. This Covenant runs with the land and binds the Owner and its successors and assigns, and may not be amended or removed without the written consent of all the Beneficiary and the Town of Marana. The following is a nonexclusive list of activities prohibited in the Restricted Area:

3.1 Development, including rezoning, subdividing, or lot splitting;

3.2 Construction or placement of new or additional buildings or structures;

3.3 Alteration of the ground surface or natural vegetation, except as may be needed for the Public Access Trail;

3.4 Impound, diversion, or alteration of any natural watercourse unless for watershed enhancements to improve species habitat or to maintain the Property’s mitigation values;

3.5 Development of, or the granting of, access, rights-of-way, or easements for new roads or new utilities not provided for in the specific plan approved by the Town of Marana in May of 2017 (“**Specific Plan**”);

3.6 Filling, excavation, dredging, mining, drilling, exploration, or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Restricted Area;

3.7 Storage, accumulation, or disposal of hazardous materials, trash, garbage, solid waste, or other unsightly material;

3.8 Confinement of livestock within the Restricted Area or any portion thereof;

3.9 Residential use for mobile homes, treehouses, playhouses, travel trailers, tent trailers, self-propelled recreational vehicles, and similar structures or vehicles, except temporary use to support the protection or enhancement of the Restricted Area;

3.10 Any modification of the topography through the placement of soil, dredging spoils, or other material, except to reduce soil erosion or to protect public health, safety and welfare; and

3.11 Off-road vehicular travel except to facilitate permitted activities on the Restricted Area.

3.12 Notwithstanding the foregoing, incursions into the Restricted Area in connection with the development or maintenance of (i) the Public Access Trail, (ii) the Eastern Boundary Improvements, (iii) the historic Lazy K Bar buildings, or (iv) the Unrestricted Area shall be permissible from time to time, so long as such incursion is temporary and reasonably necessary to the permitted development and maintenance.

4. Public Access Trail. Notwithstanding the other sections of this agreement, the Owner will develop a non-vehicular public access trail, the Public Access Trail, along the eastern and southern boundary of the Property, as more precisely located upon the Development Plan (“**Development Plan**”) entered into between the Town of Marana and the Owner. The Development Plan designates a 30-foot wide corridor within which the Public Access trail will be developed. However, Owner agrees that the developed (i.e., disturbed) portion of this 30-foot wide corridor will be no more than 15 feet wide. The exact location of the 15-foot wide disturbance within this corridor will be selected by Owner. The Public Access Trail will not intrude into the western 300-feet of the Property, if a condition restricting such incursion is made a condition of the approval of Owner’s rezoning (Specific Plan) by the Marana Town Council.

5. Construction Limitations. With respect to the Unrestricted Property, Owner agrees that separate Covenants, Conditions and Restrictions (the “**CC&R’s**”) approved by the Town of Marana will provide for the following:

3.13 No more than one hundred seventy-eight single family homes will be constructed on the Unrestricted Property, and the Unrestricted Property will not be put to any other use, except that the historic Lazy K Bar ranch house may be restored and used for public or private recreational or museum uses.

3.14 The houses on the Unrestricted Property will not exceed one story. Additionally, they will not exceed 30 feet in height, or such alternate height limit as may be set forth in the initial Specific Plan approved by the Town of Marana.

3.15 The CC&R’s and not this Covenant will govern the above restrictions, except that CC&R’s containing the above restrictions must be put in place by Owner prior to any development of the Unrestricted Property.

4 Reserved Rights of Owner. Except for the specific restrictions provided in this Covenant, the Owner and its successors in interest reserve all rights in the Property including, without limitation, the right of exclusive use, possession and enjoyment of the Property, and the right to sell, transfer, lease mortgage or otherwise encumber the Property. Nothing contained in this Covenant will be construed as a grant to the public or any other person or entity, of any right to enter upon any part of the Property, except as provided for in Section 4 or no more frequently than quarterly to confirm compliance with this Covenant.

5 Consideration. On or before 30 days after the recordation of this Covenant, Beneficiary in consideration of Owner’s execution and delivery of this Covenant, has or will pay \$100 to Owner.

6 Beneficiary’ Right to Enforce. If the Beneficiary determines that there is breach of this Covenant, it may, but is not obligated to, enforce the terms of this Covenant, but only after following the procedures set forth in this Section. Prior to any enforcement action, a written notice setting forth the alleged violation must be sent to Owner. The written notice must specify the breach and the corrective action sufficient to cure the breach. The written notice must provide that Owner will have 30 days from

receipt of the notice to commence good faith diligent efforts to cure the breach. If Owner fails to begin curing such breach within 30 days or fails to continue diligently to cure such breach until fully cured, Beneficiary may bring an action at law or equity to enforce the terms of this Covenant. When evaluating any possible breach or enforcement action, the Beneficiary may consult experts to assist in determining if there is a violation and the appropriate remedial action.

7 Limitation on Enforcement. Owner will not be liable for any injury or change in the Restricted Area resulting from cases beyond Owner's control including unforeseeable acts of trespass, fire, flood, storm, drought, pests, natural earth movement, vegetative disease, or resulting from any action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Restricted Area or adjoining property.

8 Governing Law. This Covenant is governed by the laws and regulations of the State of Arizona. Any action relating to this Covenant must be brought in a court of the State of Arizona in Pima County.

9 Severability. If any provision of this Covenant is declared void or unenforceable, such provisions will be deemed severed from this Covenant, which will otherwise remain in full force and effect.

10 Integration Clause. This Covenant represents the entire agreement of Owner and Beneficiary with respect to this Covenant.

11 Attorney Fees.— In the event of any litigation related to this Covenant, the prevailing party will be awarded their reasonable attorney fees and costs.

12 Notice. Any notice given under this Covenant must be in writing and delivered by certified mail or personally to the parties as follows:

If to Owner: To the Owner named and at the address provided in the Pima County, Arizona property tax records.

If to Beneficiary: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Owner has executed this Covenant for the benefit of the Beneficiary identified herein.

OWNER: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_