

**EASEMENT DOCUMENTATION REPORT:  
REYNEN & BARDIS (MCGREGOR PROPERTY)**

SACRAMENTO COUNTY, CALIFORNIA



**June 7, 2010**



***Prepared by:***

Angela Calderaro  
City of Elk Grove  
8401 Laguna Palms  
Elk Grove, CA 95758



**TABLE OF CONTENTS**

1. Introduction ..... 1

    1.1. Purpose ..... 1

    1.2 Location..... 1

2. Methods ..... 1

3. Description of the Easement Property and the Easement ..... 1

    3.1 Purpose of the Conservation Easement..... 2

    3.2. Surrounding Properties ..... 2

    3.3. Historic Water Uses ..... 2

    3.4. Infrastructure and Buildings ..... 7

    3.5 Conservation Features ..... 7

4. Conclusions ..... 8

    4.1. Adherence to Easement Requirements..... 8

    4.2. Quality of Swainson’s Hawk Foraging Habitat within the Easement Property ..... 9

References..... 10

**FIGURES**

Figure 1 – Project Location..... 3

Figure 2 – Photo Point Locations ..... 5

**APPENDICES**

- Appendix A: Conservation Easement
- Appendix B: Documentation Photos
- Appendix C: Photo Point Coordinates and Locality Notes



## 1. INTRODUCTION

### 1.1. PURPOSE

The purpose of this report is to provide an accurate representation of the present condition of the Reynen and Bardis property (property) also known as the McGregor property as it relates to the easement language and restrictions as of the date of the recording (June 5, 2007) of the Conservation Easement. The information and photographs provided herein represent the condition of the property as of May 25, 2010 site visit. The Conservation Easement is attached as **Appendix A**. Since the last site visit, the property has been transferred to David L. Bonuccelli & Associates, Inc (DLB).

### 1.2 LOCATION

The property is located in southern Sacramento County, California, to the east of State Route 99, just outside of the Elk Grove city limit (**Figure 1**). The property is rectangular and it is oriented in a northwest to southeast direction, bordered by Grant Line Road to the northwest and the Cosumnes River to the southeast. Deer Creek flows through the center of the property, which divides property into two separate agricultural areas. The property includes all of Assessor Parcel Number (APN) 134-0360-052-0000; however, the portion of the property included under the Conservation Easement (hereafter referred to as the "easement property") consists of approximately 14.75 acres of agricultural land, which is situated in the east-central portion of Field B, bordered by Deer Creek to the north and ending roughly at Photo Station P-12 (**Figure 2; Appendix A**). Deer Creek is surrounded by a riparian corridor, which borders the easement property on the northwestern end. The Cosumnes River and the adjacent riparian corridor is located to the southeast of the easement property. The entire property within the boundaries of the APN was surveyed as a part of this monitoring effort.

## 2. METHODS

A site visit to the easement property was conducted on May 25, 2010 by City of Elk Grove biologist, Angela Calderaro, to note features relevant to the easement agreement and to take surface reference photos at designated photo points. On the day of the site visit, the weather was mostly cloudy with an outside temperature of approximately 65 degrees Fahrenheit (TWC 2010).

Photographs of the property were taken with a 7.1 megapixel Olympus Stylus 770SW digital camera, five feet above the ground. Photo points from previous years were used. **Figure 2** shows the plotted locations of the photo points within the property. A description of each photo station location and each scene photographed is included in **Appendix B**. Photo reference numbers start with the number of a fixed photo station (e.g., P1, P2), and are followed by a letter denoting the direction toward which the camera was pointed. For example, photo P1-S is a photo taken at photo station 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 station are located in **Appendix C**.

## 3. DESCRIPTION OF THE EASEMENT PROPERTY AND THE 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 property covered under the Conservation Easement (easement property) includes a total of 14.75 acres. There was no change in the property since the 2009 survey (City of Elk Grove 2009).

The property (entire parcel) is 360 acres in size. The property consists of two separate agricultural fields, indicated on **Figure 2** as Fields A and B. Deer Creek bisects the property and defines the boundary between Fields A and B. Field A is located in the northwestern half of the property closest to Grant Line Road and is approximately 135 acres in size.

At the time of the survey, Field A consisted of annual grassland used for hay. This was present last year during the previous monitoring survey. Numerous California ground squirrel (*Spermophilus beecheyi*) burrows were located around the perimeter of the field. A few scattered oak trees (*Quercus* spp.) were present throughout. Along Grant Line Road, there is a roadside ditch with Himalayan blackberry (*Rubus discolor*) growing along its border. A gravel/dirt roadway is located on the eastern border of the property leading to the abandoned homes and associated farm structures.

Field B is located southeast of Deer Creek and consists of approximately 225 acres. Some large power lines go through the property. Some large oak trees are scattered around the perimeter of Field B. Most of Field B is disked and cleared; the area south of photo point P12 contained grass used as hay. The edge of Field B, closest to the Cosumnes River levee, is fallow and supports annual grasses, remnant riparian, and other ruderal vegetation.

### 3.1 PURPOSE OF THE CONSERVATION EASEMENT

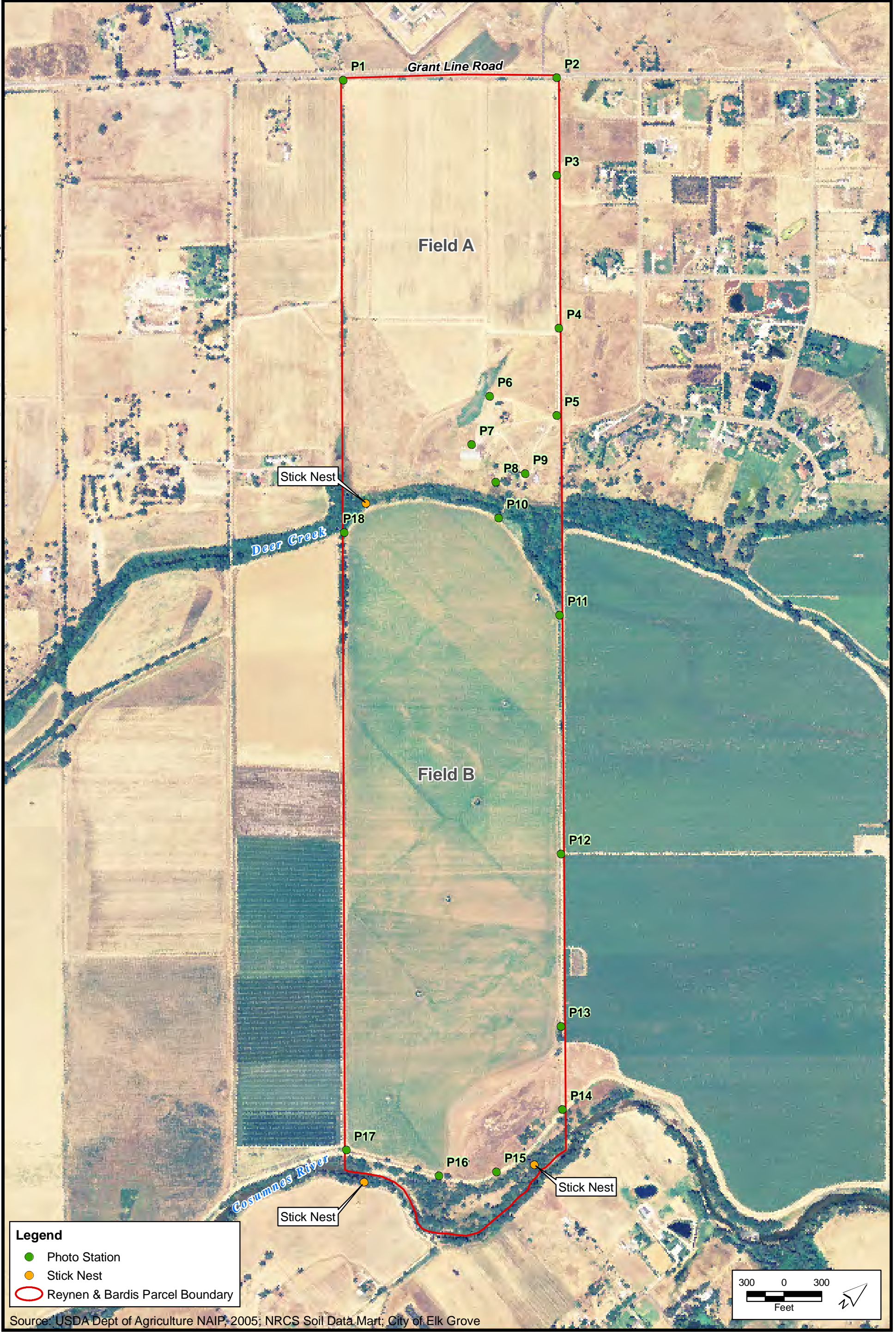
The multiple natural resource conservation purposes of the Conservation Easement are to preserve and protect in perpetuity (a) the availability of the easement property for agriculture by protecting the property from development pressure; (b) the conservation and habitat values of the easement property 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 easement property which are important public benefits and are consistent with the availability of the easement property for wildlife habitat and agricultural uses.

### 3.2. SURROUNDING PROPERTIES

The majority of land surrounding the perimeter of the property is used for growing grape vineyards and field crops. The parcel directly to the northeast of the property is a grape vineyard. While vineyard acreage has increased in the region over the last decade, most of the surrounding area continues to remain primarily in row crops. To the southeast of the property, across the Cosumnes River, the land is predominately divided into agricultural estates, a rural residential land use with parcels that are typically five to 20 acres.

### 3.3. HISTORIC WATER USES

Because of its proximity to the Cosumnes River and Deer Creek, an abundance of water is available to the property through natural flooding and seepage. Because the Cosumnes River does not have any major flood control dams, flooding occurs irregularly and unpredictably from year to year. During very wet years, such as spring 2006, inundation of the entire floodplain may occur, which would include the majority of the subject property; however, in other years that are excessively dry, only minimal flooding, if any, might occur. Flooding could occur at any time during the rainy season (typically from the end of October through May), which affects both wildlife use of the area and farming practices. The Cosumnes River does not flow year round in most years. On average it flows year round in only 25 of 100 years; therefore, it is not dependable as a water source. Typically, the water table is replenished each year except in years with severe drought.



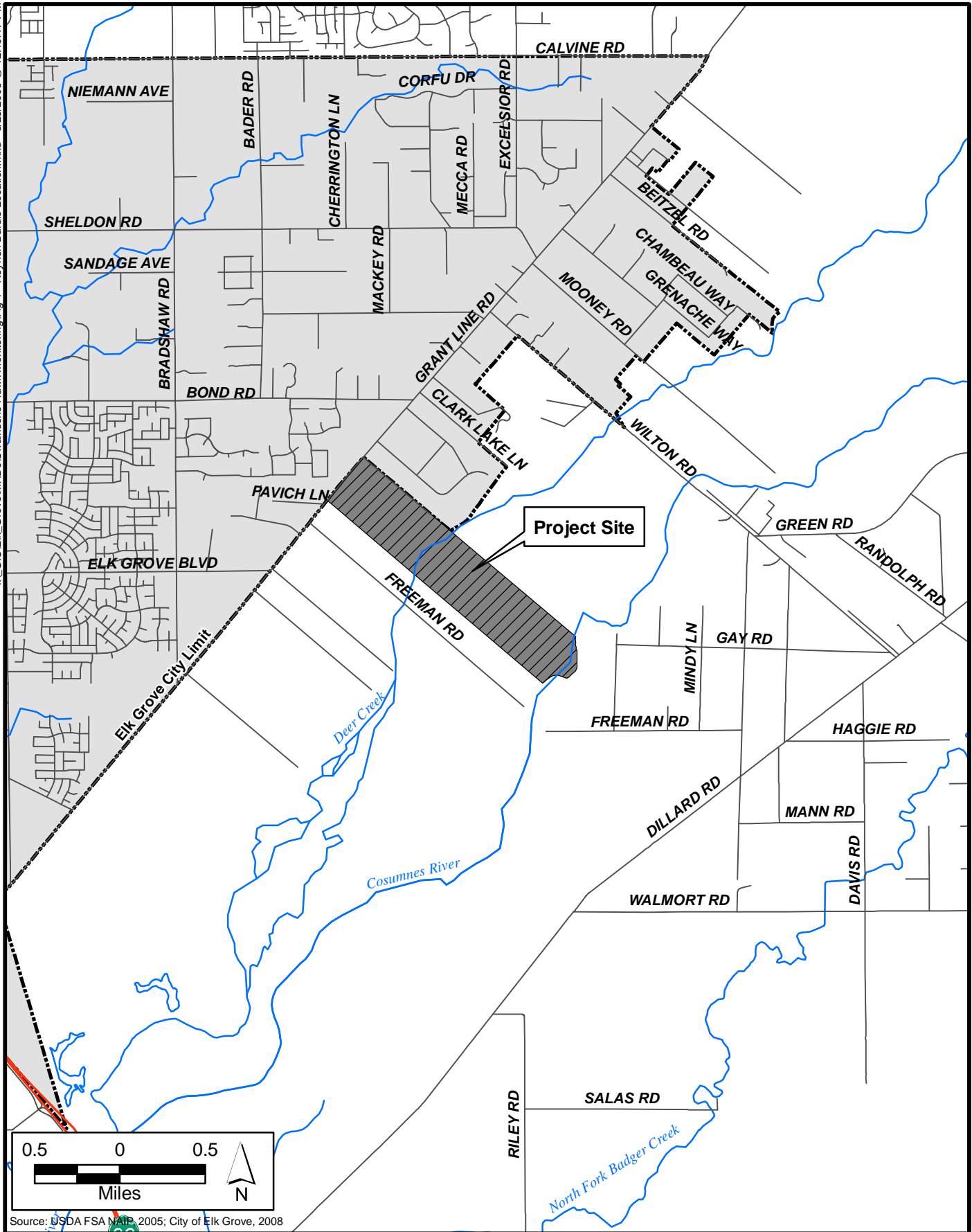
Source: USDA Dept of Agriculture NAIP, 2005; NRCS Soil Data.Mart; City of Elk Grove

Figure 2  
Photo Station Locations





T:\GIS\Elk Grove\MXD\Swainsons Hawk Monitoring\Fig 1 - Reynen Bardis Location.mxd - 3/29/2008 @ 12:49:17 PM



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



City of Elk Grove  
Development Services

Figure 1  
Location Map



### 3.4. INFRASTRUCTURE AND BUILDINGS

#### Residences and Other Buildings

There are no existing buildings on the easement property. Within the parcel boundaries, there are two abandoned homes, an old mobile home, three wood barns, an old pig pen, and a pole barn (metal shed). The conservation easement allows for a Building Envelope within a two-acre area. In that Building Envelope, the landowner can build one single family residence as well as other buildings associated with the operation of the farm. Since there are no buildings within the boundaries of the easement property; therefore, the easement property is consistent with the requirements of the Conservation Easement.

#### Fences and Roads

A gravel road runs along the northeastern boundary from Grant Line Road to the abandoned residences. There are unimproved dirt roads around the structures and leading to the Deer Creek crossing. A concrete low-water crossing is located at Deer Creek to adjoin Field A and Field B. An unimproved dirt road connects the crossing to a dirt road that runs along the northeastern border of Field B. This dirt road follows the length of the property to the Cosumnes River levee road. The easement allows for the repair and maintenance of existing roads at current levels of improvement, as well as 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 property is consistent with the requirements of the Conservation Easement.

#### Ditches and Canals

There is one small roadside ditch adjacent to the gravel road from Grant Line Road to the abandoned residences. A large detention basin or drainage is located to the west of the residences. There was no standing water present at the time of the surveys. Field B is irrigated by two wells; one is equipped with a 30 horsepower (Hp) pump and the other is equipped with a 40 Hp pump. Water is pumped into the two small ditches located alongside Field B and then pumped through the fields via furrow irrigation. The conditions of the ditches and canals are similar to what was present last year. The property is consistent with the requirements of the Conservation Easement.

### 3.5 CONSERVATION FEATURES

#### Wetlands and Riparian Areas

The riparian corridors along the Cosumnes River and Deer Creek enhance the value of the adjacent agricultural land for many wildlife species. Deer Creek consists of a narrow band of riparian habitat dominated by valley oak (*Quercus lobata*), Fremont's cottonwood (*Populus fremontii* ssp. *fremontii*), and black walnut (*Juglans hindsii*), and several understory species such as Oregon ash (*Fraxinus latifolia*), box elder (*Acer negundo*), willow (*Salix exigua*, *S. gooddingii*), and wild grape (*Vitis californica*). Scattered occurrence of blue elderberry (*Sambucus mexicana*) is also present along both Deer Creek and the Cosumnes River. Blue elderberry is the host plant for the federally listed Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*).

The Cosumnes River supports a more extensive and complex riparian community with a mature overstory of valley oak, Fremont's cottonwood, black willow, and black walnut and an understory of Oregon ash, box elder, sandbar willow (*Salix exigua*), poison oak (*Toxicodendron diversilobum*), California rose (*Rosa californica*) and blue elderberry. The riparian vegetation is continuous along the river channel, including some areas that support a relatively broad and dense riparian forest.

The tall trees within both riparian corridors provide suitable nesting habitat for Swainson's hawks. In addition to the main riparian corridors along the above-named waterways, the property supports a triangle of at least one acre of mixed riparian woodland that exists due to a bifurcation of Deer Creek. This area has never been farmed and is a small relict riparian forest with a complex shrubby understory. Another area of importance is the island in this portion of the Cosumnes River, which increases the amount of available nesting habitat and provides a buffer from human disturbance.

In addition to the riparian habitat within and adjacent to the property, the surrounding area supports numerous mature valley oak and walnut trees that occur either as isolated trees or in small clusters. A strip of black walnuts on the northwestern edge of Field B also provide suitable nesting habitat for Swainson's hawks.

### **Influences Regarding Winter Role**

The property includes two waterways with minimal flood protection. Deer Creek does not contain any flood control measures whereas Cosumnes River has a levee protecting Field B from periodic flood events. In addition, there is a drainage/detention basin behind the abandoned residences, which is periodically flooded and provides habitat for waterfowl.

### **Uplands: Trees, Shrubs, Cropland, and Open Space**

Field A is currently planted with grassland for hay production, which does not require irrigation. Field A is currently being farmed for the hay; no other crops are planned for this year. In the southern portion of field, there is a large detention basin, but no water was present at the time of the surveys.

Field B, located between Deer Creek and the Cosumnes River, is also planted with grassland for hay production. Although the upper portion has been cleared and disked, the area to the southeast of photo point P12 still contained hay. The edge of Field B, closest to the Cosumnes River levee, is fallow and supports annual grasses, remnant riparian, and ruderal vegetation.

## **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 were permitted uses. The requirements set forth in the easement state that no structures can be built except in one (two-acre) location. Although there are abandoned residential and farm structures on the parcel, there are no structures within the easement property. The farming practices observed (grassland) are allowed under the 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 and other raptors. The low-lying field crop provides excellent foraging habitat for Swainson's hawks because it allows for clear visibility and accessibility of prey items within the fields. Numerous burrows, gopher mounds, Audubon's cottontail (*Sylvilagus audubonii*), black-tailed jackrabbits (*Lepus californicus*), and California ground squirrels were observed along the roadway on the southeastern border of the property. In addition, numerous small passerine birds were observed during the site visit, including black phoebe (*Sayornis nigricans*), European starling (*Sturnus vulgaris*), American robin (*Turdus migratorius*), western scrub jay (*Aphelocoma californica*), northern mockingbird (*Mimus polyglottos*), red-winged blackbird (*Agelaius phoeniceus*), house finch (*Carpodacus mexicanus*), mourning dove (*Zenaida macroura*), acorn woodpecker (*Melanerpes formicivorus*), tree swallow (*Tachycineta bicolor*), western meadowlark (*Sturnella neglecta*), among others. Wild turkey (*Meleagris gallopavo*) and a nest of five chicks were observed along the western border. The property consists of grassland habitat, which is high-quality foraging habitat for hawks. Although no Swainson's hawks were observed during the site visit, a red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), barn owl (*Tyto alba*), American kestrel (*Falco sparverius*), northern harrier (*Circus cyaneus*) were observed. Three large stick nests were observed within the property (**Figure 2**), as well as several smaller nests. The nests did not seem to be occupied.

According to California Department of Fish and Game (CDFG) California Natural Diversity Data Base (CNDDB) records, there are 72 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 surrounding area, it is reasonable to assume that Swainson's hawks nest in the vicinity of the property and could use the property as foraging habitat. In addition, the large oak, cottonwood and willow trees within and surrounding the property represent suitable nesting habitat for Swainson's hawk.

## EASEMENT DOCUMENTATION REPORT

---

### 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 March 1, 2009. Data will expire September 1, 2009. CDFG, Biogeographic Data Branch. Sacramento, CA.

City of Elk Grove. 2009. Easement Documentation Report for the Reynen and Bardis Property, Sacramento County, California. March 16, 2009.

The Weather Channel (TWC). 2010. Monthly Weather in Elk Grove, CA. Accessed on June 7, 2010 from <http://www.weather.com>

---

# **APPENDICES**

---





## **APPENDIX A—CONSERVATION EASEMENT**



D 15-504



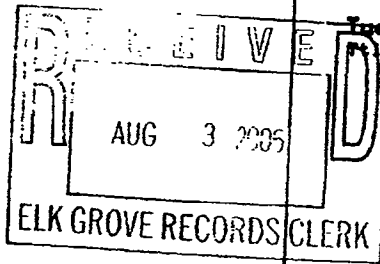
Sacramento County Recording  
Craig A Kramer, Clerk/Recorder  
BOOK 20060725 PAGE 1375

Recording requested, and when recorded,  
return to:

City of Elk Grove  
Attn: City Clerk  
8500 Laguna Palms Way  
Elk Grove, CA 95758

Tuesday, JUL 25, 2006 12:33:31 PM  
Pd \$0.00 Nbr-0004419714

DLN/17/1-27



with a conformed copy to:

No Recording Fees Needed per Government Code §6103

No Transfer Tax Due as this conveyance is for the benefit of the City of Elk Grove  
R&T Code Section 11922

(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 July 19, 2006 by and between R&B Land Investments, LLC, a California Limited Liability Company, as to an undivided 51.3800% interest; Reynen & Bardis (Tamarindo), L.P., a California Limited Partnership, as to an undivided 8.1000% interest; Christo D. Bardis, a married man, as to an undivided 20.2600% interest and John D. Reynen, a married man as to an undivided 20.2600% interest as "grantor" and the City of Elk Grove ("City"), a municipal corporation, as "grantee."

RECITALS

- A. Grantor owns real property consisting of approximately 359 acres, in Sacramento County, California. This Swainson's Hawk Habitat Conservation Easement corresponds to that portion of said real estate as described in Exhibit A and shown more particularly on the map attached as Exhibit B, attached hereto and incorporated herein, 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 easements 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 a nonexclusive 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 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, a nonexclusive 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; and (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; which are important public benefits and are consistent with the availability of the Property for wildlife habitat and agriculture. The preservation and protection of these two uses in perpetuity is hereinafter referred to as the "Natural Resource Conservation Purposes" of this Easement.

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 the processes that sustain that habitat. It is intended that each such purpose shall be conducted in a manner consistent with the other. This Easement prohibits use of the Property for any purpose, other than as otherwise allowed in this Easement, that would significantly impair, degrade or interfere with the "Natural Resource Conservation Purposes" stated above.

2. **EASEMENT DOCUMENTATION REPORT:** The parties acknowledge that an Easement Documentation Report (the "Report") of the Property ("Biological Resources Assessment of the Grant Line Road Property prepared for Corinthian Homes/R&B Land Investments, LLC; Reynen & Bardis (Tamarindo), L.P.; Christo D. Bardis and John D. Reynen by Miriam Green Associates Dated June 23, 2006") 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 Natural Resource Conservation Purposes of the Property.
- 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 in any case 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, no greater than four by eight feet, 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.
- E. Scientific Studies. Subject to Grantor's approval, which approval shall not be unreasonably withheld or denied, CONSERVATOR shall have the right to conduct Swainson's Hawk wildlife studies and associated habitat research on the 41.6-acre Easement Property, as well as monitoring Swainson's Hawk habitat on the 41.6-acre Easement Property, provided that such studies, research, and monitoring shall be carried out in a manner that shall not interfere unreasonably with the permitted use(s) or enjoyment of the Property by Grantor, its successors in interest, or any legally recognized occupant(s) or user(s) of the Property.

4. RESERVED RIGHTS. Grantor reserves all rights accruing from their ownership of the Property, including the right to engage in, or permit others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the Natural Resource Conservation Purposes of this Easement. Without limiting the generality of the foregoing, 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 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. Unless undertaken for the purpose of carrying out one of the two Natural Resource Conservation Purposes of this Easement or unless permitted by Exhibit C, any activity on or use of the Property which significantly degrades or interferes with the ability to use the Property for the Natural Resource Conservation Purposes is prohibited. Without limiting the generality of the foregoing, none of the uses described in Exhibit D attached hereto shall be made of the Property. Grantor may not plant any of the plants listed in Exhibit F on 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, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes.
- F. Third-Party Beneficiary Enforcement. It is understood by the Grantor that all rights and remedies conveyed under this Conservation Easement shall extend to and are enforceable against Grantor by City of Elk Grove as a third-party beneficiary, provided, however, that such status as a third-party beneficiary is personal to City of Elk Grove and may not be assigned or conveyed to any other entity.
- G. 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 with Grantor's prior written consent, which consent shall not be unreasonably withheld, 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. Grantor may reasonably withhold consent to transfer: if the proposed transferee is not subject to the jurisdiction of the Courts of the State of California; or if the organizational mission and purposes of the proposed transferee might cause the proposed transferee to emphasize the protection of one of the Natural Resource Protection Purposes of this Easement over the other.



L.E.

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 known 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 Title Report dated May 26, 2006, issued by Stewart Title Company 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, except as such claim, liability, damage, or expense is the result of the City's gross negligence or intentional misconduct. Without limiting the foregoing, Grantor shall indemnify, defend, and hold harmless the Indemnified Parties for all of the following:

- A. **Third Party Claims.** Any claim, liability, damage, or expense suffered or incurred by or threatened against Grantor by 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:  
with a copy to :

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



LLE



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. Deemed Consent. 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 agree 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. \$748,800.00 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 41.6, 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. Liberal Construction. It is the intent of this Easement to preserve the condition of the Property and each of the 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 and Swainson's hawk habitat 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 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.** Notwithstanding any other provision herein to the contrary, the City will indemnify, defend and hold harmless Grantor, its employees, agents, contractors, successors, 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 City on the Property, except as such claim, liability, damage, or expense is the result of the Grantor's gross negligence or intentional misconduct.

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 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.

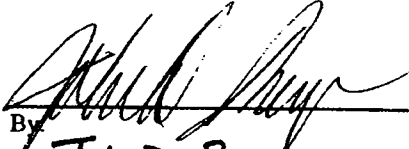
IN WITNESS WHEREOF, the parties have executed this Easement as of the date first above written.

GRANTOR:

R&B Land Investments, LLC

a California Limited Liability Company

By:

  
John D. Reynen

Its: *managing member*

  
Christo D. Bardis

Reynen & Bardis (Tamarindo), L.P.

a California Limited Partnership

By *R&B Land Investments, LLC,*  
*its general partner*

By:

  
John D. Reynen

Its: *managing member*

  
John D. Reynen



CITY:

City of Elk Grove, a municipal corporation

BY: [Signature]

ITS: City Manager

APPROVED AS TO FORM: [Signature]

Anthony Manzanetti, City Attorney



1-11

STATE OF California  
 COUNTY OF Sacramento } SS.  
 On 7/6/2006, before me, Lori A. Rispoli  
 PERSONALLY APPEARED John D. Reynen and  
Christo D. Bardis

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.

Signature Lori A. Rispoli



**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 OF TYPE OF DOCUMENT

\_\_\_\_\_ NUMBER OF PAGES

\_\_\_\_\_ DATE OF DOCUMENT

\_\_\_\_\_ SIGNER(S) OTHER THAN NAMED ABOVE

**SIGNER IS REPRESENTING:**

NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_

\_\_\_\_\_



23

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed to the City of Elk Grove, a municipal corporation, by the within instrument, the provisions of which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted by the undersigned officer(s) on behalf of the City pursuant to authority conferred by the Elk Grove City Council Resolution No. 2000-52 adopted on November 1, 2000, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert Lee, City Engineer

OR

Dated: July 19, 2006

By: [Signature]  
John Danielson, City Manager

ACKNOWLEDGEMENT

State of California )  
County of Sacramento ) ss.

On 07-19-06 before me, Peggy Jackson, 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.

[Signature]  
Peggy E. Jackson, City Clerk  
City of Elk Grove



**EXHIBIT "A"**

**SWAINSON'S HAWK MITIGATION DESCRIPTION**

All that real property situated in the City of Elk Grove in a part of Lots 4 and 5 of the Lower Daylor Estate as shown on the Plat of Survey filed in Book 3 of Surveys at Page 166 in the Official Records of the County of Sacramento, State of California, more particularly described as follows:

Commencing at a point on the centerline of Grant Line Road being the northeast corner of the property shown on said Plat of Survey, thence, South 49°42'37" East, a distance of 3516.60 feet along the northeasterly line of said property to the approximate centerline of Deer Creek and the Point of Beginning.

Thence, from the Point of Beginning, South 49°42'37" East, a distance of 2598.96 feet along said northeasterly line;

Thence, South 40°17'23" West, a distance of 679.85 feet;

Thence, North 49°47'47" West, a distance of 2716.29 feet to the approximate centerline of Deer Creek;

Thence, North 50°01'27" East, a distance of 693.92 feet along the approximate centerline of Deer Creek to the Point of Beginning.

Containing 41.60 Acres, more or less.

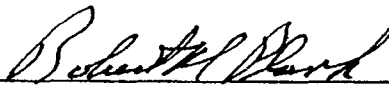
See Exhibit "B", plat to accompany legal description attached hereto and made a part hereof.

End of Description.

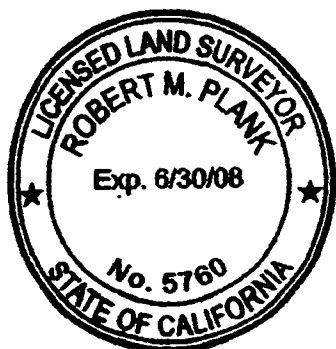
This description was prepared by me or under my direction pursuant to the Professional Land Surveyors Act.

Dated: \_\_\_\_\_

06/29/06



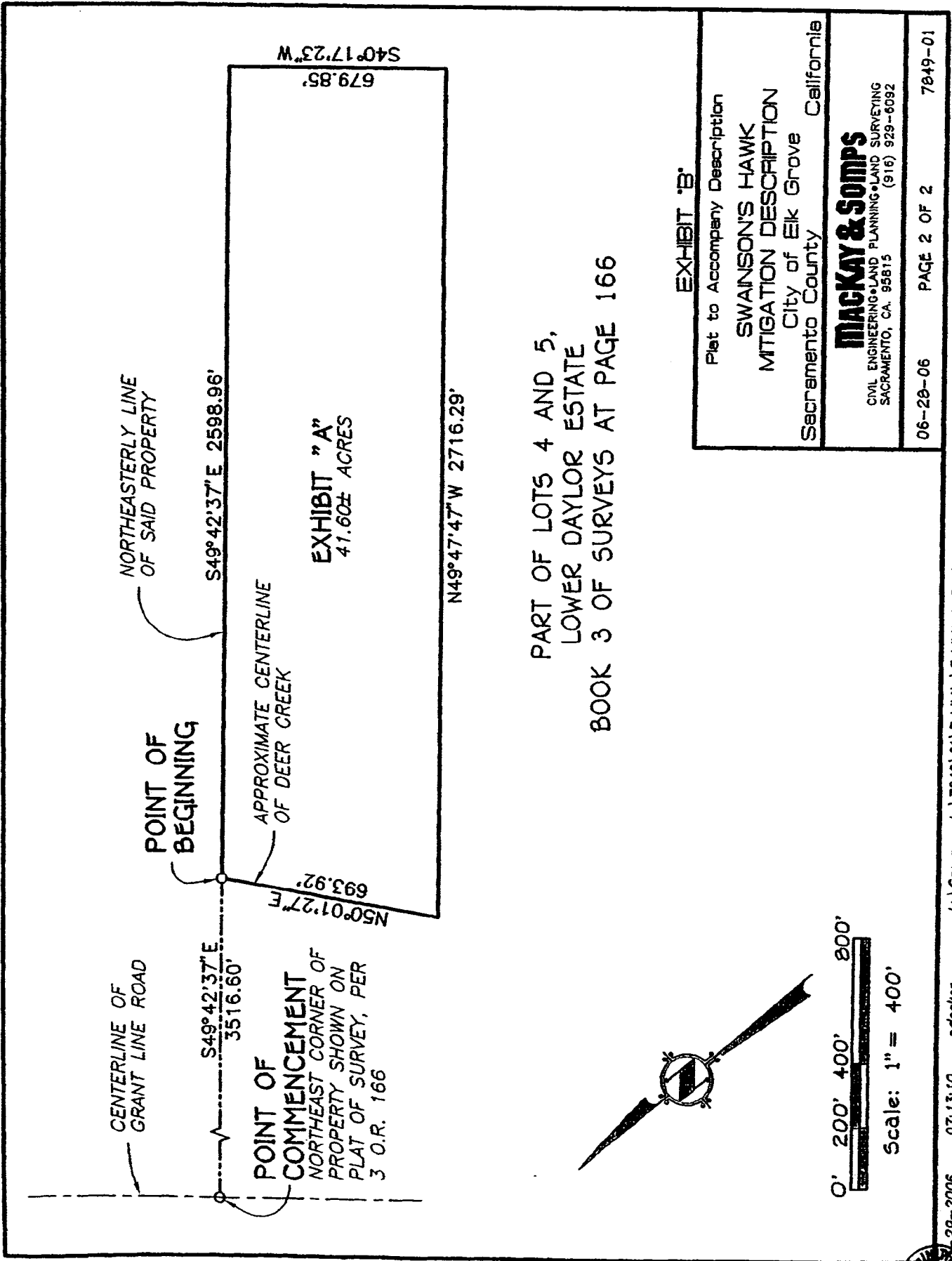
Robert M. Plank, L.S. 5760



L:\Sacramento\784901\Descriptions\  
Exhibit A\_Swainson's Hawk Mitigation Desc.  
06-28-06 .doc RMP

Prepared by the firm of  
MacKay & Soms Civil Engineers, Inc.  
Sacramento, California

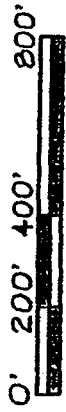
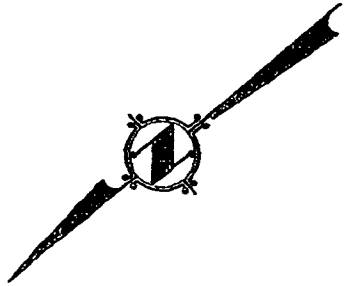




PART OF LOTS 4 AND 5,  
 LOWER DAYLOR ESTATE  
 BOOK 3 OF SURVEYS AT PAGE 166

**EXHIBIT "B"**

Plat to Accompany Description	SWANSON'S HAWK MITIGATION DESCRIPTION City of Elk Grove Sacramento County California
<b>MACKAY &amp; SOMPS</b>	
CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING SACRAMENTO, CA. 95815 (916) 929-6092	
06-28-06	PAGE 2 OF 2
	7849-01



Scale: 1" = 400'





Boundary Exhibit A Swainsons Hawk Mitigation Description

Bearing	Distance	Northing	Easting	Inverse
		0.000	0.000	
S49°42'37.0"E	2598.960	-1680.625	1982.446	2598.960
S40°17'23.0"W	679.850	-2199.204	1542.819	2686.408
N49°47'47.0"W	2716.290	-445.823	-531.762	693.923
N50° 1'27.0"E	693.920	-0.004	-0.000	0.004

Area = 1812089.255 Square Feet or 41.600 Acres.

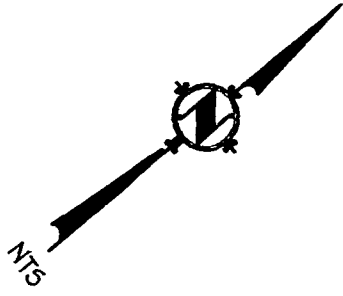
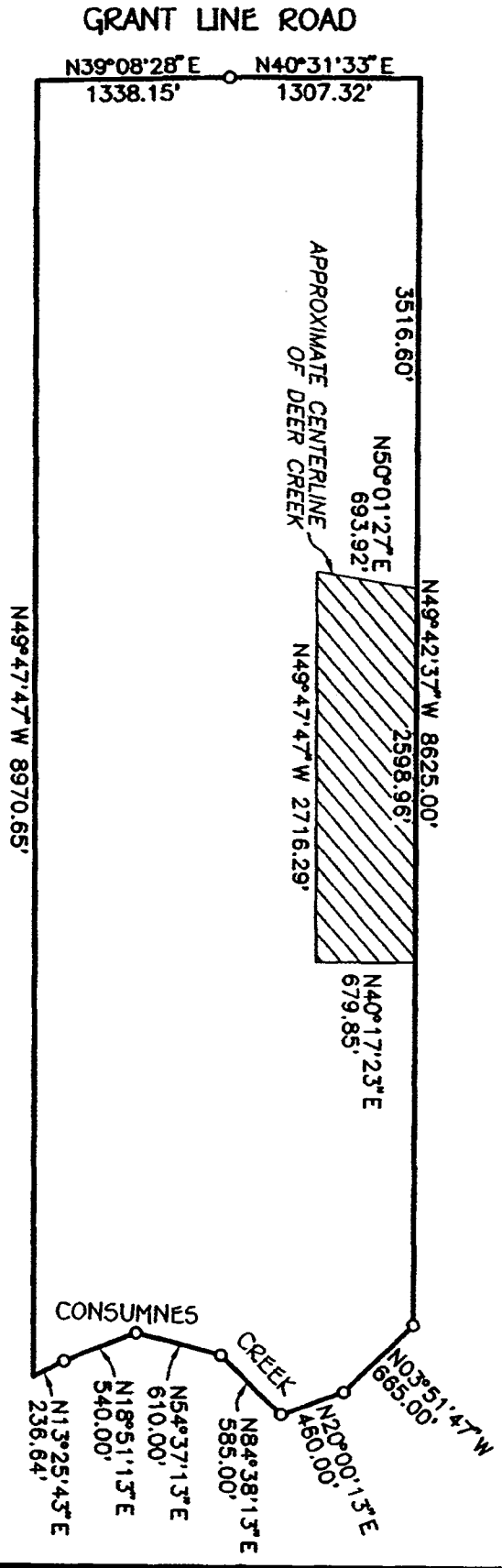
Precision = 1 In 1598251.223.

Direction = N 5°21'53.4"W 0.004





107



**EXHIBIT 'B'**

Plat to Accompany Description

MAP

City of Elk Grove  
Sacramento County  
California

**MACKAY & SOMPS**

CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING  
SACRAMENTO, CA 95815  
(916) 929-6092

07-07-06	PAGE 1 OF 1	7049-01
----------	-------------	---------

7-07-2006 11:21:32 pdecker  
There are no references in this drawing.

L:\Sacramento\7849\01\Exhibits\Exhibit A\_Swinson Hawk Mitigation 06-28-06.dwg

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 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 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 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; and (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; 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 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 Swainson's hawk habitat.

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, 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 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 which consent shall not be



unreasonably withheld. 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. 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.

6. 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.

7. 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.

8. 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.

9. Transfer of Property. To transfer the Property, provided that the transfer is not prohibited in Exhibit D, and provided that the transferee is subject to the jurisdiction of the Courts of the State of California. 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.

10. 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 does not significantly impair or degrade the ability to accomplish the Natural Resource Conservation Purposes of the Easement.

If any question exists regarding whether historic or new practices or activities are permitted or would have an adverse impact on the 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 Natural Resource Conservation Purposes of this Easement:

1. **No Subdivision.** The legal or *de facto* division, subdivision, or partitioning of the two separate agricultural fields comprising the 41.6-acre Easement Property.

2. **No Non-Agricultural Commercial Uses.** The establishment of any commercial or industrial uses other than the continuation of agriculture, 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 in this Easement, 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.** The removal, cutting or destruction of native trees on the 41.6-acre Easement 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 in accordance with Paragraphs 1 and 2 of Exhibit C.

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 encumbered by the 41.6-acre Easement Area. Except as otherwise permitted in this Easement, 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 five-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 either of the Natural Resource Conservation Purposes of this Easement.



**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 of 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 41.6-acre Easement Property for the uses permitted by this Schedule 1, 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 41.6-acre Easement 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 pursuant to this Schedule 1, 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 this Schedule.
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 easement property.



**EXHIBIT F**

**PROHIBITED PLANT LIST**

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

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



<u>Gorse</u>	<i>Ulex europaeus</i>
<u>Groundcherry, grape</u>	<i>Physalis viscosa</i>
<u>Groundcherry, long-leaf</u>	<i>Physalis longifolia</i>
<u>Halogeton</u>	<i>Halogeton glomeratus</i>
<u>Hermal</u>	<i>Pegamon harmala</i>
<u>Henbane, black</u>	<i>Hyoscyamus niger</i>
<u>Himalayan Blackberry</u>	<i>Rubus discolor.</i>
<u>Hoarycress, globe-podded</u>	<i>Cardaria pubescens</i>
<u>Hoarycress, heart-podded</u>	<i>Cardaria draba</i>
<u>Hoarycress, lens-podded</u>	<i>Cardaria chalepensis</i>
<u>Horsenettle, Carolina</u>	<i>Solanum carolinense</i>
<u>Horsenettle, white</u>	<i>Solanum elaeagnifolium</i>
<u>Hydrilla</u>	<i>Hydrilla verticillata</i>
<u>Iris, Douglas</u>	<i>Iris douglasiana</i>
<u>Iris, western blue flag</u>	<i>Iris missouriensis</i>
<u>Johnsongrass</u>	<i>Sorghum halepense</i>
<u>Jointvetch, rough</u>	<i>Aeschynomene rudis</i>
<u>Kangaroothorn</u>	<i>Acacia paradoxa</i>
<u>Kelp</u>	<i>Polygonum amphibium var. emersum</i>
<u>Kikuyugrass</u>	<i>Pennisetum clandestinum</i>
<u>Klamathweed</u>	<i>Hypericum perforatum</i>
<u>Knapweed, diffuse</u>	<i>Centaurea diffusa</i>
<u>Knapweed, Russian</u>	<i>Acroptilon repens</i>
<u>Knapweed, spotted</u>	<i>Centaurea maculosa</i>
<u>Knapweed, squarrose</u>	<i>Centaurea squarrosa</i>
<u>Knotweed, giant</u>	<i>Polygonum sachalinense</i>
<u>Knotweed, Himalayan</u>	<i>Polygonum polystachyum</i>
<u>Knotweed, Japanese</u>	<i>Polygonum cuspidatum</i>
<u>Loosestrife, purple</u>	<i>Lythrum salicaria</i>
<u>Lettuce, water</u>	<i>Pistia stratiotes</i>
<u>Mallow, alkali</u>	<i>Malvella leprosa</i>
<u>Marigold, wild</u>	<i>Tagetes minuta</i>
<u>Medusahead</u>	<i>Taeniatherum caput-medusae</i>
<u>Melon, dedaim</u>	<i>Cucumis melo var. Dudaim</i>
<u>Melon, paddy</u>	<i>Cucumis myriocarpus</i>
<u>Mesquite, creeping</u>	<i>Prosopis strombulifera</i>
<u>Mistletoe, European</u>	<i>Viscum album</i>
<u>Mustard, purple</u>	<i>Chorispora tenella</i>
<u>Nightshade, heartleaf</u>	<i>Solanum cardiophyllum</i>
<u>Nightshade lanceleaf</u>	<i>Solanum lanceolatum</i>
<u>Nightshade, Torrey's</u>	<i>Solanum dimidiatum</i>
<u>Nightshade, white-margined</u>	<i>Solanum arginatum</i>
<u>Nimblewill</u>	<i>Muhlenbergia schreberi</i>
<u>Nutsedge, purple</u>	<i>Cyperus rotundus</i>
<u>Nutsedge, yellow</u>	<i>Cyperus esculentus</i>
<u>Onion, paniced</u>	<i>Allium paniculatum</i>
<u>Osage orange</u>	<i>Maclura pomifera</i>
<u>Pampas Grass</u>	<i>Cortaderia jubata or C. selloana</i>
<u>Peaweed, Austrian</u>	<i>Sphaerophysa salsula</i>
<u>Peppercress, perennial</u>	<i>Lepidium latifolium</i>
<u>Periwinkle</u>	<i>Vinca major</i>
<u>Povertyweed</u>	<i>Iva axillaris</i>



<u>Punagrass</u>	<i>Achnatherum brachychaetum</i>
<u>Puncturevine</u>	<i>Tribulus terrestris</i>
<u>Quackgrass</u>	<i>Elytrigia repens</i>
<u>Ragweed, giant</u>	<i>Ambrosia trifida</i>
<u>Ragwort, Oxford</u>	<i>Senecio squalidus</i>
<u>Ragwort, tansy</u>	<i>Senecio jacobaea</i>
<u>Restharrow, foxtail</u>	<i>Ononis alopecuroides</i>
<u>Rice, red</u>	<i>Oryza rufipogon</i>
<u>Russianthistle, barbwire</u>	<i>Salsola paulsenii</i>
<u>Russianthistle, common</u>	<i>Salsola tragus</i>
<u>Russianthistle, spineless</u>	<i>Salsola collina</i>
<u>St. Johnswort</u>	<i>as Hypericum perforatum</i> (see Klamathweed)
<u>Sage, meadow</u>	<i>Salvia virgata</i>
<u>Sage, Mediterranean</u>	<i>Salvia aethiopis</i>
<u>Salsola, wormleaf</u>	<i>Salsola vermiculata</i>
<u>Salt cedar (Tamarisk)</u>	<i>Tamarix spp.</i>
<u>Salttree, Russian</u>	<i>Halimodendron halodendron</i>
<u>Salvinia</u>	<i>Salvinia auriculata complex</i>
<u>Sandbur, coast</u>	<i>Cenchrus incertus</i>
<u>Sandbur, mat</u>	<i>Cenchrus longispinus</i>
<u>Sandbur, southern</u>	<i>Cenchrus echinatus</i>
<u>Satintail</u>	<i>Imperata brevifolia</i>
<u>Sicilian starthistle</u>	<i>Centaurea sulphurea</i>
<u>Skeletonweed</u>	<i>Chondrilla juncea</i>
<u>Sowthistle, perennial</u>	<i>Sonchus arvensis</i>
<u>Smooth-leaved elm</u>	<i>Ulmus minor</i>
<u>Spongeplant (S. American &amp; N. American)</u>	<i>Limnobium spongia sensu lato</i>
<u>Spurge, leafy</u>	<i>Euphorbia esula</i>
<u>Spurge, oblong</u>	<i>Euphorbia oblongata</i>
<u>Spurge serrate</u>	<i>Euphorbia serrata</i>
<u>Spurge, Geraldton carnation</u>	<i>Euphorbia terracina</i>
<u>Starthistle, Iberian</u>	<i>Centaurea iberica</i>
<u>Starthistle, purple</u>	<i>Centaurea calcitrapa</i>
<u>Starthistle, Sicilian</u>	<i>Centaurea sulphurea</i>
<u>Starthistle, yellow</u>	<i>Centaurea solstitialis</i>
<u>Swinecress</u>	<i>Coronopus squamatus</i>
<u>Tanglehead</u>	<i>Heteropogon contortus</i>
<u>Thistle, artichoke</u>	<i>Cynara cardunculus</i>
<u>Thistle, Canada</u>	<i>Cirsium arvense</i>
<u>Thistle, distaff, smooth</u>	<i>Carthamus baeticus</i>
<u>Thistle, distaff, whitestern</u>	<i>Carthamus leucocaulos</i>
<u>Thistle, distaff, woolly</u>	<i>Carthamus lanatus</i>
<u>Thistle, golden</u>	<i>Scolymus hispanicus</i>
<u>Thistle, Illyrian</u>	<i>Onopordum illyricum</i>
<u>Thistle, Itaslian</u> (see also "Thistle, slenderflowered")	<i>Arduus pycnocephalus</i>
<u>Thistle, Japanese</u>	<i>Cirsium japonicum</i>
<u>Thistle, musk</u>	<i>Carduus nutans</i>
<u>Thistle, plumeless</u>	<i>Carduus acanthoides</i>
<u>Thistle, Scotch</u>	<i>Onopordum acanthium</i>
<u>Thistle, slenderflowered</u>	<i>Carduus tenuiflorus</i>



<b>Thistle, Taurian</b>	<i><u>Onopordum tauricum</u></i>
<b>Thistle, wavyleaf</b>	<i><u>Cirsium undulatum</u></i>
<b>Thistle yellowspine</b>	<i><u>Cirsium ochrocentrum</u></i>
<b>Toadflax, Dalmatian</b>	<i><u>Linaria genistifolia subsp. Dalmatica</u></i>
<b>Tree of Heaven or Ailanthus</b>	<i><u>Ailanthus altissima</u></i>
<b>Waterlily, banana</b>	<i><u>Nymphaea mexicana</u></i>
<b>Witchweed</b>	<i><u>Striga asiatica</u></i>





D. 07-073

Recording requested, and when recorded,  
return to:

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

with a conformed copy to:

**No Recording Fees Needed per Government Code §6103**

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

**No Transfer Tax Due as this  
conveyance is for the benefit of  
the City of Elk Grove  
R&T Code Section 11922**

GRANT DEED OF SWAINSON'S HAWK HABITAT CONSERVATION EASEMENT

THIS GRANT DEED OF SWAINSON'S HAWK HABITAT CONSERVATION EASEMENT is made as of June 5, 2007 by and between **R&B Land Investments, LLC**, a California Limited Liability Company, as to an undivided 51.3800% interest; **Reynen & Bardis (Tamarindo), L.P.**, a California Limited Partnership, as to an undivided 8.1000% interest; **Christo D. Bardis**, a married man, as to an undivided 20.2600% interest and **John D. Reynen**, a married man, as to an undivided 20.2600% interest as "grantor" and the **City of Elk Grove** ("City"), a municipal corporation, as "grantee."

RECITALS

A. Grantor owns real property consisting of approximately 359 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, 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 easements 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.



*original*

G. To accomplish all of the aforementioned purposes, Grantor intends to convey to the City and the City intends to obtain a nonexclusive 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 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, a nonexclusive 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; and (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; which are important public benefits and are consistent with the availability of the Property for wildlife habitat and agriculture. The preservation and protection of these two uses in perpetuity is hereinafter referred to as the "Natural Resource Conservation Purposes" of this Easement.

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 the processes that sustain that habitat. It is intended that each such purpose shall be conducted in a manner consistent with the other. This Easement prohibits use of the Property for any purpose, other than as otherwise allowed in this Easement, that would significantly impair, degrade or interfere with the "Natural Resource Conservation Purposes" stated above.

2. EASEMENT DOCUMENTATION REPORT: The parties acknowledge that an Easement Documentation Report (the "Report") of the Property ("Biological Resources Assessment of the Grant Line Road Property prepared for Corinthian Homes/R&B Land Investments, LLC; Reynen & Bardis (Tamarindo), L.P. Christo D. Bardis and John D. Reynen, by Miriam Green and Associates Dated June 23, 2006") 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 Natural Resource Conservation Purposes of the Property.

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 in any case 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, no greater than four by eight feet, 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.
- E. Scientific Studies. Subject to Grantor's approval, which approval shall not be unreasonably withheld or denied, CONSERVATOR shall have the right to conduct Swainson's Hawk wildlife studies and associated habitat research on the 14.746+/- -acre Easement Property, as well as monitoring Swainson's Hawk habitat on the 14.746+/- -acre Easement Property, provided that such studies, research, and monitoring shall be carried out in a manner that shall not interfere unreasonably with the permitted use(s) or enjoyment of the Property by Grantor, its successors in interest, or any legally recognized occupant(s) or user(s) of the Property.

4. RESERVED RIGHTS. Grantor reserves all rights accruing from their ownership of the Property, including the right to engage in, or permit others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the Natural Resource Conservation Purposes of this Easement. Without limiting the generality of the foregoing, 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 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. Unless undertaken for the purpose of carrying out one of the two Natural Resource Conservation Purposes of this Easement or unless permitted by Exhibit C, any activity on or use of the Property which significantly degrades or interferes with the ability to use the Property for the Natural Resource Conservation Purposes is prohibited. Without limiting the generality of the foregoing, none of the uses described in Exhibit D attached hereto shall be made of the Property. Grantor may not plant any of the plants listed in Exhibit F on 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, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes.
  - F. Third-Party Beneficiary Enforcement. It is understood by the Grantor that all rights and remedies conveyed under this Conservation Easement shall extend to and are enforceable against Grantor by City of Elk Grove as a third-party beneficiary, provided, however, that such status as a third-party beneficiary is personal to City of Elk Grove and may not be assigned or conveyed to any other entity.
  - G. 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 with Grantor's prior written consent, which consent shall not be unreasonably withheld, 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. Grantor may reasonably withhold consent to transfer: if the proposed transferee is not subject to the jurisdiction of the Courts of the State of California; or if the organizational mission and purposes of the proposed transferee might cause the proposed transferee to emphasize the protection of one of the Natural Resource Protection Purposes of this Easement over the other.



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 known 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 Title Report dated May 14, 2007, issued by Stewart 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, except as such claim, liability, damage, or expense is the result of the City's gross negligence or intentional misconduct. Without limiting the foregoing, Grantor shall indemnify, defend, and hold harmless the Indemnified Parties for all of the following:

- A. Third Party Claims. Any claim, liability, damage, or expense suffered or incurred by or threatened against Grantor by 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:  
with a copy to :

To City:                      Environmental Planning Manager  
   City of Elk Grove  
   8401 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. Deemed Consent. 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 agree 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. \$294,920.00 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 14.746, 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. Liberal Construction. It is the intent of this Easement to preserve the condition of the Property and each of the 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 and Swainson's hawk habitat 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 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. Notwithstanding any other provision herein to the contrary, the City will indemnify, defend and hold harmless Grantor, its employees, agents, contractors, successors, 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 City on the Property, except as such claim, liability, damage, or expense is the result of the Grantor's gross negligence or intentional misconduct.

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 Easement.

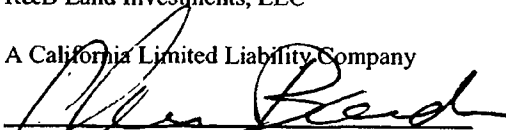
21. ENTIRE AGREEMENT. This Easement, together with the attached exhibits and schedules, and any documents incorporated herein by reference, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior agreement and understandings of the parties.

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

GRANTOR:

R&B Land Investments, LLC

A California Limited Liability Company

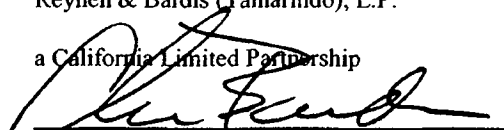
  
By: \_\_\_\_\_

CHRISTO D. BARDIS  
Its: MANAGING MEMBER

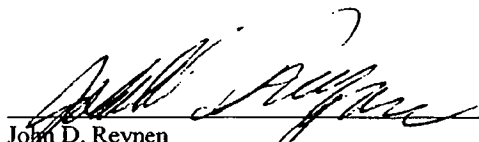
  
Christo D. Bardis

Reynen & Bardis (Tamarindo), L.P.

a California Limited Partnership

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

CHRISTO D. BARDIS  
Its: MANAGING MEMBER

  
Joan D. Reynen



STATE OF California }  
 COUNTY OF Sacramento } SS.  
 On May 31 2007 before me, Lori A. Rispoli  
 PERSONALLY APPEARED John D. Reynen and  
Christo D. Bardis

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.

Signature Lori A. Rispoli



**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 OF TYPE OF DOCUMENT

\_\_\_\_\_ NUMBER OF PAGES

\_\_\_\_\_ DATE OF DOCUMENT

\_\_\_\_\_ SIGNER(S) OTHER THAN NAMED ABOVE

**SIGNER IS REPRESENTING:**

NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_

\_\_\_\_\_



CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed to the City of Elk Grove, a municipal corporation, by the within instrument, the provisions of which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted by the undersigned officer(s) on behalf of the City pursuant to authority conferred by the Elk Grove City Council Resolution No. 2000-52 adopted on November 1, 2000, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert Lee, City Engineer

OR

Dated: 6-5-07

By: [Signature]  
John Danielson, City Manager

ACKNOWLEDGEMENT

State of California )  
County of Sacramento ) ss.

On 06-05-07 before me, Peggy Jackson, 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.

[Signature]

Peggy E. Jackson, City Clerk  
City of Elk Grove

**EXHIBIT "A"**

**DESCRIPTION OF SWAINSON'S HAWK/AGRICULTURE  
MITIGATION TO SATISFY WHITELOCK PARKWAY SEGMENT 3  
MITIGATION REQUIREMENTS**

All that real property situated in the City of Elk Grove in a part of Lots 4 and 5 of the Lower Daylor Estate as shown on the Plat of Survey filed in Book 3 of Surveys at Page 166 in the Official Records of the County of Sacramento, State of California, more particularly described as follows:

Commencing at a point on the centerline of Grant Line Road being the northeast corner of the property shown on said Plat of Survey, thence, South 40°31'33" West, a distance of 669.92 feet along the easterly line of said property;

Thence, South 49°28'27" East, a distance of 3402.06 feet to the Point of Beginning of the parcel to be described;

Thence, from the Point of Beginning, South 49°47'47" East, a distance of 2716.29 feet;

Thence, South 40°17'23" West, a distance of 236.48 feet;

Thence, North 49°47'47" West, a distance of 2716.29 feet;

Thence, North 40°17'23" East, a distance of 236.48 feet to the Point of Beginning.

Containing 14.746 Acres, more or less.

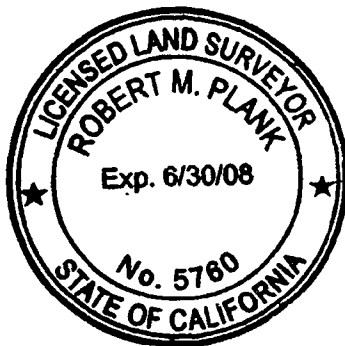
See Exhibit "B", plat to accompany legal description attached hereto and made a part hereof.

End of Description.

This description was prepared by me or under my direction pursuant to the Professional Land Surveyors Act.

Dated: 05/21/07

  
Robert M. Plank, L.S. 5760



L:\Sacramento\7702-00\Descriptions\  
Exhibit A\_Swainson's Hawk Mitigation Desc.  
05-21-07 .doc RMP

Prepared by the firm of  
MacKay & Soms Civil Engineers, Inc.  
Sacramento, California

**POINT OF COMMENCEMENT**  
 NORTHEAST CORNER OF  
 PROPERTY SHOWN ON  
 PLAT OF SURVEY, PER  
 3 R.S. 166

CENTERLINE GRANT LINE ROAD

S40°31'33"W  
 669.92'

S49°28'27"E 3402.06'

**POINT OF BEGINNING**

N40°17'23"E  
 236.48'

PREVIOUS MITIGATION EASEMENT

S49°47'47"E 2716.29'

**EXHIBIT "A" 14.746± ACRES**

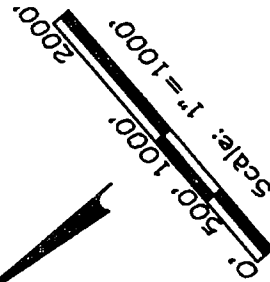
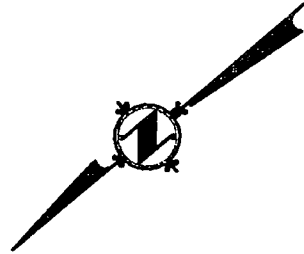
N49°47'47"W 2716.29'

S40°17'23"W  
 236.48'

♀ COSUMNES RIVER

EASTERLY LINE 3 R.S. 166

3 R.S. 166



**EXHIBIT 'B'**

Plat to Accompany Description  
**SWANSON'S HAWK/AGRICULTURE MITIGATION 3  
 TO SATISFY WHITELOCK PARKWAY SEGMENT  
 MITIGATION REQUIREMENTS**  
 City of Elk Grove  
 Sacramento County California

**MACKAY & SOMPS**

CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING  
 SACRAMENTO, CA. 95815 (916) 929-6082

05-21-07

PAGE 2 OF 2

7702-00

Swainson's Hawk Easement

Bearing	Distance	Northing	Easting	Inverse
		0.000	0.000	
S49°47'47.0"E	2716.290	-1753.381	2074.581	2716.290
S40°17'23.0"W	236.480	-1933.764	1921.661	2726.210
N49°47'47.0"W	2716.290	-180.383	-152.920	236.480
N40°17'23.0"E	236.480	0.000	0.000	0.000

Area = 642347.534 Square Feet or 14.746 Acres.

Precision = Perfect.

Direction = N 0° 0' 0.0"W 0.000

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 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 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 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; and (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; 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 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 Swainson's hawk habitat.

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, 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 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 which consent shall not be



unreasonably withheld. 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. 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.

6. 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.

7. 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.

8. 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.

9. Transfer of Property. To transfer the Property, provided that the transfer is not prohibited in Exhibit D, and provided that the transferee is subject to the jurisdiction of the Courts of the State of California. 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.

10. 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 does not significantly impair or degrade the ability to accomplish the Natural Resource Conservation Purposes of the Easement.

If any question exists regarding whether historic or new practices or activities are permitted or would have an adverse impact on the 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 Natural Resource Conservation Purposes of this Easement:

1. **No Subdivision.** The legal or de facto division, subdivision, or partitioning of the two separate agricultural fields comprising the 14.746-acre Easement Property.

2. **No Non-Agricultural Commercial Uses.** The establishment of any commercial or industrial uses other than the continuation of agriculture, 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 in this Easement, 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.** The removal, cutting or destruction of native trees on the 14.746-acre Easement 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 in accordance with Paragraphs 1 and 2 of Exhibit C.

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 encumbered by the 14.746-acre Easement Area. Except as otherwise permitted in this Easement, 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 five-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 either of the Natural Resource Conservation Purposes of this Easement.





**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 of 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 14.746-acre Easement Property for the uses permitted by this Schedule 1, 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 14.746-acre Easement 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 pursuant to this Schedule 1, 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 this Schedule.
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. Invalidity 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 easement property.



**EXHIBIT F**

**PROHIBITED PLANT LIST**

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

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



<u>Gorse</u>	<u><i>Ulex europaeus</i></u>
<u>Groundcherry, grape</u>	<u><i>Physalis viscosa</i></u>
<u>Groundcherry, long-leaf</u>	<u><i>Physalis longifolia</i></u>
<u>Halogeton</u>	<u><i>Halogeton glomeratus</i></u>
<u>Hermal</u>	<u><i>Pegamon harmala</i></u>
<u>Henbane, black</u>	<u><i>Hyoscyamus niger</i></u>
<u>Himalayan Blackberry</u>	<u><i>Rubus discolor.</i></u>
<u>Hoarycress, globe-podded</u>	<u><i>Cardaria pubescens</i></u>
<u>Hoarycress, heart-podded</u>	<u><i>Cardaria draba</i></u>
<u>Hoarycress, lens-podded</u>	<u><i>Cardaria chalepensis</i></u>
<u>Horsenettle, Carolina</u>	<u><i>Solanum carolinense</i></u>
<u>Horsenettle, white</u>	<u><i>Solanum elaeagnifolium</i></u>
<u>Hydrilla</u>	<u><i>Hydrilla verticillata</i></u>
<u>Iris, Douglas</u>	<u><i>Iris douglasiana</i></u>
<u>Iris, western blue flag</u>	<u><i>Iris missouriensis</i></u>
<u>Johnsongrass</u>	<u><i>Sorghum halepense</i></u>
<u>Jointvetch, rough</u>	<u><i>Aeschynomene rudis</i></u>
<u>Kangaroothorn</u>	<u><i>Acacia paradoxa</i></u>
<u>Kelp</u>	<u><i>Polygonum amphibium var. emersum</i></u>
<u>Kikuyugrass</u>	<u><i>Pennisetum clandestinum</i></u>
<u>Klamathweed</u>	<u><i>Hypericum perforatum</i></u>
<u>Knapweed, diffuse</u>	<u><i>Centaurea diffusa</i></u>
<u>Knapweed, Russian</u>	<u><i>Acroptilon repens</i></u>
<u>Knapweed, spotted</u>	<u><i>Centaurea maculosa</i></u>
<u>Knapweed, squarrose</u>	<u><i>Centaurea squarrosa</i></u>
<u>Knotweed, giant</u>	<u><i>Polygonum sachalinense</i></u>
<u>Knotweed, Himalayan</u>	<u><i>Polygonum polystachyum</i></u>
<u>Knotweed, Japanese</u>	<u><i>Polygonum cuspidatum</i></u>
<u>Loosestrife, purple</u>	<u><i>Lythrum salicaria</i></u>
<u>Lettuce, water</u>	<u><i>Pistia stratiotes</i></u>
<u>Mallow, alkali</u>	<u><i>Malvella leprosa</i></u>
<u>Marigold, wild</u>	<u><i>Tagetes minuta</i></u>
<u>Medusahead</u>	<u><i>Taeniatherum caput-medusae</i></u>
<u>Melon, dedaim</u>	<u><i>Cucumis melo var. Dudaim</i></u>
<u>Melon, paddy</u>	<u><i>Cucumis myriocarpus</i></u>
<u>Mesquite, creeping</u>	<u><i>Prosopis strombulifera</i></u>
<u>Mistletoe, European</u>	<u><i>Viscum album</i></u>
<u>Mustard, purple</u>	<u><i>Chorispora tenella</i></u>
<u>Nightshade, heartleaf</u>	<u><i>Solanum cardiophyllum</i></u>
<u>Nightshade lanceleaf</u>	<u><i>Solanum lanceolatum</i></u>
<u>Nightshade, Torrey's</u>	<u><i>Solanum dimidiatum</i></u>
<u>Nightshade, white-margined</u>	<u><i>Solanum arginatum</i></u>
<u>Nimblewill</u>	<u><i>Muhlenbergia schreberi</i></u>
<u>Nutsedge, purple</u>	<u><i>Cyperus rotundus</i></u>
<u>Nutsedge, yellow</u>	<u><i>Cyperus esculentus</i></u>
<u>Onion, paniced</u>	<u><i>Allium paniculatum</i></u>
<u>Osage orange</u>	<u><i>Maclura pomifera</i></u>
<u>Pampas Grass</u>	<u><i>Cortaderia jabata or C. selloana</i></u>
<u>Peaweed, Austrian</u>	<u><i>Sphaerophysa salsula</i></u>
<u>Peppercress, perennial</u>	<u><i>Lepidium latifolium</i></u>
<u>Periwinkle</u>	<u><i>Vinca major</i></u>
<u>Povertyweed</u>	<u><i>Iva axillaris</i></u>



<u>Punagrass</u>	<u><i>Achnatherum brachychaetum</i></u>
<u>Puncturevine</u>	<u><i>Tribulus terrestris</i></u>
<u>Quackgrass</u>	<u><i>Elytrigia repens</i></u>
<u>Ragweed, giant</u>	<u><i>Ambrosia trifida</i></u>
<u>Ragwort, Oxford</u>	<u><i>Senecio squalidus</i></u>
<u>Ragwort, tansy</u>	<u><i>Senecio jacobaea</i></u>
<u>Restharrow, foxtail</u>	<u><i>Ononis alopecuroides</i></u>
<u>Rice, red</u>	<u><i>Oryza rufipogon</i></u>
<u>Russianthistle, barbwire</u>	<u><i>Salsola paulsenii</i></u>
<u>Russianthistle, common</u>	<u><i>Salsola tragus</i></u>
<u>Russianthistle, spineless</u>	<u><i>Salsola collina</i></u>
<u>St. Johnswort</u>	<u>as <i>Hypericum perforatum</i></u> <u>(see <i>Klamathweed</i>)</u>
<u>Sage, meadow</u>	<u><i>Salvia virgata</i></u>
<u>Sage, Mediterranean</u>	<u><i>Salvia aethiopsis</i></u>
<u>Salsola, wormleaf</u>	<u><i>Salsola vermiculata</i></u>
<u>Salt cedar (Tamarisk)</u>	<u><i>Tamarix spp.</i></u>
<u>Salttree, Russian</u>	<u><i>Halimodendron halodendron</i></u>
<u>Salvinia</u>	<u><i>Salvinia auriculata complex</i></u>
<u>Sandbur, coast</u>	<u><i>Cenchrus incertus</i></u>
<u>Sandbur, mat</u>	<u><i>Cenchrus longispinus</i></u>
<u>Sandbur, southern</u>	<u><i>Cenchrus echinatus</i></u>
<u>Satintail</u>	<u><i>Imperata brevifolia</i></u>
<u>Sicilian starthistle</u>	<u><i>Centaurea sulphurea</i></u>
<u>Skeletonweed</u>	<u><i>Chondrilla juncea</i></u>
<u>Sowthistle, perennial</u>	<u><i>Sonchus arvensis</i></u>
<u>Smooth-leaved elm</u>	<u><i>Ulmus minor</i></u>
<u>Spongeplant (S. American &amp; N. American)</u>	<u><i>Limnobium spongia sensu lato</i></u>
<u>Spurge, leafy</u>	<u><i>Euphorbia esula</i></u>
<u>Spurge, oblong</u>	<u><i>Euphorbia oblongata</i></u>
<u>Spurge serrate</u>	<u><i>Euphorbia serrata</i></u>
<u>Spurge, Geraldton carnation</u>	<u><i>Euphorbia terracina</i></u>
<u>Starthistle, Iberian</u>	<u><i>Centaurea iberica</i></u>
<u>Starthistle, purple</u>	<u><i>Centaurea calcitrapa</i></u>
<u>Starthistle, Sicilian</u>	<u><i>Centaurea sulphurea</i></u>
<u>Starthistle, yellow</u>	<u><i>Centaurea solstitialis</i></u>
<u>Swinecress</u>	<u><i>Coronopus squamatus</i></u>
<u>Tanglehead</u>	<u><i>Heteropogon contortus</i></u>
<u>Thistle, artichoke</u>	<u><i>Cynara cardunculus</i></u>
<u>Thistle, Canada</u>	<u><i>Cirsium arvense</i></u>
<u>Thistle, distaff, smooth</u>	<u><i>Carthamus baeticus</i></u>
<u>Thistle, distaff, whitestern</u>	<u><i>Carthamus leucocaulos</i></u>
<u>Thistle, distaff, woolly</u>	<u><i>Carthamus lanatus</i></u>
<u>Thistle, golden</u>	<u><i>Scolymus hispanicus</i></u>
<u>Thistle, Illyrian</u>	<u><i>Onopordum illyricum</i></u>
<u>Thistle, Itaslian</u> (see also "Thistle, slenderflowered")	<u><i>Arduus pycnocephalus</i></u>
<u>Thistle, Japanese</u>	<u><i>Cirsium japonicum</i></u>
<u>Thistle, musk</u>	<u><i>Carduus nutans</i></u>
<u>Thistle, plumeless</u>	<u><i>Carduus acanthoides</i></u>
<u>Thistle, Scotch</u>	<u><i>Onopordum acanthium</i></u>
<u>Thistle, slenderflowered</u>	<u><i>Carduus tenuiflorus</i></u>



<u>Thistle, Taurian</u>	<u><i>Onopordum tauricum</i></u>
<u>Thistle, wavyleaf</u>	<u><i>Cirsium undulatum</i></u>
<u>Thistle yellowspine</u>	<u><i>Cirsium ochrocentrum</i></u>
<u>Toadflax, Dalmatian</u>	<u><i>Linaria genistifolia subsp. Dalmatica</i></u>
<u>Tree of Heaven or Ailanthus</u>	<u><i>Ailanthus altissima</i></u>
<u>Waterlily, banana</u>	<u><i>Nymphaea mexicana</i></u>
<u>Witchweed</u>	<u><i>Striga asiatica</i></u>



CITY:

City of Elk Grove, a municipal corporation

BY: [Signature]

ITS: City Manager

APPROVED AS TO FORM:

[Signature]  
City Attorney





## **APPENDIX B—DOCUMENTATION PHOTOS**



APPENDIX B: DOCUMENTATION PHOTOS

P1-SE: View of the northwestern corner of the property. Grassland located in background.



P1-NE: View of the northwestern corner of the property. Grant Line Road to the left.



P2-N: Metal gate at entrance of the property.



P2-SW: View of property along the Grant Line Road.



P3-SE: View of the grassland in Field A and the dirt roadway on the northeastern boundary.



P3-SW: View of large oak tree in the grassland in Field A.



**APPENDIX B: DOCUMENTATION PHOTOS**

**P3-NW:** View of the grassland within Field A. Gravel/dirt roadway along the northeastern boundary.



**P4-SE:** View of the gravel/dirt roadway along the northeastern boundary.



**P4-S:** View of grassland in Field A near the residential area.



**P5-NW:** View of the dirt roadway and fenced in field within Field A.



**P5-SW:** The pasture with water trough to the left is hidden by overgrown weeds.



**P5-SE:** View of the residential area with dirt roads and the abandoned motorhome.



**APPENDIX B: DOCUMENTATION PHOTOS**

**P6-N:** Parts of field have been over grown with thistle. The fence and detention basin are not visible.



**P6-SE:** View of a concrete pathway in the back of the smaller abandoned residence.



**P6-E:** The field has been over grown with thistle. The small fenced in area within the Field A is not visible.



**P7-S:** View of large shed in the central portion of the property in the southern part of Field A.



**P8-S:** View of riparian vegetation along Deer Creek.



**P8-N:** View of main residence (abandoned).



**APPENDIX B: DOCUMENTATION PHOTOS**

**P9-E:** View of barn in between Deer Creek and the abandoned residence.



**P9-NW:** View of abandoned residence.



**P10-E:** View of the southern side of Deer Creek and the riparian vegetation in the background.



**P10-S:** View of Field B. Electrical power lines are located in the background to the left.



**P10-NW:** View of low-water crossing over Deer Creek from Field B.



**P11-NW:** View of NE corner of Field B showing the riparian vegetation along Deer Creek.



**APPENDIX B: DOCUMENTATION PHOTOS**

**P12-SE:** View of the disked field in the eastern-central portion of Field B.



**P12-SW** View of Field B, gravel roadway, and the adjacent vineyards.



**P13-W:** View of the water well in the southern portion of Field B on the NE border.



**P13-SE:** View of a large oak on the NE border of Field B.



**P14-NW:** View of gravel roadway and grassland from the levee road in the SE corner of Field B.



**P14-S:** View of the levee road adjacent to Cosumnes River in the south.



**APPENDIX B: DOCUMENTATION PHOTOS**

**P15-N:** View of the levee road and riparian vegetation associated with Cosumnes River.



**P16-E:** View of the levee road and the adjacent riparian habitat.



**P16-NW:** View of the ruderal vegetation and faredm grassland.



**P-17-N:** View of farmed grassland for hay production from the southern corner of Field B.



**P18-SE:** View of SE border of the Field B from the Deer Creek riparian corridor. Trees line the property's boundary.



**P18-NE:** View of the riparian vegetation associated with Deer Creek and the grassland in Field B.





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



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

<b>Photo Point</b>	<b>UTM – E(m)</b>	<b>UTM – N(m)</b>	<b>Description</b>
P1	646827	4253202	The northwest corner of the property.
P2	647156	4253604	The northern corner of the property at the entry gate.
P3	647338	4253451	Along the gravel roadway near the large valley oak tree.
P4	647626	4253216	Along the gravel roadway near a small fenced in area.
P5	647785	4253076	Long the gravel roadway entering the residential area.
P6	647645	4252981	Behind a small residence adjacent to the fenced in area.
P7	647707	4252872	Next to large metal shed for hay storage.
P8	647814	4252858	Behind the main residence and small red barn.
P9	647844	4252926	Roadway leading to Deer Creek low-water crossing.
P10	647885	4252807	On the southern side of Deer Creek near Field B.
P11	648162	4252769	Adjacent to Deer Creek riparian corridor and the northern corner of Field B.
P12	648609	4252398	Central-eastern portion of Field B where there is a dirt roadway break between the vineyard rows on adjacent property.
P13	648930	4252129	Along the roadway near the water pump and large oak tree.
P14	649087	4252002	On levee road of Cosumnes River at the southeastern corner of Field B.
P15	649100	4251781	At the metal gate on the levee road.
P16	649018	4251668	Where the natural vegetation intersects with the farmed grassland in Field B view from the levee road.
P17	648825	4251536	The southwest corner of Field B on the levee road.
P18	647671	4252497	Western corner of Field B where Deer Creek meets the property boundary.