

**RESOLUTION NO. 2005-259**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE PURCHASE  
AND SALE AGREEMENTS FOR THE ACQUISITION OF A SWAINSON'S HAWK  
FORAGING HABITAT CONSERVATION EASEMENT**

**WHEREAS**, the City of Elk Grove desires to purchase a Swainson's hawk foraging habitat conservation easement over approximately 158 acres distributed on two properties identified as a portion of Assessor's Parcel Number 134-0130-001 and all of Assessor's Parcel Number 134-0130-018 which are generally located on Grant Line Road on its westerly side, at the intersection of Elk Grove Blvd., between Deer Creek and the Cosumnes River, in the County of Sacramento, State of California; and

**WHEREAS**, the purchase of the 158 acres implements section 16.130.080 of the City of Elk Grove Municipal Code; and

**WHEREAS**, the California Government Code 65402, provides in part that no real property shall be acquired until the use of the property has been reported upon as to conformity with the applicable General Plan; and

**WHEREAS**, the conservation easement subject of the acquisition protects Swainson's hawk habitat in perpetuity by protecting the agricultural uses of the property in perpetuity; and

**WHEREAS**, agricultural uses are the specific purpose of the Agricultural Cropland land use designation as described in the County of Sacramento General Plan; and

**WHEREAS**, California Environmental Quality Act Guidelines Class 25 exemption applies to the acquisition of property to preserve wildlife habitat; and

**WHEREAS**, no adverse environmental effects were identified during staff review of the proposed acquisition; and

**WHEREAS**, no special circumstances exist that create a reasonable possibility that the activity may have a significant adverse impact on the environment.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby find:

The proposed conservation easement acquisition will encumber a portion of Sacramento County Assessor's Parcel Number 134-0130-001 and all of Sacramento

County Assessor's Parcel Number 134-0130-018 with land use limitations which are in conformity with the Sacramento County General Plan.

The project qualifies for Categorical exemption in accordance with CEQA Guidelines Section 15325, Class 25.

BE IT FURTHER RESOLVED:

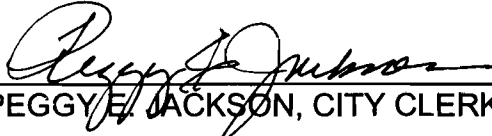
The City Manager or his designee is hereby authorized to execute the following:

- Purchase and Sale Agreement and Joint Escrow Instructions (APN 134-0130-001) by and between David Carli, Co-Trustee and Sandy (Elva) Carli, Co-Trustee of the Julius Carli and Doris Carli Revocable Family Trust (Seller) and the City of Elk Grove, a municipal corporation (Purchaser).
- Purchase and Sale Agreement and Joint Escrow Instructions (APN 134-0130-018) by and between David Carli, Co-Trustee and Sandy (Elva) Carli, Co-Trustee of the Julius Carli and Doris Carli Revocable Family Trust and the City of Elk Grove, a municipal corporation (Purchaser).

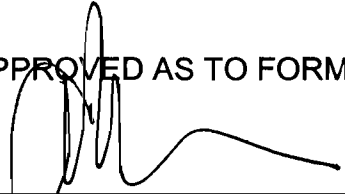
**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 14<sup>th</sup> day of Sept., 2005.

  
DANIEL BRIGGS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**CERTIFICATION**  
**ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-259**

**STATE OF CALIFORNIA            )**  
**COUNTY OF SACRAMENTO        )**     **ss**  
**CITY OF ELK GROVE             )**

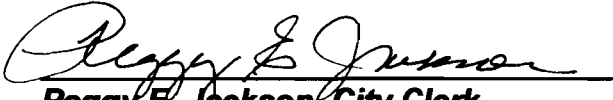
***I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 14th day of September, 2005 by the following vote:***

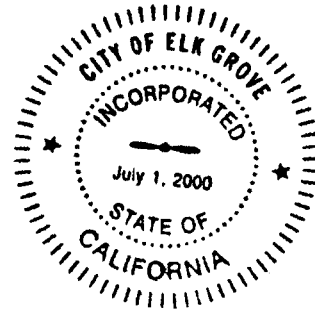
**AYES 5:     COUNCILMEMBERS:     Scherman, Soares, Briggs, Cooper, Leary**

**NOES 0:     COUNCILMEMBERS:**

**ABSTAIN 0: COUNCILMEMBERS:**

**ABSENT 0: COUNCILMEMBERS:**

  
**Peggy E. Jackson, City Clerk**  
**City of Elk Grove, California**



Grantor agrees to sell and convey to Grantee and Grantee agrees to purchase from Grantor, the Easement.

2. **Escrow.**

City shall open an escrow with Fidelity National Title Company, 8801 Folsom Blvd., Suite 210, Sacramento, California 95826 ("Escrow Holder") by delivery of a fully executed copy of this Agreement.

3. **Payment.**

A. **Purchase Price.**

The purchase price of the Easement shall be **Two Million Four Hundred Nineteen Thousand Six Hundred and Forty-Eight and No/100 Dollars (\$2,419,648.00)** subject to adjustment as further set forth herein (the "Purchase Price"). The parties agree that the Purchase Price is the full amount of compensation due and owing to Grantor for conveyance of the Easement to Grantee.

B. **Adjustment of Purchase Price.**

1. Upon receipt of the legal description of that portion of Parcel 3 which will be subject to the Easement (the "Burdened Portion"), the parties shall (i) attach a copy of the legal description to this Agreement as Exhibit A-4, and (ii) adjust the Purchase Price as further set forth herein.

2. If, following the creation of the legal description for the Burdened Portion, the total number of square feet contained in the Easement (calculated by adding the area of Parcel 2 and the Burdened Portion) is either greater or less than 158.48 acres in total; consisting of 140.42 acres (6,116,695.20 square feet) for Farmable lands and 18.06 acres (786,693.60 square feet) for Non-Farmable, the Purchase Price associated with the Burdened Portion, depending on the area determined as a result of the boundary survey, the Purchase Price shall be increased or decreased accordingly.

If the total number of square feet contained in the Easement on the Burdened Portion is greater than 56.13 acres in total; consisting of 50.05 acres (2,180,178.00 square feet) for Farmable lands and 6.08 acres (264,844.80 square feet) for Non-Farmable, the Purchase Price shall be increased by an amount equal to \$0.39 per square foot for Farmable land and \$0.04 per square foot for Non-Farmable land contained in the Easement.

If the total number of square feet contained in the Easement on the Burdened Portion is less than 56.13 acres in total; consisting of 50.05 acres (2,180,178.00 square feet) for Farmable lands and 6.08 acres (264,844.80 square feet) for Non-Farmable, the Purchase Price shall be decreased by an amount equal to \$0.39 per square foot for Farmable land and \$0.04 per square foot for Non-Farmable land contained in the Easement.

feet) for Non-Farmable, the Purchase Price shall be reduced by an amount equal to \$0.39 per square foot for Farmable value and \$0.04 per square feet for Non-Farmable value of land, less than the total of Farmable and Non-Farmable total square feet contained in the Easement.

**C. Deposit of Purchase Price**

On or before the Closing, as defined herein, Grantee shall deposit in Escrow the Purchase Price, as adjusted, in cash or other immediately available funds.

**4. Title.**

**A. Title Insurance Commitment.** Within 10 days after the Effective Date, Grantee shall request a current title insurance commitment issued by the Escrow Holder, including copies of all recorded exceptions to title referred to therein (collectively, the "Title Commitment"), showing title to the Property to be vested in Seller and committing to insure title to the Easement in Grantee in the amount of the Purchase Price. Grantee shall review the Title Commitment within 10 days after receipt thereof and provide Grantor with any objection thereto. If Grantee does not terminate this Agreement, the exceptions to title disclosed in the Title Commitment, excluding (i) any delinquent taxes or assessments, and (ii) monetary liens or encumbrances (other than non-delinquent taxes and assessments), shall be the "Permitted Exceptions" hereunder.

**B. Issuance of Title Policy.** At Closing, Grantor shall cause the Escrow Holder to issue, or unconditionally commit to issue, to Grantee its policy of title insurance insuring marketable title to the Easement in the amount of the Purchase Price in accordance with the Title Commitment, subject only to the Permitted Exceptions (the "Title Policy"). Grantee shall arrange for, and pay the cost of, coverage (including extended coverage) and any endorsements to the Title Policy that Grantee desires.

**C. Title Defects.** As used herein, a "Subsequent Defect" shall mean any encumbrance, encroachment, defect in or other matter affecting title that is not one of the Permitted Exceptions and (a) of which Grantee and Grantor are notified by the Title Company prior to Closing (by endorsement to the Title Commitment or otherwise); or (b) which is discovered by Grantee, and of which Grantee notifies Grantor, prior to Closing. If Grantor shall be so notified of a Subsequent Defect, Grantor shall use such efforts and shall expend such amount as it may, in its sole judgment, deem appropriate to remove or cure the Subsequent Defect prior to Closing. Except as provided in the last sentence of this Section 5, C, Grantor shall have no obligation, however, to cure or attempt to cure any Subsequent Defect. If Grantor does not or is unable to so remove or cure all Subsequent Defects prior to Closing, Grantee may (i) waive all such uncured Subsequent Defects and accept such title as Grantor is able to convey as of Closing without an abatement of the Purchase Price; or (ii) terminate this Agreement, whereupon Escrow Holder shall return any sums deposited by Grantee to Grantee, and Grantor and Grantee shall be relieved of any further obligations hereunder.

**D. Subordination.**

1. **Subordination of Current Lender.** Grantor shall obtain from any lender holding a mortgage or deed of trust on the Property (the "Lender"), an agreement confirming that the Lender's interest in the Property is subordinate to the Easement and any modifications, amendments and supplements thereto.

2. **Seniority of Grantee's Rights.** Grantor agrees that the rights of Grantee, pursuant to the subordination, shall, as between Grantee and Lender, be senior to and supersede and prevail over any conflicting rights of Lender. Without limiting the foregoing, Grantee agrees that Lender's right to all Rents from the Property and any insurance proceeds, condemnation awards or other compensation or proceeds paid or payable with respect to the Property or any portion thereof, including, any settlements or other payments in lieu thereof (collectively, "Proceeds") shall be senior to and any rights of the Grantee with respect thereto.

5. **Grantor's Representations and Warranties.** Grantor represents and warrants to Grantee as follows:

A. **Authority.** Grantor has full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. The person signing this Agreement on behalf of Grantor is authorized to do so.

B. **Consents; Binding Obligations; Violations.** All consents and approvals which may be required in order for Grantor to enter into this Agreement or consummate the transaction contemplated hereby have been obtained. This Agreement and all documents required hereby to be executed by Grantor are and shall be valid, legally binding obligations of and enforceable against Grantor in accordance with their terms. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Grantor is subject or by which Grantor is bound, or constitute a breach or default under any agreement or other obligation to which Grantor is a party or otherwise bound.

C. **Violations of Laws.** To Grantor's knowledge, Grantor has received no notices from any governmental entities of any uncured violation of any law, code or regulation applicable to the Property.

D. **Litigation.** There are no pending or, to Grantor's knowledge, threatened judicial, municipal or administrative proceedings affecting the Property.

All the foregoing representations and warranties made by Grantor are made as of the date of the Agreement. Between the Effective Date of this Agreement and the date of Closing, (i) Grantee shall notify Grantor of any breach or violation of the foregoing representations and warranties discovered by Grantee; and (ii) Grantor shall have the right to deliver to Grantee supplemental statements indicating any changes to the foregoing representations and warranties

that Grantor has discovered to date. Grantee shall have a period of three days from and after receipt of any such supplemental statement (or, if the date of Closing is less than three days from the day on which Grantee receives any such supplemental statement, the period from Grantee's receipt until Closing) to notify Grantor in writing of Grantee's election to terminate this Agreement, whereupon Escrow Holder shall return any funds deposited by Grantee to Grantee and both parties shall be relieved of any further obligations hereunder, except those which expressly survive termination.

In the event Grantee does not so terminate this Agreement within such period, Grantee shall be deemed to have accepted any changes to the foregoing representations and warranties set forth in the supplemental statement delivered by Grantor, and Grantee shall have no further right to object to such changes when the same are reflected in the above-described certificate to be delivered to Grantee at Closing.

Notwithstanding any contrary provision of this Agreement, Grantee acknowledges that Grantor is not representing or warranting that any reports, documents or other items which it has provided to Grantee pursuant to the terms of this Agreement are accurate or complete.

All of the foregoing representations and warranties of Grantor shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

6. **Grantee's Representations and Warranties.** Grantee represents and warrants to Grantor as follows:

A. **Authority.** Grantee is a municipal corporation. Grantee has full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. All requisite corporate action has been taken by Grantee in connection with the entering into of this Agreement and the instruments referenced herein and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Grantee is authorized to do so.

B. **Consents; Binding Obligations; Violations.** All consents and approvals which may be required in order for Grantee to enter into this Agreement or consummate the transaction contemplated hereby have been obtained. This Agreement and all documents required hereby to be executed by Grantee are and shall be valid, legally binding obligations of and enforceable against Grantee in accordance with their terms. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Grantee is subject or by which Grantee is bound, or constitute a breach or default under any agreement or other obligation to which Grantee is a party or otherwise bound.

7. **Survival.** The foregoing representations and warranties of Grantee shall be continuing and shall be deemed remade by Grantee as of the date of Closing with the same force and effect as if made at and as of that time.

8. **Covenants of Grantor.** Grantor hereby covenants with Grantee as that after the date of this Agreement and prior to Closing, Grantor agrees to pay, prior to delinquency, all property taxes which become due and payable with respect to the Property.

9. **Conditions Precedent.** Except as otherwise specifically provided herein, unless waived by the party entitled to the benefit thereof, the obligations of either party to close under this Agreement shall be subject to the satisfaction of the conditions that all representations and warranties of the other party contained in this Agreement shall be true and correct as of the Closing, and that the other party shall have performed all covenants, agreements and obligations required to be performed by it under this Agreement.

10. **Closing.** Grantee and Grantor agree that the purchase of the Property will be consummated as follows:

A. **Closing Date.** The closing of the transaction contemplated by this Agreement (the "Closing") shall take place at the offices of the Escrow Holder or in such other place which may be mutually agreed to by Grantor and Grantee on or before 60 days after the date this Agreement is approved by the City council (the "Closing Date").

B. **Closing Documents.** Except as otherwise required herein, Grantor and Grantee will deliver or cause to be delivered to each other at Closing, as appropriate, the following items (all documents will be duly executed and acknowledged where required):

(i) **Easement Deed.** The Easement Deed, in the form attached hereto as Exhibit "B", which shall have all blanks completed and shall be duly executed by the parties, conveying the Easement to Grantee.

(ii) **Title Policy.** The Title Policy or an unconditional commitment by the Escrow Holder to issue the Title Policy promptly after Closing.

(iii) **Non-foreign Affidavit.** An affidavit of Grantor that evidences that it is exempt from the withholding requirements of Section 1445 of the Code.

(iv) **Settlement Statements and Funds.** Settlement statements reflecting the Purchase Price and all adjustments and prorations to be made thereto pursuant to this Agreement, including without limitation Section 11 below, together with any amounts, in immediately available funds, required to be paid by either party thereunder.



(v) **Certificate.** The certificate of Grantor described in Subsection 6, D.

(vi) **Subordination Agreement.** The Subordination Agreement referred in Subsection 5, D, herein.

(vii) **Title Company Documentation.** Such documents, including without limitation, lien affidavits, possessory affidavits and authority documents, as may reasonably be required by the Escrow Holder in order to issue the Title Policy.

(viii) **Further Documents.** Grantor and Grantee shall execute and deliver such other documents and shall take such other action at Closing as may be necessary or appropriate to carry out their respective obligations under this Agreement, without further representations or warranties or indemnities, other than those contained herein.

## 11. **Condemnation.**

A. **Notice.** If, prior to Closing, Grantor learns of any actual or threatened taking in condemnation or by eminent domain (or a sale in lieu thereof) of all or any portion of the Property, Grantor will notify Grantee promptly thereof.

B. **Termination.** Other than with respect to an "Immaterial Taking" (as defined below), actual or threatened taking or condemnation for any public or quasi-public purpose or use by any competent authority in appropriate proceedings or by any right of eminent domain of all or any part of the Property between the date of this Agreement and the Closing Date shall, at Grantee's option, cause a termination of this Agreement. In the event of such termination, the Escrow Holder shall return the Deposit to Grantee and both parties shall be relieved of further obligations hereunder. The election to terminate provided hereby must be exercised by Grantee (or will be deemed to have been waived) by notice to Grantor to that effect given within 15 days following Grantee's receipt of Grantor's notice pursuant to Subsection 12, A, above. If Grantee shall not elect to so terminate this Agreement, Grantor shall be relieved of all obligations under this Agreement with respect to the portion of the Property so taken or condemned, but Grantee will be entitled to an adjustment of the Purchase Price using the formula set forth in Subsection 3, B, above.

12. **Commissions.** Grantor and Grantee represent that neither party has consulted with or engaged a broker with respect to the transaction contemplated hereby. Grantor agrees to indemnify, defend with counsel reasonably acceptable to Grantee, and hold Grantee harmless from and against any loss, liability, damage, cost or expense (including, without limitation, court costs and reasonable attorneys' fees) arising from any claim to any broker's, finder's or other fee in connection with this transaction by any party claiming by, through or under Grantor. Grantee agrees to indemnify, defend with counsel reasonably acceptable to Grantor, and hold Grantor harmless from and against any loss, liability, damage or expense (including, without limitation, court costs and reasonable attorneys' fees) arising from any claim to any broker's, finder's or other fee in connection with this transaction by any party claiming by, through or under Grantee.

13. **Remedies.**

A. **Grantor's Default.** In the event that Grantor shall default in its obligation to convey the Easement to Grantee and execute and deliver the documents required by it pursuant to Section 11 above, Grantee may, at its option and as its exclusive remedy therefor, either (i) terminate this Agreement by giving written notice of termination to Grantor, whereupon the Escrow Holder shall return the all funds deposited by Grantee to Grantee and both Grantee and Grantor shall be relieved of any further obligations or liabilities hereunder, except those which expressly survive termination of this Agreement; or (ii) seek specific performance of this Agreement.

B. **Grantee's Default.** In the event that Grantee shall default in its obligation to pay to Grantor the Purchase Price, as required by Section 3,C above, or execute and deliver the documents required by it pursuant to Section 11, B above, Grantor may, as its exclusive remedy therefor, terminate this Agreement by giving written notice of termination to Grantee, and both Grantee and Grantor shall be relieved of any further obligations or liabilities hereunder, except those which expressly survive termination of this Agreement.

14. **General Provisions.** The parties further agree as follows:

A. **Time.** Time is of the essence of this Agreement and Grantor's and Grantee's obligations hereunder.

B. **Entire Agreement.** No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. This Agreement contains the entire agreement between the parties relating to the acquisition of the Easement. All prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, under-takings, warranties or representations, oral or written, express or implied, between the parties other than as set forth herein.

C. **Survival.** All of the parties' representations, warranties, covenants and agreements hereunder, to the extent not fully performed or discharged by or through the Closing, shall not be deemed merged into any instrument delivered at Closing and shall remain fully enforceable thereafter.

D. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

E. **Notices.** All notices or other communications required or permitted to be given by this Agreement shall be in writing and shall be delivered personally (including by means of professional messenger service); or sent by prepaid registered or certified mail, return receipt requested; and addressed as follows:

If to Grantee, to:

City of Elk Grove  
City Clerk  
8380 Laguna Palms Way  
Elk Grove, CA 95758  
Attn: Real Property Manager

with a copy to:

Matthew R. Berrien, Esq.  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814

If to Grantor, to:

Elva (Sandy) Carli  
5118 Teichert Ave.  
Sacramento, CA 95819

with a copy to:

David J. Carli  
9585 Grant Line Road  
Elk Grove, CA 95624

or to such other address as shall, from time to time, be supplied by either party to the other by like notice. Any notice or other communication sent as aforesaid shall be deemed served when actually received or refused.

G. **Headings.** The headings which appear in some of the sections of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the sections in which they appear.

H. **Counterparts.** This Agreement may be executed in counterparts, each of which (or any combination of which) when signed and delivered by all of the parties shall be deemed an original, but all of which when taken together shall constitute one agreement.

I. **Assignment.** This Agreement cannot be assigned in whole or in part by Grantor without the consent of Grantee which consent may be withheld in Grantee's sole discretion.

J. **Successors and Assigns.** Subject to Section I, above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

K. **Miscellaneous.** In the event that any provision of this Agreement shall be determined to be illegal, invalid or unenforceable, such determination shall not affect the remaining provisions of this Agreement and in lieu of each provision of this Agreement that is illegal, invalid or unenforceable, a provision substantially the same in all material respects will

be added to this Agreement, if possible, which provision shall be legal, valid and enforceable; and this Agreement shall not be construed against the party preparing it but shall be construed as if all parties prepared this Agreement.

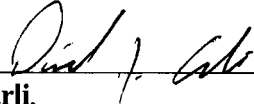
L. **Attorney Fees.** Either party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

M. **Recording.** Either party may record a memorandum of this Agreement in the Recorder's Office for Sacramento County.

(Remainder of this page left intentionally blank)

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

**GRANTOR:**

  
\_\_\_\_\_  
David Carli, \_\_\_\_\_

  
\_\_\_\_\_  
Elva Carli, \_\_\_\_\_

**GRANTEE:**

City of Elk Grove, a municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

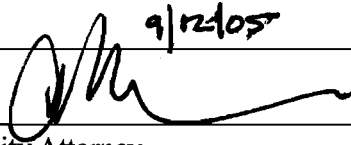
**RECOMMENDED FOR APPROVAL:**

Date: : Sept 9, 2005

By:   
\_\_\_\_\_  
Julie Cline, Real Property Manager

**APPROVED AS TO FORM:**

Date: : 9/12/05

By:   
\_\_\_\_\_  
City Attorney

**ATTEST:**

Date: : \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

**\*Note:** If Grantor is a corporation, the following two signatures are required: (1) the first signature by either the Chairman of the Board, the President or any Vice President of the corporation; and (2) the second signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of the corporation.

**Exhibit "A-2"**

**Parcel 2**

**BOUNDARY SURVEY CURRENTLY BEING COMPLETED TO IDENTIFY  
LOCATION OF ACTUAL ACREAGE USED FOR THE PLACEMENT OF CITY'S  
CONSERVATION EASEMENT**

**Exhibit "A-3"**

**Parcel 3**

**BOUNDARY SURVEY CURRENTLY BEING COMPLETED TO IDENTIFY  
LOCATION OF ACTUAL ACREAGE USED FOR THE PLACEMENT OF CITY'S  
CONSERVATION EASEMENT**

**Exhibit "A-4"**

**Portion of Parcel 3**

**BOUNDARY SURVEY CURRENTLY BEING COMPLETED TO IDENTIFY  
LOCATION OF ACTUAL ACREAGE USED FOR THE PLACEMENT OF CITY'S  
CONSERVATION EASEMENT**



Recording requested, and when recorded,  
return to:

City of Elk Grove  
Development Services, Planning  
8400 Laguna Palms Way  
Elk Grove, CA 95758

with a conformed copy to:

**DRAFT**

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

GRANT DEED OF SWAINSON'S HAWK HABITAT CONSERVATION EASEMENT

THIS GRANT DEED OF SWAINSON'S HAWK HABITAT CONSERVATION EASEMENT is made as of \_\_\_\_\_, 2005 by and between **David J. Carli**, an individual, and **Elva L. Carli**, an individual, collectively, "Grantor" and the **City of Elk Grove** ("City"), a municipal corporation, as "grantee."

RECITALS

A. Grantor owns real property consisting of approximately 184.63 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 is comprised of open space land, appropriate to use for agriculture, and also essential to providing foraging and/or nesting habitat for Swainson's hawks, and other significant relatively natural habitat and buffer for many species of wildlife including, but not limited to, raptors, migratory birds, and others.

C. Protection and preservation of the Property, including its wildlife habitat, will assure that this area and its existing features will continue to be available for agriculture, to provide foraging and or nesting habitat for Swainson's hawks and other natural habitat values and buffer for wildlife, a significant public benefit by preserving open space against development pressure, and scenic qualities unique to the Cosumnes River Watershed.

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

E. The State of California recognizes the public importance and validity of conservation easement by enactment of Section 815 *et seq* of the Civil Code, and the City is an entity qualified under such Civil Code provisions to hold a conservation easement.

F. The City is a local government agency in the State of California, and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended, qualified to acquire and hold conservation easements.

G. To accomplish all of the aforementioned purposes, Grantor intends to convey to the City and the City intends to obtain an easement restricting the use which may be made of the Property, to preserve and protect forever the agricultural uses, open-space, foraging and/or nesting habitat for Swainson's hawks and other wildlife habitat and scenic values of the Property.

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 acknowledged, and pursuant to the laws of the State of California and in particular California Civil Code section 815 et seq., Grantor hereby voluntarily grants and conveys to the City, its successors and assigns, an Easement in gross, forever in, on, over, and across the Property (the "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 the Easement are to preserve and protect in perpetuity (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 Swainson's hawks and for other wildlife including the process which sustain that habitat; and (c) the open space character 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 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 Swainson's hawks 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 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 an Easement Documentation Report (the "Report") of the Property has been prepared by a competent biologist familiar with the environs and approved by the City and Grantor in writing, a copy of which is on file with the Grantor and the City at their respective address for notices, set forth below. 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 foregoing, if a controversy arises with respect to the nature and extent of the physical and 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.

3. **CITY'S RIGHTS:** To accomplish the purpose of this Easement, the rights and interests which are conveyed to the City by this Easement include, but are not limited to, the following:

A. **Preserve and Protect.** The City may preserve and protect forever, the agricultural, open space, natural, ecological, and wildlife features and other conservation values of the Property, including, without limitation, the foraging and/or nesting habitat for Swainson's hawks, and for other wildlife including the processes which sustain that habitat.

B. **Entry and Access Rights.** The City is hereby granted rights of access to enter upon the Property, using appurtenant easements and rights of way, if required for access by City, at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Easement and to determine whether Grantor's activities are in compliance with the terms hereof. Except in cases where the City determines that immediate entry is required to prevent, terminate, or mitigate a violation of the Easement, such entry shall be upon prior reasonable notice to Grantor and will not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

C. **Enforcement.** The City may prevent any activity on, or use of, the Property that is inconsistent with the terms of this Easement, may enforce the restoration of such areas or features of the

Property that may be damaged by any inconsistent activity or use and may recover money damages for any injury to the easement, to the interests being protected thereby or for the breach of the terms of this easement as set forth herein.

- D. Signs. The City 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 resources of the Property are protected by the City. The wording of the information on the sign shall be jointly determined by the City and the Grantor, but shall clearly indicate that the Property is privately owned and not open to the public. The City shall be responsible for the costs of erecting and maintaining its sign or marker.

4. PERMITTED USES OF THE PROPERTY. Grantor and the City intend that this Easement shall confine the uses of the Property to the multiple natural resource conservation uses of agricultural, open space, conservation, and Swainson's hawk habitat, including the processes which sustain that agricultural use and habitat, and to such other incidental uses as are expressly permitted herein. Except as prohibited or otherwise limited in Paragraph 5 below and Exhibit D attached hereto, Grantor reserves the right to use and enjoy the Property in any manner which is consistent with the multiple natural resource conservation purposes of this Easement. In that regard, except as provided in Paragraph 5 below and Exhibit D attached hereto, the uses set forth in the Report as well as the permitted uses stated in Exhibit C attached hereto, though not an exhaustive list of consistent permitted uses, are consistent with this Easement, and shall not be precluded, prevented or limited by this Easement, except for the requirement of prior approval by the City where such approval is required herein.

5. PROHIBITED USES OF THE PROPERTY. Any activity on or use of the Property which is inconsistent with the multiple natural resource conservation purposes of this Easement is prohibited. Though not an exhaustive list of prohibited uses, none of the uses described in Exhibit D attached hereto shall be made of the Property.

6. REMEDIES.

- A. Notice of Violation: Corrective Action. If the City becomes aware that a violation of the terms of this Easement has occurred or is threatened to occur, the City, 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 purpose of this Easement, 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 the City, 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 and fails to continue diligently to cure such violation until finally cured, the City shall have all remedies available at law or in equity to enforce the terms of this 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, and to recover any damages arising from the violation. The Remedies described in this paragraph shall be cumulative and shall be in addition to all remedies hereafter existing at law or in equity.

The parties agree that monetary damages shall, include but are not limited to, reimbursement of the per acre value of the easement for all acres affected by such breach. Such per acre value of the easement is hereby stipulated to be the per acre value that results from application of the formula stated in Paragraph 14 below; or, if less, \$8,200.- per acre, which is the per acre value paid to the original grantor of this Easement by the City for the purchase of the Easement.

- B. Cost of Enforcement. In any action, suit or other proceeding undertaken to enforce the provisions of this Easement, the prevailing party shall be entitled to recover from the non-prevailing all reasonable costs and expenses including attorneys' fees, 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.

- C. Emergency Enforcement. If the City, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the protected values of the Property, the City may pursue its remedies under this paragraph 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 Easement shall be at the discretion of the City, and the failure of the City to discover a violation or to take action under this paragraph shall not be deemed or construed to be a waiver of the City's rights hereunder with respect to such violation in the event of any subsequent breach.
- E. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the City 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. Agent for Enforcement. Without the prior consent of the Grantor, the City may appoint any person or entity as the City's agent for enforcing the terms of this Easement, and the Grantor shall be entitled to treat any such person or entity as the City's agent for enforcement, provided such person or entity presents written proof of such authority signed by the City.

7. TRANSFER. The City may transfer all or any of its interests in this Easement without Grantor's consent, provided that (1) the City or any successor holder of this Easement obtains the prior written consent of the California Department Fish and Game; and (2) any transfer shall be made only 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.

8. RUNNING WITH THE LAND. The Easement created by this Grant Deed shall burden and run with the Property forever. Every provision of this Easement that applies to the Grantor or the City 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. The Grantor and the City agree that transfer by Grantor of any interest in the Property shall be in accordance with the terms of Paragraph 10 of Exhibit C 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 15; or (3) could reasonably be expected to cause any person to incur environmental investigation, removal, remediation, or other cleanup costs. Except as listed in Exhibit E, 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 15.
- B. State of Title. Subject to matters of record as disclosed in the Title Report, Grantor warrants that it has good and sufficient title to the Property and that all mortgages, liens, and encumbrances are subordinated to this Easement.
- 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 Easement. The person executing this Easement on behalf of the City represents that execution of this Easement has been duly authorized by the City. The person(s) executing this Easement on behalf of the Grantor represents that the execution of this 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 the City 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 the City'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 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 the City, its 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 reasonable attorneys' fees) which the Indemnified Parties may suffer or incur as a result of or arising out of the activities of the Grantor on the Property or any breach of this 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 or given or withheld by the City hereunder, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against Grantor or any other person or entity, except as such claim, liability, damage, or expense is the result of the City'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 in maintaining the Property.
- C. Hazardous Materials. Any Hazardous Material, as that term is defined in Paragraph 15, present, alleged to be present, or otherwise connected in any way to the Property, whether by or after the date of this Easement.

12. NOTICE; APPROVAL.

- A. Notice for Entry. Except in the event of emergency, where notice to Grantor of the City's entry upon Property is required herein, the City 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 five (5)

working-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 this Easement.

- C. Written Notices. Except as set forth in Subsection A above, any written notice called for in this Easement may be delivered (1) in person; (2) by certified mail, return receipt requested, postage paid; (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: David J. Carli  
9585 Grant Line Road  
Elk Grove CA 95624

Elva L. Carli  
5118 ~~Teichert~~ Ave.  
Sacramento, CA 95819

To City: Environmental Coordinator  
City of Elk Grove  
8400 Laguna Palms Way  
Elk Grove, CA 95758

with a copy to: Regional Manager  
Region 2  
California Department of Fish and Game  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670

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 or refusal.

- D. Notice of Reserved Rights. Grantor agrees to notify the City, in writing, at least sixty (60) days before exercising any reserved right which may have an adverse impact on any of the multiple natural resource conservation purposes protected herein.
- 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 Easement are intended to be perpetual. If any provision or purpose of this Easement or the application hereof to any person or circumstance is found to be invalid, the remainder of the provisions and purposes of this 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. Grantor and the City agrees that this grant of a perpetual Easement gives rise to a property right, immediately vested in the City, which for purposes of this Paragraph, the parties stipulate to have a fair market value of the greater of:

- A. \$\_\_\_\_\_, which is the product obtained when the per acre value paid to the grantor of this Agricultural Easement by City for the purchase of this easement is multiplied by \_\_\_\_\_, the total number of protected acres of the Property; or

- B. The number obtained by multiplying (1) the fair market value of the Property unencumbered by this Easement (minus any increase in value after the date of this grant attributable to improvements) by (2)  $[x/y]$ , which is] the ratio of the value of the Easement at the time of this grant to the value of the Property, without the deduction for the value of the Easement. The values at the time of this grant are those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. For Purposes of this Paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

If for any reason there is an extinguishment of the restrictions of this Easement, the City, on 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.

15. INTERPRETATION

- A. Liberal Construction. It is the intent of this Easement to preserve the condition of the Property and each of the multiple natural resource conservation purposes protected herein, notwithstanding economic or other hardship or changes in surrounding conditions. The provisions of this Easement shall be liberally construed to effectuate the perpetual purposes of preserving and protecting the agricultural, Swainson's hawk habitat, open space and other conservation purposes described above, and allowing Grantor's use and enjoyment of the Property to the extent consistent with those purposes. Liberal construction is expressly required for purposes of effectuating this Easement in perpetuity, notwithstanding changed conditions of any kind. The multiple natural resource conservation purposes herein are the intended best and most productive use of the Property. No remedy or election given by any provision in this 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 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 Easement. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions of the State of California, the City in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.
- B. Governing Law. This 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 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 Easement to be construed such that it creates in or gives to the City:
- (a) 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");
  - (b) the obligations or liabilities of a person described in 42 USC §9607(a)(3);
  - (c) the obligations of a responsible person under any applicable Environmental Laws, as defined below;

- (d) the right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property; or
- (e) any control over Grantor's ability to investigate, remove, remediate or otherwise cleanup any hazardous material associated with the Property.

E. Definitions.

- (a) The terms "Grantor" and "City", wherever used in this 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 the City and its successors and assigns.
- (b) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous 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 federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.
- (c) 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. **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 Easement, the Grantor and the City 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, which proceeds shall be divided in accordance with the value of City's and Grantor's interests as determined in accordance with the provisions of Paragraph 14 above, it being expressly agreed that this Easement constitutes a compensable property right. All expenses incurred by the Grantor and the City in such action shall be paid out of the recovered proceeds.

17. **SUBSEQUENT LIENS ON PROPERTY.** No provision of the Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage, lien, or encumbrance arising from such a borrowing shall be subordinated to the Easement.

18. **INDEMNIFICATION BY CITY.** The City will indemnify, defend and hold harmless Grantor from any costs, liabilities, penalties, damages, claims or expenses (including reasonable attorneys' fees) which Grantor and its employees, agents, and contractors may suffer or incur as a result of or arising out of the activities of the City on the Property, except damages caused solely by the gross negligence or willful misconduct or any breach of this Easement by Grantor or its employees, agents or contractors.

19. **RE-RECORDING.** The City is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, Grantor appoints the City their attorney-in-fact to execute, acknowledge and deliver any necessary instrument on their behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

20. **ACCESS.** Nothing contained in this 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 Agricultural Conversation Easement.



21. **ENTIRE AGREEMENT.** This Easement, 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.

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

GRANTOR:

\_\_\_\_\_  
David J. Carli, an individual

\_\_\_\_\_  
Elva L. Carli, an individual

GRANTEE:

City of Elk Grove, a municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

Date: : \_\_\_\_\_

By: \_\_\_\_\_  
Julie Cline, Real Property Manager

**APPROVED AS TO FORM:**

Date: : \_\_\_\_\_

By: \_\_\_\_\_  
City Attorney

**ATTEST:**

Date: : \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

EXHIBIT B

Map

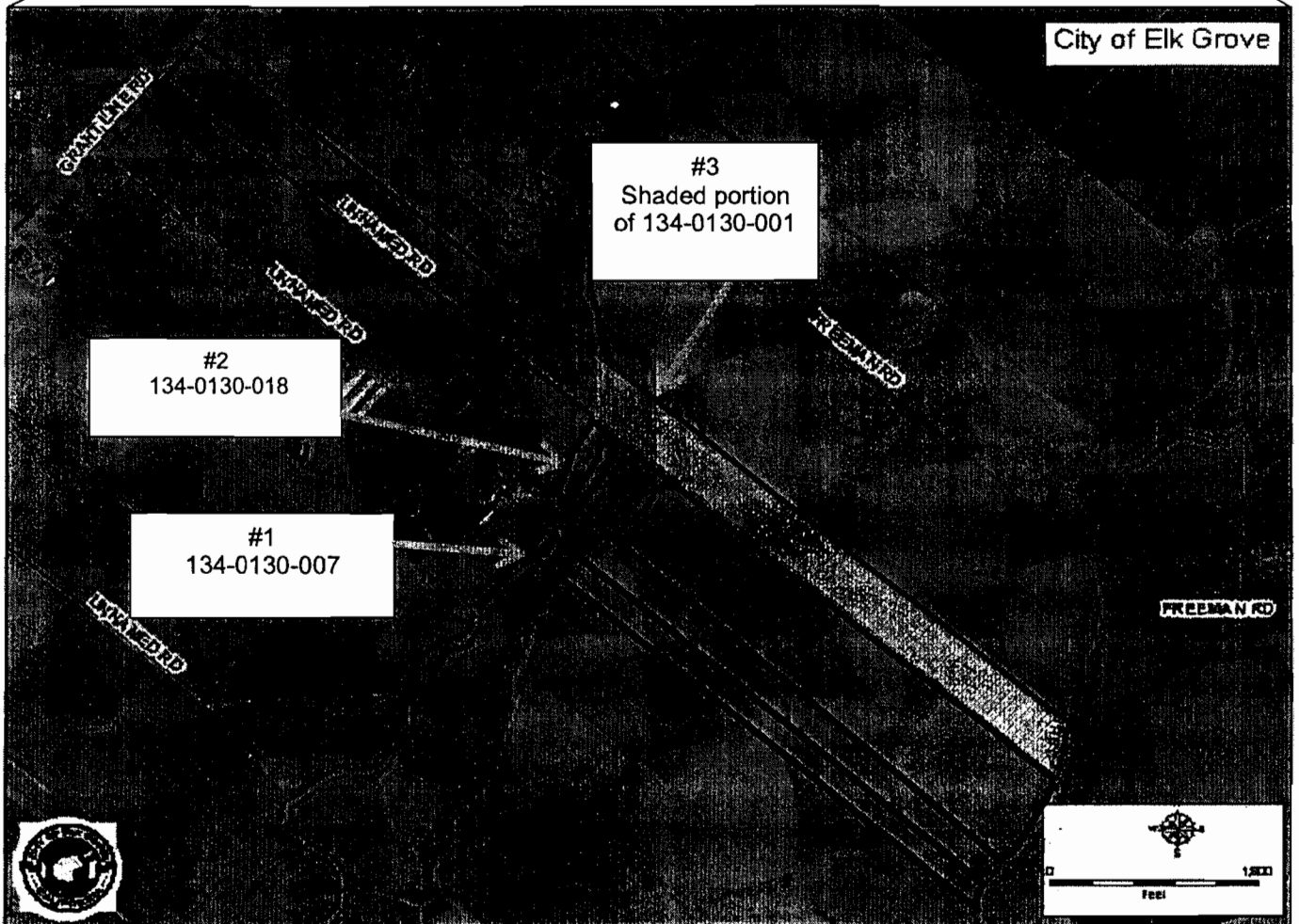
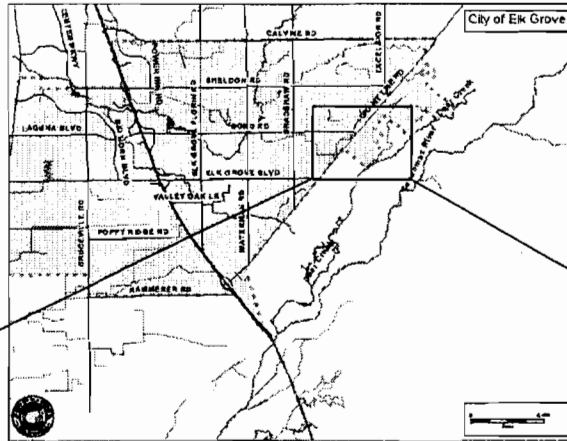


EXHIBIT A-1

Description being developed by Surveyor

EXHIBIT A-2

Description being developed by Surveyor

EXHIBIT A-3

Description being developed by Surveyor

EXHIBIT B

Map

[To be attached]

EXHIBIT C  
(Paragraph 4)

PERMITTED USES OF THE PROPERTY

The following are set forth both to list specific permitted activities, and to provide guidance in determining the consistency of other activities with the multiple natural resource conservation purposes of this Easement:

1. Historical Agricultural Practices. Except as prohibited or restricted in Paragraph 5 or Exhibit D of the Easement, Grantor is permitted to continue historical agricultural practices in the manner and location as set forth in the Report, to the extent that such practices are consistent with the multiple natural resource conservation purposes of this Easement. The term "historical agricultural practices" includes the continued historic use of fertilizers, pesticides, herbicides, and other biocides, 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 regulations, and such use does not injure or destroy the habitat for Swainson's hawk.

2. New Practices. Except as prohibited or restricted in Paragraph 5 or Exhibit D of the Easement, and subject to obtaining the City's prior approval in accordance with the notice and approval provisions contained therein, Grantor is permitted 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 adversely affect the multiple natural resource conservation purposes of this Easement, which purposes are to preserve and protect in perpetuity (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 Swainson's hawks and for other wildlife including the processes which sustain that habitat; and (c) the open space character of the Property which are important public benefits and are consistent with the availability of the Property for wildlife, habitat and agriculture.

The following new practices are hereby found to be consistent with this Easement and do not require the notice and approval described above so long as such new practices will 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 adversely affect the multiple natural resource conservation purposes of this Easement:

- (a) grazing;
- (b) cultivation of rice and other row and field crops;
- (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 regulations, and such use does not injure or destroy the naturally occurring ecosystems; and
- (d) allowing row crop bottomland to revert to native hardwood forest or engaging in actions that precipitate such reversion.

3. Maintenance, Repair and Replacement. To maintain, repair, replace and rebuild existing structures and improvements, including, by way of illustration and not limitation, fences and irrigation systems, provided that such replacement improvements, structures and improvements shall be of approximately the same square footage as the improvements that they replaced, shall be rebuilt in the same general location, and in a manner consistent with the purposes of this Easement, and the agricultural productivity and natural habitat values for the Swainson's hawk, wildlife, and open space character of the Property provided, however, that Grantor shall have the right to replace existing structures and improvements in different locations, with the City's prior approval. The City shall review and respond to any such request within thirty (30) days after receipt of the request. Additional fencing deemed by Grantor to be reasonably necessary to agricultural activities may be constructed without the City's consent.

4. Roads. To maintain and repair existing roads at currently existing levels of improvement, and to construct and maintain such new, unpaved and otherwise unimproved roads as shall be reasonably necessary for agricultural purposes and will not substantially diminish or impair the open space character, agricultural productivity of the Property, or Swainson's hawk habitat qualities on the Property and shall be consistent with this Easement, provided that no new roads shall be constructed unless prior written consent has been obtained from the City. The City shall review and respond to any such request within thirty (30) days after receipt of the request.

5. Residence. Grantor reserves the right to construct and use a headquarters compound consisting of one single family residence (the "Residence") and agriculture and grazing related structures and improvements, including, without limitation, barns, corrals, fencing, equipment sheds and pads, etc., (the "Headquarters"), and improvements associated with the Residence and Headquarters, including, without limitation, utilities, driveway, septic system, water well, so long as (i) the Residence and associated improvements are contained within an area not exceeding one (1) acre; (ii) the headquarters and associated improvement are contained within an area not exceeding two (2) acres; and (iii) the one acre and two acre areas are in a reasonable compact shape and form a contiguous or single unit.

6. Fishing and Hunting. To fish or to hunt or trap wildlife not afforded protection under applicable laws or regulations, in compliance with applicable laws and regulations, and in a manner that does not significantly deplete the wildlife resources; provided, however, that while commercial hunting and fishing are permitted, commercial fish farms are prohibited. In addition, 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 livestock and other property, Grantor may construct duck blinds.

7. Water Resources. To develop and maintain such water resources on the Property as are necessary or convenient for agricultural, and Swainson's hawk habitat uses, in a manner consistent with this Easement.

8. Passive Recreational Uses. To conduct passive recreational uses, including, but not limited to, bird watching, hiking, horseback riding, and picnicking, provided that these uses, require no surface alteration or other development of land.

9. Signs. To erect a sign or other appropriate marker in a prominent location on the Property, visible from a public road, which state that no trespassing or no hunting is allowed on the Property.

10. Transfer of Property. To transfer the Property, provided that the transfer is not prohibited in Exhibit D, Grantor shall notify the City before the transfer of the Property, and the document of conveyance shall expressly incorporate by reference this Easement. The City shall review and respond to the request for the transfer of property or for leases in excess of five years with thirty (30) days after receipt of such request. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

11. Residual Rights; Prior Approval. Except as expressly limited herein, to exercise and enjoy all rights as owner of the Property, including the right to use the Property for any purpose which is consistent with and does not adversely affect the multiple natural resource conservation purposes of the Easement, which purposes are to preserve and protect in perpetuity (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 Swainson's hawks and for other wildlife including the processes which sustain that habitat; and (c) the open space character of the Property which are important public benefits and are consistent with the availability of the Property for wildlife, habitat and agriculture.

If any question exists regarding whether historic or new practices or activities are permitted or would have an adverse impact on any of the multiple natural resource conservation purposes protected herein, Grantor shall notify the City pursuant to Paragraph 12 of the Easement and obtain the City's approval prior to engaging in such practices or activities.



In the event that the City determines that any practice or activity is not consistent with or would adversely affect the conservation or habitat values of the Property as foraging and/or nesting habitat for Swainson's hawks, and if Grantor disagrees with such decision, the matter shall be submitted to the California Department of Fish and Game for determination, and such determination shall be binding upon the Grantor and the City.

EXHIBIT D

(Paragraph 5)

**PROHIBITED USES OF THE PROPERTY**

The following are set forth both to list specific prohibited activities, and to provide guidance in determining whether other activities are not consistent with the multiple natural resource conservation purposes of this Easement:

1. No Subdivision. The legal or de facto division, subdivision, or partitioning of the Property.
  
2. No Non-Agricultural Commercial Uses. The establishment of any commercial or industrial uses other than the continuation of agricultural, except those commercial practices allowed under Paragraph 6 of Exhibit C. Examples of prohibited commercial or industrial uses include, but are not limited to the establishment or maintenance of any commercial feedlots, which are defined as any open or enclosed area where domestic livestock owned by other than Grantor are grouped together for intensive feeding purposes.
  
3. No Use or Transfer of Development Rights. Except as expressly permitted by terms of Exhibit C of the Easement, the exercise of any development rights associated with the Property, including, without limitation, the construction or placement of any residential or other buildings, camping accommodations, boat ramps, bridges, mobile homes, house trailers, permanent tent facilities, Quonset huts or similar structures, underground tanks, or billboards, signs, or other advertising, and/or other structures or improvements, street lights, utility structures or lines, sewer systems or lines, except as specifically permitted herein.

Except as expressly permitted by terms of Exhibit C of the Easement, the exercise of all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property, provided, however, that with prior written permission of the City, this subparagraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

4. Natural Resource Development. Except soils, sands and other material as appropriate for the conduct of the agricultural and other activities permitted herein, 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, except in accordance with and as permitted by the terms, conditions and restrictions contained in Schedule 1 attached hereto and incorporated herein.
  
5. No Orchards and Vineyards. The planting and cultivation of commercial orchards and vineyards.
  
6. 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 C may be stored on the Property, provided that such storage is in compliance with applicable health, safety and Environmental Laws and regulations.
  
7. No New Roads. The construction, reconstruction or replacement of any roadways, except as expressly provided herein, without the consent of the City. The City shall review and respond to any request for roadway construction, reconstruction or replacement within thirty (30) days after receipt of such request.
  
8. 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.
  
9. No Biocides. The use of fertilizers, pesticides, biocides, and herbicides or other agricultural chemicals, except as expressly permitted herein.

10. No Hunting. The use of the property for hunting, trapping, or fishing, except as expressly permitted in accordance with Paragraph 6 of Exhibit C.

11. No Alteration of Natural Water Courses; Degradation of Water Quality. Except with the prior consent of the City, 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, pollution of any surface or subsurface waters.

12. 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.

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.

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

13. Alteration of Grassland Landscape. Deep ripping, leveling or altering the native landscape of any portion of the property which is grassland at the time this instrument is recorded.

14. Inconsistent or Adverse Actions. Any action or practice which is or becomes not consistent with, or which adversely affects any of the multiple natural resource conservation purposes of this Easement, which purposes are to preserve and protect in perpetuity (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 Swainson's hawks and for other wildlife including the processes which sustain that habitat; and (c) the open space character of the Property which are important public benefits and are consistent with the availability of the Property for wildlife, habitat and agriculture.

**Schedule 1**  
**to**  
**Exhibit D**

The following terms and restrictions shall apply to any exploration for or extraction of minerals, hydrocarbons, soils, sands, gravel or rock, or any other material on or below the surface of the Property:

1. Except soils, sands and other material as appropriate for the conduct of the agricultural and habitat conservation activities permitted under the Easement, Grantor shall not enter upon or use, or permit entry or use of, the surface of the Property or any part thereof or the subsurface to a depth of five hundred feet (500') for the exploration for or extraction of minerals, hydrocarbons, soils, sands, gravel or rock or any other material on or below the surface of the Property except as herein specifically provided.

2. Grantor shall have the right to drill from the surface of lands other than the Property, in, into and through that portion of the subsurface of the Property lying below a depth of five hundred feet (500') measured vertically from the surface thereof, for the purposes of exploring for, extracting and removing any and all oil, gas and hydrocarbon substances; provided, however, that no drill site surface location shall be located within one hundred feet (100') of the Property's boundary.

3. Grantor or Grantor's oil and gas lessees shall have the right to use of one (1) drill and well site of not more than one and one-half (1-1/2) acres in size and in reasonably compact shape, for exploration and development of the reserved mineral estate; provided, however that, except for routine operation or maintenance of facilities in place or in the event of an emergency, all use of the surface of the Property by Grantor or Grantor's oil and gas lessees shall occur only during the period commencing May 15 and ending September 30. Upon completion of drilling at any such drillsite, the sump shall be filled, the drilling pad removed, and the surface of the land restored as nearly as reasonably practicable to its natural contours, as directed by the City. In the event a well is completed as capable of commercial production of oil or gas, the well site shall be reduced to a size not to exceed 100 feet by 100 feet and shall be fenced and locked with a gate, all reasonably designed so as to blend into the surrounding landscape. Upon abandonment of a well site, the area so occupied shall be restored as nearly as reasonably practicable to its natural contours, as directed by grantee herein. All pipelines shall be buried at least 48 inches below the surface of the ground, adjacent and parallel to then-existing roads.

4. Grantor shall indemnify, release and hold the City harmless from any and all claims, loss, expense, damage or other liability due to any damage to property or any injury to, or the death of any person arising out of any activities relating to the exploration for or development of the minerals, hydrocarbons, soils, sands, gravel or rock or any other material on or below the surface of the Property.

5. It is expressly acknowledged that if any activity is undertaken in violation of these terms and restrictions, the City shall be entitled to restoration of the lands affected by such activity, and any damages shall include, without limitation, the cost or restoring such lands to the condition that existed prior to the undertaking of such activity.

6. Grantor agrees that Grantor shall not enter into any lease for the purposes of exploration or extraction of minerals, soils, sands, gravel or rock, or any other material on or below the surface of the Property unless such lease includes each and every term and restriction set forth in the Easement and the lessee agrees not to carry out any exploration or development activity except in accordance with such terms and restrictions. Grantor further agrees to deliver in form satisfactory to the City and concurrent with execution and delivery of the Easement, a written agreement to be bound by the terms of this Easement executed by all holders of any existing ownership or rights to explore for or develop the minerals, hydrocarbons, soils, sands, gravel or rock, or any other material on or below the surface of the Property.

7. These terms and restrictions shall run with the land described in and covered by the Easement, and shall inure to the benefit of and be binding upon the heirs, devisee, personal representatives, successors and assigns of the City and the Grantor.

8. Grantor shall not conduct or permit any surface mining on the Property whatsoever.

9. Grantor shall have the right to drill additional wells within the drill and well site only for water and shall be limited to the reasonable use of water so obtained in the exploration for and development of the mineral estate. All such drilling for and use of water shall be performed in accordance with applicable laws and ordinances. Grantor shall not pollute or interfere with the surface or subsurface water in or under the Property. Any waste water resulting from Grantor's activities shall be treated so that its quality is at least equal to that in other wells in the general area or removed from the Property.

10. As soon as Grantor ceases to use any portion of the Property, Grantor shall immediately remove therefrom all foundation and foreign substances placed there in the course of exploration or development activities by Grantor or Grantor's oil and gas lessees, including, but not limited to, residues from drilling muds and any oil used to surface roads, abandon all wells as required by law, and restore such portions of the Property to their original contours, as reasonably specified by the City.

11. The Property shall not be used by Grantor for any activity which is inconsistent with the terms and restrictions of the Easement. Grantor shall give the City written notice pursuant to terms of the Easement at least forty-five (45) days prior to commencement of any operations by Grantor, Grantor's oil and gas lessees or by others on the Property, describing the proposed location and nature of such operations.

12. Grantor shall indemnify and defend the City, its agents, employees and officers (the "City") and hold the City harmless from and against, and waive and release the City from any and all claims, liability, losses, damage, costs, and expenses (including, without limitation, reasonable attorneys' fees) asserted against or suffered by the City resulting from damage to property or injury to or the death of any person arising out of the acts or omissions of Grantor or Grantor's agents, employees, lessees, successors or assigns with respect to the exercise of any rights reserved by Grantor in the Easement or any other use of the Property.

13. The parties hereto shall have the option and right to enforce, by any proceedings at law or in equity, all of the terms and restrictions confirmed in the Easement. Failure by either party to enforce any terms or restrictions herein and in the Easement shall in no event be deemed a waiver of the right to do so thereafter. Should any lawsuit or other legal proceedings be instituted by either party, the prevailing party shall be entitled to its costs of such proceedings, including reasonable attorneys' fees.

14. Invalidation of any one of the terms and restrictions herein by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

EXHIBIT E

UNDERGROUND TANKS

The following underground tanks exist on the Property:

NONE