

CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES
FOR THE GREATER ADAMS CAVE BEETLE AND
LESSER ADAMS CAVE BEETLE AT ADAMS CAVE,
MADISON COUNTY, KENTUCKY

This Candidate Conservation Agreement with Assurances ("CCAA"), effective and binding on the date of last signature below, is between Southern Conservation Corporation ("Cooperator") and the U.S. Fish and Wildlife Service ("Service") (hereinafter referred to as "the Parties"):

Cooperator: Southern Conservation Corporation
6582 Gaines Ferry Road
Flowery Branch, Georgia 30542
Phone – (770) 967-1208
Fax – (770) 967-3755

Service: U.S. Fish and Wildlife Service
Kentucky Field Office
3761 Georgetown Road
Frankfort, Kentucky 40601
Phone - (502) 695-0468
Fax - (502) 695-1024

Agreement/Tracking Number: TE-088168-0

1. Authority and Purpose

Sections 2, 7, and 10 of the Endangered Species Act (Act) of 1973, as amended, allow the Service to enter into this CCAA. Section 2 of the Act states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation's heritage in fish, wildlife, and plants. Section 7 of the Act requires the Service to review programs that it administers and to utilize such programs in furtherance of the purposes of the Act. By entering into this CCAA, the Service is utilizing its authority to enter into CCAAs to further the conservation of the Nation's fish and wildlife resources. Lastly, section 10(a)(1)(A) of the Act authorizes the issuance of permits to "enhance the survival" of a listed species.

The purpose of this CCAA is for the Service to join with Southern Conservation Corporation to implement conservation measures for the greater Adams Cave beetle (*Pseudanophthalmus pholeter*) and lesser Adams Cave beetle (*Pseudanophthalmus cataryctos*) by removing the threats to the survival of these species and protecting their habitat. These species are considered the "covered species" as defined in the Service's final CCAA Policy (64 *Federal Register* 32726). In 2001, the Service elevated these species to candidate species status (64 *Federal Register* 54808-54832). These two species are only known to occur in Adams Cave in Madison County, Kentucky. Information pertaining to the life histories, taxonomy, conservation status, and threats of these species is contained in the Service's Candidate and Listing Priority Assignment Form

(Candidate Form). The most recent Candidate Form for these species is incorporated into this CCAA as Appendix C.

2. Enrolled Lands

The CCAA covers an approximately 1-acre parcel land that is known as lot 3 of Adams Place subdivision in Madison County, Kentucky (Appendix A). A land survey that accurately depicts the property is incorporated into this CCAA as Appendix B. This property is considered the "enrolled property" as defined in the Service's CCAA Policy. The enrolled property is owned by Southern Conservation Corporation and contains the entrance to Adams Cave and a portion of the subterranean area of Adams Cave.

3. Description of Existing Conditions

The enrolled property is in the Bluegrass Region of central Kentucky, near the city of Richmond, Madison County. The area surrounding the enrolled property is largely rural but is developing rapidly due to its close proximity to the cities of Richmond and Lexington, Kentucky. The enrolled property lies within a platted residential subdivision, and construction is occurring on many of the building lots in the subdivision. The terrestrial habitat surrounding Adams Cave is dominated by abandoned pasture containing scattered groups of trees, including black walnut (*Juglans nigra*) and Kentucky coffee tree (*Gymnocladus dioica*), and small clumps of cane (*Arundinaria* sp.).

The enrolled property is under threat from a variety of sources. These threats could result in significant and irreversible habitat alterations to Adams Cave and the area surrounding the cave. The Service's Candidate Form (Appendix C) for the covered species identifies four primary threats that would be applicable to the enrolled property:

- The species' limited distributions make them vulnerable to isolated events, such as toxic chemical spills, discharges of large amounts of polluted water, or cave entrance closures or alterations that would only have a minimal effect on the more wide-ranging members of the genus. Since the covered species are only known to occur in Adams Cave, the Parties believe that it will be important to implement conservation measures that will control or eliminate the probability that these isolated events will occur.
- Alteration of the cave food chain can affect populations of the covered species, because they are completely dependent upon energy from outside of the cave. This energy can come from bat guano, large or small woody debris washed or blown into the cave, or tiny bits of organic matter that is carried into the cave by water through small cracks in the rocks overlaying the cave. The Parties believe that the cave food chain can be maintained by ensuring conservation measures that would maintain the cave entrance and allow the passage of energy are implemented.
- Activities such as industrial, residential, commercial, or highway construction can, if not planned in a manner to protect caves, directly destroy caves or result in severe modification of the natural processes that maintain the cave's sensitive biological systems. The Parties believe that, by restricting development of the enrolled property and implementing conservation measures to protect Adams Cave and habitat surrounding the

cave, the cave's natural processes and biological integrity can be maintained to the extent possible.

- Vandalism and trash dumping can affect the cave and historically has occurred at a high level in Adams Cave. The Parties believe that maintenance of the metal gate at the entrance to Adams Cave and controlling access into Adams Cave and the enrolled property will eliminate this threat.

Addressing these threats is the primary objective of this CCAA. The Cooperator's contributions to this CCAA are expected to alleviate these threats by controlling the identifiable, potential sources of those threats and are important for the conservation of the covered species.

4. Conservation Measures

The conservation measures that will be implemented were chosen based on an analysis of the threats to the covered species and the Service's knowledge of conservation measures that could reasonably be expected to reduce and/or eliminate those threats.

Specifically, the Cooperator will:

A. Maintain the enrolled property in a natural state

The Cooperator will ensure that: (1) the enrolled property is maintained in vegetative condition that promotes native vegetation; (2) no residential or commercial development of the property is allowed; (3) no mechanical land clearing or timber harvesting is conducted on the enrolled property unless such disturbance is necessary to improve the habitat surrounding Adams Cave; (4) no pesticides are used within the enrolled property; (5) the enrolled property is not used as a chemical, waste, or debris storage site or facility; and (6) no dumping of debris or potential contaminants occurs on the enrolled property. These activities will alleviate the potential effects of the threats of isolation and habitat conversion or destruction and help address threats to the covered species' food chain by ensuring that the habitat immediately surrounding Adams Cave is maintained in a natural/semi-natural state to promote energy transfer into Adams Cave and that the enrolled property is not developed. The Cooperator will be authorized to restore native vegetation, selectively use herbicides to control exotic plants and maintain native vegetation, cut trees or other vegetation to protect public safety or on-site facilities, and construct a small parking area for no more than three vehicles at the east side of the enrolled property and as far from the entrance and underground portions of Adams Cave as possible.

B. Maintain the metal gate at the entrance to Adams Cave

If the gate needs repair, the Cooperator will take the necessary steps to repair the gate as soon as possible after the need for repair is identified. Further, the Cooperator will ensure that the gate does not become blocked with rock or other debris that would block access to the cave for native bats or other species or prevent organic matter from entering the cave. This organic matter degrades into food for cave invertebrates and serves as the basis of the food chain for most

obligate cave species. The covered species are predatory beetles that feed on other cave invertebrates. These activities will alleviate the threats to the covered species' food chain and those relating to vandalism and trash dumping.

C. Control and limit access to Adams Cave and the Enrolled Property

The Cooperator will ensure that access into Adams Cave is limited to no more than one entry per month; however, more than one entry per month may occur if for monitoring, scientific, and/or educational purposes and if first approved by the Service in writing. If necessary, the Cooperator will mark a trail within Adams Cave that will be used to minimize the effects of authorized access and require persons that are granted access to the cave to stay on this trail to the maximum extent possible. Further, the Cooperator will ensure that no person who is not affiliated with the Cooperator will hold a key to the gate, except for the key that will be held by the Service's Kentucky Field Office Supervisor. The Cooperator will also erect signs at all access points and fencing, as may be necessary to protect the enrolled property. Collectively, these measures are necessary to alleviate the threats of vandalism, unrestricted access, and trash dumping.

5. Expected Benefits

Implementation of this CCAA is expected to protect and conserve habitat for the covered species, eliminate unauthorized human disturbances within Adams Cave that are believed to impact the covered species, and provide important monitoring data that can be used to develop and/or improve management strategies for the covered species and other cave-dependent species. These benefits will be obtained through restoration and protection of the above- and below-ground habitats on the enrolled property.

6. Responsibilities of the Parties

A. The Cooperator shall:

- Adhere to the terms and provisions of this CCAA and the enhancement of survival permit (Permit) and to provide sufficient funding and other resources necessary to implement the CCAA.
- Allow Service personnel, or other properly permitted and qualified persons designated by the Service, to enter both the enrolled property and Adams Cave, with reasonable advance written notice, at reasonable hours and times for the general purposes specified in 50 CFR 13.21(e)(2).
- Provide the Service with a key to the metal gate at the entrance to Adams Cave, which shall be held by the Service's Kentucky Field Office Supervisor.
- Meet with the Service if any listed species other than the covered species may potentially be impacted by an activity covered by this CCAA to discuss ways to avoid take of that species and/or to develop an alternative course of action to cover the potential take of that species.

- Notify the Service, via certified letter, at least 60 days in advance of any activity that may result in the destruction of any federally-listed, proposed, or candidate plant species known to occur on the enrolled property and shall provide the Service with an opportunity to remove the affected plants to sites that are outside of the enrolled property or, with the Cooperator's permission, to other sites within the enrolled property.
- Implement the conservation measures as stated in the "Conservation Measures" section of this CCAA.

B. The Service shall:

- Inspect the enrolled property at least annually to evaluate the Cooperator's activities and to inspect Adams Cave and the metal gate.
- Ensure that the Cooperator has properly implemented the CCAA and the Conservation Measures identified below.
- Have sole approval for access to Adams Cave when such access is requested by the Cooperator or another party and when such access would exceed the one entry into the cave per month specified in the Conservation Measures section above.

C. The Parties mutually agree to:

- Ensure that the CCAA and the actions covered by the CCAA are consistent with applicable Federal, State, and Tribal laws and regulations.
- Inspect the enrolled property not less than annually, or earlier if the opportunity presents itself, for the duration of the CCAA in order to visually inspect the gate, determine if any repairs are necessary, and determine if any unauthorized access has or could occur due to failure of the gate.
- Ensure that the terms of the CCAA will not be in conflict with any on-going conservation or recovery programs for the covered species.
- Ensure that nothing in this CCAA will be construed to limit or constrain any Party or any other entity from taking additional actions at its own expense to protect or conserve the covered species.
- Ensure that nothing in this CCAA shall limit the ability of Federal and State conservation authorities to conduct investigations on the enrolled property and in Adams Cave.
- Ensure that each Party shall have all remedies otherwise available to enforce the terms of the CCAA and the Permit.

- Work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by the Parties. The Service will engage in such procedures if funding is available as specified in section 22 of this CCAA (Availability of Funds).
- Share information relating to this CCAA if disclosure of such information is not protected by the Privacy Act, the Freedom of Information Act, or other applicable privileges.

7. Level/Type of Take/Impacts

Since the covered species only occur within Adams Cave, the Service expects that the only activities undertaken by the Cooperator that could result in incidental take of the covered species are those that would occur within the underground portions of Adams Cave (i.e., those that are protected by the gate) and/or those that could reasonably be expected to occur that would result in degradation of the covered species' habitat within Adams Cave. Activities within Adams Cave that could result in take include any activities associated with inspection and/or maintenance of the metal gate and activities associated with approved access into Adams Cave, including monitoring, scientific, and/or educational purposes.

The Service expects that take of the covered species may occur when humans access the cave to inspect and/or maintain the metal gate or conduct monitoring, scientific, and/or educational activities. This take is expected to come in the form of harm, harassment, and/or mortality. Harm and harassment are likely to occur, because human access to the cave is likely to result in disturbances that the covered species would not experience naturally. This may cause temporary habitat alterations or result in modifications of the covered species' behavior patterns. However, the expected level of human disturbance in Adams Cave will likely be less than historic levels of disturbance. As a result, the Service does not expect the take from harm and harassment to have negative effects on the covered species' population levels, because the covered species have persisted under higher levels of disturbance. Mortality may occur if individuals of the covered species are stepped-on or crushed/injured by equipment or rocks dislodged by human activities.

The level of take that will be authorized by the Permit will be all of the individuals of the covered species that are harmed, harassed, or killed in association with activities authorized by this CCAA. The Service recognizes that this level of take, which is comprised of all individuals of the covered species that are harmed, harassed, or killed in association with activities authorized by this CCAA, is consistent with the overall goal of precluding the need to list the species, and that if the Conservation Measures were implemented on other necessary properties, there would be no need to list the covered species.

8. Assurances Provided

Through this CCAA, the Service provides Southern Conservation Corporation assurances that no additional conservation measures or additional land, water, or resource use restrictions, beyond those voluntarily agreed to and described in the Conservation Measures section of this CCAA, will be required should the greater Adams Cave beetle and/or lesser Adams Cave beetle become listed as a threatened or endangered species in the future. Unless otherwise stated, these assurances will be authorized with the issuance of an enhancement of survival permit under

section 10(a)(1)(A) of the Endangered Species Act. The application for the enhancement of survival permit is included as Appendix D to this CCAA.

9. Assurances Provided to the Cooperator in Case of Changed or Unforeseen Circumstances

The assurances listed below apply to the Cooperator. The assurances apply only where the Permit associated with the CCAA and the CCAA itself are being properly implemented, and only with respect to species adequately covered by the CCAA.

A. Changed circumstances provided for in the CCAA.

If additional conservation measures are necessary to respond to changed circumstances and the measures were set forth in the CCAA's operating conservation program, the Cooperator will implement the measures specified in the CCAA.

B. Changed circumstances not provided for in the CCAA.

If additional conservation measures not provided for in the CCAA's operating conservation program are necessary to respond to changed circumstances, the Service will not require any conservation measures in addition to those provided for in the CCAA without the consent of the Cooperator.

C. Unforeseen circumstances.

(i) If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures of the Cooperator only if such measures are limited to modifications within the CCAAs conservation strategy for the affected species, and only if those measures maintain the original terms of the CCAA to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the CCAA without the consent of the Cooperator.

(ii) The Service will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Service will consider, but not be limited to, the following factors:

- Size of the current range of the affected species;
- Percentage of range adversely affected by the CCAA;
- Percentage of range conserved by the CCAA;
- Ecological significance of that portion of the range affected by the CCAA;
- Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the CCAA; and
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

10. Reporting Provisions

The Cooperator will provide a report of biological and compliance monitoring efforts to the Service on or before December 31 of each year monitoring is required. The annual report will provide and include:

- a summary of any monitoring activities that were undertaken by the Cooperator or authorized by the Cooperator within the enrolled property, which will include the date the monitoring activities were undertaken, the person or persons involved, the results of the monitoring, and copies of any data and/or reports that were prepared, including the reports containing the results of the monitoring conducted by the Kentucky State Nature Preserves Commission;
- a summary of any conservation measures that were implemented by the Cooperator or authorized by the Cooperator within the enrolled property, which will include the date the conservation measures were implemented, the person or persons involved, and the results of the implementation;
- a summary of the dates and times that entry into Adams Cave by the Cooperator or the Cooperator's designee(s) occurred during the reporting period; and
- a summary of the dates and times that of any known entry into Adams Cave that is proposed for the next reporting period by the Cooperator or the Cooperator's designee(s).

11. Compliance Monitoring

The Cooperator will be responsible for the compliance monitoring and reporting specified herein related to implementation of the CCAA and fulfillment of its provisions, including implementation of the agreed-upon Conservation Measures, and take authorized by the Permit. The Service, after reasonable prior notice to the Cooperator, may enter the enrolled property and Adams Cave to ascertain compliance with the CCAA.

12. Biological Monitoring

The Cooperator will allow the Kentucky State Nature Preserves Commission (KSNPC), or any other organization or individual approved by the Parties, to conduct periodic surveys for the covered species to determine their habitat use and population levels. Survey methodologies will be determined by the KSNPC and the Service. These periodic surveys shall be conducted in 2004, 2005, and 2006. After these initial monitoring periods, additional habitat use and population monitoring will be conducted on a minimum 5-year interval if determined necessary by the Service based on the results of the initial monitoring efforts. These biological monitoring efforts are included in the allowable monitoring specified in section 4(C) above.

13. Notification of Take Requirement

By signature of this CCAA, the Cooperator agrees to provide the Service with an opportunity to rescue individuals of the covered species before any authorized take occurs (i.e., before each authorized entry into Adams Cave), thereby minimizing the authorized take. Notification that take will occur must be provided by the Cooperator in writing to the Service at least 60 days in

advance of the action. If the Service does not respond to the Cooperator's notification within 7 working days of receipt of the notification, the Cooperator is authorized to proceed with the proposed activity. This notification requirement shall apply to all situations, except for emergency situations, which shall be defined as a natural disaster, insect infestation, or other significant and uncontrollable event that causes the unplanned alteration of habitat within the enrolled property that is occupied by the covered species. In an emergency situation in which a 60-day notification cannot be given, the Cooperator shall notify the Service as soon as possible but no less than 5 days prior to implementation of the unplanned habitat alteration and shall provide the Service an opportunity of no less than 5 days to translocate affected individuals of the covered species to other sites within the enrolled property. Further, the Cooperator shall not initiate the emergency habitat alteration any sooner than 10 days after the initial notification to the Service has been provided or upon the Service's approval to proceed, whichever occurs first. The Parties acknowledge that survey and translocation efforts may be precluded by certain urgent or emergency situations.

14. Agreement Duration

The CCAA will be in effect for a duration of 30 years following its approval and signing by the Parties. The section 10(a)(1)(A) permit authorizing take of the covered species will become effective on the date of the final rule listing a covered species is published in the Federal Register and will expire when this CCAA expires or is otherwise suspended or terminated. The permit and CCAA may be extended beyond the specified terms prior to permit expiration through the permit renewal process and with the agreement of the parties.

15. Modifications

After approval of the CCAA, the Service may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, the Cooperator or successor in interest to the Cooperator, to compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the CCAA except as stipulated in 50 CFR 17.22(d)(5) and 17.32(d)(5).

A Party may propose modifications or amendments to this CCAA by providing written notice to the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications or amendments will become effective upon the other Party's written concurrence.

16. Amendment of the Permit

The Permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the Service's permit regulations at 50 CFR 13 and 50 CFR 17. The Party proposing the amendment shall provide a statement describing the proposed amendment and the reasons for it.

17. Termination of the CCAA

As provided in the Service's CCAA Policy (64 *Federal Register* 32726), the Cooperator may, for good cause, terminate implementation of the CCAA's voluntary management actions prior to the

CCAA's expiration date, even if the expected benefits have not been realized. If the CCAA is terminated without good cause, however, the Cooperator is required to surrender the Permit at termination, thus relinquishing his or her take authority (if the species has become listed) and the assurances granted by the permit. The Cooperator must give 60 days written notice to the Service of its intent to terminate the CCAA and must give the Service an opportunity to relocate individuals of the covered species within 30 days of the notice.

18. Permit Suspension or Revocation

The Service may suspend or revoke the Permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation (50 CFR 13.28(a)). The Service may also, as a last resort, revoke the permit if continuation of permitted activities would likely result in jeopardy to covered species (50 CFR 17.22/32(d)(7)). The Service will revoke because of jeopardy concerns only after first implementing all practicable measures to remedy the situation.

19. Remedies

Each Party shall have all remedies otherwise available to enforce the terms of the CCAA and Permit.

20. Dispute Resolution

The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties. The Service will engage in such activities if funding is available as specified in section 23 of this CCAA.

21. Succession and Transfer

This CCAA shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, (i.e., new owners) in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this CCAA shall run with the ownership of the enrolled property and are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25. The Permit issued to the Cooperator is also transferable to the new owner(s) pursuant to 50 CFR 13.25. If the CCAA and Permit are transferred, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner (i.e., the Cooperator). The new owner(s) also will have the option of receiving CCAA assurances by signing a new CCAA and receiving a new Permit. The Cooperator shall notify the Service in writing of any transfer of ownership within 90 days of any transfer, so that the Service can attempt to contact the new owner, explain the responsibilities applicable to the enrolled property, and seek to interest the new owner in signing the existing CCAA or a new CCAA that would benefit the covered species on the enrolled property. Assignment or transfer of the Permit shall be governed by Service regulations in force at the time.

22. Availability of Funds

Implementation of this CCAA is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this CCAA will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this CCAA to expend any

Federal agency's appropriated funds unless and until an authorized agency official affirmatively acts to commit to such expenditures as evidenced in writing.

23. Relationship to Other Agreements

The metal gate that protects the entrance to Adams Cave was installed via a separate 10-year agreement between the Service and the previous owner of the enrolled property under the Service's Partners for Fish and Wildlife Program. The Cooperator agrees to adhere to terms and conditions of the previous agreement with the Partners for Fish and Wildlife Program and will ensure that the metal gate is maintained for the duration of the separate, 10-year agreement.

24. Notices and Reports

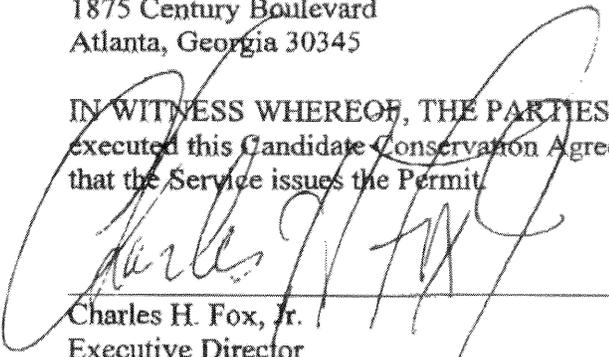
Any notices and reports, including monitoring and annual reports, required by this CCAA shall be delivered to the persons listed below, as appropriate:

Executive Director
Southern Conservation Corporation
6582 Gaines Ferry Road
Flowery Branch, Georgia 30542

Field Supervisor
U.S. Fish and Wildlife Service
3761 Georgetown Road
Frankfort, Kentucky 40601

CCAA Permit Coordinator
U.S. Fish and Wildlife Service
1875 Century Boulevard
Atlanta, Georgia 30345

IN WITNESS WHEREOF, THE PARTIES HERETO have, as of the last signature below, executed this Candidate Conservation Agreement with Assurances to be in effect as of the date that the Service issues the Permit.



Charles H. Fox, Jr.
Executive Director
Southern Conservation Corporation

Date

4 March 2005



for Regional Director
U.S. Fish and Wildlife Service, Southeast Region

MAR 01 2005

Date

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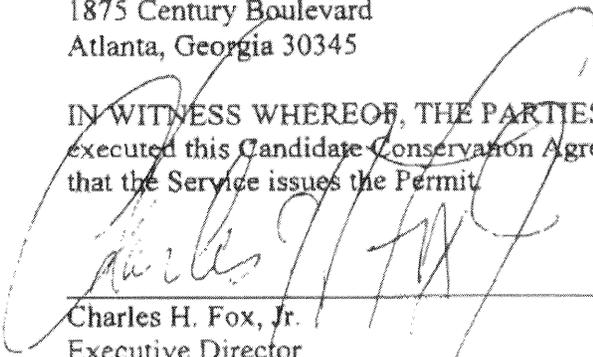
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