

RESOLUTION

WHEREAS, it is the desire of the El Paso City Council to protect the environment and the natural resources unique to the El Paso region; and,

WHEREAS, there is an opportunity to guide and plan for future development and the protection of valuable open space that could potentially be lost if action is not taken; and,

WHEREAS, Castner Range is located outside of the City's corporate limits, in the northeast mountainous area of the City, and is owned by the United States Government (the "U.S."); and,

WHEREAS, the U.S. has declared that Castner Range be categorized as excess land under federal policy; and,

WHEREAS, the City Council wishes that the land be preserved and not developed, and wishes to request that the U.S. Department of the Army declare Castner Range as surplus land and consider either a Public Benefit Conveyance or Conservation Conveyance so that the whole of Castner Range is preserved and no portion is developed so that it is fully accessible and can be used by the public for passive or active recreational use.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

THAT the City Manager be authorized to send a letter on behalf of the El Paso City Council to be addressed and delivered to the Garrison Plans, Analysis & Integration Office at Fort Bliss, Texas (on behalf of the United States Department of Defense), to express the City of El Paso's desire to protect Castner Range in its entirety in its current state, and that it be preserved for future generations and that it not be developed in whole or in part. Further, that City staff coordinate with the City's federal lobbyist to add to the City's federal agenda a request for federal funds for the remediation of unexploded ordnance within Castner Range.

ADOPTED this _____ day of _____, 2006.

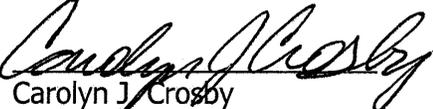
CITY OF EL PASO

John F. Cook
Mayor

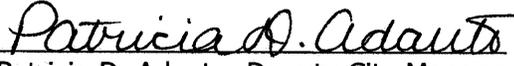
ATTEST:

Richarda Momsen
City Clerk

APPROVED AS TO FORM:


Carolyn J. Crosby
Assistant City Attorney

APPROVED AS TO CONTENT:


Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services

OFFICE OF THE CITY MANAGER



JOHN COOK
MAYOR

CITY COUNCIL

ANN MORGAN LILLY,
DISTRICT 1
SUSANNAH M. BYRD,
DISTRICT 2
ALEXANDRO LOZANO,
DISTRICT 3
MELINA CASTRO,
DISTRICT 4
PRESI ORTEGA, JR.,
DISTRICT 5
EDDIE HOLGUIN JR.,
DISTRICT 6
STEVE ORTEGA,
DISTRICT 7
BETO O'ROURKE,
DISTRICT 8

JOYCE WILSON
CITY MANAGER

Via Certified Mail, Return Receipt Requested

March 15, 2006

BGEN Robert P. Lennox
Commanding General
U.S. Army Air Defense Artillery Center
Fort Bliss, Texas 79916

Dear General Lennox:

Due to some concern among members of the El Paso City Council with the proposals for use of portions of Castner Range by the Regional Economic Development Corporation and other groups, an Ad-Hoc Committee was created on January 10, 2006 to evaluate the City's position and submit its own recommendations. A meeting of the Ad-Hoc Committee was held on March 1, 2006 and included a briefing of the conveyance options available and the proposals before the Department of Defense for the land. This meeting was very well attended and included discussion on various options and recommendations of the community.

On March 14, 2006, the El Paso City Council approved the recommendations of the Castner Range Ad-Hoc Committee and authorized the formal submission of this letter for your consideration. Specifically, the City of El Paso requests your support and evaluation of the following:

- That Castner Range be declared surplus. It is our understanding that Castner Range has been declared excess, a military option to place the land in abeyance due to no immediate military need identified. The City requests that a declaration be taken that the land is surplus and has no military value now or in the future.
- That either a Conservation Conveyance or Public Benefit Conveyance of Castner Range be considered to preserve the physical and environmental attributes of the land without development opportunity under an enhanced use lease. Castner Range is a highly visible ecologically sensitive area within the community, and measures to protect and preserve this distinct area as an open natural preserve in perpetuity should be taken immediately. Protection of the environment and its natural resources will be beneficial in the future, and this area will bring increasing value at a regional level as the City deals with continued land development at the mountain foothills. A copy of the approved and accompanying Resolution to this item is attached for informational purposes.

Additionally, the City Council voted to seek federal congressional assistance to expedite the efforts for remediation of the lands from unexploded ordnance. These efforts will assist the Department of Defense with its remediation process

OFFICE OF THE CITY MANAGER



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since the responsibility and liability associated with any unexploded ordnance will remain with the U.S. government. Remediation of the area has been given the City's highest priority in its federal legislative agenda and following yesterday's action has been forwarded to the congressional delegation and our federal lobbyists.

The City clearly understands the considerations that must be given this proposal, and I will be glad to meet at your convenience to discuss this option more fully and to provide additional documentation as may be necessary.

Sincerely,

Joyce A. Wilson
City Manager

C: The Honorable Kay Bailey Hutchison, U.S. Senator
The Honorable Silvestre Reyes, U.S. Congressional District 16
LTG David W. Barno, Asst. Chief of Staff for Installation Management
COL Robert T. Burns, Garrison Commander
El Paso City Council
Patricia D. Adauto, Deputy City Manager
Sylvia B. Firth, Director of Governmental Relations

I. UXO Responsibility

Summary: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) states that the government cannot transfer this responsibility (unexploded ordnance- UXO), or the liability associated with the unexploded ordnance, to any other party. [42 USC 9607 (e) (1) and 9620 (a) (1).] Therefore, it should be taken into consideration for the following three options that never will the City of El Paso assume responsibility for unexploded ordnance and the responsibility for remediation remains with the United States Government. Additionally, the Government must fully disclose their progress with the remediation process.

Ordinance: Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended through September 25, 1996, Title 42, U.S. Code, Sec. 9620

(e) Required action by department

(1) RI/FS

Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before October 17, 1986, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after October 17, 1986. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of remedial action; interagency agreement

The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 9617 of this title.

(3) Completion of remedial actions

Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) Contents of agreement

Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

- (A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.*
- (B) A schedule for the completion of each such remedial action.*

(C) Arrangements for long-term operation and maintenance of the facility.

(5) Annual report

Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) Settlements with other parties

If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 9622 of this title (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 9606 of this title.

The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 9621 of this title.

(g) Transfer of authorities

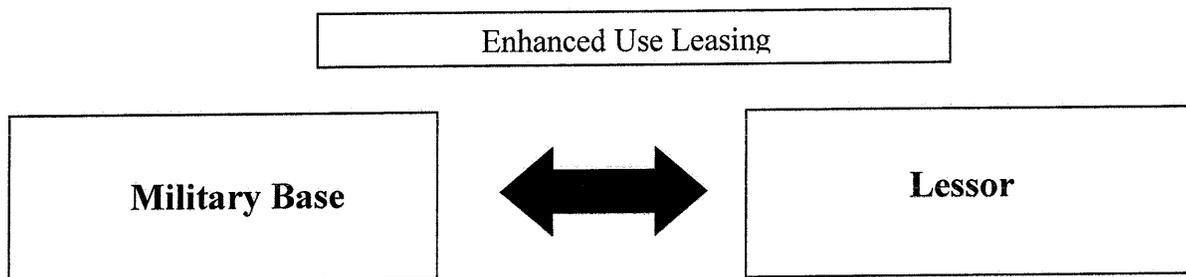
Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

II. Enhanced Use Leasing

Ordinance: General. Section 485 of Title 40, United States Code, and sections 2667 and 2667a of Title 10, United States Code, each require that a special fund be established for the deposit of proceeds received from the transfer or lease of real and personal property under the control of a Military Department (other than property at a military installation designated for closure or realignment) and from the lease of personal property under the control of a Defense Agency.

Summary: Enhanced Use Leasing is a means of property transfer that can be made, with or without reimbursement, between a military base and an interested party. The terms of the negotiation are settled between the participants in the agreement. Any monies from the lease shall be deposited into a special fund set up by the Secretary of Defense and deposited accordingly. Fifty percent of these funds can be made available for the environmental restoration of the leased property.

Process:



Pros:

- Money from lease can be used for remediation of UXO's (However, it is not mandated)
- Could provide land for economic development at little or no cost

Cons:

- Interferes with natural landscape
- Land is not conserved, in full.
- Depending on land holder, there might not be a revenue stream to cover cost of infrastructure services.

III. Conservation Conveyance

Ordinance: SEC. 2812. CONVEYANCE OF SURPLUS REAL PROPERTY FOR NATURAL RESOURCE CONSERVATION PURPOSES.

(i) CONVEYANCE AUTHORITY-

(1) Chapter 159 of title 10, United States Code, is amended by inserting after section 2694 the following new section:

Sec. 2694a. Conveyance of surplus real property for natural resource conservation

(a) AUTHORITY TO CONVEY- The Secretary of a military department may convey to an eligible entity described in subsection

(b) any surplus real property that--

(1) is under the administrative control of the Secretary;

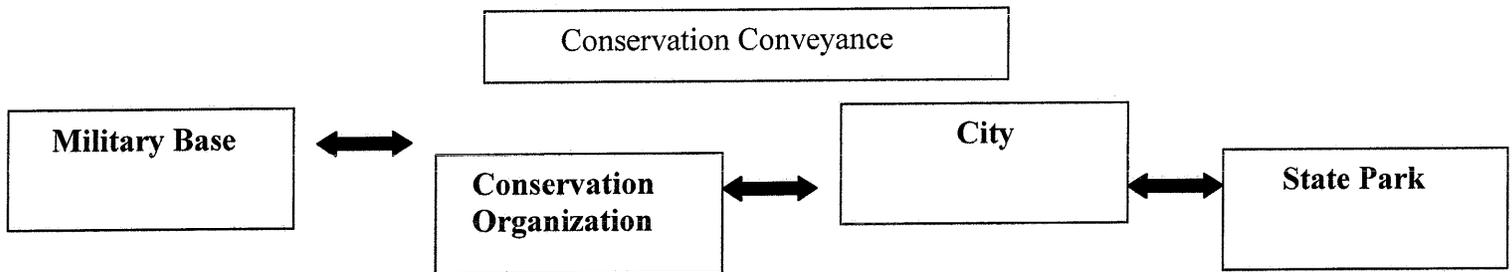
(2) is suitable and desirable for conservation purposes;

(3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and

(4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property disposal processes and authorities under subtitle I of title 40.

Summary: Conservation Conveyance is a means of property transfer for land that is "suitable and desirable for conservation purposes". This transfer can occur for little to no cost. The natural resources of the land must remain in their entirety. The deed is settled between the military base and a non-profit conservation organization, usually a land trust. If at any time that the property is not being held for the designated purpose, ownership reverts to the United States Government.

Process



Pros

- Preserves land from development
- Land trust holds land not city during remediation
- Land could be available for inclusion into Franklin Mountain State Park

Cons

- New method, only done successfully once before
- Honey Lake, First Conservation Conveyance ended up being bad deal
- While the government is responsible for UXO clean up, remediation must be expedited through US Congressional appropriations

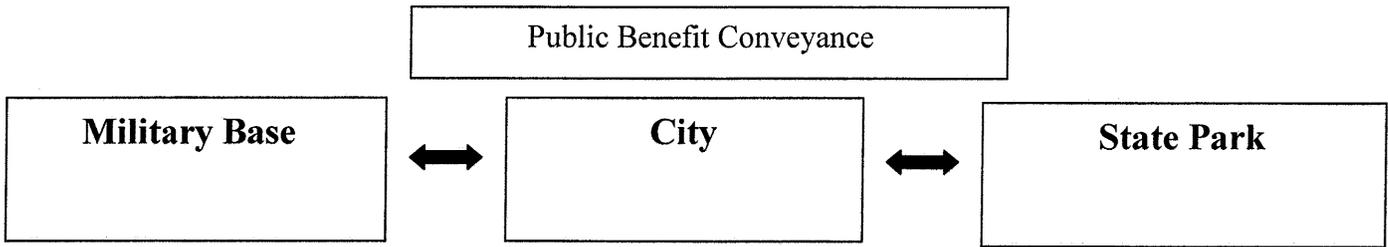
IV. Public Benefit Conveyance

Ordinance: Sec. 101-47.201-1 of Federal Property Management \Regulations states it is the policy of the Administrator of General Services:

- To stimulate the identification and reporting by executive agencies of excess real property*
- To achieve the maximum utilization by executive agencies, in terms of economy and efficiency, of excess real property in order to minimize expenditures for the purchase of real property.*
- To provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia*

Summary: Public Benefit Conveyance is means of property transfer for land to be used for public benefit. Like a Conservation Conveyance, this transfer can occur for little to no cost. Among several options, land can be used for public parks or recreation. Several departments of the federal government would screen the land. The "Federal Lands to Parks Program" would provide assistance with the exchange of property. The transferred property would be new park space, whether as a new park or being included in a preexisting site. Also like with a conservation conveyance, ownership reverts to the United States Government for noncompliance.

Process



Pros

- Land is conveyed with the specific use of it becoming parkland at little or no cost
- Assistance is provided through "Federal Lands to Parks Program"

Cons

- City has to be landholder. Public Benefit Conveyances do not work with land trusts.
- Same as Conservation Conveyance, remediation can only be expedited through the appropriation of US Congressional funds