

**EASEMENT DOCUMENTATION REPORT:
KIRKHAM FARM**

Sacramento County, California



March 6, 2009

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1. INTRODUCTION

1.1. PURPOSE

The purpose of this report is to provide an accurate representation of the present condition of the Kirkham Farm property as it relates to the easement language and restrictions as of the date of the recording (August 26, 2005) of the Conservation Easement for Kirkham Farm. The information and photographs provided herein represent the condition of the property as of February 3, 2009. The Conservation Easement for Kirkham Farm is attached as **Appendix A**.

1.2 LOCATION

The Kirkham Farm Property (property) is located to the southwest of the intersection of Twin Cities Road and Franklin Boulevard in southern Sacramento County, California (**Figure 1**). The property is bordered to the north by Twin Cities Road, to the east by Franklin Boulevard, and to the south by Lost Slough (a main tributary to Snodgrass Slough to the southwest of the property). The western boundary is approximately 1,954 feet west of Franklin Blvd. The Western Pacific Railroad runs along the east side of Franklin Boulevard, to the east of the property.

2. METHODS

A site visit to the property was conducted on February 3, 2009 by City of Elk Grove biologist, Jessica Griggs, to note features relevant to the easement agreement and to take reference photos at designated photo points. On the day of the site visit, it was sunny and clear with an outside temperature of approximately 65 degrees Fahrenheit (TWC 2009).

Air Photo USA aerial photos (2004) and digitized parcel boundaries were used as references and as base layers for maps. Maps were created using ArcView software.

Photographs of the property were taken with an 8.0 megapixel Nikon Coolpix L18 digital camera, five feet above the ground. Photos points were recorded on an aerial photograph and then digitized using ArcGIS software. **Figure 2** shows the plotted locations of the photo points within the property. A description of each photo point location and each scene photographed is included in **Appendix B**. Photo reference numbers start with the number of a fixed photo point (e.g., P1, P2), and are followed by a letter denoting the direction toward which the camera was pointed. Thus, photo P1-S is a photo taken at photo point 1 looking toward the south, and P1-N is a photo taken from the same fixed location but looking toward the north. The geographic coordinates and a brief locality description for each photo point are located in **Appendix C**.

3. DESCRIPTION OF THE PROPERTY AND EASEMENT

The property's legal description is contained in Exhibit A of the Conservation Easement, which is enclosed as **Appendix A** of this report. The Kirkham Farm Property covered under the Conservation Easement includes a total of 169 acres. The property is composed of approximately 150 acres of leveled farmland that is currently covered with dense low-growing grasses and used as cattle pasture. The remainder of the property is either disturbed (ruderal) or marsh habitat. A 2.6-acre tailwater pond dominated by marsh vegetation is located on the southern-central boundary of the property. The pond's southern edge borders the levee road adjacent to Lost Slough. The other characteristics of the property are described below under **Section 3.6 Infrastructure and Buildings** and **Section 3.7 Conservation Features**.

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3.1. PURPOSE OF THE CONSERVATION EASEMENT

The multiple natural resource conservation purposes of the Conservation 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 (*Buteo swainsoni*) and for other wildlife essential for maintaining Swainson's hawk habitat, including the processes which sustain that habitat; and (c) the open space character of the property which is an important public benefit and is consistent with the availability of the property for wildlife habitat and agricultural uses.

3.2. SURROUNDING PROPERTIES

The majority of the surrounding land to the west, north, and east of the Kirkham Farm property is used for growing row crops or for pasture. The zoning for the area is *General Agriculture-80*, which permits single-family dwellings at a density no greater than one per 80 acres, but smaller parcels may exist west, north, and east of the property (County of Sacramento 1993). The area south of the property and south of Lost Slough is part of the Cosumnes River Preserve, a nearly 46,000-acre preserve dedicated to the preservation of wetland and riparian habitats along the Cosumnes River (Cosumnes River Preserve 2009).

3.3. HISTORIC AGRICULTURAL PRACTICES

Historically, water was pumped from Lost Slough and carried to crops on the southern portion of the property via plastic piping, while irrigation ditches continued to be used in the northern portions of the property.

In past years, prior to 1950, the property was used for growing rice. From 1950 to 1977, the property was grazed by cattle. Prior to 2007, the property was used to grow annual row crops such as rice, corn, milo, sudan grass seed, ladino clover seed, oat hay, rye, and wheat. The irrigation ditches used for watering these crops remain on the property as of February 3, 2009.

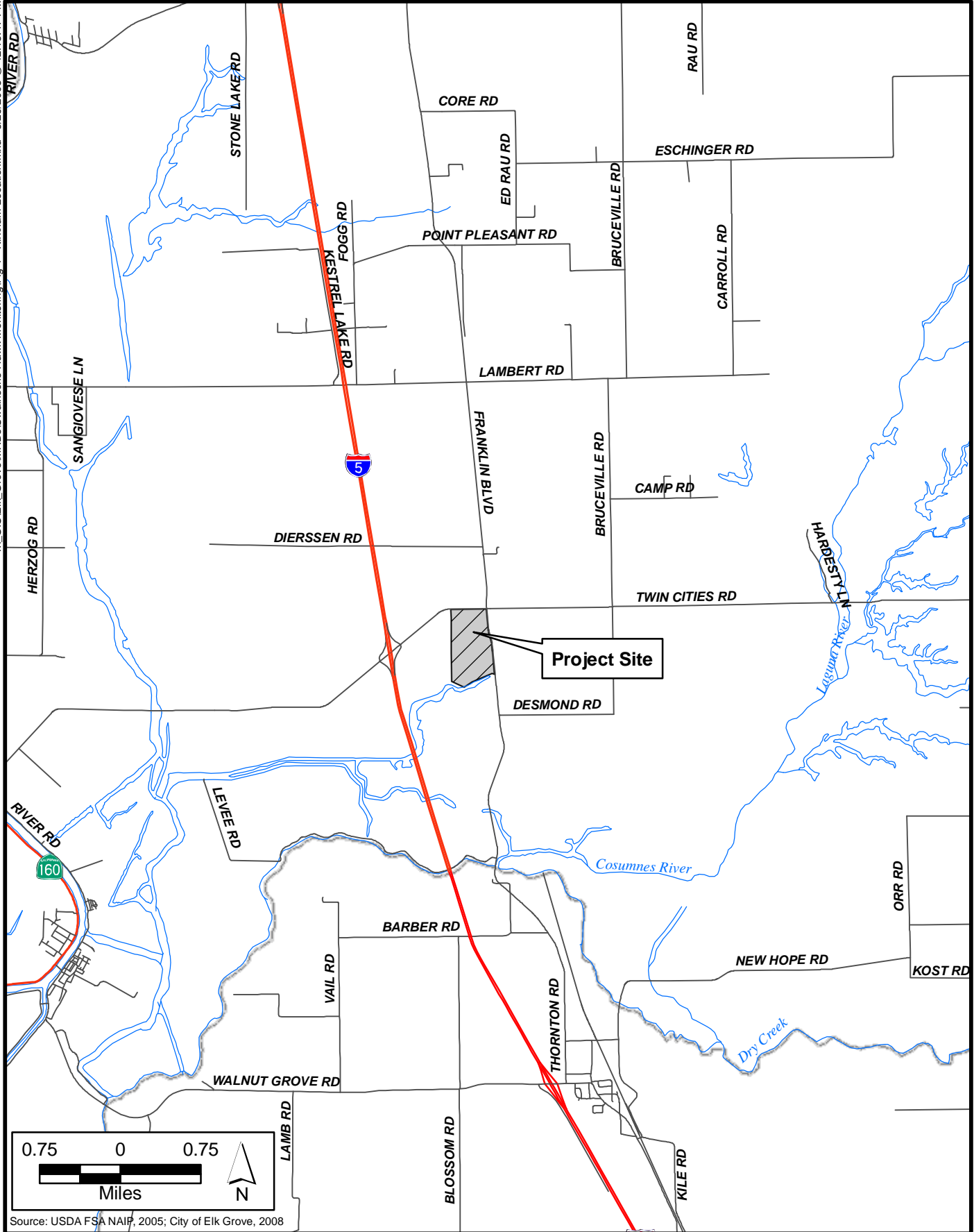
3.4. CURRENT AGRICULTURAL PRACTICES

The property is currently used as pasture for cattle. Property improvements since the last monitoring report include a cattle corral as well as perimeter and cross barbed wire fencing. The new cattle corral was installed last year, after the *Easement Documentation Report for Kirkham Farm* prepared on February 27, 2008 (City of Elk Grove 2008). The 2008 report stated that the new leasee at the time had plans for the construction of a new cattle corral in the same location as the previous cattle corral, which had been removed and was not present at the time of the 2008 report (City of Elk Grove 2008). The current location of the new cattle corral is in accordance with the description provided in the 2008 report. The current agricultural practices observed on the property are in compliance with the requirements of the Conservation Easement.

New barbed wire fencing has also been installed within the property since the 2008 report. There is a new barbed wire fence that surrounds the perimeter of the property. New cross-fencing has also been installed to divide the fields on the property since the 2008 report. A full description of the fencing is included under Section **3.2 Fences and Roads**.

There is a water well located in the northeast corner of the property adjacent to the new cattle corral. The well is contained within a small, closed structure (see P12-SW in **Appendix B**). There are several irrigation ditches located along the perimeter of the property near the edge of the pasture fields. Drainage ditches run along the southern edge of the property adjacent to the levee road and along the eastern side of the property adjacent to Franklin Boulevard.

T:\GIS\Elk_Grove\MXD\Swainsons Hawk Monitoring\Fig 1 - Kirkham Location.mxd - 3/26/2008 @ 12:15:47 PM



Source: USDA FSA NAIP, 2005; City of Elk Grove, 2008



City of Elk Grove
Development Services

Figure 1
Location Map



3.5. CURRENT WATER USES

The property is irrigated by water pumped via a 15-20 horsepower pump from Lost Slough, which is a perennial, tidal tributary to Snodgrass Slough and the Mokelumne River. The water is then delivered via plastic piping to the southern portion of the property and extended northward through irrigation ditches. The highest elevation within the property is in the northeastern corner, where runoff generally flows to the south and west.

There is an oblong, marshy 2.6-acre tailwater pond near the southern-central edge of the property. The 2008 report stated that there was another small pond located near the property's southeastern corner near photo point 7 [(P7-N; **Appendix B**); City of Elk Grove 2008]. This small pond was not present during the site visit on February 3, 2009. There was no identifiable depression in the ground surface where the small pond had been last year. The site where the small pond had been last year was currently covered with low-lying dense grasses similar to the vegetation on the remainder of the property and typical wetland vegetation was not present.

There is a water well located near the northeastern corner of the property, adjacent to the new cattle corral. The 2008 report stated that this well had not been used for many years. The well's current frequency of use could not be determined during the February 3, 2009 site visit. The Conservation Easement allows for the repair, maintenance, and rebuilding of existing wells, and for the establishment of new wells, as long as they support the allowable uses of the property. The property's current water uses, including the location and size of the water well on the property, are in compliance with the requirements of the Conservation Easement.

3.6. INFRASTRUCTURE AND BUILDINGS

Residences and Other Buildings

There are no existing buildings on the property. The Conservation Easement allows for a Building Envelope within a two-acre area. Within that Building Envelope, the landowner can build one single family residence as well as other buildings associated with the operation of the farm. There are no plans to construct any new buildings on the property; therefore, the property is consistent with the requirements of the Conservation Easement.

Fences and Roads

Historically, fencing encircled the perimeter of the property and cross-fencing divided the fields. The previous 2008 report stated that segments of a dilapidated barbed wire fence supported by wooden posts and steel T-posts were present along the periphery of the property (City of Elk Grove 2008); however, this dilapidated fence is no longer present. The current, new barbed wire fence runs along the entire perimeter of the property. The location of this fence is consistent with the details included in the 2008 report, which mention the leasee's plans to install fencing for cattle grazing that year (City of Elk Grove 2008). There is no fencing along the southern border of the property on the northern side of the levee road. The levee road adjacent to Lost Slough serves as a barrier for the property's southern edge.

During the February 3, 2009 site visit, new cross-fencing was observed within the property, which divides the pasture into four fields. This cross-fencing runs north-south from approximately the middle of the northern property line bordering Twin Cities Road to approximately the middle of the levee road adjacent to Lost Slough along the property's southern boundary. This section of cross-fencing runs through the center of the tailwater pond near the southern central portion of the property. Additional cross-fencing runs east-west from approximately the middle of the property line bordering Franklin Boulevard to approximately the middle of the western property line at the edge of the pasture.

On February 3, 2009, a new metal farm gate was observed near the southeastern corner of the property, which prohibits vehicle access to the levee road that runs adjacent to Lost Slough from Franklin Boulevard (to the east) to Snodgrass Slough (to the west, and to the end of the property line).

A gravel road runs along the outside of the western boundary, just west of the western fence and property line, and another dirt road runs along the top of the Lost Slough levee within the property line (**Figure 2**). Unimproved interior roads exist for the purposes of farming activities. The Conservation Easement allows for the repair and maintenance of existing roads to current levels of improvement, as well as for the creation of new unpaved roads that are reasonably necessary for agricultural purposes and that do not substantially diminish or impair the open space character, agricultural productivity, wildlife habitat or scenic qualities of the property. New paved roads, as required by state law, are also permissible. The type, location and size of the roads within the property are similar to what has been reported in the past (City of Elk Grove 2008). The property is consistent with the requirements of the Conservation Easement for fences and roads.

Ditches and Canals

Ditches on the property include irrigation ditches on the northern portion of the property, along the east side, and drainage ditches along the south and west. A small channel is present on the northern side of the levee road along the perimeter of the property inside the barbed wire fence.

Roadside ditches are located just outside of the property fencing along Twin Cities Road and Franklin Boulevard. There are two irrigation ditches located within the interior of the property. The first irrigation ditch is located along the eastern boundary in the northern half of the property and the second irrigation ditch is located near the center of the property, oriented in a north-south direction. The location and size of the ditches and canals within the property are similar to what has been reported in the past (City of Elk Grove 2008). The property is consistent with the requirements of the Conservation Easement for ditches and canals.

3.7. CONSERVATION FEATURES

Wetlands and Riparian Areas

The only wetland areas within the property are the tailwater pond and the irrigation and drainage ditches bordering the edges of the property. The tailwater pond is dominated by cattails (*Typha* spp.) with smaller patches of tules (*Scirpus* spp.) and a few scattered small willows (*Salix lasiolepis* and *S. gooddingii*), near the edges of the pond.

As stated above, the roadside ditches, located outside of the property boundary, border the property to the north and east adjacent to Twin Cities Road and Franklin Boulevard, respectively. Lost Slough is a perennial, tidal slough that often floods the adjacent Cosumnes River Preserve during the winter. Lost Slough is located adjacent to the levee on the southern edge of the property, which protects the property from seasonal flooding events. These areas contain wetland vegetation such as various rushes (*Juncus* spp.) and spikerush (*Eleocharis* spp.) and provide foraging and cover habitat for wildlife.

Inferences Regarding Winter Role

This property is protected from seasonal flooding events by levees located outside of the property in the surrounding area. There is no indication that there is significant seasonal water on

the property other than in the tailwater pond and in some roadside ditches along Twin Cities Road and Franklin Boulevard, where there was standing water present during the site visit on February 3, 2009.

Uplands: Trees, Shrubs, Cropland, and Open Space

Almost the entire 169 acres of the property has been leveled and planted with grasses for cattle pasture. Areas not used for pasture within the property include interior dirt roads, the levee along Lost Slough, and the tailwater pond.

Roadsides and levees are thickly covered with weedy vegetation typical of the area, including wild radish (*Raphanus* sp.), mustards (mostly *Brassica nigra*), thistles (milk-thistle, *Silybum marianum*, is dominant along the levee), and grasses (e.g., *Lolium multiflorum*, *Hordeum murinum* ssp. *leporinum*, *Vulpia* spp.), and other weedy flora. There are no large trees suitable for raptor nesting sites located on the property; however there are large trees suitable for nesting on adjacent properties.

4. CONCLUSIONS

4.1. ADHERENCE TO EASEMENT REQUIREMENTS

Review of the Conservation Easement (**Appendix A**) for this property revealed that the activities and practices observed during the site visit on February 3, 2009 were permitted uses. The requirements set forth in the easement state that no structures can be built except in one (two-acre) Building Envelope. No structures have been built anywhere on the property. A new cattle corral has been built at the same northeastern corner location as a previous corral. This is within the permitted uses of the Conservation Easement. The farming practices (cattle pasture) observed during the February 3, 2009 site visit are allowed under the Conservation Easement's requirements.

4.2. QUALITY OF SWAINSON'S HAWK FORAGING HABITAT WITHIN THE EASEMENT PROPERTY

The property consists of high-quality foraging habitat for Swainson's hawks. The low groundcover of the pasture serves as excellent foraging habitat for Swainson's hawks because it allows for clear visibility of prey items. One Swainson's hawk was observed during the February 3, 2009 site visit soaring above the southeastern corner of the property, flying in an east-west direction. Other birds of prey observed during the site visit include: a red-tailed hawk (*Buteo jamaicensis*), which was observed perching on a telephone post near the southwestern corner of the property on the northern side of the levee; and a white-tailed kite (*Elanus leucurus*), which was observed flying over the southern boundary of the property in a north-south direction towards Lost Slough.

Numerous small burrows, gopher mounds, and vole runs were observed throughout the property. The property supports prey items that Swainson's hawks could eat, and therefore it may be used as foraging habitat by Swainson's hawks. In addition, according to California Department of Fish and Game (CDFG) California Natural Diversity Data Base (CNDDB) records, there are 103 previously recorded occurrences of Swainson's hawk within a ten-mile radius of the property (CDFG 2009). Since numerous Swainson's hawk nests have been recorded in the region, it is reasonable to assume that Swainson's hawks nest in the vicinity of the property and would use the property as foraging habitat.

Other birds observed within or flying above the property during the February 3, 2009 survey include: double-crested cormorant (*Phalacrocorax auritus*), greater white-fronted geese (*Anser albifrons*), great egret (*Ardea alba*), savannah sparrow (*Passerculus sanwicensis*), yellow-

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rumped warbler (*Dendroica coronata*), western scrub jay (*Aphelocoma californica*), red-winged blackbird (*Agelaius phoeniceus*), American crow (*Corvus brachyrhynchos*), and turkey vulture (*Cathartes aura*).

REFERENCES

California Department of Fish and Game (CDFG). 2009. California Natural Diversity Database (CNDDDB) Rarefind 3 computer program, Version 3.1.1. Commercial version dated February 1, 2009. Data will expire August 1, 2009. CDFG, Biogeographic Data Branch. Sacramento, CA.

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APPENDICES

APPENDIX A—CONSERVATION EASEMENT

FIRST AMERICAN TITLE COMPANY
1885028 GA

Recording requested, and when recorded,
return to:

City of Elk Grove, *Attn: City Clerk*
~~Development Services, Planning~~
8400 Laguna Palms Way
Elk Grove, CA 95758

with a conformed copy to:

Sacramento County Recording
Craig A Kramer, Clerk/Recorder
BOOK 20050826 PAGE 2253

Check Number 34824

Friday, AUG 26, 2005
Ttl Pd \$0.00

3:39:27 PM
Nbr-0003810212

KPM/36/1-21

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

No Transfer Tax Due as this conveyance is for the benefit of City of Elk Grove.
GRANT DEED OF SWAINSON'S HAWK HABITAT CONSERVATION EASEMENT

RET-11972

THIS GRANT DEED OF SWAINSON'S HAWK HABITAT CONSERVATION EASEMENT is made as of *August 25*, 2005 by and between Diane Kirkham, an individual, "Grantor" and the City of Elk Grove ("City"), a municipal corporation, as "grantee."

RECITALS

A. Grantor owns real property consisting of approximately One Hundred Sixty-Nine (169) 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 essential for maintaining Swainson's hawk habitat including the processes on 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, other than as otherwise allowed in this Easement, 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 forgoing, 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 essential for maintaining Swainson's hawk habitat 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, subject to Section 6,A,

below, may enter the Property to take corrective action, including, but not limited to, incurring costs and expenses to restore any areas or features of the Property that may be damaged by any inconsistent activity or use.

- 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. Except for the permitted uses stated on Exhibit C, 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 as the result of Grantor's use of the Property or Grantor's failure to exercise reasonable care, 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, (i) the right to seek a temporary or permanent injunction with respect to such activity, (ii) 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, (iii) to recover any damages arising from the violation, to the extent that such damages include monetary amounts paid by the City which, if not paid, could result in the extinguishment, modification, non-enforcement or impairment of the Easement, and (iv) to recover all reasonable costs and expenses incurred by the City to effect the restoration of the Property. In the event that the nature of any violation is such that the Property cannot be restored, or a court of competent jurisdiction determines that a material violation of the terms of this Easement occurred but nonetheless refuses to order such restoration, the City shall have the right to seek money damages for the diminution in value of this Easement (determined in accordance with Section 14) caused by such 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. Notwithstanding anything contained herein to the contrary, in no event shall a monetary recovery by Grantee against Grantor exceed the value of this Easement, determined in accordance with Section 14.

- 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 discloses to City that the Property has historically been used for agricultural purposes and will continue to be so used and, accordingly, fertilizers, pesticides and other substances historically used in such practices and typically used in such practices, have been, and may be, on the Property. Subject to the foregoing, Grantor represents and warrants that to the best of Grantor's knowledge, 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 disclosed in that certain Preliminary Title Report dated April 19, 2005, issued by First American Title regarding the Property, Grantor warrants that as of the date that title to the Easement transfers 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 all interests in the Property retained by Grantor 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. Nothing in this Section shall obligate Grantor for any costs of monitoring this Easement. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the interest in the Property retained by Grantor before delinquency and that Grantor shall keep the City's interest in the Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by or on behalf of 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 interest in the Property retained by Grantor, including those for which exemption cannot be obtained, or any other costs in maintaining the Property.
- C. Hazardous Materials. Other than as disclosed by Grantor in Section 9.A. regarding the historic uses of the Property, 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: Diane Kirkham
6600 Twin Cities Rd
Elk Grove, CA 95757

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. Notwithstanding any other provision herein, the failure of the City to object in writing to any notice or request from or by Grantor, within sixty (60) days after receipt thereof shall be deemed consent by the City to the subject of such notice and/or such request.
- 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. Notwithstanding any other provision herein, the failure of the City to object in writing to any notice or request from or by Grantor, within sixty (60) days after receipt thereof shall be deemed consent by the City to the subject of such notice and/or such request.

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. \$2,449,195.00 which is the product obtained when the per acre value paid to the grantor of this Easement for the purchase of this easement is multiplied by 168.91, 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 other than a voluntary surrender or extinguishment by the City, 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. Liberally Construed. 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. Subject to the limitations set forth in this Easement on the City's right to seek monetary damages, 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.** Grantor agrees to execute all documents and instruments reasonably necessary and requested by the City to assure the perpetual enforceability of this Easement.

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:

Diane Irene Kirkham
~~XXXXXXXXXXXXXXXXXXXX~~
Diane Irene Kirkham

CITY:

City of Elk Grove, a municipal corporation

BY: *[Signature]*
John Danielson

ITS: City Manager

APPROVED AS TO FORM:

[Signature]
Anthony Manzanetti, City Attorney

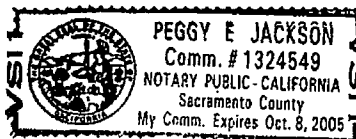
ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

On Aug. 25, 2005 before me, PEGGY E JACKSON a Notary Public in and for said county, personally appeared JOHN DANIELSON, 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 my hand and official seal.

Peggy E Jackson
Signature



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

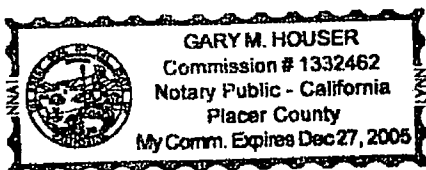
State of California

County of Placer

On August 25, 2005 before me, Gary M. Houser, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Diane Irene Kirkham
NAME(S) OF SIGNER(S)

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 my hand and official seal.

Gary M. Houser
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Sacramento, State of California, described as follows:

ALL THAT PORTION OF THE WEST ONE-HALF OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 5 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SECTION LINE COMMON TO SAID SECTION 16 AND SECTION 17, TOWNSHIP 5 NORTH, RANGE 5 EAST, M.D.B. & M., FROM WHICH THE SECTION CORNER COMMON TO SAID SECTIONS 16 AND 17 AND SECTIONS 9 AND 8, TOWNSHIP 5 NORTH, RANGE 5 EAST, M.D.B. & M., BEARS NORTHERLY 30.00 FEET; THENCE FROM SAID POINT OF BEGINNING EASTERLY, PARALLEL TO AND 30.00 FEET SOUTHERLY FROM THE NORTH LINE OF SAID SECTION 16 TO A POINT ON A LINE WHICH IS PARALLEL TO AND 210.00 FEET WESTERLY FROM THE MAIN LINE OF THE WESTERN PACIFIC RAILWAY COMPANY; THENCE SOUTHEASTERLY ALONG SAID PARALLEL LINE TO THE SOUTHERLY LINE OF THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 16; THENCE EASTERLY ALONG SAID SOUTHERLY LINE OF THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 16 TO A POINT ON THE WESTERLY PROPERTY LINE OF THE WESTERN PACIFIC RAILWAY COMPANY; THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE TO A POINT IN THE CENTER LINE OF A CANAL; THENCE ALONG THE CENTER LINE OF SAID CANAL AND THE MEANDERINGS THEREOF THE FOLLOWING SIX COURSES AND DISTANCES: SOUTH 89° 20' 00" WEST 23.00 FEET, NORTH 07° 50' 00" WEST 80.75 FEET, NORTH 71° 07' 00" WEST 123.65 FEET SOUTH 66° 02' 00" WEST 1065.90 FEET, SOUTH 58° 18' 00" WEST 470.14 FEET AND NORTH 66° 18' 00" WEST 664.00 FEET, MORE OR LESS TO A POINT ON THE SECTION LINE COMMON TO SAID SECTION 16 AND 17, SAID SECTION LINE BEING THE EAST LINE OF ALLUVIAL ACRES, THE OFFICIAL PLAT OF WHICH IS RECORDED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY IN BOOK 14 OF MAPS, MAP NO. 1; THENCE NORTHERLY ALONG SAID SECTION LINE AND ALONG EAST LINE OF SAID ALLUVIAL ACRES TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND CASINGHEAD GAS, AND OTHER HYDROCARBON SUBSTANCES, WHICH MAY HEREAFTER BE LAWFULLY PRODUCED ON SAID PROPERTY TOGETHER WITH THE RIGHT FOR THE PURPOSE OF EXPLORING AND MINING THEREFOR, AND SUCH RIGHTS OF WAY AND EASEMENTS NECESSARY FOR THAT PURPOSE AND ALL OPERATIONS CONNECTED THEREWITH, AS RESERVED IN THE DEED FROM RUBY K. MORSE ET AL., TO WESTERN TITLE GUARANTY COMPANY, SACRAMENTO COUNTY DIVISION, A CORPORATION, DATED NOVEMBER 23, 1959, RECORDED NOVEMBER 24, 1959, IN BOOK 3940 OF OFFICIAL RECORDS, PAGE 534.

APN: 146-0210-001-0000

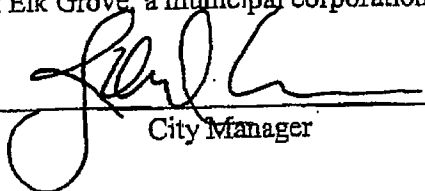
CERTIFICATE OF ACCEPTANCE

This is to certify that the interests in real property conveyed by Grant Deed of Swainson's Hawk Habitat Conservation Easement dated August 25, 2005 ("Deed") from Diane Kirkham, to the City of Elk Grove, a municipal corporation, are hereby accepted by the City Manager of the City of Elk Grove pursuant to authority conferred by resolution no 2000-52 of the City Council of the City of Elk Grove adopted on November 1, 2000, and the City, as grantee, consents to recordation of said Deed.

Dated: 8 . 25 . 05

City of Elk Grove, a municipal corporation

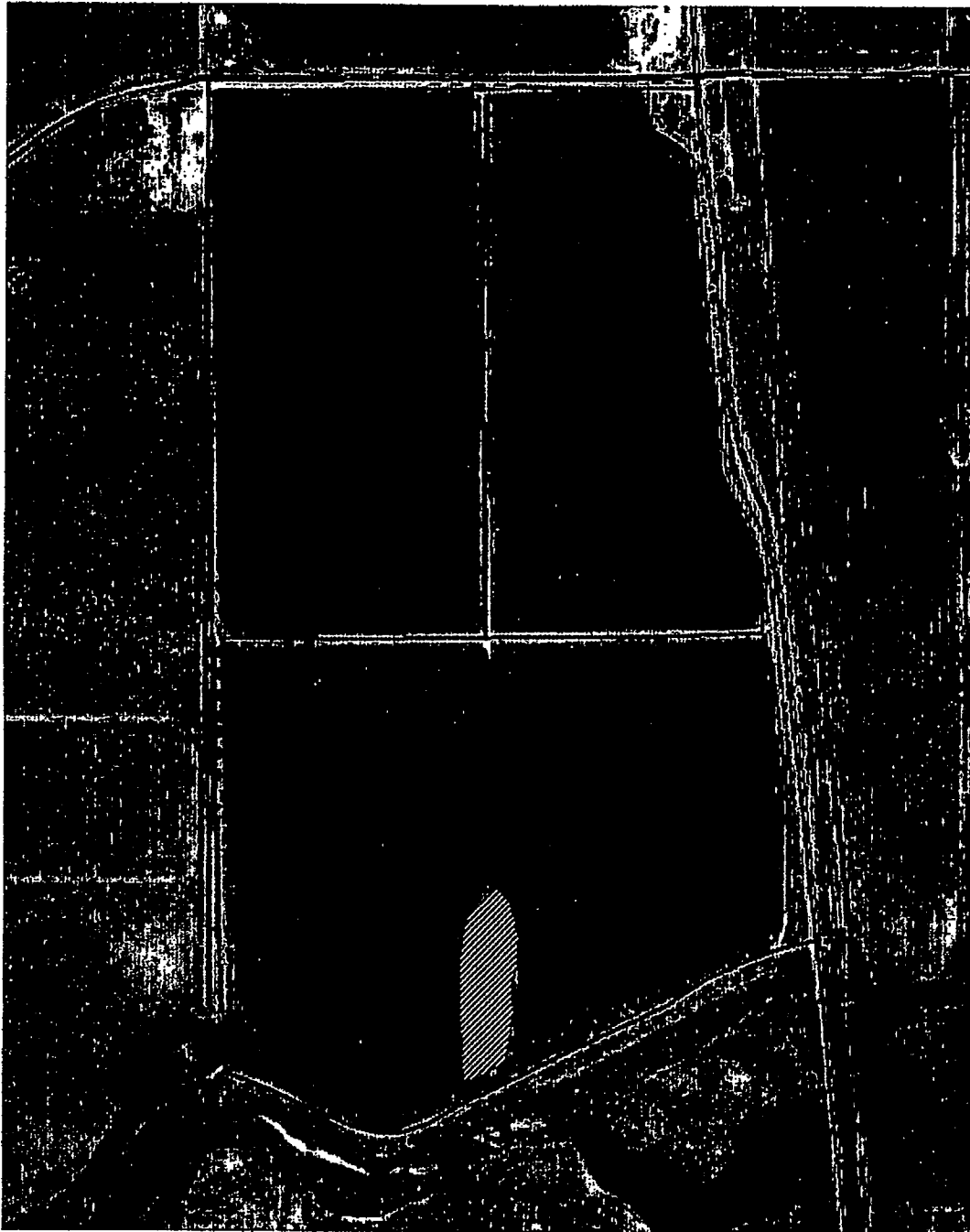
By: _____








City Manager

EXHIBIT B

Map



-  Fencing
-  Unimproved levee road
-  Unimproved farm road
-  Paved road
-  Tailwater pond

200 0 200 Meters



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 of this Easement or Exhibit D, 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 essential for maintaining Swainson's hawk habitat 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 row and field crops; 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 regulations, and such use does not injure or destroy the naturally occurring ecosystems.

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 and the failure by the City to respond within such thirty (30) day period shall be deemed consent by the City to such 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 and the failure by the City to respond within such thirty (30) day period shall be deemed consent by the City to such 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 (1) the Residence and associated improvements are contained within an area not exceeding one (1) acre; (2) the headquarters and associated improvement are contained within an area not exceeding two (2) acres; and (3) 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 have the right to prevent transfers in which prospective transferees are not given notice of the covenants, terms, conditions and restrictions of this Easement. 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. Notwithstanding any other provision herein, the failure of the City to object in writing to any request by Grantor to engage in such practices or activities within sixty (60) days after receipt of such request shall be deemed consent by the City to such request.

In the event that Grantor and the City disagree regarding any practice or activity and whether such 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, the matter shall be submitted to the California Department of Fish and Game ("DFG") for advice. If after submitting the matter to DFG for advice, Grantor and the City still disagree regarding the practice or activity, Grantor agrees that DFG may intervene in any legal action commenced by the City regarding the dispute.

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, Vineyards or Rice. The planting and cultivation of commercial orchards, vineyards or rice.
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. Notwithstanding any other provision herein, the failure of the City to object in writing to any such request within thirty (30) days after receipt of such request shall be deemed consent by the City to 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 Easement shall not sever or impair any riparian water rights appurtenant to the Property.

13. 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

There are no underground tanks on the property.

APPENDIX B—DOCUMENTATION PHOTOS

APPENDIX B: DOCUMENTATION PHOTOS

P1-S: View of the NW corner of the property. The field is covered with grassland.



P1-E: View of the NW corner of the property. Twin Cities Rd borders the northern boundary.



P1-SE: View of the NW corner of the property.



P2-E: View of property line along Twin Cities Rd.



APPENDIX B: DOCUMENTATION PHOTOS

P2-S: View of pasture and new cross-fencing.



P2-W: View of property line along Twin Cities Rd.



P3-S: View of northeastern corner of property adjacent to the new cattle corral.



P3-SW: View of new cattle corral in the northeastern corner of property.



P3-W: View of the new cattle corral in the northeastern corner of the property.



P4-S: View of the roadside ditch along the eastern border of the property adjacent to Franklin Blvd.



APPENDIX B: DOCUMENTATION PHOTOS

P5-S: View of large ditch next to existing roadside ditch, adjacent to Franklin blvd.



P6-N: View of roadside ditch on the central-eastern side of the property adjacent to Franklin Blvd.



P6-W: View of the pasture and the new barbed wire fence that runs along the perimeter of the property.



P6-S(1): View of roadside ditch on the central-eastern side of the property adjacent to Franklin Blvd.



APPENDIX B: DOCUMENTATION PHOTOS

P6-S(2): View of new barbed wire fence with wooden supports over the roadside ditch on the central-eastern side of the property.



P6-S(3): View of roadside ditch on the central-eastern side of the property.



P7-N: View of eastern border of the property taken from the southeastern corner.



P7-SW: View of the entrance to the Cosumnes River Preserve and the levee road on the southern boundary of the property.



APPENDIX B: DOCUMENTATION PHOTOS

P8-E: View of the levee road and the grassy fields from the central-southern end of the property, taken from the levee road.



P8-NW: View of the tailwater pond in the central-southern end of the property, taken from the levee road.



P9-N: View of the tailwater pond in the central-southern end of the property.



P9-W: View of the levee road and weedy flora on the levee.



APPENDIX B: DOCUMENTATION PHOTOS

P10-N: View of gravel road adjacent to the western side of the property, taken from the levee road.



P7-NW: View of the adjacent property to the west.



P11-E: View of cattle corral in the northeastern corner of the property near the intersection of Twin Cities Rd. and Franklin Blvd.



P11-W: View of the roadside ditch adjacent to Twin Cities Rd. and the barbed wire fence along the northern edge of the property.



P12-SW: View of the covered structure surrounding the well in the northeastern corner of the property.



**APPENDIX C– PHOTO POINT COORDINATES
AND LOCALITY NOTES**

APPENDIX C: PHOTO POINT COORDINATES AND LOCALITY NOTES

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Photo Point	UTM – E(m)	UTM – N(m)	Description
P1	635882.2	4238957.0	At northwestern corner of property adjacent to Twin Cities Rd.
P2	636165.6	4238960.0	At central-northern point on property along Twin Cities Rd.
P3	636390.8	4238964.3	At northeastern corner of property at intersection of Franklin Blvd and Twin Cities Rd.
P4	636402.4	4238917.3	Near northeastern corner of property adjacent to Franklin Boulevard.
P5	636299.1	4239060.1	At northeastern corner of property near end of field, adjacent to Franklin Boulevard.
P6	636359.4	4238743.1	At roadside ditch adjacent to Franklin Boulevard.
P7	636502.7	4238039.2	At southeastern corner of property, adjacent to Franklin Boulevard, near the "Cosumnes River Preserve" entrance sign.
P8	636233.2	4237913.6	At central-southern location on top of levee road along southern edge of the property, just east of the tailwater pond.
P9	636175.4	4237886.4	At central-southern location on top of levee road along southern edge of the property, just west of the tailwater pond.
P10	635900.1	4237898.9	At southwestern corner of the property on top of levee road.
P11	636223.9	4239161.7	At northeastern corner of property adjacent to Twin Cities Road and location of cattle corral.
P12	636278.8	4239138.0	At northeastern corner of property next to covered well.