

APPENDIX D
Sample Easements

APPENDIX D1

Sample Conservation Easement

APPENDIX D1
Sample Conservation Easement

Recording requested, and when recorded, return to:

South Sacramento Conservation Agency
Street Address
City, State, Zip
Attn: Executive Director

(space above this line reserved for recorder's use)

**SAMPLE CONSERVATION EASEMENT DEED AND AGREEMENT
CREATING ENFORCEABLE RESTRICTIONS IN PERPETUITY**

CONSERVATION EASEMENT DEED

THIS GRANT DEED OF HABITAT CONSERVATION EASEMENT (the "Grant") is made as of _____, 20XX by and between the _____, a _____, as "Grantor" and the South Sacramento Conservation Agency, a California nonprofit public benefit corporation, as "Grantee."

RECITALS

A. Grantor owns real property consisting of approximately _____ acres, in Sacramento County, California, as described in Exhibit A and shown more particularly on the map attached as Exhibit B, attached hereto and incorporated herein, which together with all appurtenances thereto, including without limitation all mineral and mineral rights, if any, and all water and water rights appurtenant to such land (collectively, the "Property").

B. The Property possesses wildlife and habitat values of great importance to Grantor, Grantee, the people of the State of California and the people of the United States. The Property will provide high quality natural habitat for [*specify plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands*]: and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property.

C. The Property is comprised of open space land, , which also provide essential habitat for South Sacramento Habitat Conservation Plan (SSHCP) Covered Species, and other significant relatively natural habitat and buffer for many species of wildlife.

APPENDIX D1 (Continued)

D. Protection and preservation of the Property, including its wildlife habitat, shall assure that this area and its existing features shall continue to be available for SSHCP Covered Species and other natural habitat values and buffer for wildlife, a significant public benefit by preserving open space against development pressure, and scenic qualities.

E. As fee owner, Grantor owns the affirmative rights to identify, preserve, and protect forever the existing features and Conservation Values of the Property.

F. _____, a _____, paid for the acquisition of this Conservation Easement Deed for Agricultural Land and Agreement Creating Enforceable Restrictions in Perpetuity from Grantor and provided _____ Dollars (\$_____) in management funds to Grantee to satisfy mitigation requirements imposed by the South Sacramento Habitat Conservation Plan (SSHCP), Plan Participant _____ (the “Plan Participant”).

G. The State of California recognizes the public importance and validity of habitat conservation easements by enactment of Section 815 et seq. of the California Civil Code, and Grantee is an entity qualified under such Civil Code provisions to hold conservation easements.

H. Grantee is authorized to hold conservation easements pursuant to California Civil Code §815.3 and, as relevant to tax-exempt non-profit organizations, §501(c)(3) of the Internal Revenue Code.

I. To accomplish all of the aforementioned purposes, Grantor intends to convey to Grantee, and Grantee intends to obtain from Grantor, a Conservation Easement over a portion of the Property (the ‘Easement Area’). The Easement Area is more particularly described in Exhibit C attached hereto and incorporated herein and depicted on the map in Exhibit D attached hereto to and incorporated herein (the “Easement Area Map”) restricting the use which may be made of the Property to preserve and protect forever the agricultural, open-space, foraging and/or nesting habitat for SSHCP Covered Species and other wildlife habitat and scenic values of the Property.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Property will be retained forever in its natural, restored, or enhanced condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats.

APPENDIX D1 (Continued)

2. Easement Documentation Report.

The parties acknowledge that a Preserve Documentation Report (the “Report”) of the Property has been prepared by a competent biologist familiar with the environs and approved by Grantor and Grantee in writing, a copy of which is on file with Grantor and Grantee at their respective address for notices, set forth below. Selected portions of the Report are attached hereto as Exhibit C. The parties agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time of this Grant, and of the historical uses of the Property, including historical water uses. Notwithstanding the forgoing, if a controversy arises with respect to the nature and extent of the physical, biological condition of the Property or the permitted historical uses of the Property, the parties shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy. The Report includes an aerial photograph where the “Agricultural Area” of the Property is delineated.

3. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (a) To preserve and protect the Conservation Values of the Property.
- (b) To enter the Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement and any Management Plan developed for the Property and to implement at Grantee's sole discretion Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property.
- (c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.
- (d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement.
- (e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise.
- (f) Grantee may erect a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the environmental and scenic resources of the Property are protected by Grantee. The wording of the information on the sign shall be jointly determined by Grantee and Grantor, but shall clearly indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the costs of erecting and maintaining its sign or marker.

APPENDIX D1 (Continued)

(g) Subject to Grantor's approval, which approval shall not be unreasonably withheld or denied, Grantee shall have the right to conduct fish, wildlife, plant, and habitat studies on the Property, as well as research and monitoring on the Property, provided that such studies, research, and monitoring shall be carried out in a manner that shall not interfere unreasonably with the permitted use(s) or enjoyment of the Property by Grantor, its successors in interest, or any legally recognized occupant(s) or user(s) of the Property. Any other parties interested in conducting scientific studies on the Property are subject to the approval of Grantor, and such approval shall not be unreasonably withheld or denied.

4. Prohibited Uses.

Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [*include the following language only if the Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the Management Plan.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [*include the following language only if the Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the Management Plan.

(c) Agricultural activity of any kind [*include the following language only if the Management Plan, including any adaptive management measures, specifies such an exception:*] except grazing for vegetation management as specifically provided in the Management Plan.

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [*include the following language only if the Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the Management Plan.

APPENDIX D1 (Continued)

- (h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.
- (i) Planting, introduction or dispersal of non-native or exotic plant or animal species.
- (j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.
- (k) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Management Plan.
- (l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [*include the following language only if the Management Plan specifies such an exception:*]; and except for [*insert specific exception(s)*] as specifically provided in the Management Plan.
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [*include the following language only if the Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the Management Plan].
- (n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.
- (o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question.

5. Grantee's Duties.

- (a) To ensure that the purposes of this Conservation Easement as described in

APPENDIX D1 (Continued)

Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this Conservation Easement reverts to or is transferred to the State of California, CDFW will carry out the tasks specified in Section 4(a) to the extent that funds and staff are available for that purpose. If CDFW determines that it cannot carry out the specified tasks, the Third Party Beneficiaries may identify a replacement Grantee, acceptable to all, and CDFW, subject to obtaining all necessary approvals, will transfer this Conservation Easement to the identified replacement Grantee in compliance with Section 10(a) of this Conservation Easement.

6. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 3 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the Management Plan.

7. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

8. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this

APPENDIX D1 (Continued)

Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. 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, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

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

(c) Acts Beyond Grantor's Control.

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 (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by the Third-Party Beneficiaries (as defined in Section 15(m)). These enforcement rights are in addition to, and do not limit, the rights of

APPENDIX D1 (Continued)

enforcement under the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

9. Access.

This Conservation Easement does not convey a general right of access to the public.

10. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

APPENDIX D1 (Continued)

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 15(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 6, 10 and 10(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 10 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 10 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

APPENDIX D1 (Continued)

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, [*include this phrase only if there are jurisdictional wetlands:* including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. The remaining proceeds shall be divided consistent with the provisions of this Paragraph using the ratio of the value of Grantee's and Grantor's interests that is set forth in subparagraph A above, it being expressly agreed that the Conservation Easement constitutes a compensable property right.

11. Transfer of Conservation Easement or Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65967 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 12.

(b) Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section

APPENDIX D1 (Continued)

shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 12.

12. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

13. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
 [Grantee address]
 Attn: _____

To Grantee: *[insert the appropriate Grantee information:]*

[Remove/modify the following blocks as appropriate when CDFW or the USFWS are not third-party beneficiaries to the CE.]

To CDFW: [Department of Fish and Game]
 [Region name] Region
 [REGION ADDRESS]
 [Attn: Regional Manager]

With a copy to: Department of Fish and Game
 Office of General Counsel
 1416 Ninth Street, 12th Floor
 Sacramento, CA 95814-2090
 Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
 [Field Office name] Field Office
 [FIELD OFFICE ADDRESS]
 Attn: Field Supervisor

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in

APPENDIX D1 (Continued)

the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

14. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

15. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* and Government Code Section 65965. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 14.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

APPENDIX D1 (Continued)

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

(2) Without limiting the obligations of Grantor under Section 10 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 10 (b) (1)) from and against any and all Claims (defined in Section 10 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 10 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 10 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release

APPENDIX D1 (Continued)

and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of

APPENDIX D1 (Continued)

human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Property. Grantor also represents and warrants that, [***choose applicable statement:*** there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement ***or*** the holder of any outstanding mortgage, lien, encumbrance or other interest in the Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a “Transfer”) any mineral, air, or water right or any water associated with the Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 15(k) shall not limit the provisions of Section 3(d) or 4(n), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 11. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [***include the agencies that will be third-party beneficiaries***] (the “Third-Party Beneficiaries”) are third party beneficiaries of this Conservation Easement with the right of access to the Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor’s obligations under Section 15, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Property is specified in and governed by the South Sacramento Habitat Conservation Plan.

APPENDIX D1 (Continued)

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [*Notarization Required*]

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Approved as to form:

South Sacramento Conservation Agency:

Approved as to form:

BY: _____

BY: _____

(Insert Name)

(Insert Counsel Name)

(Insert Title)

DATE: _____

APPENDIX D2

Sample Agricultural Easement

APPENDIX D2
Sample Agricultural Easement

Recording requested, and when recorded, return to:

South Sacramento Conservation Agency
Street Address
City, State, Zip
Attn: Executive Director

(space above this line reserved for recorder’s use)

SAMPLE CONSERVATION EASEMENT DEED FOR AGRICULTURAL LAND AND AGREEMENT CREATING ENFORCEABLE RESTRICTIONS IN PERPETUITY

THIS GRANT DEED OF HABITAT CONSERVATION EASEMENT (the “Grant”) is made as of _____, 20XX by and between the _____, a _____, as “Grantor” and the South Sacramento Conservation Agency, a California nonprofit public benefit corporation, as “Grantee.”

Recitals

- A. Grantor owns real property consisting of approximately _____ acres, in Sacramento County, California, as described in Exhibit A and shown more particularly on the map attached as Exhibit B, attached hereto and incorporated herein, which together with all appurtenances thereto, including without limitation all mineral and mineral rights, if any, and all water and water rights appurtenant to such land (collectively, the “Property”).
- B. The Property possess significant conservation values, including, without limitation, scenic, natural habitat, hydrologic, open space, ecological, agricultural and scientific values of great importance to Grantor, Grantee, and the people of the State of California and the people of the United States. (collectively, the “Conservation Values”).
- C. The Property is comprised of open space land, appropriate to use for certain types of agriculture, which also provide essential foraging and/or nesting habitat for South Sacramento Habitat Conservation Plan (SSHCP) Covered Species, and other significant relatively natural habitat and buffer for many species of wildlife including, but not limited to, raptors, migratory birds, and others.
- D. Protection and preservation of the Property, including its wildlife habitat, shall assure that this area and its existing features shall continue to be available for certain types of agriculture, which provide foraging and or nesting habitat for SSHCP Covered Species

APPENDIX D2 (Continued)

and other natural habitat values and buffer for wildlife, a significant public benefit by preserving open space against development pressure, and scenic qualities.

- E. As fee owner, Grantor owns the affirmative rights to identify, preserve, and protect forever the existing features and Conservation Values of the Property.
- F. _____, a _____, paid for the acquisition of this Conservation Easement Deed for Agricultural Land and Agreement Creating Enforceable Restrictions in Perpetuity from Grantor and provided _____ Dollars (\$_____) in management funds to Grantee to satisfy mitigation requirements imposed by the South Sacramento Habitat Conservation Plan (SSHCP), Plan Participant _____ (the “Plan Participant”).
- G. The State of California recognizes the public importance and validity of agricultural and habitat conservation easements by enactment of Section 815 *et seq.* of the California Civil Code, and Grantee is an entity qualified under such Civil Code provisions to hold conservation easements.
- H. Grantee is authorized to hold conservation easements pursuant to California Civil Code §815.3 and, as relevant to tax-exempt non-profit organizations, §501(c)(3) of the Internal Revenue Code.
- I. To accomplish all of the aforementioned purposes, Grantor intends to convey to Grantee, and Grantee intends to obtain from Grantor, a Conservation Easement over a portion of the Property (the ‘Easement Area’). The Easement Area is more particularly described in Exhibit C attached hereto and incorporated herein and depicted on the map in Exhibit D attached hereto to and incorporated herein (the “Easement Area Map”) restricting the use which may be made of the Property to preserve and protect forever the agricultural, open-space, foraging and/or nesting habitat for SSHCP Covered Species and other wildlife habitat and scenic values of the Property.

Grantor Intends to Grant

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for the good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, and pursuant to the laws of the State of California and in particular California Civil Code 815 *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee, its successors and assigns, a Conservation Easement in gross forever in, on, over, and across the Property (the “Conservation Easement”), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Property, and the parties agree as follows:

1. **PURPOSES:** The multiple natural resource conservation purposes of this Conservation Easement are to identify, preserve, protect, enhance, monitor and restore in perpetuity the Conservation Values of the Property, including, without limitation,

APPENDIX D2 (Continued)

the following (collectively, “Conservation Purposes”): (a) the availability of the Property for agriculture by protecting the Property from development pressure; (b) the conservation and habitat values of the Property as foraging and/or nesting habitat for SSHCP Covered Species and for other wildlife including the processes which sustain that habitat; and (c) the open space character and scenic qualities of the Property which are important public benefits and are consistent with the availability of the Property for wildlife habitat and agriculture.

It is intended that this Conservation Easement shall foster agricultural practices on the Property in harmony with the protection and preservation of conservation and habitat values of the Property as foraging and/or nesting habitat for SSHCP Covered Species and for other wildlife habitat and the processes that sustain that habitat, and in harmony with the open space qualities of the Property. It is intended that each such purpose shall be conducted in a manner consistent with all of such multiple natural resource conservation purposes. This Conservation Easement prohibits use of the Property for any purpose that would impair, degrade or interfere with any of the multiple natural resources conservation purposes stated above.

2. **EASEMENT DOCUMENTATION REPORT:** The parties acknowledge that a Preserve Documentation Report (the “Report”) of the Property has been prepared by a competent biologist familiar with the environs and approved by Grantor and Grantee in writing, a copy of which is on file with Grantor and Grantee at their respective address for notices, set forth below. Selected portions of the Report are attached hereto as Exhibit C. The parties agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time of this Grant, and of the historical uses of the Property, including historical water uses. Notwithstanding the forgoing, if a controversy arises with respect to the nature and extent of the physical, biological condition of the Property or the permitted historical uses of the Property, the parties shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy. The Report includes an aerial photograph where the “Agricultural Area” of the Property is delineated.
3. **GRANTEE'S RIGHTS:** To accomplish the purpose of this Conservation Easement, the rights and interests which are conveyed to Grantee by this Conservation Easement include, but are not limited to, the following:
 - a. **Preserve and Protect.** Grantee may identify, preserve, protect, enhance, monitor (including the right to conduct evaluations of habitat quantity and quality and to survey for threatened species and monitor their populations) and restore in perpetuity the Conservation Values of the Property. If Grantor chooses not to farm in the Agricultural Area, Grantee shall have the right to farm the Agricultural Area or lease

APPENDIX D2 (Continued)

the Agricultural Area for farming, provided such farming is consistent with the terms of this Conservation Easement and Grantor has approved Grantee's lessee, which approval shall not be unreasonably withheld or delayed.

- b. To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement.
- c. **Entry and Access Rights:** Grantee and Grantee's employees and agents, and staff from the South Sacramento Conservation Agency , are hereby granted rights of access to enter upon the Property, using appurtenant easements and rights-of-way, if any, and may enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, to study and make scientific observations of the natural elements and ecosystems of the Property, to determine whether Grantor's activities are in compliance with the terms this Conservation Easement and to take all actions deemed necessary by Grantee to identify, preserve, protect, enhance, monitor and restore in perpetuity the Conservation Values. Except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of the Conservation Easement, such entry shall be upon prior reasonable notice to Grantor and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
- d. **Enforcement.** Grantee may prevent or enjoin any activity on, or use of, the Property that is inconsistent with the purposes of this Conservation Easement, and may enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use. This right of enforcement extends to the South Sacramento Conservation Agency or its designee as third party beneficiary hereof.
- e. **Signs.** Grantee may erect a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the environmental and scenic resources of the Property are protected by Grantee. The wording of the information on the sign shall be jointly determined by Grantee and Grantor, but shall clearly indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the costs of erecting and maintaining its sign or marker.
- f. **Scientific Studies.** Subject to Grantor's approval, which approval shall not be unreasonably withheld or denied, Grantee shall have the right to conduct fish, wildlife, plant, and habitat studies on the Property, as well as research and monitoring on the Property, provided that such studies, research, and monitoring shall be carried out in a manner that shall not interfere unreasonably with the permitted use(s) or

APPENDIX D2 (Continued)

enjoyment of the Property by Grantor, its successors in interest, or any legally recognized occupant(s) or user(s) of the Property. Any other parties interested in conducting scientific studies on the Property are subject to the approval of Grantor, and such approval shall not be unreasonably withheld or denied.

4. **PERMITTED USES OF THE PROPERTY.** Grantor and Grantee intend that this Conservation Easement shall confine the uses of the Property to the multiple natural resource conservation uses of agriculture, open space, scenic, conservation, and wildlife habitat, including the processes which sustain that habitat, and to such other incidental uses as are expressly permitted herein, all in accordance with the terms and conditions of this Conservation Easement. Except as prohibited or otherwise limited by Paragraph 5 below and Exhibit E attached hereto, Grantor reserves the right to use and enjoy the Property in any manner which is consistent with the Conservation Purposes of this Conservation Easement. In that regard, the uses set forth in Exhibit D attached hereto, though not an exhaustive list of consistent permitted uses, are consistent with this Conservation Easement, and shall not be precluded, prevented or limited by this Conservation Easement, except as follows: (a) as provided in Paragraph 5 below and Exhibit E attached hereto; (b) in those instances in which prior approval by Grantee is required under this Conservation Easement; and (c) in those instances in which any action or practice is or becomes inconsistent with the Conservation Purposes or diminishes or impairs any of the specific Conservation Values, as determined by Grantee in the exercise of Grantee's reasonable discretion.
5. **PROHIBITED USES OF THE PROPERTY.** Any activity on or use of the Property that is inconsistent with the Conservation Purposes (including, without limitation, any activity or use that diminishes or impairs the Conservation Values) is prohibited. Though not an exhaustive list of prohibited uses, none of the uses described in Exhibit E attached hereto and incorporated herein by reference shall be made of or on the Property. In making this Grant, Grantor has considered the possibility that uses prohibited by the terms of this Grant may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination, extinguishment, or modification of this Grant or the Conservation Easement. In addition, the inability of Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Grant, or the unprofitability of doing so, shall not impair the validity of this Grant or the Conservation Easement or be considered grounds for the termination, extinguishment, or modification of same.

APPENDIX D2 (Continued)

6. REMEDIES.

- a. Notice of Violation: corrective action.** If grantee becomes aware that a violation of the terms of this conservation easement has occurred or is threatened to occur, grantee shall give written notice to the grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the property resulting from any use or activity inconsistent with the conservation values or the conservation purposes, to restore the portion of the property so injured. If grantor fails to cure the violation within thirty (30) days after receipt of notice from grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fail to continue diligently to cure such violation until finally cured, grantee shall have all remedies available at law or in equity to enforce the terms of this conservation easement, including without limitation the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity, to pay monetary amounts which, if not paid, could result in the extinguishment, modification, non-enforcement or impairment of the conservation easement, and/or to recover any damages arising from the violation. Grantee's rights under this paragraph 6.a apply equally to 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 seek the injunctive relief described in this paragraph 6.a, both prohibitive and mandatory, in addition to such other relief to which grantee may be entitled, including 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. The remedies described in this paragraph 6 shall be cumulative and shall be in addition to all remedies hereafter existing at law or in equity. Furthermore, the provisions of California civil code section 815 *et seq.* Are incorporated herein by this reference, and this conservation easement shall include all of the rights and remedies set forth therein.
- b. Cost of Enforcement.** In any action, suit or other proceeding undertaken to enforce the provisions of this Conservation Easement, the prevailing party shall be entitled to recover from the non-prevailing all reasonable costs and expenses including, without limitation, attorneys' and experts' fees and costs, and if such prevailing party shall recover judgment in any action or proceeding, such costs and expenses shall be included as part of the judgment. In addition, any costs of restoration shall be borne by the Grantor.

APPENDIX D2 (Continued)

- c. **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values or to prevent breach or extinguishment of the Conservation Easement, Grantee may pursue its remedies under this Paragraph 6 without prior notice to Grantor or without waiting for the period to cure to expire.
- d. **Non-Waiver.** Enforcement of the terms and provisions of this Conservation Easement shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action under this Paragraph 6 shall not be deemed or construed to be a waiver of Grantee's rights hereunder with respect to such violation in the event of any subsequent breach. In no event shall any delay or omission by Grantee in exercising any right or remedy constitute an impairment of or a waiver of such right or remedy.
- e. **Acts Beyond Grantor's Control.** 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 causes beyond Grantor's control, including fire, flood, storm, and earth movement.
- f. **Third Party Beneficiary Enforcement.** It is understood by the Grantor that all rights and remedies conveyed under this Conservation Easement shall extend to and are enforceable by the South Sacramento Conservation Agency and California Department of Fish and Game as a third party beneficiaries.
- i. **TRANSFER.** Grantee may, in Grantee's sole and absolute discretion, transfer all or any of its interests in this Conservation Easement without Grantor's consent, provided that (1) Grantee requires, as a condition of such transfer, that the Conservation Purposes of the Conservation Easement continue to be carried out following such transfer; (2) any assignment shall be approved by the South Sacramento Conservation Agency and made only to a local, state or federal agency and/or to an organization qualified at the time of the transfer as an eligible donee under Internal Revenue Code Section 170(h)(3) or its successor, or any regulation issued thereunder, and such organization shall be an entity qualified pursuant to Civil Code Section 815 et seq. or any subsequent State law governing the creation, transfer and enforcement of conservation easements; and (3) Grantee shall provide Grantor with notice of the assignment, at the address last provided by Grantor to Grantee, within thirty (30) days of the effective date of the assignment.

If Grantee, or its successors, ceases to exist or no longer qualifies under Section 170(h)(3) of the Internal Revenue Code, then the South Sacramento Conservation Agency shall identify and select an appropriate local, state or federal agency and/or organization qualified at the time of the transfer as an eligible donee under

APPENDIX D2 (Continued)

Internal Revenue Code Section 170(h)(3) or its successor, or any regulation issued thereunder, and such organization shall be an entity qualified pursuant to Civil Code Section 815 et seq. or any subsequent State law governing the creation, transfer and enforcement of conservation easements, having similar purposes that agrees to assume the responsibility imposed by this Conservation Easement to which to transfer this Conservation Easement.

7. **MANAGEMENT FUNDS.** Concurrent with the recordation of this Conservation Easement and as reflected in Recital F, above, Grantee received a one-time distribution of _____ Dollars (\$_____) in management funds (the “Management Funds”), of which _____ Dollars (\$_____) shall be a non-wasting endowment. Grantee may spend the Management Funds on any property interest held by Grantee for XX in Sacramento County for any purpose related to such property interest in the Grantee’s sole and absolute discretion, including, but not limited to, management, monitoring, enforcement, or restoration..
8. **RUNNING WITH THE LAND.** The Conservation Easement created by this Grant is perpetual and shall burden and run with the Property forever. Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply forever to and shall burden or benefit, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interest may appear. Grantor agrees that transfer by Grantor of any interest in the Property shall be in accordance with the terms of Paragraph 20 of this Conservation Easement and Paragraph 11 of Exhibit D attached hereto, and shall not be made in violation with the terms of Exhibit E attached hereto.
9. **REPRESENTATION AND WARRANTIES.**
 - a. **Hazardous Materials.** Grantor represents and warrants that the Property (including, without limitation, any associated air, soil, groundwater, and surface water) is free of any conditions that individually or in aggregate (1) pose a significant risk to human health or the environment; (2) violate any Environmental Law, as that term is defined below in Paragraph 16; or (3) could reasonably be expected to cause any person to incur environmental investigation, removal, remediation, or other cleanup costs. There are no underground tanks located on the Property. Grantor represents and warrants that Grantor shall comply with all Environmental Laws in using the Property and that Grantor shall keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials, as that term is defined below in Paragraph 16.
 - b. **State of Title.** Subject to matters of record as disclosed in the title policy issued to Grantee insuring Grantee’s interests in the Conservation Easement created by this

APPENDIX D2 (Continued)

Grant, Grantor warrants that Grantor has good and sufficient title to the Property (including all appurtenances thereto, including, without limitation, all minerals and mineral rights and all water and water rights) and that Grantor has full right and authority to grant this Conservation Easement to Grantee. All deeds of trust and mortgages recorded against the Property, or any portion thereof, are and shall continue to be subordinated to the Conservation Easement created by this Grant.

- c. **Compliance with Laws.** Grantor has not received notice of and has no knowledge of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Property.
- d. **No Litigation.** There is no action, suit or proceeding which is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.
- e. **Authority To Execute Conservation Easement.** The person executing this Conservation Easement on behalf of Grantee represents that execution of this Conservation Easement has been duly authorized by Grantee. The person(s) executing this Conservation Easement on behalf of the Grantor represents that the execution of this Conservation Easement has been duly authorized by the Grantor.

10. **COSTS, LEGAL REQUIREMENTS, AND LIABILITIES.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property and agrees that Grantee shall have no duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public, or any third parties from risks relating to conditions on the Property. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property before delinquency and that Grantor shall keep Grantee's interest in the Property free of any liens, including those arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

11. **INDEMNIFICATION BY GRANTOR.** Notwithstanding any other provision herein to the contrary, Grantor hereby agrees to indemnify, defend, and hold harmless Grantee, its

APPENDIX D2 (Continued)

members, directors, officers, employees, agents, and contractors and their heirs and assigns (the “Indemnified Parties”) from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, reasonable attorneys’ fees and costs) and litigation costs (collectively, “Damages”) which the Indemnified Parties may suffer or incur as a result of or arising out of any of the following: (a) the activities of Grantor on the Property; (b) the inaccuracy of any representation or warranty made by Grantor; (c) the breach of any provision of this Conservation Easement; (d) any injury to or the death of any person or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties; or (e) the existence or the administration of this Conservation Easement. Without limiting the foregoing, Grantor shall indemnify, defend, and hold harmless the Indemnified Parties for all of the following:

- a. **Approvals.** Approvals requested by Grantor, whether given or withheld by Grantee hereunder, except as such Damage is the result of Grantee’s gross negligence or intentional misconduct.
- b. **Taxes.** Any real property taxes, insurance, utilities or assessments that are levied against the Property, including those for which exemption cannot be obtained, or any other costs of maintaining the Property.
- c. **Hazardous Materials.** Any Hazardous Material, as that term is defined in Paragraph 16, present, alleged to be present, or otherwise connected in any way to the Property, whether by or after the date of this Conservation Easement.

12. NOTICE; APPROVAL.

- a. **Notice for Entry.** Where notice to Grantor of Grantee’s entry upon Property is required herein, Grantee shall notify any of the persons constituting Grantor or their authorized agents by telephone or in person, or by written notice in the manner described below in subparagraph C, prior to such entry.
- b. **Other Notice.** Except as provided in subparagraph A above, whenever express approval, agreement or consent is required by this document, the initiating party shall give written notice, in the manner described below in subparagraph C, and detailed information to the other party. The receiving party shall review the proposed activity and notify the initiating party, within sixty (60) days after receipt of notice of any objections to such activity. Any objections by a party shall be based upon its opinion that the proposed activity is inconsistent with the terms of the Conservation Easement.
- c. **Written Notices.** Any written notice called for in this Conservation Easement may be delivered (1) in person; (2) by certified mail, return receipt requested, postage paid;

APPENDIX D2 (Continued)

(3) by facsimile with the original deposited with the United States Post office, postage prepaid on the same date as sent by facsimile; or (4) by a reputable overnight courier that guarantees next day delivery and provided a receipt, and addressed as follows:

To the Grantor: XX

To Grantee: XX

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Notice is deemed to be given upon receipt.

- d. **Notice of Reserved Rights.** Grantor shall notify Grantee, in writing, at least sixty (60) days before exercising any reserved right which may have an adverse impact on any Conservation Values.
- e. **Subsequent Activities.** Permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.

13. **SEVERABILITY AND ENFORCEABILITY.** The terms and purposes of this Conservation Easement are intended to be perpetual. If any provision or purpose of the Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions and purposes of the Conservation Easement, and the application of such provision or purpose to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

14. **VALUATION; EXTINGUISHMENT; CONDEMNATION.**

- a. **Stipulated Fair Market Value.** Grantor and Grantee agrees that this Grant of a perpetual Conservation Easement gives rise to a property right, immediately vested in Grantee, which for purposes of this Paragraph, the parties stipulate to have a fair market value of the greater of:
 - i. \$_____, which is the product obtained when the per acre value paid to the Grantor of this Conservation Easement for the purchase of this easement is multiplied by _____, the total number of acres of Property; or
 - ii. the number obtained by multiplying (1) the fair market value of the Property unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) [insert x], which is the ratio of the value of the Conservation Easement at the time of this grant to the value of the Property, without the deduction for the value of the Conservation Easement. For Purposes of this Paragraph, the ratio of the value of the

APPENDIX D2 (Continued)

Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.

If for any reason there is an extinguishment of the restrictions of this Conservation Easement, Grantee, on a subsequent sale, exchange, or taking of the Property, shall be entitled to a portion of the proceeds at least equal to the amount determined in accordance with this Paragraph. If such extinguishment occurs with respect to fewer than all acres of the Property, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

- b. **Judicial Extinguishment.** It is the intention of the parties that the Conservation Purposes of the Conservation Easement shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind.
- c. **Condemnation.** If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. The remaining proceeds shall be divided consistent with the provisions of this Paragraph using the ratio of the value of Grantee's and Grantor's interests that is set forth in subparagraph A above, it being expressly agreed that the Conservation Easement constitutes a compensable property right.

15. INTERPRETATION

- a. **Liberal Construction.** It is the intent of this Conservation Easement to preserve the condition of the Property and each of the Conservation Purposes protected herein, notwithstanding economic or other hardship or changes in surrounding conditions. The provisions of this Conservation Easement shall be liberally construed to effectuate their purposes of preserving and protecting in perpetuity the Conservation Values and other Conservation Purposes described above, and allowing Grantor's use and enjoyment of the Property to the extent consistent with the Conservation Purposes. Liberal construction is expressly required for purposes of effectuating this Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. The Conservation Purposes described herein are the intended best and most productive use of the Property. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this

APPENDIX D2 (Continued)

- Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the State of California, the county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.
- b. **Governing Law.** This Conservation Easement shall be interpreted in accordance with the laws of the State of California, and shall be subject to the provisions of Civil Code Section 815 *et seq.* or any subsequent State law governing the creation, transfer and enforcement of conservation easements.
- c. **Captions.** The captions have been inserted solely for convenience of reference and are not part of the Conservation Easement and shall have no effect upon construction or interpretation.
- d. **No Hazardous Materials Liability.** Notwithstanding any other provision herein to the contrary, the parties do not intend this Conservation Easement to be construed such that it creates in or gives to Grantee:
- i. the obligations or liabilities of an “owner” or “operator” as those words are defined and used in Environmental Laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC § 9601 *et seq.* and hereinafter “CERCLA”);
 - ii. the obligations or liabilities of a person described in 42 USC §9607(a)(3);
 - iii. the obligations of a responsible person under any applicable Environmental Laws, as defined below;
 - iv. the right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property; or
 - v. any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.
- e. **Definitions.**
- i. The terms “Grantor” and “Grantee,” wherever used in this Conservation Easement and any pronouns used in place thereof, shall mean and include, respectively, the above-named Grantor, its personal representatives, heirs, devisee, personal representatives, and assigns, and all other successors as their interest may appear and Grantee and its successors and assigns.
 - ii. The term “Hazardous Materials” includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous

APPENDIX D2 (Continued)

wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC 9601 *et seq.*), the Hazardous Materials Transportation Act (49 USC §6901 *et seq.*), the Hazardous Waste Control Law (Cal. Health & Safety Code §25100 *et seq.*), the Hazardous Substance Account Act (Cal. Health & Safety Code §25300 *et seq.*), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after this date.

iii. The term “Environmental Laws” includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, protection of human health, the environment or Hazardous Materials.

16. **SUBSEQUENT LIENS ON PROPERTY.** No provision of the Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any deed of trust, mortgage, lien, or encumbrance arising from such a borrowing must, at all times, be subordinated to the Conservation Easement and this Grant. Any successor interest of Grantor, by acceptance of a deed, lease or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Conservation Easement.
17. **RE-RECORDING.** Grantee is authorized to re-record this Grant Deed, or record or file any notices or instruments necessary, as appropriate to assure the enforceability in perpetuity of this Conservation Easement. For such purpose, Grantor appoints Grantee as Grantor’s attorney-in-fact to execute, acknowledge and deliver any such instrument for recording or filing on Grantor’s behalf. The power of attorney in the immediately preceding sentence is irrevocable and coupled with any interest. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.
18. **ACCESS.** Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Grant Deed. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities might diminish or impair the Conservation Values.
19. **SUBSEQUENT TRANSFERS; NO MERGER.** Grantor shall incorporate the terms of this Grant Deed by reference in any deed or legal instrument by which Grantor divests any interest in the Property, including without limitation, any lease. Grantor shall give Grantee at least thirty (30) days written notice prior to the date of such transfer, which notice shall include the name, address and telephone number of the transferee. Grantor’s failure to perform any act required by this Paragraph shall not impair the validity of the Conservation Easement or this Grant Deed or limit its enforceability in any way. Any

APPENDIX D2 (Continued)

successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement.

20. **ENTIRE AGREEMENT.** This Grant Deed, together with the attached exhibits and schedules, and any documents incorporated herein by reference, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior agreement and understandings of the parties.
21. **AMENDMENTS.** The Conservation Easement may be amended only by way of a written instrument signed by Grantor and Grantee, and approved by the South Sacramento Conservation Agency. Any such amendment shall be consistent with the Conservation Purposes, and shall comply with Section 815 *et seq.* of the California Civil Code.
22. **COUNTERPARTS.** This Grant Deed may be signed in one or more counterparts, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Grant Deed of Conservation Easement as of the date first above written.

DATE: _____

BY: _____

NAME: _____

ITS: _____

DATE: _____

EXHIBITS

- Exhibit A – Legal Description of Property
- Exhibit B – Map of Property
- Exhibit C – Selected Portion of the Easement Documentation Report
- Exhibit D – Permitted Uses of the Property
- Exhibit E – Prohibited Uses of the Property
- Exhibit F – Prohibited Plant List

APPENDIX D2 (Continued)

STATE OF CALIFORNIA)

) ss.

COUNTY OF _____)

On _____, 20xx, before me, _____, the undersigned, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS by hand and official seal.

EXHIBIT A

Legal Description of Property

EXHIBIT B
Map of Property

EXHIBIT C

*Selected Portion of the
Easement Documentation Report*

EXHIBIT D

Permitted Uses of the Property

EXHIBIT D

Permitted Uses of the Property

The uses set forth in this Exhibit D detail specific activities that are permitted under the Conservation Easement. The uses set forth in this Exhibit D are also intended to provide guidance in determining the consistency of other activities with the Conservation Purposes. Notwithstanding the uses set forth in this Exhibit D and, notwithstanding any provision of this Grant to the contrary, in no event shall any of the permitted uses of the Property (whether set forth in this Exhibit D or elsewhere in this Grant) be conducted in a manner or to an extent that diminishes or impairs the Conservation Values or that otherwise violates this Grant.

1. **Historical Agricultural Practices.** Except as prohibited or restricted in Paragraph 6 of Exhibit E of this Grant, Grantor may continue historical agricultural practices on the Property in the manner and location as set forth in the Report to the extent that such practices are consistent with the Conservation Values and Conservation Purposes of the Conservation Easement. All farming operations on the Property shall be consistent with reasonable farming practices and shall be in full compliance with all applicable federal, state and local statutes, laws, rules, regulations and ordinances (collectively, the “Laws”). The term “historical agricultural practices” includes the continued historic use of fertilizers, pesticides herbicides, and other biocides, provided that such use, including, without limitation, the amount, frequency, and manner of application, shall be in accordance with all applicable Laws, and such use does not diminish or impair the Conservation Values or the Conservation Purposes of the Conservation Easement and shall not diminish or impair the naturally occurring ecosystem on and around the Property (not including any impacts caused to such ecosystems that are the intended result of the application of such fertilizers, pesticides, herbicides and/or biocides as long as the application of such substances has been conducted in accordance with the instructions for application set forth for such substance and such application is consistent with those good farm management practices that are customary in the general geographic area in which the Property is located).
2. **New Practices.** Except as prohibited or restricted in Paragraph 5 or Exhibit E of this Grant, and subject to obtaining Grantee’s prior approval in accordance with the notice and approval provisions contained herein, it shall be permissible to carry on agricultural practices, and other practices or activities, that differ from historical agricultural practices, so long as such practices do not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters, and such practices are consistent with and do not diminish or impair the Conservation Purposes of this Conservation Easement.

The following new practices are hereby found to be consistent with the Conservation Purposes of this Conservation Easement and do not require compliance with the notice

EXHIBIT D (Continued)

and approval procedures described above so long as such new practices shall not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters and such new practices are consistent with and do not diminish or impair the Conservation Purposes of this Conservation Easement:

- a. grazing of livestock;
- b. cultivation and harvest of alfalfa, clover and other permanent pasture; and
- c. substitution of new fertilizers, pesticides and herbicides for those Grantor presently uses, provided that such use, including, but not limited to, the amount, frequency, and manner of application shall be in accordance with all applicable Laws, and such use does not diminish or impair the naturally occurring ecosystems existing on the Property (not including any impacts caused to such ecosystems that are the intended result of the application of such fertilizers, pesticides, herbicides and/or biocides as long as the application of such substances has been conducted in accordance with the instructions for application set forth for such substance and such application is consistent with those good farm management practices that are customary in the general geographic area in which the Property is located); and
- d. the planting of native trees and shrubs anywhere on the Property except within the Agricultural Area of the Property as identified in the Report.

Except as expressly permitted in the immediately preceding sentence, the cultivation and harvest of any non-annual crops on the Property requires Grantee's prior approval in accordance with the notice and approval provisions contained above.

3. **Fences.** Grantor may maintain, repair, replace and rebuild the fences that exist on the Property as of the date of this Grant. Grantor, with Grantee's prior written approval, may construct and maintain new fences anywhere on the Property for purposes reasonable and customary management of agriculture, livestock, and wildlife.
4. **Irrigation Systems.** Grantor may maintain, repair, replace and rebuild any irrigation systems that exists on the Property as of the date of this Grant, and may construct and maintain new irrigation system improvement anywhere on the Property for purposes reasonable and customary management of agriculture, livestock, and wildlife.
5. **Roads.** Grantor may maintain and repair existing roads at currently existing levels of improvement, and construct and maintain such new unpaved and otherwise unimproved roads as may be reasonably necessary for Grantor's agricultural activities on the Property and in manner that shall not diminish or impair the Conservation Values of the Property or the Conservation Purposes of this Conservation Easement, provided, however, that any new roads may not be constructed unless prior written consent has been obtained from Grantee, which approval shall not be unreasonably withheld.

EXHIBIT D (Continued)

6. **Fishing and Hunting.** Grantor may fish or to hunt or trap wildlife on the Property, to the extent that fish or animals subject to such activities are not afforded protection under applicable Laws and provided such fishing, hunting or trapping is conducted in compliance with applicable Laws, and in a manner that does not significantly deplete the wildlife resources on the Property; and provided, further, that hunting on the Property shall be subject to regional hunting season restrictions applicable to individual hunters at local State Wildlife Areas, which shall in no event include any special regulation hunting seasons that would increase hunting activities on the Property in a manner that would be inconsistent with the Conservation Purposes or the Conservation Values of the Conservation Easement. Commercial hunting and fishing are permitted so long as conducted in accordance with the provisions of this Paragraph, provided, however, that commercial fish farms are prohibited. Control of predatory and problem animals shall use selective control techniques, which shall be limited in their effectiveness to specific animals which have caused damage to agriculture, livestock and other property.
7. **Water Resources.** Grantor may develop and maintain such groundwater resources on the Property as are necessary or convenient for agricultural, livestock, and wildlife habitat uses in a manner consistent with this Conservation Easement. Grantor may maintain such surface water resources on the Property as are noted in the Report as currently existing on the Property.
8. **Passive Recreational Uses.** Grantor may conduct passive recreational uses on the Property, including, but not limited to, bird watching, hiking, horseback riding, and picnicking, provided that these uses require no surface alteration or other development of the Property.
9. **Signs.** Grantor may erect a reasonable number of signs or other appropriate markers in a prominent location on the Property, visible from a public road, which identify agricultural or open space activities on the Property and/or state that no trespassing or no hunting is allowed on the Property.
10. **Transfer of Property.** Grantor may transfer the Property, provided that the transfer is not prohibited in Exhibit E and that Grantor notifies Grantee before the transfer of the Property, and the document of conveyance shall expressly incorporate by reference this Grant. Leasing of the Property for a period of five (5) or more years must be approved in writing by Grantee, whose approval shall not unreasonably be withheld. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Grant or the Conservation Easement or limit the enforceability in any way.
11. **Residual Rights; Prior Approval.** Except as expressly limited herein, Grantor may exercise and enjoy all rights as fee owner of the Property, including the right to use the Property for any purpose which is consistent with and does not diminish or impair

EXHIBIT D (Continued)

the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement.

If any question exists regarding whether historic or new practices or activities are permitted or would impair or diminish the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement, Grantor shall notify Grantee pursuant to Paragraph 13 of the Conservation Easement and obtain Grantee's written approval prior to engaging in such practices or activities.

EXHIBIT E

Prohibited Uses of the Property

EXHIBIT E

Prohibited Uses of the Property

Though not an exhaustive list of prohibited uses, none of the uses described below shall be made of the Property. The following are set forth both to list specific prohibited activities on the Property, and to provide guidance in determining whether other activities are not consistent with the Conservation Purposes of the Conservation Easement:

1. **No Subdivision.** The legal or de facto division, subdivision, or partitioning of the Property, any fee transfer of less than the entire Property.
2. **No Non-Agricultural Commercial Uses.** The establishment of any commercial or industrial uses on the Property other than the agricultural uses and commercial practices allowed by the terms of Exhibit D of this Grant. Examples of prohibited commercial or industrial uses include, but are not limited to, (a) the establishment or maintenance of any commercial feedlots, which are defined as any open or enclosed area where domestic livestock are grouped together for intensive feeding purposes; (b) the planting and cultivation orchards or vineyards; (c) the establishment or maintenance of any commercial greenhouses or plant nurseries; the (d) establishment or maintenance of any gravel mines; and (e) the establishment of any multi-family dwellings.
3. **No Non-Agricultural Practices in the Agricultural Area.** The planting and cultivation of any non-agricultural plants, including, but not limited to, native trees and shrubs, in the Agricultural Area as identified in the Report.
4. **No Use or Transfer of Development Rights.** Except as expressly permitted by terms of Exhibit D of this Grant, the exercise of any development rights associated with the Property, including without limitation, the construction or placement of any residential or other buildings, golf courses, camping accommodations, boat ramps, bridges, mobile homes, house trailers, permanent tent facilities, Quonset huts or similar structures, underground tanks, billboards, signs, or other advertising, and/or other structures or improvements, street lights, utility structures or lines, sewer systems or lines.

Except as expressly permitted by terms of Exhibit D of this Grant, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

5. **Natural Resource Development.** Except soils, sands and other material as appropriate for the conduct of the agricultural and other activities expressly permitted on the Property in this Grant, the exploration for or extraction of minerals, gas, hydrocarbons, soils, sands, gravel or rock or any other material on or below the surface of the Property.

EXHIBIT E (Continued)

6. **Prohibited Agriculture.** Any annual crop not historically planted on the Property or approved in writing by Grantor. Any non-annual crop not expressly permitted by the terms of Exhibit D of this Grant or approved in writing by Grantor. The planting, cultivation and harvest of any orchards, vineyards, artichokes, asparagus, sod, rice, safflower, or cotton.
7. **No Dumping.** The dumping, storage, or other disposal of non-compostable refuse, trash, sewer sludge or unsightly or toxic or Hazardous Materials or agrichemicals, except that fertilizers, pesticides, biocides, and herbicides permitted under Paragraphs 1 and 2 of Exhibit D may be stored on the Property provided that such storage is in full compliance with applicable Laws, best management practices, and does not diminish or impair the Conservation Values of the Property.
8. **No New Roads.** The construction, reconstruction or replacement of any roadways, except as expressly permitted in Exhibit D of this Grant, without the consent of Grantee.
9. **No Destruction of Native Trees or Shrubs.** The removal, cutting or destruction of native trees or shrubs on the Property, except for disease or insect control or to prevent property damage or personal injury and except for the removal of native trees that are four inches or less in diameter when measured at chest height from those areas of the Property that are used by Grantor for agricultural purposes permitted under this Grant.
10. **No Biocides.** The use of fertilizers, pesticides, biocides, and herbicides or other agricultural chemicals on the Property, except as expressly permitted in Exhibit D of this Grant.
11. **No Long-Term Leases.** Leasing the Property for a period of five (5) or more years without the prior written approval of Grantee.
12. **No Alteration of Natural Water Courses; Degradation of Water Quality.** Except with the prior consent of Grantee, the manipulation or alteration of natural water courses, wetland, streambank, shoreline, or body of water. Activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or subsurface waters; provided, however, that Grantor shall be allowed to conduct any of the uses specifically permitted in this Grant even if such uses result in some adverse impact on water quality so long as such permitted uses are conducted in full compliance with all applicable Laws and consistent with those good farming practices that are customary in the general geographic area in which the Property is located.
13. **No Impairment of Water Rights.** Severance, conveyance, or encumbrance of water or water rights appurtenant to the Property, separately from the underlying title to the Property, or other action which diminishes or extinguishes such water rights.

EXHIBIT E (Continued)

Nothing in this provision shall restrict the right of the Grantor to sell rights to use water, or to use water on the Property, or on lands other than the Property on a temporary basis (maximum one-year increments), provided that such sale or use does not permanently impair the riparian or other water rights appurtenant to the Property nor reduce water rights below what is necessary for present or future agricultural production on the Property.

This Agricultural Easement shall not sever or impair any riparian water rights appurtenant to the Property.

14. **Inconsistent or Adverse Actions.** Any action or practice which is or becomes not consistent with, or which diminishes or impairs the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement.
15. **Vehicles.** The use of any motorized vehicles off designated roadways, except for agricultural purposes.
16. **Introduction of Non-native Species.** The intentional or reckless introduction of non-native plant or animal species which may in Grantee's determination threaten the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement, which species include, but are not limited to, the plants, trees and weeds listed on Exhibit F, attached hereto and incorporated herein by reference. Grantor shall not be considered reckless for failure to prevent, investigate or research any potential manner that such items may be introduced to the Property if such prevention, investigation or research is not within Grantor's normal business practices, or such potential manner has not been brought to Grantor's attention.
17. **Subsequent Transfers.** Conveyance by Grantor of any interest in the Property in a manner that would directly or indirectly violate the prohibitions of this Exhibit E, or in any manner that does not comply with the requirements of Exhibit D and Paragraph 20 of this Grant.
18. **No Hazing.** The hazing or other disturbance of cranes or Swainson's hawks on, approaching, or leaving the Property for the purpose of, without limitation, discouraging the presence of or habitat use by cranes and other migratory birds on the Property.
19. **Junkyards.** The storage or disassembly of inoperable automobiles, machinery, equipment, trucks, and similar items for purposes of storage, sale, or rental of space for any such purpose.

EXHIBIT E (Continued)

INTENTIONALLY LEFT BLANK

EXHIBIT F
Prohibited Plant List

EXHIBIT F Prohibited Plant List

None of the following plant, tree, or weed species shall be planted on the Property:

Alligatorweed	<i>Alternanthera philoxeroides</i>
Ambulia	<i>Limnophila indica</i>
Arundo or Giant Weed	<i>Arundo donax</i>
Baby's breath	<i>Gypsophila paniculata</i>
Beancaper, Syrian	<i>Zygophyllum fabago</i>
Bearded creeper	<i>Crupina vulgaris</i>
Bermudagrass	<i>Cynodon</i> spp. and hybrids
Biddy biddy	<i>Acaena novae-zelandiae</i>
Biddy biddy, pale	<i>Acaena pallida</i>
Birdweed, field	<i>Convolvulus arvensis</i>
Black locust	<i>Robinia pseudoacacia</i>
Bladderflower	<i>Araujia sericifera</i>
Blueweed	<i>Helianthus ciliaris</i>
Broom, French	<i>Genista monspessulana</i>
Broom, Scotch	<i>Cytisus scoparius</i>
Broomrape, branched	<i>Orobanche ramosa</i>
Broomrape, Cooper's	<i>Orobanche cooperi</i>
Broomrape, Desert	<i>Orobanche cooperi</i>
Camelthorn	<i>Alhagi maurorum</i>
Capeweed	<i>Arctotheca calendula</i>
Chinese pistachio	<i>Pistacia atlantica</i> or <i>P. chinensis</i>
Chinese tallow tree	<i>Sapium sebiferum</i>
Chinese or scarlet wisteria	<i>Sesbania punicea</i>
Comfrey, rough	<i>Symphytum asperum</i>
Crupina, common	<i>Crupina vulgaris</i>
Distaff thistle, smooth	<i>Carthamus baeticus</i>
Distaff thistle, whitestern	<i>Carthamus leucocaulos</i>
Distaff thistle, woolly	<i>Carthamus lanatus</i>
Dodder, all species except giant dodder	<i>Cuscuta</i> spp.
Dodder, giant	<i>Cuscuta reflexa</i>
Diver's woad	<i>Isatis tinctoria</i>
Edible fig	<i>Ficus carica</i>
English Ivy	<i>Hedera helix</i>
Eucalyptus	<i>Eucalyptus</i> spp.
Fanwort, Carolina	<i>Cabomba caroliniana</i>
Field cress, Austrian	<i>Rorippa autriaca</i>
Field cress, creeping yellow	<i>Rorippa sylvestris</i>
Flag, western blue	<i>Iris missouriensis</i>
Foxtail, giant	<i>Setaria faberi</i>
Garlic, false	<i>Nothoscordum inodorum</i>

EXHIBIT F (Continued)

Garlic, wild	<i>Allium vineale</i>
Gaura, scarlet	<i>Gaura coccinea</i>
Gaura, Drummond's	<i>Gaura drummondii</i>
Gaura, wavy-leaved	<i>Gaura sinuata</i>
Goatgrass, barb	<i>Aegilops triuncialis</i>
Goatgrass, jointed	<i>Aegilops cylindrica</i>
Goatgrass, oyate	<i>Aegilops ovata</i>
Gorse	<i>Ulex europaeus</i>
Groundcherry, grape	<i>Physalis viscosa</i>
Groundcherry, long-leaf	<i>Physalis longifolia</i>
Halogeton	<i>Halogeton glomeratus</i>
Hermal	<i>Pegamon harmala</i>
Henbane, black	<i>Hyoscyamus niger</i>
Himalayan Blackberry	<i>Rubus discolor.</i>
Hoarycress, globe-podded	<i>Cardaria pubescens</i>
Hoarycress, heart-podded	<i>Cardaria draba</i>
Hoarycress, lens-podded	<i>Cardaria chalepensis</i>
Horsenettle, Carolina	<i>Solanum carolinense</i>
Horsenettle, white	<i>Solanum elaeagnifolium</i>
Hydrilla	<i>Hydrilla verticillata</i>
Iris, Douglas	<i>Iris douglasiana</i>
Iris, western blue flag	<i>Iris missouriensis</i>
Johnsongrass	<i>Sorghum halepense</i>
Jointvetch, rough	<i>Aeschynomene rudis</i>
Kangaroothorn	<i>Acacia paradoxa</i>
Kelp	<i>Polygonum amphibium</i> var. <i>emersum</i>
Kikuyugrass	<i>Pennisetum clandestinum</i>
Klamathweed	<i>Hypericum perforatum</i>
Knapweed, diffuse	<i>Centaurea diffusa</i>
Knapweed, Russian	<i>Acroptilon repens</i>
Knapweed, spotted	<i>Centaurea maculosa</i>
Knapweed, squarrose	<i>Centaurea squarrosa</i>
Knotweed, giant	<i>Polygonum sachalinensis</i>
Knotweed, Himalayan	<i>Polygonum polystachyum</i>
Knotweed, Japanese	<i>Polygonum cuspidatum</i>
Loosestrife, purple	<i>Lythrum salicaria</i>
Lettuce, water	<i>Pistia stratiotes</i>
Mallow, alkali	<i>Malvella leprosa</i>
Marigold, wild	<i>Tagetes minuta</i>
Medusahead	<i>Taeniatherum caput-medusae</i>
Melon, dedaim	<i>Cucumis melo</i> var. <i>Dudaim</i>
Melon, paddy	<i>Cucumis myriocarpus</i>
Mesquite, creeping	<i>Prosopis strombulifera</i>

EXHIBIT F (Continued)

Mistletoe, European	<i>Viscum album</i>
Mustard, purple	<i>Chorispora tenella</i>
Nightshade, heartleaf	<i>Solanum cardiophyllum</i>
Nightshade lanceleaf	<i>Solanum lanceolatum</i>
Nightshade, Torrey's	<i>Solanum dimidiatum</i>
Nightshade, white-margined	<i>Solanum arginatum</i>
Nimblewill	<i>Muhlenbergia schreberi</i>
Nutsedge, purple	<i>Cyperus rotundus</i>
Nutsedge, yellow	<i>Cyperus esculentus</i>
Onion, paniced	<i>Allium paniculatum</i>
Osage orange	<i>Maclura pomifera</i>
Pampas Grass	<i>Cortaderia jabata</i> or <i>C. selloana</i>
Peaweed, Austrian	<i>Sphaerophysa salsula</i>
Peppercress, perennial	<i>Lepidium latifolium</i>
Periwinkle	<i>Vinca major</i>
Povertyweed	<i>Iva axillaris</i>
Punagrass	<i>Achnatherum brachychaetum</i>
Puncturevine	<i>Tribulus terrestris</i>
Quackgrass	<i>Elytrigia repens</i>
Ragweed, giant	<i>Ambrosia trifida</i>
Ragwort, Oxford	<i>Senecio squalidus</i>
Ragwort, tansy	<i>Senecio jacobaea</i>
Restharrow, foxtail	<i>Ononis alopecuroides</i>
Rice, red	<i>Oryza rufipogon</i>
Russianthistle, barbwire	<i>Salsola paulsenii</i>
Russionthistle, common	<i>Salsola tragus</i>
Russianthistle, spineless	<i>Salsola collina</i>
St. Johnswort	as <i>Hypericum perforatum</i> (see Klamathweed)
Sage, meadow	<i>Salvia virgata</i>
Sage, Mediterranean	<i>Salvia aethiopis</i>
Salsola, wormleaf	<i>Salsola vermiculata</i>
Salt cedar (Tamarisk)	<i>Tamarix</i> spp.
Salttree, Russian	<i>Halimodendron halodendron</i>
Salvinia	<i>Salvinia auriculata</i> complex
Sandbur, coast	<i>Cenchrus incertus</i>
Sandbur, mat	<i>Cenchrus longispinus</i>
Sandbur, southern	<i>Cenchrus echinatus</i>
Satintail	<i>Imperata brevifolia</i>
Sicilian starthistle	<i>Centaurea sulphurea</i>
Skeletonweed	<i>Chondrilla juncea</i>
Sowthistle, perennial	<i>Sonchus arvensis</i>
Smooth-leaved elm	<i>Ulmus minor</i>
Spongeplant (S. American & N. American)	<i>Limnobium spongia sensu lato</i>

EXHIBIT F (Continued)

Spurge, leafy	<i>Euphorbia esula</i>
Spurge, oblong	<i>Euphorbia oblongata</i>
Spurge serrate	<i>Euphorbia serrata</i>
Spurge, Geraldton carnation	<i>Euphorbia terracina</i>
Starthistle, Iberian	<i>Centaurea iberica</i>
Starthistle, purple	<i>Centaurea calcitrapa</i>
Starthistle, Sicilian	<i>Centaurea sulphurea</i>
Starthistle, yellow	<i>Centaurea solstitialis</i>
Swinecress	<i>Coronopus squamatus</i>
Tanglehead	<i>Heteropogon contortus</i>
Thistle, artichoke	<i>Cynara cardunculus</i>
Thistle, Canada	<i>Cirsium arvense</i>
Thistle, distaff, smooth	<i>Carthamus baeticus</i>
Thistle, distaff, whitestem	<i>Carthamus leucocaulos</i>
Thistle, distaff, woolly	<i>Carthamus lanatus</i>
Thistle, golden	<i>Scolymus hispanicus</i>
Thistle, Illyrian	<i>Onopordum illyricum</i>
Thistle, Itaslian (see also "Thistle, slenderflowered")	<i>Arduus pycnocephalus</i>
Thistle, Japanese	<i>Cirsium japonicum</i>
Thistle, musk	<i>Carduus nutans</i>
Thistle, plumeless	<i>Carduus acanthoides</i>
Thistle, Scotch	<i>Onopordum acanthium</i>
Thistle, slenderflowered	<i>Carduus tenuiflorus</i>
Thistle, Taurian	<i>Onopordum tauricum</i>
Thistle, wavyleaf	<i>Cirsium undulatum</i>
Thistle yellowspine	<i>Cirsium ochrocentrum</i>
Toadflax, Dalmatian	<i>Linaria genistifolia</i> subsp. <i>Dalmatica</i>
Tree of Heaven or Ailanthus	<i>Ailanthus altissima</i>
Waterlily, banana	<i>Nymphaea mexicana</i>
Witchweed	<i>Striga asiatica</i>