



Easement Documentation Report

Huachuca Mountains, Arizona City 5, LLC
104 acres
Cochise County, Arizona

Prepared By: Damian Rawoot

Title: Land & Water Protection Manager, Southern Arizona

Office Location: Tucson Field Office

Address: 1510 East Fort Lowell Road, Tucson, Arizona 85719

Date of Report: August 19, 2019

Condition of Property as of June 6, 2019

Acknowledgement of Condition

This acknowledgement constitutes a part of a Conservation Easement Documentation Report prepared in conjunction with a Conservation Easement granted on _____, 2019, to The Nature Conservancy, a non-profit corporation organized and existing under the laws of the District of Columbia (“Conservancy”), over property owned by Cochise County Flood Control District (“Owner”). The conservation easement covers a tract of land in Cochise County, Arizona (“Protected Property”).

The Conservation Easement Documentation Report is dated _____, 2019, was prepared by Damian Rawoot and includes a cover page, table of contents, maps, photographs, tables, exhibits, and this Acknowledgement, and contains a natural resources inventory of the Protected Property, consisting of 104 acres. Owner and Damian Rawoot, a representative of the Conservancy, acknowledge and agree that the Conservation Easement Documentation Report is an accurate representation of the Protected Property at the time of the transfer of the Conservation Easement.

OWNER

THE NATURE CONSERVANCY

 Peggy Judd
 Chair, Cochise County
 Flood Control District

By: _____
 Damian Rawoot
 Land & Water Protection Manager,
 Southern Arizona

Date: _____

Date: _____

STATE OF _____)
) ss
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of September 2019, by Peggy Judd, Chair, Cochise County Flood Control District, a political subdivision of the State of Arizona.

 Notary Public
 My Commission Expires:

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of September 2019, by Damian Rawoot, Land & Water Protection Manager of The Nature Conservancy, a non-profit corporation under the laws of the District of Columbia, on behalf of said corporation.

Notary Public
My Commission Expires:

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Conservation Easement Documentation

A. Introduction

This report has been prepared in conjunction with a conservation easement (“**Conservation Easement**”) granted to The Nature Conservancy, a non-profit corporation organized and existing under the laws of the District of Columbia (“**Conservancy**”), over Property owned by Cochise County Flood Control District (“**Owner**”). The Conservation Easement covers approximately 104 acres of land in Cochise County, Arizona, as legally described in attached Exhibit 1 (“**Protected Property**”). The Protected Property is shown on the maps attached as Exhibit 2.

This Conservation Easement Documentation Report is intended to document the condition of the Protected Property as of the date of the Conservation Easement and to provide a natural resources inventory of the Protected Property.

B. Location

The Protected Property is located along the Babocomari River approximately three miles east of Huachuca City in Cochise County, Arizona, due north the East Range of the US Army’s Fort Huachuca and its legal description is described in Exhibit 1. The property consists of the southeast corner of the Historic San Ignacio del Babocomari Land Grant. Exhibit 2A shows the location of the Protected Property on a map. The property can be reached by traveling south for 1 mile from the Junction of Highways 90 and 82 (“Mustang Corners”), then turn left (east) onto the frontage road “AZ Wildcats Dr.” on the east side of Highway 90. Travel south for 0.25 mile on frontage road to Ronald Reagan Parkway, then turn left (east). Proceed on Ronald Reagan Parkway for approximately 3.25 miles (this will include one right and one left turn to stay on the “Parkway”). At the end of Ronald Reagan Parkway turn right (south) on the dirt two track and proceed for 0.25 miles to the intersection with Railroad Drive. Turn left (east) and proceed east until you reach fence line, and the gate entering the property is to the left on the property’s northwest corner.

C. Site Description of Conservation Area

The Protected Property is a vacant tract that includes approximately 0.5 mile of the main channel of the Babocomari River and relatively natural riparian habitat and connected uplands. The Babocomari River is a key tributary of the San Pedro River and serves as a key corridor of connectivity between the Huachuca Mountains and the San Pedro River Valley. The Babocomari was identified as a priority for conservation by both TNC, and by Cochise County in their 2007 *Babocomari Area Plan*. The Babocomari River supports several aquatic and riparian endangered species, which are shared with the San Pedro River, such as Gila chub, Gila topminnow, Huachuca water umbel, Chiricahua leopard frog, and yellow-billed cuckoo. The riparian forest and surrounding grasslands also provide important nesting habitat for numerous neotropical migratory birds.

The Protected Property lies to the east and directly downstream of three contiguous tracts already under conservation easement protection. This Conservation Easement extends protection to cover almost 500 contiguous acres along the Babocomari River. The additional protected acreage will also prevent future groundwater pumping and development along this stretch of the Babocomari River and support flows in the downstream San Pedro River. Additionally, the Protected Property is strategically situated to serve to anchor a future groundwater recharge site as part of the Cochise Conservation and Recharge Network.

D. Ecological Features/Conservation Values of the Protected Property

The purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Values (defined below) (the Conservation Purpose). The Property is a natural area that consists of “a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,” as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii) and applicable regulations. Specifically, the Property includes an approximately 0.5-mile stretch and adjacent flood plains of the Babocomari River, the largest tributary of the Upper San Pedro River. The Babocomari River supports several aquatic and riparian endangered species, which are shared with the San Pedro River, including the Gila chub, Gila topminnow, Huachuca water umbel, Chiricahua leopard frog, and yellow-billed cuckoo. The globally rare (and groundwater dependent) Fremont cottonwood-Goodding willow riparian forest and the surrounding semi-desert grassland uplands present on the Property provide important nesting habitat for numerous neotropical migratory and resident birds, and riparian-dependent conservation targets. The Property is located in a priority wildlife corridor connecting upland areas in the Huachuca Mountains, Canelo Hills, and Mustang Mountains to the San Pedro River. Additionally, the property lies to the east and directly downstream of three contiguous tracts that were previously protected by conservation easements and extends protection to cover almost 500 acres within this priority corridor. Groundwater protection and recharge measures at this Property have the potential to not only influence water availability within the Property, but also to protect and enhance groundwater dependent riparian communities along the Babocomari and San Pedro Rivers downstream.

Additionally, Owner intends to use a portion of the Property for Groundwater Protection and Recharge Uses (as that term is defined below) which, both Owner and the Conservancy acknowledge, do not impair or interfere with the Conservation Values, are consistent with the Conservation Values, and protect and support the biodiversity of the area. For purposes of the Conservation Easement and this EDR the term “Groundwater Protection and Recharge Uses” shall mean the objective of sustaining flows in the Babocomari River and thus the San Pedro River, by precluding significant groundwater pumping within this hydrologically-sensitive Property, removing non-native phreatophytes, and/or replenishing groundwater storage through the possible development of stormwater capture and/or effluent recharge projects.

The attributes of the Property described in this section are collectively referred to in this Conservation Easement as the Conservation Values.

E. Photographs

Photographs documenting the current condition of the Protected Property accompany this report and are incorporated by reference. The photographs were taken on **June 6, 2019**. The points from which photographs were taken are shown on Map C in Exhibit 2. A brief description of each photograph appears in Exhibit 3 and the photographs follow. Exhibit 4 presents a table of the GPS Waypoints for each of the Photo Points.

F. Legal Information

The following excerpts from the Conservation Easement set forth certain rights of the Owner and the Conservancy.

5. GRANTEE’S RIGHTS. To accomplish the Conservation Purpose, the following rights are granted to Grantee (and Grantee’s agents, representatives and invitees) by this Conservation Easement:

5.1 Right to Enforce. The right to preserve and protect the Conservation Values of the Property and enforce the terms of this Conservation Easement.

5.2 Right of Entry. The right to enter the Property at reasonable times for the purposes of: (a) inspecting the Property to determine if there is compliance with the terms of this Conservation Easement; (b) obtaining evidence for the purpose of seeking judicial enforcement of this Conservation Easement; (c) monitoring and research as described below; (d) posting of signage as described below; and (e) provided, however, that the foregoing rights of Grantee shall not relieve Grantor from any obligations to comply with the terms of this Conservation Easement or waive any of Grantee's rights or remedies to enforce this Conservation Easement against any violation.

Grantee agrees that entry will be done in a manner that will not interfere unreasonably with Grantor's Permitted Uses of the Property. Grantee also agrees to provide advance notice to Grantor prior to entering the Property, except in any case where immediate entry is necessary or desirable to prevent, terminate, or mitigate damage to, or the destruction of, the Conservation Values, or to prevent, terminate or mitigate a violation of the terms of this Conservation Easement. In the event Grantor elects to maintain gated, locked access to and through the Property, Grantor shall provide Grantee with keys for all such locks.

5.3 Monitoring and Research. The right, but not the obligation, to engage in ecological or hydrologic monitoring and research, including biological surveys, inventories of plant and wildlife populations, plant communities and natural habitats on the Property. Monitoring and research shall not interfere with approved property management or Flood Control/Recharge projects by Grantor. Grantor shall cooperate with Grantee in establishing, at no expense to Grantor, a written Monitoring and Research Plan, if desired by Grantee.

5.4 Signage. The right to install and maintain, at Grantee's sole cost and expense, signage on the Property in order to indicate Grantee's participation and/or any of Grantee's public or private funding sources in the acquisition and maintenance of the Conservation Easement; provided, however, that the size, location, number, text, and design of the signage will be subject to the written agreement of Grantor, Grantee and any funding source, which agreement will not be unreasonably withheld, conditioned, or delayed.

5.5 Mineral Rights. As more specifically set forth in Subsection 3.15 of this Conservation Easement, the right, but not the obligation, to influence and control impacts to the surface of the Property from development of Minerals by third parties who, as of the effective date of this Conservation Easement, already own some or all of the Minerals located beneath the Property.

6. VIOLATION AND REMEDIES.

6.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation within 60 days and, where the violation involves injury to the Property resulting from any use or activity by Grantor that is inconsistent with the purpose of this Easement, to restore the portion of the Property injured to its prior condition with a plan approved by Grantee at Grantor's expense.

6.2 Injunctive Relief. If Grantor fails to cure the violation within sixty (60) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing the violation within the sixty (60) day period, or fails to seek accommodation to cure the violation, or fails to continue diligently to cure

such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

6.3 Damages. Should Grantor violate the terms hereof, and should Grantee elect to seek injunctive relief or otherwise to enter upon the Property in accordance with the terms hereof to prevent further violation, or to correct such violation or to restore damage as a result of such violation, and except as provided in Sections 5.2 and 6.6 below, Grantee shall first give Grantor ten (10) days written notice before entering upon the Property for such purposes. Grantor shall reimburse Grantee for its reasonable costs or expenses incurred in abating or correcting any such violation, including but not limited to reasonable court costs and attorneys' fees. Nothing herein shall purport to create liability to Grantor for damage to the Property due to Acts of God, or due to fire damage not deliberately or intentionally caused by Grantor, but Grantor shall nevertheless be required to indemnify Grantee as provided in Section 18 with respect to any claims made against Grantee by any third party arising from a controlled burn by Grantor.

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

6.5 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from: (1) causes beyond Grantor's control, including, without limitation, fire (except for Grantor's indemnity obligation to Grantee referred to in Section 9.6), flood, storm, and earth movement, or acts of third parties, except Grantor's lessees or invitees, or (2) any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate any threatened or actual significant injury to the Property resulting from such causes.

6.6 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent, terminate or mitigate significant damage to the Conservation Values of the Property, or to prevent, terminate or mitigate a violation of this Conservation Easement, the Grantee may pursue its remedies under this section without prior notice to Grantor and/or without waiting for the period provided for cure to expire.

6.7 Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including without limitation: (a) specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; and (b) the right to enter the Property to undertake any corrective action Grantee may elect to complete. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.8 Costs of Enforcement. If the court determines that Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Grantee for any reasonable costs associated

with enforcement, including Grantee's staff time, costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.

6.9 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel or prescription with respect to any failure to act or any delay by Grantee in enforcing any restriction or exercising any rights under this Conservation Easement.

6.10 Natural Events. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from any natural event, natural cause, or natural disaster (collectively, Natural Events(s)) beyond Grantor's control, including, without limitation, weather, fire, flood, storm, infestation, natural deterioration, earth movement, climate change, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such a Natural Event. Grantor shall notify Grantee of any Natural Event or acts taken in response to such a Natural Event that may adversely affect or interfere with the Purpose or Conservation Values, whether caused by the Natural Event or the Grantor's or a third party's acts or omissions in response to the Natural Event. If a Natural Event alters the Property, Grantor and Grantee will work together to identify restoration or rehabilitation activities and develop a restoration plan. Nothing in this subsection shall prohibit Grantee from bringing an action against Grantor for any violation of the terms of this Conservation Easement resulting from Grantor's negligence or intentional misconduct in response to the Natural Event.

6.11 Acts of Third Parties. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (a) acts of third parties legally authorized to act by recorded instrument or other legally established rights to which this Easement is subject or (b) the wrongful acts of third parties other than Grantor's agents, employees, invitees or contractors (provided the Grantor has taken reasonable actions to prevent such third parties from trespassing and from causing harm to the Property and has not authorized, consented to or participated in the acts of such third parties). Grantor shall notify Grantee of any act or occurrence that would adversely affect or interfere with the Conservation Purpose, whether caused by the Grantor's acts or omissions or by a third party or parties. In the event of a violation of this Conservation Easement caused by the wrongful acts of a third party, Grantor shall cooperate fully with Grantee in enforcement of this Conservation Easement, including but not limited to: gathering facts and information relevant to the violation; assigning its right of action to the Grantee; joining in any claim or legal action; and/or appointing the Grantee as its attorney-in-fact for purposes of enforcement, all at the election of the Grantee. In the event that such third party acts interfere with the Conservation Purpose and/or Conservation Values of this Conservation Easement, Grantor and Grantee will work together to identify restoration or rehabilitation activities and develop a restoration. This Subsection shall not be construed to relieve Grantor of the obligation to clean up garbage or materials dumped on the Property by third parties, to take all reasonable actions to prevent violations of the Conservation Easement by third parties, or to otherwise maintain the Property in a condition consistent with the Purpose of this Conservation Easement. Nothing in sub-paragraph (b) of this Subsection 6.10 shall prohibit Grantee from bringing an action against Grantor resulting from Grantor's failure to take reasonable actions to prevent violations of the Conservation Easement by third parties or from Grantor's authorization, consent, or participation in the wrongful acts of third parties resulting in violations of the Conservation Easement.

7. RIGHTS OF THE UNITED STATES ARMY. The Easement was purchased subject to the purposes, terms and obligations of the Army Compatible Use Buffer (ACUB) Contract # W911SR-07-2-0005 on behalf of Fort Huachuca and the Army for the primary purposes of protecting the

Property's Conservation Values and thereby maintaining and improving natural resources on or near Fort Huachuca by limiting development of the Property and any related degradation of its natural resources. An incidental, but important, result of the purchase of the Easement is the avoidance of development of the Property that can result in limitations on training and operations at Fort Huachuca and additional water usage in the area. The contingent rights set forth in Paragraphs 7.1 through 7.3 and Paragraph 12 protect the Army's interests in this transaction.

- 7.1 Should the Grantee or its monitoring agent fail to monitor the Easement pursuant to paragraph 5.2 or enforce any term of the Easement and permit the Property to be used or developed in a manner inconsistent with the recitals and purposes of the Easement, then the United States Secretary of the Army (the "Secretary"), through his or her authorized representative, shall have the right to conduct monitoring in accordance with paragraph 5.2 and enforce the Easement using the procedures in Paragraph 7.0 and all authorities available under state or federal law.
- 7.2 If Grantee terminates, transfers, or otherwise divests itself of any rights, title, or interest in the Easement without the prior written approval of the Secretary of the Army, such transaction shall be legally ineffective and all right, title and interest in the Easement shall become vested in the United States of America.
- 7.3 If the Grantee permits use of the Property for purposes inconsistent with the Conservation Values of the Property or fails to enforce the breach of any covenant contained in this Easement, the Secretary of the Army, through his or her authorized representative, may demand the transfer of this Easement to the United States.

G. Prohibited and Permitted Uses of the Protected Property

Certain text that follows is excerpted from the Conservation Easement. References to paragraph numbers and exhibits in these excerpts refer to paragraphs and exhibits in the Conservation Easement. In the event of any conflict between text referenced in this EDR and the conservation easement, the conservation easement controls over any reference, excerpt or summary contained herein.

1. General Purpose and Use Restriction. The following excerpt from the Conservation Easement sets forth the purpose of the Conservation Easement.

The purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Values (defined below) (the Conservation Purpose). The Property is a natural area that consists of "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii) and applicable regulations. Specifically, the Property includes an approximately 0.5-mile stretch and adjacent flood plains of the Babocomari River, the largest tributary of the Upper San Pedro River. The Babocomari River supports several aquatic and riparian endangered species, which are shared with the San Pedro River, including the Gila chub, Gila topminnow, Huachuca water umbel, Chiricahua leopard frog, and yellow-billed cuckoo. The globally-rare (and groundwater dependent) Fremont cottonwood-Goodding willow riparian forest and the surrounding semi-desert grassland uplands present on the Property provide important nesting habitat for numerous neotropical migratory and resident birds, and riparian-dependent conservation targets. The Property is located in a priority wildlife corridor connecting upland areas in the Huachuca Mountains, Canelo Hills, and Mustang Mountains to the San Pedro River. Additionally, the property lies to the east and directly downstream of three contiguous tracts that were previously protected by conservation easements and extends protection to cover almost 500 acres within this priority corridor. Groundwater protection and recharge measures at this

Property have the potential to not only influence water availability within the Property, but also to protect and enhance groundwater dependent riparian communities along Babocomari and San Pedro Rivers downstream.

Additionally, the parties specifically acknowledge and understand that Grantor intends to use a portion of the Property for Groundwater Protection and Recharge Uses (as that term is defined below) which, both Grantor and Grantee acknowledge, do not impair or interfere with the Conservation Values, are consistent with the Conservation Values, and protect and support the biodiversity of the area. For purposes of this Easement the term “Groundwater Protection and Recharge Uses” shall mean the objective of sustaining flows in the Babocomari River and thus the San Pedro River, by precluding significant groundwater pumping within this hydrologically-sensitive Property, removing non-native phreatophytes, and/or replenishing groundwater storage through the possible development of stormwater capture and/or effluent recharge projects. Additional sources of water for recharge may also be acceptable to enhance conservation values, provided they are acceptable to Grantee.

The attributes of the Property described in this section are collectively referred to in this Conservation Easement as the Conservation Values.

Any activity on or use of the Protected Property inconsistent with the purpose(s) of the Conservation Easement is prohibited.

2. Use of the Property. The Conservation Easement contains a number of provisions which place restrictions on the use and development of the Protected Property. Each Property Use is stated in bold below, followed by a detailed description of the current conditions and features of the Protected Property relevant to each Property Use. These Property Uses appear as numbered in the Conservation Easement.

3.1 Approval Process. Grantor and Grantee agree that they will work together collaboratively and in good faith to support appropriate activities consistent with the Permitted Uses of the Property by Grantor while also protecting the Conservation Values of the Property. Activities consistent with Grantor’s Permitted Uses do not require prior written approval, however Grantor will notify Grantee of the planned activities before starting the activity. For any activity outside of the Permitted Uses, where the Grantee’s approval is required for that activity prior to Grantor engaging in the activity, Grantor’s shall submit a written request for approval that contains detailed information regarding the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information. Such a request shall be delivered to Grantee at least sixty (60) days prior to the anticipated start date of such activity. Grantee agrees to use reasonable diligence to respond to the request within sixty (60) days and further agrees that such approval will not be unreasonably withheld. A decision by Grantee to disapprove must be based on Grantee’s determination that the proposed activity may affect the Conservation Values of the Property.

3.2 Development and Construction. Development and construction of any buildings or structures on the Property, including, but not limited to, buildings intended for occupancy for residential purposes is prohibited except as follows:

- (a) **Constructing and maintaining structures and other improvements relating to the Groundwater Protection and Recharge Uses, including but not limited to one or more basins or other water conveyance, storage, sewage treatment or recharge facilities that would result in the enhanced infiltration and**

recharge (the “Permitted Uses”) are permitted, subject to submission of plans and specifications to Grantee for review and comment and mutually agreed upon between the parties. Grantor and Grantee acknowledge and understand that the Permitted Uses will require the completion of a feasibility study and thus the structures and other improvements that ultimately will be required for these Uses are not known for certain. The Grantor might also partner with the Town of Huachuca City, Fort Huachuca, or other entities to convey accelerated runoff and/or treated effluent from developed areas to the Property, if water quality standards are met for recharge facilities. No groundwater or stormwater will be used for offsite consumptive purposes. The portion of the Property that could ultimately be used for Permitted Uses is also not known. Because the structures and other improvements relating to Permitted Uses, and the portion of the Property necessary for the implementation, are not known for certain, Grantee acknowledges that flexibility is necessary; provided, however, that any such structures, improvements and boundaries shall be consistent with the above description of such Permitted Uses.

Current Conditions: The Protected Property is currently vacant, undeveloped, and free of structures.

3.3 Subdivision. The division, subdivision, or de facto subdivision of the Property into two or more parcels, whether by physical or legal process, including but not limited to the partition of undivided interests, or the transfer of title to the Property except as a single parcel is prohibited.

Current Conditions: The Protected Property is currently not subdivided and consists of approximately 104 acres as described in Exhibit 1.

3.4 Livestock Management. Pasturing, grazing, feeding, and care of horses, and cattle and/or other livestock by Grantor and the leasing or pasturing of livestock owned by others may be conducted using best management practices documented in a Stewardship and Grazing Management Plan which shall be developed by the Grantor, submitted to Grantee for review and comment, and mutually agreed upon between the parties.

a. The Stewardship and Grazing Management Plan shall include a seasonal grazing system that identifies stocking rates, season of use, frequency of use, kind or mix of animals, and related necessary infrastructure; identify best management practices for livestock management and water quality; describe food supplements (such as hay or other) that may be placed on the Property; and must maintain and/or enhance riparian conditions and Conservation Values on the Property.

b. Grantor's activities may include those normally incident to range management and enhancement. Such activity may include controlled burns, habitat restoration, seasonal confining of livestock into an area for limited durations for range management, and other land management activities that may be appropriate and as described in the Stewardship and Grazing Management Plan. All Stewardship Activities on the Property shall be carried out in compliance with all applicable laws, rules, and regulations and in compliance with the Purpose and terms of this Easement.

Current Conditions: There is currently no grazing, pasturing, or other management of livestock on the Protected Property.

3.5 Recreational & Educational Use. Utilizing the Property for non-commercial, non-motorized recreational uses including hiking, horseback riding, wildlife observation, nature photography, educational field trips, picnicking and hunting that do not materially negatively affect the Conservation Values of the Property is permitted. In addition, the Grantor may make the Property accessible to the public for the educational purpose of demonstrating and showcasing the Permitted Uses, as well as other Conservation Values. With prior approval of Grantee, Grantor may build such structures and improvements, including unpaved trails for non-motorized use, as are necessary to these purposes so long as they do not compromise Conservation Values.

Current Conditions: The Protected Property is not currently being utilized for any recreational or educational uses.

3.6 Removal of Native Vegetation. Cutting, removing, or destruction of native vegetation is prohibited except as follows:

(a) **The selective harvesting of native trees and vegetation is permitted for the following purposes: controlling insects and disease; protecting persons or property from the hazards of falling trees or branches or wildfire; constructing the Buildings, Structures, and roads authorized in this Conservation Easement. These conditions apply to both living and standing dead trees and vegetation. Subject to Grantee's prior written approval, if Grantor desires to sell products as a result of selective harvesting of trees and vegetation permitted herein, such activity shall not be deemed a commercial activity prohibited by this Conservation Easement.**

(b) **Cutting, removing, burning, or destruction of native vegetation is permitted to the extent necessary to allow for uses and activities as needed for Permitted Uses.**

Current Conditions: Some native vegetation was cut in January 2019 to construct new wildlife-friendly fence along portions of the Protected Property's boundaries and along the northern bank cut of the Babocomari River. Within the main channel of the Babocomari River there are some downed trees and limbs because of seasonal flooding.

3.7 Changing the Topography of the Property. Changing the topography of the Property by placing on it or removing from it any soil, dredging spoils, land fill, or other material, is prohibited except as follows:

(a) **Construction of stockponds or in furtherance of Permitted Uses.**

Current Conditions: There is some limited evidence of historic gravel mining primarily in the Protected Property's northwest quadrant (see Photo Point 1, Photo 1). The Protected Property has experienced significant topographic changes because of historic erosion, flooding, and other ecological degradation.

3.8 Fences. Maintenance, removal, repair, and, if destroyed, reconstruction of existing fencing, as documented in the Easement Documentation Report, and the construction of new fences to prevent trespass or to facilitate livestock management is permitted. It is the responsibility of the Grantor to limit trespass uses, provided that new or reconstructed boundary or pasture-division fences shall not unduly restrict or exclude wildlife use of the Property. Any new or rebuilt fencing shall be designed and constructed following applicable legal standards and minimizes the adverse effect of the fencing on wildlife or on the natural features of the Property.

Current Conditions: Fences on the Protected Property include perimeter fencing constructed with barbed and smooth wire, a limited section of farm field fence along the homesite on the neighboring parcel to the northeast, and an interior barbed and smooth wire along the northern bank cut of the Babocomari River. Approximate location of fencing is shown on Exhibit 2, Map B. Fences running through the main channel of the Babocomari River consist of a single strand of smooth wire to allow for the movement of wildlife and flood waters. The southern bank cut of the Babocomari River within the Protected Property is not fenced in its entirety.

3.9 Roads. No new roads may be constructed on the property except those necessary for uses permitted by this Easement as mutually agreed upon between the parties. Preserving, repairing, maintaining, and replacing the existing roads and utility access across the Property and to relocate the existing roads and utility access on the Property is permitted when reasonably necessary to maintain the use thereof.

Current Conditions: No maintained roads exist on the Protected Property. There are dirt two tracks entering the property at its entrance gate and traveling to a gate in the interior fence along the northern bank cut, as well as additional dirt two tracks created by historic vehicle traffic.

3.10 Motor vehicles. Using motor vehicles upon and across the Property except as reasonably necessary for Permitted Uses is prohibited except on the roads and trails described in the Easement Documentation Report or otherwise determined by mutual agreement between the parties. Recreational off-road vehicle use is not permitted.

Current Conditions: Since acquisition by the Conservancy, all vehicle traffic across the property has been limited to existing dirt two-tracks for maintenance and inspection activities, as well as the installation of a monitoring well in April 2019. There is evidence of historic vehicle traffic primarily in the area of the Protected Property north of the main channel of the Babocomari River, and along some larger washes in the main river channel.

3.11 Trash. The dumping or accumulation of any kind of trash or refuse on the Property, other than trash and refuse produced on the Property as result of Permitted Uses, is strictly prohibited. However, this shall not prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

Current Conditions: There is no trash accumulated on the property except for some small refuse items that have been deposited on the Protected Property as a result of flooding.

3.12 Feed Lot. The establishment or maintenance of a commercial feed lot is prohibited. For purposes of this Easement, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock.

Current Conditions: There is no feed lot on the Protected Property.

3.13 Agricultural Chemicals. Application of agrichemicals, including but not limited to biocides, herbicides, defoliants, chemical fertilizers, or other chemicals is prohibited except as follows:

(a) Using agrichemicals, but only in those amounts and with the frequency of application reasonably necessary for Permitted Uses; natural resource management associated with

livestock grazing, recreational, and educational uses; and, other property uses permitted in this Easement. All agrichemical use shall be in accordance with label directions and in compliance with applicable federal, state, and local laws, regulations, and requirements.

(b) Application of herbicides, defoliant or other chemicals for the control of noxious weeds, as required by Arizona state law, and for the control of other invasive exotic plant species is permitted; provided that herbicides, defoliant or other chemicals may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control and shall be applied consistent with labeled instructions and all applicable governmental regulations.

(c) Regardless of anything to the contrary, aerial spraying of biocides, herbicides, defoliant, chemical fertilizers, or other agrichemicals is permitted only with the prior written approval of Grantee.

Current Conditions: No agricultural chemicals are currently being used on the Protected Property.

3.14 Biological Agents. Use of biological weed and insect control agents is permitted, subject to prior written approval by Grantee, except that the following biological agents are deemed approved in advance by Grantee:

- Biological agents for fly control (such as Fly Eliminators from Arbico Organics), provided that such agents are native species to this region.
- Bti (bacillus thuringiensis israelensis) (such as Mosquito Dunks) to control mosquito larvae.

Grantor and Grantee acknowledge and agree that the list of permissible biological agents may be amended, upon mutual agreement of the parties.

Current Conditions: No biological agents are currently being used on the Protected Property.

3.15 Mining. The commercial mining or extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method is prohibited; provided that mineral extraction is permitted if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the real property that is not irretrievably destructive of the Conservation Values of the Property, and provided further that the proposed mining or extraction will not substantially diminish or impair the Conservation Values of the Property. No extraction permitted pursuant to this paragraph shall occur without prior written notice to Grantee, which notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof. Nothing herein purports to create any responsibility or liability of Grantor should there be entry upon the Property by third persons not under control of Grantor, including persons who may lawfully enter upon the land pursuant to rights of mineral entry in state or federal patents. This section does not apply to necessary sediment removal from construction or maintenance of basins, settling ponds or other facilities designed and constructed as part of Permitted Uses.

Current Conditions: There are currently no mining activities on the Protected Property. There are several small piles of rock and gravel in the northeast quadrant of the Protected Property, the origins of which are unknown (see Photo Point 1, Photo 1).

3.16 Hazardous Materials. The release of or other disposal (such as by burying) of Hazardous Materials as defined in this Conservation Easement on the Property is prohibited. The storage of Hazardous Materials on the Property is also prohibited, except that storage and use of

Hazardous Materials in limited quantities for purposes and uses permitted under this Conservation Easement shall be permitted in compliance with all laws.

Current Conditions: No hazardous or toxic materials have been dumped or disposed of on the Protected Property. There are no hazardous materials stored on the Protected Property.

3.17 Commercial or Industrial Activity. Establishment of any commercial activity that may have an adverse effect on the Conservation Values is prohibited. Grantor's rights to use the Property as permitted by this Conservation Easement shall not be deemed a prohibited commercial use.

Current Conditions: No commercial or industrial activity of any kind is currently being undertaken on the Protected Property.

3.18 Water Usage. Grantor may consumptively use water that is harvested from storm water or ground water for Permitted Uses, and non-irrigated agricultural use only; no commercial, industrial or residential use of water on the Property is permitted. The parties acknowledge the existence of a groundwater monitoring well on the Property and acknowledge that a well for the purpose of livestock management may be constructed, the size, location and other features of which shall be mutually agreed upon by the parties. Any export of water from the Property or streams traversing the Property is prohibited, except that export of water for Grantor's livestock management and stewardship activities on adjacent properties may be permitted with prior approval by Grantee.

Current Conditions: No consumptive water use is currently being undertaken on the Protected Property.

3.19 Electromagnetic generation. Construction and/or operation of cellular towers, radio-telephone repeaters, wind powered electrical generators, television or radio stations, radio-dispatch dependent businesses, microwave or other wireless communications systems operating between 2.4MHz and 8GHZ, and structures more than 50 feet in height are prohibited.

Current Conditions: No sources of electromagnetic radiation are currently on the Protected Property.

3.20 Nonnative Plants. Intentional introduction of non-native plants is prohibited.

Current Conditions: There has been no purposeful introduction of plants that are not native to the ecological systems of Cochise County, Arizona, other than typical weed species that may commonly occur in this region.

3.21 Nonnative Animal Species. Introduction or release of nonnative animal species is prohibited, except as permitted in section 3.3:

Current Conditions: There has been no purposeful introduction of nonnative animals on the Protected Property, other than some historic livestock grazing that occurred prior to acquisition of the Protected Property by the Conservancy.

3.22 Impairment of Conservation Values. Subject to the foregoing, any use of the Property that materially impairs the Conservation Values of the Property is prohibited.

Current Conditions: No other use is currently occurring that would impair the Conservation Values of the Protected Property.

**EXHIBIT 1
LEGAL DESCRIPTION**

The Land referred to herein below is situated in the County of Cochise, State of Arizona, and is described as follows:

PARCEL I:

That portion of the SAN IGNACIO DEL BABOCOMARI Private Land Grant, situated in Township 20 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County Arizona, being a portion of Parcel 18, according to Book 23 of Surveys, page 89, records of Cochise County, Arizona, described as follows:

BEGINNING at a General Land Office (GLO) Corner No. 1 of said Land Grant as shown on said Record of Survey recorded in Book 23 of Surveys, page 89, records of Cochise County, Arizona;

THENCE South 71°10'50" West, along the Southerly line of said Land Grant, a distance of 2,401.37 feet to a GLO stone marking the 1-1/2 mile marker of said Land Grant;

THENCE South 71°08'49" West continuing along said Southerly line, a distance of 423.46 feet;

THENCE North 00°00'00" West, a distance of 2,213.74 feet;

THENCE North 82°11'26" East, a distance of 1,434.95 feet;

THENCE South 10°28'26" East, a distance of 298.12 feet;

THENCE North 79°31'34" East, a distance of 752.62 feet to the Easterly line of said Land Grant;

THENCE South 18°51'51" East (basis of bearings), along said Easterly line, a distance of 1,179.17 feet to a GLO stone marking the 1 mile marker of said Land Grant;

THENCE South 18°47'19" East, continuing along said Easterly line of said Land Grant, a distance of 237.73 feet to the POINT OF BEGINNING.

EXCEPT any gold, silver or quicksilver mines or minerals of the same within the boundaries of the Grant as reserved in Patent from United States of America.

PARCEL II:

An easement for ingress, egress and utilities over the North 30.00 feet of following described property:

That portion of the SAN IGNACIO DEL BABOCOMARI Private Land Grant, situated in Township 20 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County Arizona, being a portion of Parcel 18, according to Book 23 of Surveys, page 89, records of Cochise County, Arizona, described as follows:

COMMENCING at a GLO corner No. 1 of said Land Grant;

THENCE South 71° 10' 50" West a distance of 2,401.37 feet to Mile Marker 1-1/2;

THENCE South 71° 08' 49" West a distance of 423.46 feet to the POINT OF BEGINNING;

THENCE North a distance of 2,213.74 feet to a point;

THENCE South 82° 11' 26" West 1,611.70 feet to a point on the West line of Parcel 18;

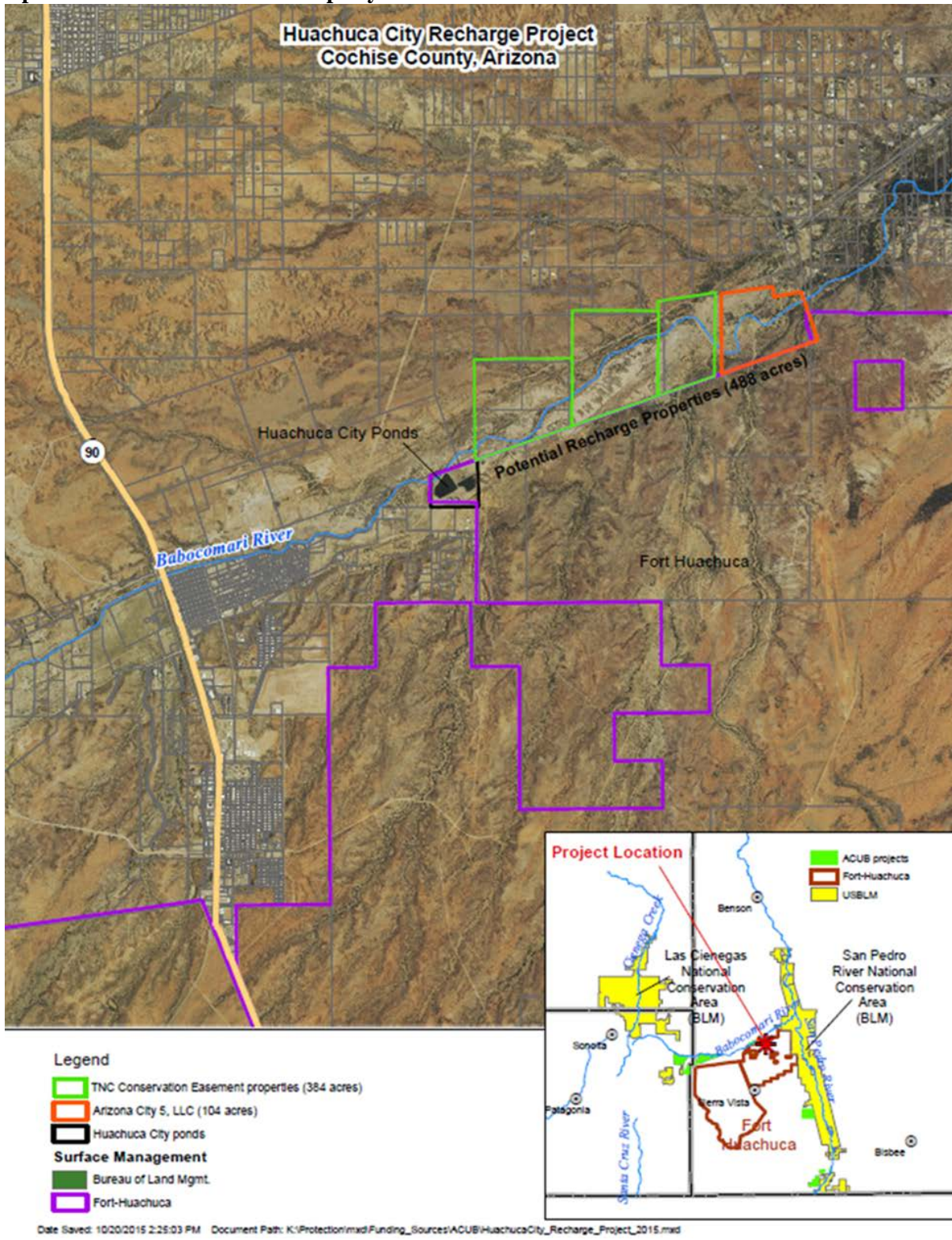
THENCE South 00° 00' 00" West, along the West line of Parcel 18 a distance of 2,540.60 to the Southwest corner of said Parcel 18;

THENCE North 71° 08' 49" East 1,690.43 feet to the POINT OF BEGINNING;

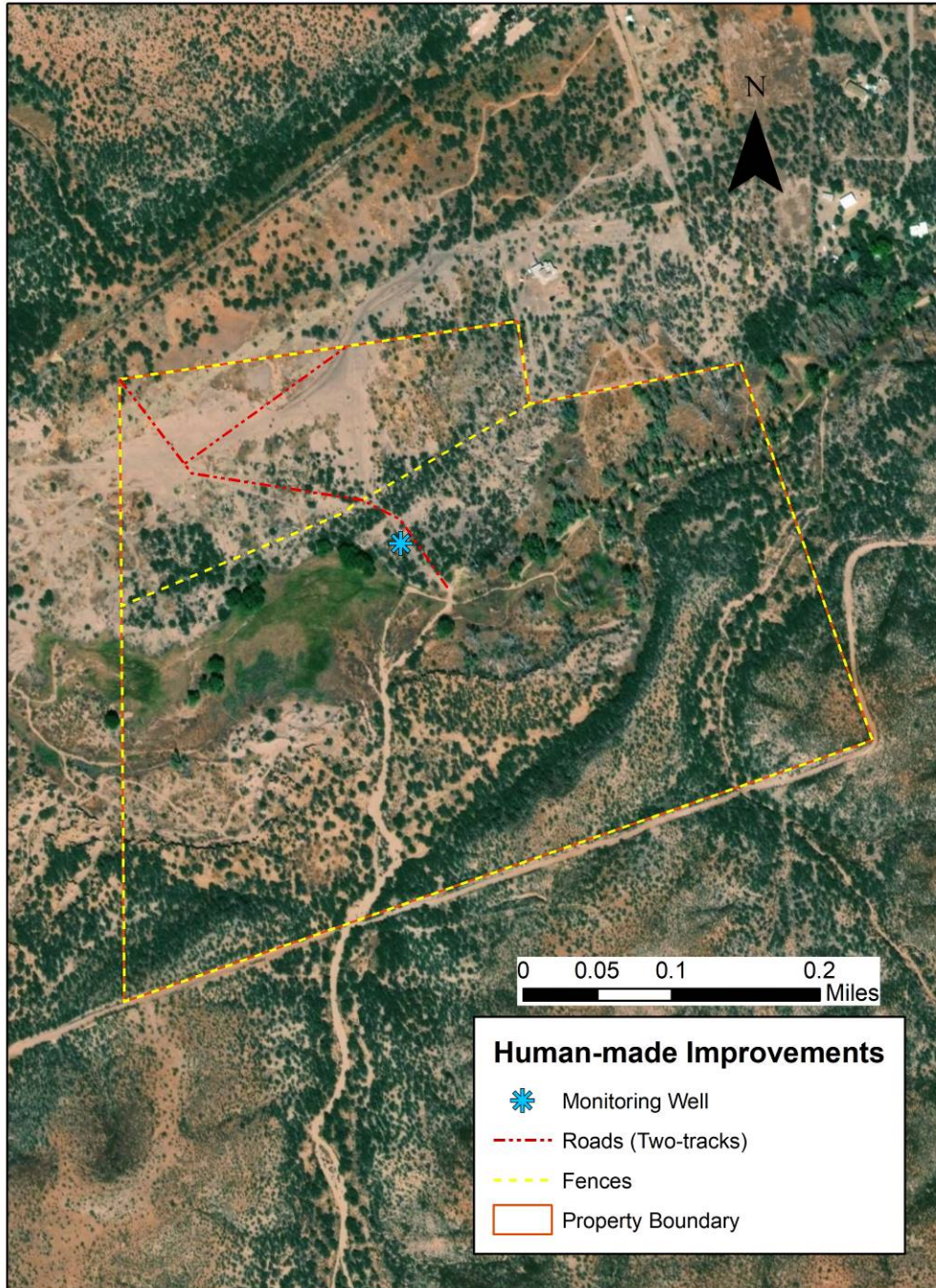
EXCEPT any gold, silver or quicksilver mines or minerals of the same within the boundaries of the Grant as reserved in Patent from United States of America.

EXHIBIT 2
Maps of Protected Property

Map A: Location of Protected Property



Map B. Human-made Improvements



Map C. Aerial Photograph & Photo Point Locations



EXHIBIT 3
LIST OF PHOTOGRAPHS & PHOTOGRAPHS

The photographs listed below and incorporated herein were taken on June 6, 2019. The photographs accompany this report.

Photo points are shown on the map attached as Exhibit 2 (Map C) to this report.

Photo Point 1: Photo point is located at the northwest corner of the Protected Property at the entrance gate to the property.

(Lat/Long: 31.667/-110.290)

Photo 1 – Looking south along the western property boundary.

Photo 2 – Looking southeast across the northern portion of the Protected Property.

Photo 3 – Looking east along the northern property boundary.

Photo Point 2: Photo point is located along the western property on a small mound just north of the main channel of the Babocomari River.

(Lat/Long: 31.665/-110.290)

Photo 4 – Looking south along the western property boundary at main channel of the Babocomari.

Photo 5 – Looking north along the western property boundary at main channel of the Babocomari.

Photo 6 – Looking northeast across the northern portion of the Protected Property.

Photo Point 3: Photo point is located at the intersection of the interior fence line at western property boundary.

(Lat/Long: 31.664/-110.290)

Photo 7 – Looking south along the western property boundary, overlooking main channel.

Photo 8 – Looking north along the western boundary of the Protected Property.

Photo 9 – Looking east along the interior fence along north bank cut.

Photo Point 4: Photo point taken at northernmost point of Protected Property.

(Lat/Long: 31.667/-110.286)

Photo 10 – Looking south along boundary shared with homesite on parcel to the east.

Photo 11 – Looking west along northern property boundary.

Photo Point 5: Photo point was taken at the intersection of the interior fence line with northern property boundary that lies south of the neighboring homesite.

(Lat/Long: 31.666/-110.285)

Photo 12 – Looking west along interior fence line.

Photo 13 – Looking north along the eastern property boundary adjacent to neighboring homesite (looking towards Photo Point 4).

Photo 14 – Looking south towards the northern bank cut of the main channel of the Babocomari..

Photo 15 – Looking east along northern property boundary shared with neighboring homesite.

Gate in view accesses neighboring parcel and pre-dates acquisition of the Protected Property by the Conservancy.

Photo Point 6: Photo point was taken at the gate in the interior fence line.

(Lat/Long: 31.665/-110.288)

Photo 16 – Looking southeast at gate and dirt two-track leading towards monitoring well site and main channel.

Photo 17 – Looking west along interior fence line.

Photo 18 – Looking northwest along dirt two-track that leads to property entrance.

Photo 19 – Looking west along interior fence line.

Photo Point 7: Photo point taken at the monitoring well site.

(Lat/Long: 31.665/-110.287)

Photo 20 – Looking west, directly at monitoring well.

Photo Point 8: Photo point taken in a large channel that crosses the southern property boundary shared with Fort Huachuca

(Lat/Long: 31.661/-110.287)

Photo 21 – Looking south towards property boundary with Fort Huachuca

Photo 22 – Looking north along channel that connects with the Babocomari River.

Photo Point 9: Photo point taken at southwest corner of property boundary.

(Lat/Long: 31.661/-110.290)

Photo 23 – Looking north along the western property boundary towards the main channel of Babocomari River.

Photo 24 – Looking east along southern property boundary.

Photo Point 10: Photo Point taken along the western property boundary from within the main channel of the Babocomari River.

(Lat/Long: 31.662/-110.290)

Photo 25 – Looking south along western property boundary towards the southwest corner of property at top of hill.

Photo 26 – Looking north along the western property boundary.

Photo 27 – Looking east across main channel of Babocomari River.

Photo Point 11: Photo point taken at the easternmost, northern corner of property.

(Lat/Long: 31.667/-110.283)

Photo 28 – Looking south along the eastern property boundary across the main channel of the Babocomari River.

Photo 29 – Looking west along the northern property boundary which is heavily eroded..

Photo Point 12: Photo point taken in a smaller channel that crosses the southern property boundary shared with Fort Huachuca (this point is east of Photo Point 8).

(Lat/Long: 31.663/-110.283)

Photo 30 – Looking north along the channel.

Photo 31 – Looking west along southern property boundary.

Photo Point 13: Photo point taken at the southeast property corner.

(Lat/Long: 31.663/-110.282)

Photo 32 – Looking north along the eastern property boundary.

Photo 33 – Looking west along the southern property boundary.

Photo 34 – Looking northwest across the Protected Property.

PHOTOGRAPHS



PHOTO 1: LOOKING SOUTH ALONG THE WESTERN PROPERTY BOUNDARY. (PHOTO POINT 1)



PHOTO 2: LOOKING SOUTHEAST ACROSS THE NORTHERN PORTION OF THE PROTECTED PROPERTY.. (PHOTO POINT 1)



PHOTO 3: LOOKING EAST ALONG THE NORTHERN PROPERTY BOUNDARY. (PHOTO POINT 1)



PHOTO 4: LOOKING SOUTH ALONG THE WESTERN PROPERTY BOUNDARY AT MAIN CHANNEL OF THE BABOCOMARI. (PHOTO POINT 2)



PHOTO 5: LOOKING NORTH ALONG THE WESTERN PROPERTY BOUNDARY AT MAIN CHANNEL OF THE BABOCOMARI. . (PHOTO POINT 2)



PHOTO 6: LOOKING NORTHEAST ACROSS THE NORTHERN PORTION OF THE PROTECTED PROPERTY. (PHOTO POINT 2)



PHOTO 7: LOOKING SOUTH ALONG THE WESTERN PROPERTY BOUNDARY, OVERLOOKING MAIN CHANNEL. (PHOTO POINT 3)



PHOTO 8: LOOKING NORTH ALONG THE WESTERN BOUNDARY OF THE PROTECTED PROPERTY. (PHOTO POINT 3)



PHOTO 9: LOOKING EAST ALONG THE INTERIOR FENCE ALONG NORTH BANK CUT. (PHOTO POINT 3)



PHOTO 10: LOOKING SOUTH ALONG BOUNDARY SHARED WITH HOMESITE ON PARCEL TO THE EAST. (PHOTO POINT 4).



PHOTO 11: LOOKING WEST ALONG NORTHERN PROPERTY BOUNDARY. (PHOTO POINT 4)



PHOTO 12: LOOKING WEST ALONG INTERIOR FENCE LINE.
(PHOTO POINT 5)



PHOTO 13: LOOKING NORTH ALONG THE EASTERN PROPERTY BOUNDARY ADJACENT TO NEIGHBORING HOMESITE; LOOKING TOWARDS PHOTO POINT 4. (PHOTO POINT 5)



PHOTO 14: LOOKING SOUTH TOWARDS THE NORTHERN BANK CUT OF THE MAIN CHANNEL OF THE BABOCOMARI. (PHOTO POINT 5)



PHOTO 15: LOOKING EAST ALONG NORTHERN PROPERTY BOUNDARY SHARED WITH NEIGHBORING HOMESITE. GATE IN VIEW ACCESSES NEIGHBORING PARCEL AND PRE-DATES ACQUISITION OF THE PROTECTED PROPERTY BY THE CONSERVANCY. (PHOTO POINT 5)



PHOTO 16: LOOKING SOUTHEAST AT GATE AND DIRT TWO-TRACK LEADING TOWARDS MONITORING WELL SITE AND MAIN CHANNEL. (PHOTO POINT 6)



PHOTO 17: LOOKING WEST ALONG INTERIOR FENCE LINE. (PHOTO POINT 6)



PHOTO 18: LOOKING NORTHWEST ALONG DIRT TWO-TRACK THAT LEADS TO PROPERTY ENTRANCE. (PHOTO POINT 6)



PHOTO 19: LOOKING WEST ALONG INTERIOR FENCE LINE. (PHOTO POINT 6)



PHOTO 20: LOOKING WEST, DIRECTLY AT MONITORING WELL. (PHOTO POINT 7)



PHOTO 21: LOOKING SOUTH TOWARDS PROPERTY BOUNDARY WITH FORT HUACHUCA.
(PHOTO POINT 8)



PHOTO 22: LOOKING NORTH ALONG CHANNEL THAT CONNECTS WITH THE
BABOCOMARI RIVER. (PHOTO POINT 8)



PHOTO 23: LOOKING NORTH ALONG THE WESTERN PROPERTY BOUNDARY TOWARDS THE MAIN CHANNEL OF BABOCOMARI RIVER. (PHOTO POINT 9)



PHOTO 24: LOOKING EAST ALONG SOUTHERN PROPERTY BOUNDARY. (PHOTO POINT 9)



PHOTO 25: LOOKING SOUTH ALONG WESTERN PROPERTY BOUNDARY TOWARDS THE SOUTHWEST CORNER OF PROPERTY AT TOP OF HILL. (PHOTO POINT 10)



PHOTO 26: LOOKING NORTH ALONG THE WESTERN PROPERTY BOUNDARY. (PHOTO POINT 10)



PHOTO 27: LOOKING EAST ACROSS MAIN CHANNEL OF BABOCOMARI RIVER. (PHOTO POINT 10)



PHOTO 28: LOOKING SOUTH ALONG THE EASTERN PROPERTY BOUNDARY ACROSS THE MAIN CHANNEL OF THE BABOCOMARI RIVER. (PHOTO POINT 11)



PHOTO 29: LOOKING WEST ALONG THE NORTHER PROPERTY BOUNDARY WHICH IS HEAVILY ERODED. (PHOTO POINT 11)



PHOTO 30: LOOKING NORTH ALONG THE CHANNEL. (PHOTO POINT 12)



PHOTO 31: LOOKING WEST ALONG SOUTHERN PROPERTY BOUNDARY. (PHOTO POINT 12)



PHOTO 32: LOOKING NORTH ALONG THE EASTERN PROPERTY BOUNDARY. (PHOTO POINT 13)



PHOTO 33: LOOKING WEST ALONG THE SOUTHERN PROPERTY BOUNDARY. (PHOTO POINT 13)



PHOTO 34: LOOKING NORTHWEST ACROSS THE PROTECTED PROPERTY. (PHOTO POINT 13)

**EXHIBIT 4
GPS WAYPOINTS**

A total of 34 photographs were taken to document the current conditions of the property as of the date of this report (See Exhibit 2, Map C for Photo Point locations corresponding to below waypoints and Exhibit 3 for photographs). Only those photos designated for repeat photo monitoring in the table below will be taken during annual conservation easement monitoring visits.

WAYPOINT /PHOTO POINT IDENTIFICATION	LAT	LONG	REPEAT PHOTO MONITORING?
1	31.667	-110.290	YES
2	31.665	-110.290	YES
3	31.664	-110.290	YES
4	31.667	-110.286	YES
5	31.666	-110.285	YES
6	31.665	-110.288	YES
7	31.665	-110.287	YES
8	31.661	-110.287	
9	31.661	-110.290	
10	31.662	-110.290	YES
11	31.667	-110.283	YES
12	31.663	-110.283	
13	31.663	-110.282	