

Introduced by _____ Council Bill No. R 98-13

A RESOLUTION

authorizing the City Manager to execute a declaration of restrictive covenants necessary for wetlands mitigation along a portion of the Forum Nature Area for the Katy Place Trail project required in connection with a permit issued by the Army Corps of Engineers.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a declaration of restrictive covenants necessary for wetlands mitigation along a portion of the Forum Nature Area for the Katy Place Trail project required in connection with Permit No. NWK-2011-01640 issued by the Army Corps of Engineers to fill certain waters of the United States.

SECTION 2. The form and content of the declaration of restrictive covenants shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

ADOPTED this _____ day of _____, 2013.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

Exhibit 1

DECLARATION OF RESTRICTIVE COVENANTS

The Declarant, The City of Columbia, is the fee simple owner of the certain real property located in Boone County, MISSOURI, as described on Exhibit A, which is attached hereto and incorporated herein by reference (the "Mitigation Area"). Declarant has applied for and received Permit No. NWK-2011-01640 from the United States Army Corps of Engineers (the "Corps") to fill certain waters of the United States (the "Permit"). In consideration of the issuance of the Permit and in compliance with the terms thereof, and for other good and valuable consideration, the Declarant hereby declares that that the portion of the property described in Exhibit A shall henceforth be subject to the following restrictive covenants (the "Restrictions"). As used herein, the term "Declarant" includes and shall be binding upon The City of Columbia, its successors, heirs, and assigns.

1. **Purpose:** The purpose of these Restrictions is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition, and to retain such areas as suitable habitat for fish, plants, or wildlife. Those wetland or upland areas that are to be restored, enhanced, or created pursuant to the Permit shall be retained and maintained in the restored, enhanced, or created condition required by the Permit.

2. **Rights of Corps and Owners in the Development:** The following rights are conveyed to the Corps and any Owner of any parcel of real estate in the Development (the "Owner" or "Owners"):

- a. The right to take action to preserve and protect the environmental value of the Property; and
- b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of these Restrictions, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;
- c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if the Declarant is complying with the covenants and prohibitions contained in these Restrictions; and
- d. The right to proceed at law or in equity to enforce the provisions of these Restrictions, and to prevent the occurrence of any of the prohibited activities hereinafter set forth.

3. **Prohibited Uses:** Except for restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements, which are permitted or required by the Permit, the following activities are prohibited on the Property:

- a. Construction of any structure or object (i.e., buildings, roads, above or below ground utilities, signs, billboards etc.) without written approval from the Corps of Engineers prior to construction;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except as may be permitted by the Permit, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by the Corps;

d. Planting of nuisance, exotic, or non-native plants as listed by the State of MISSOURI;

e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, loam, peat, gravel, soil, rock, or other material substance, except as may be permitted or required by the Permit;

f. Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that may affect the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep, or as otherwise may be permitted or required by the Permit;

g. Tilling, plowing, planting of crops, digging, mining, or other activities that are or may be detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or fish and wildlife habitat preservation, including but not limited to ditching, diking, and fencing, except as permitted or required by the Permit;

h. The extraction of water from the Property or adjacent properties owned by Grantor, or the impoundment of water on the Property or on adjacent properties owned by Grantor, so as to affect the hydrology of the Property;

i. Acts or uses detrimental to the aforementioned retention and maintenance of land or water areas;

j. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. Reserved Rights: Declarant reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any Corps rule, criteria, permit, or the intent and purposes of these Restrictions.

5. Taxes: Declarant shall pay any and all applicable real property taxes and assessments levied by competent taxing authority on the Property.

6. **Maintenance:** Declarant shall, at Declarant's sole expense, operate, maintain and keep up the Property consistent with the purpose of these Restrictions. Declarant shall remove from the Property any nuisance, exotic, or non-native plants as listed by the State of MISSOURI and shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Permit.

7. **Hazardous Waste:** Declarant covenants that if any hazardous substances or toxic waste exist or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, or there are or have been any underground storage tanks on the Property, Declarant shall be responsible for any and all necessary costs of remediation.

8. **Liability:** Declarant shall continue to retain all liability for any injury or damage to the person or property of third parties that may occur on the Property arising from solely by reason of ownership of the Property. Neither Declarant, nor any person claiming by or through Declarant, shall hold the Corps or any Owner liable for any damage or injury that may occur on the Property.

9. **Recording Requirements:** Declarant shall record these Restrictions in the official records of Boone County, MISSOURI, and shall re-record these Restrictions at any time the Corps may require to preserve its rights. Declarant shall pay all recording costs and taxes necessary at any time to record these Restrictions in the public records. Declarant shall thereafter insert the terms and restrictions of these Restrictions in any deed or other legal instrument by which Declarant divests itself of any interest in the Development, and shall provide a copy of these Restrictions to the new owner(s).

10. **Enforcement:** The terms and conditions of these Restrictions may be enforced in an action at law or equity by the Corps or any Owner against the Declarant or any other party violating or attempting to violate these Restrictions. Venue for any such action shall be in Boone County, MISSOURI. Enforcement of these Restrictions shall be at the reasonable discretion of the Corps or Owner, and any forbearance on behalf of the Corps or Owner to exercise any right hereunder in the event of any breach by Declarant shall not be deemed or construed to be a waiver of rights. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions, and restrictions of these Restrictions, including without limitation, the costs of suit, and attorney's fees, shall be borne by and recoverable against the non-prevailing party in such proceedings, except that such costs shall not be recoverable against the Corps. In addition, if the Corps or any Owner shall prevail in an enforcement action, such party shall also be entitled to recover that party's cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of these Restrictions or to the vegetative and hydrologic condition required by the Permits.

11. **Effect of Restrictions:** These Restrictions shall take effect immediately upon declaration and shall run with the land in perpetuity. These Restrictions shall be deemed to survive unity of title. Declarant shall take no action to rescind, revoke, or otherwise nullify these Restrictions.

12. **Successors:** The covenants, terms, conditions, and restrictions of these Restrictions shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

13. **Notices:** All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest. Any and all notices to the Declarant may be addressed to:

City of Columbia
701 East Broadway
Columbia, MO 65205

14. **Severability:** If any provision of these Restrictions or the application thereof to any person or circumstances is found to be invalid, the remainder of the Restrictions shall not be affected thereby, as long as the purpose of these Restrictions is preserved.

15. **Alteration or Revocation:** These Restrictions may be amended, altered, released, canceled, or revoked only by written agreement between all then-current owners of all parcels of land located in the Development as shown the by the public records of Boone County, MISSOURI. No action shall be taken, however, without advance written approval by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Restrictions, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice to the Corps, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of Boone County, MISSOURI, within 30 days thereafter.

16. **Controlling Law:** The interpretation and performance of these Restrictions shall be governed by the laws of the State of MISSOURI.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Restrictive Covenants this _____ day of _____, 2013.

DECLARANT:
CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

STATE OF MISSOURI
COUNTY OF Boone

The foregoing Declaration of Restrictive Covenants was acknowledged before me this
_____ day of _____, 20____, by _____ as _____
of _____ who is personally known to me or has produced
_____ as identification.

My Commission Expires:

NOTARY PUBLIC

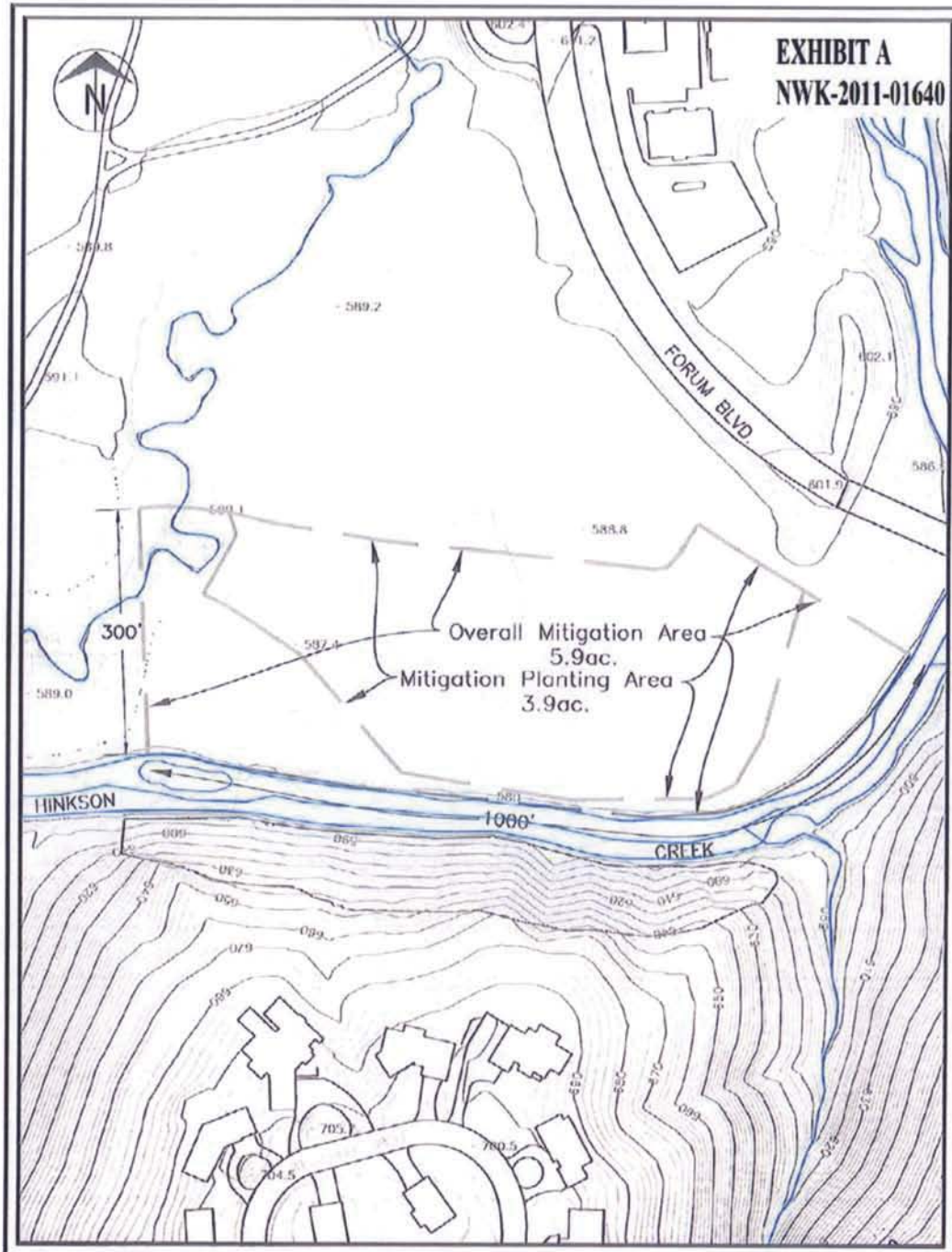


EXHIBIT A: NWK-2011-01640 MITIGATION AREA

IN NORTHEAST $\frac{1}{4}$ OF NORTHEAST $\frac{1}{4}$ OF SECTION 27, TOWNSHIP 48 NORTH,
RANGE 13 WEST, BOONE COUNTY, MISSOURI



Source: Public Works

Agenda Item No:

To: City Council
From: City Manager and Staff

Council Meeting Date: May 20, 2013

Re: Deed Restriction for Mitigation on Forum Nature Area Property

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration a resolution authorizing the City Manager to execute a deed restriction for a portion of Forum Nature Area. Stream mitigation is required by the Army Corps of Engineers for the Katy Place Trail project, and an area has been identified in the Forum Nature Area for the mitigation (see Attachment 1 for trail project location and mitigation area). The mitigation will involve planting 1,700 trees (see Attachment 2).

DISCUSSION:

As part of the Katy Place Trail project, a pond will be created to provide water and to aid in the maintenance of the recently constructed 3M Wetland just east of Chapel Hill Court. The pond will cover approximately 700 linear feet of a small stream which is tributary to Hinkson Creek. In order to acquire a Corps permit for covering the stream with a pond, staff proposed a mitigation plan whereby a 1000-foot long by 300-foot wide area along Hinkson Creek in Forum Nature Area will be reforested and protected. This area must be protected by deed restriction to satisfy requirements of the permit.

The departments of Public Works and Parks and Recreation had already planned to reforest the area as part of a project for the Hinkson Collaborative Adaptive Management (CAM) process, and Parks and Recreation was involved in formulating the mitigation plan.

FISCAL IMPACT:

The only cost associated with the Deed Restriction is \$42 for the recording fee.

VISION IMPACT:

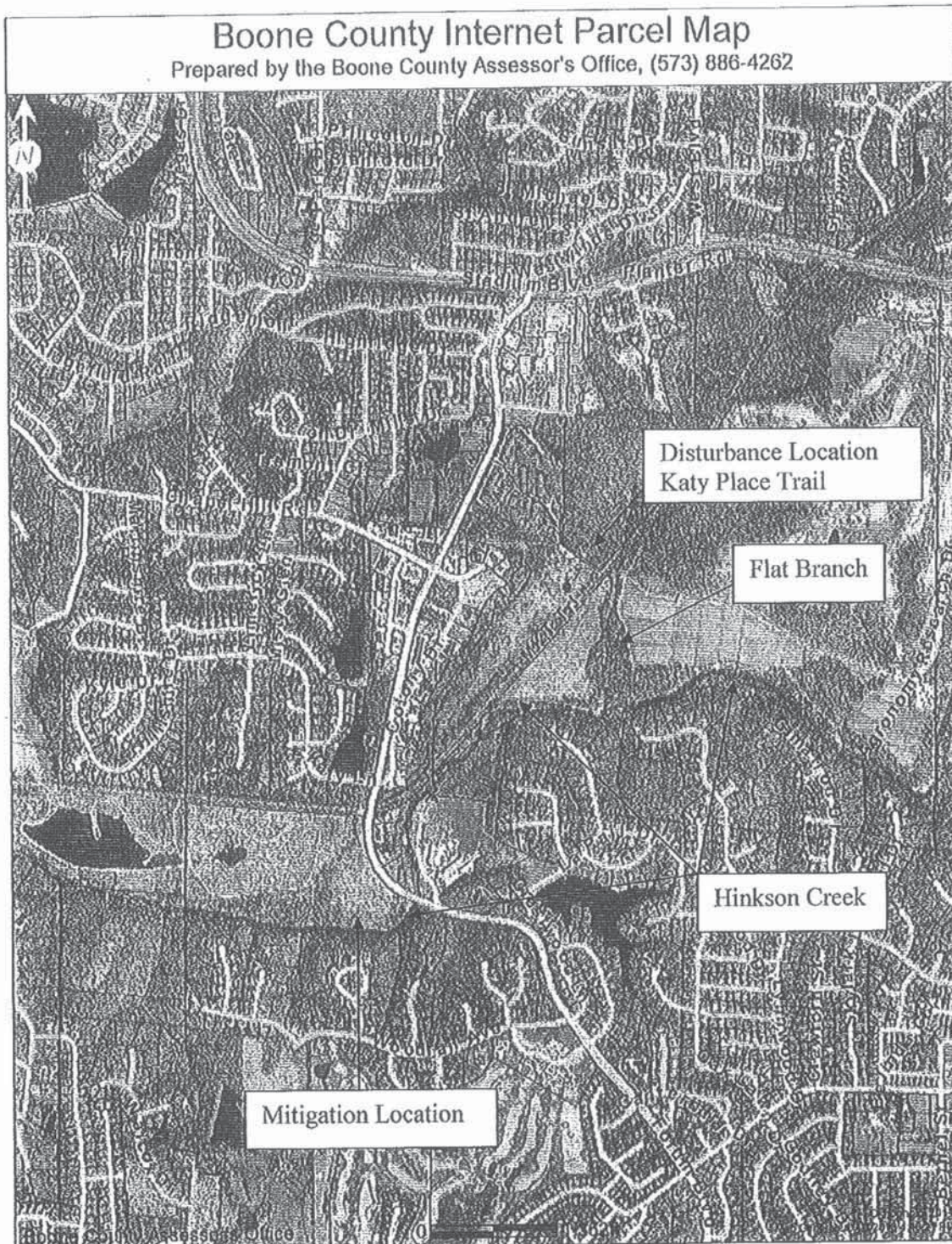
<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

Columbia and its neighboring communities will be a place where the air, water, land, and natural aesthetic qualities of our environment shall be protected by a combination of conservation strategies including, but not limited to, regulations and ordinances, conservation incentives, education programs, and smart growth planning.

SUGGESTED COUNCIL ACTIONS:

Approve the resolution authorizing the City Manager to execute a deed restriction for a portion of Forum Nature Area.

| FISCAL and VISION NOTES: | | | | | |
|--|---------|---|----|--|-----|
| City Fiscal Impact Enter all that apply | | Program Impact | | Mandates | |
| City's current net FY cost | \$0.00 | New Program/ Agency? | No | Federal or State mandated? | Yes |
| Amount of funds already appropriated | \$0.00 | Duplicates/Expands an existing program? | No | Vision Implementation impact | |
| Amount of budget amendment needed | \$0.00 | Fiscal Impact on any local political subdivision? | No | Enter all that apply: Refer to Web site | |
| Estimated 2 year net costs: | | Resources Required | | Vision Impact? | Yes |
| One Time | \$42.00 | Requires add'l FTE Personnel? | No | Primary Vision, Strategy and/or Goal Item # | 9.1 |
| Operating/ Ongoing | \$0.00 | Requires add'l facilities? | No | Secondary Vision, Strategy and/or Goal Item # | |
| | | Requires add'l capital equipment? | No | Fiscal year implementation Task # | |



ATTENTION!

DISCLAIMER, READ CAREFULLY: These maps were prepared for the inventory of real property based on the utilization of deeds, plans, and/or supportive data. In addition, map files are frequently changed to reflect changes in boundaries, lot lines and other geographic features resulting from changes in ownership, development and other causes. The existence, dimension, and location of features, as well as other information, should not be relied upon for any purpose without actual field verification. The County of Boone makes no warranty of any kind concerning the completeness or accuracy of information contained on these maps and assumes no liability or responsibility for the use or reuse of these maps by persons not affiliated with Boone County. Use of these maps by any person not affiliated with Boone County constitutes agreement by the user to assume full liability and responsibility for the verification of the accuracy of information shown.

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