

D-09-048

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AND WHEN RECORDED,
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The Nature Conservancy
201 Mission Street, 4th Floor
San Francisco, CA 94105
Attn: Legal Department

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GRANT DEED OF AGRICULTURAL AND SWAINSON'S HAWK HABITAT
CONSERVATION EASEMENT

This Grant Deed of Agricultural and Swainson's Hawk Habitat Conservation Easement (this "Grant") is made as of December 10, 2009 by and between the **City of Elk Grove**, a municipal corporation, as "Grantor" and **The Nature Conservancy**, a District of Columbia nonprofit corporation, as "Grantee."

Recitals

A. Grantor owns real property consisting of approximately 743 acres, in Sacramento County, California, as described in Exhibit A, attached hereto and incorporated herein, which together with all appurtenances thereto, including without limitation all mineral and mineral rights, if any, and all water and water rights appurtenant to such land (collectively, the "Property").

B. In 2008, Grantor granted to Pacific Gas & Electric Company, a California corporation ("PG&E") a pipe line easement over the easterly fifty feet (50') of the Property, consisting of approximately 6.57 acres, which allows PG&E to maintain and use such pipe lines as PG&E shall elect for conveying gas, and the right, among other rights, to maintain, protect and access the pipe lines (the "Excluded Property").

C. The Property less the Excluded Property consists of approximately 736.591 acres (the "Conservation Easement Property"). The Property, the Excluded Property and the Conservation Easement Property are all shown more particularly on Exhibit B attached hereto and incorporated herein by reference. The Conservation Easement Property is more particularly described in Exhibit C attached hereto and incorporated herein by reference.

D. The Conservation Easement Property possesses significant conservation values, including, without limitation and in no particular order, scenic, natural habitat, hydrologic, open space, ecological, agricultural and scientific values of great importance to Grantor, the people of the City of Elk Grove and the people of the State of California (collectively, the "Conservation Values").

E. The Conservation Easement Property is comprised of open space land, appropriate to use for certain types of agriculture, which also provide essential foraging habitat for Swainson's hawks, and other species of wildlife including, but not limited to, raptors and migratory birds.

F. The protection of the Conservation Easement Property shall assure that this area continues to be available for certain types of agriculture that provide foraging habitat for Swainson's hawks. The protection of the Conservation Easement Property will also provide habitat and a buffer for other wildlife, as well as providing a significant public benefit by preserving open space against development pressure, and providing protection for scenic qualities unique to the Cosumnes River Watershed.

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

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

I. Grantee is a nonprofit corporation incorporated under the laws of the District of Columbia, and, as a tax-exempt public charity described in Section 815.3 of the California Civil Code and Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1968, as amended from time to time and together with any and all regulations promulgated thereunder (the "Code"), is organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "qualified organization" within the provisions of Section 170(h) of the Code qualified to acquire and hold conservation easements, and is authorized to hold conservation easements pursuant to Section 815.3 of the California Civil Code.

J. To accomplish all of the aforementioned purposes, Grantor intends to convey to Grantee, and Grantee intends to obtain from Grantor, an Agricultural and Swainson's Hawk Habitat Conservation Easement restricting the use which may be made of the Conservation Easement Property to preserve and protect forever the agricultural, open-space, foraging habitat for Swainson's hawks and other wildlife habitat and scenic values of the Conservation Easement 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 815 *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee, its successors and assigns, an Agricultural and Swainson's Hawk Habitat Conservation Easement in gross forever in, on, over, and across the Conservation Easement Property (the "Conservation Easement"), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Conservation Easement Property, and the parties agree as follows:

1. **Purposes.** The multiple natural resource conservation purposes of this Grant and the Conservation Easement are to identify, preserve, protect, enhance, monitor and restore in perpetuity the Conservation Values of the Conservation Easement Property, including, without limitation, the following (collectively, "Conservation Purposes"): (a) the conservation and habitat values of the Conservation Easement Property as foraging habitat for Swainson's hawks and for other wildlife including the processes which sustain that habitat; (b) the availability of the Conservation Easement Property for agriculture by protecting the Conservation Easement Property from development pressure; and (c) the open space character and scenic qualities of the Conservation Easement Property which are important public benefits and are consistent with the availability of the Conservation Easement Property for wildlife habitat and agriculture. It is intended that the Conservation Easement shall foster agricultural practices on the Conservation Easement Property in harmony with the protection and preservation of conservation and habitat values of the Conservation Easement Property as foraging habitat for Swainson's hawks and for other wildlife habitat and the processes that sustain that habitat, and in harmony with the open space

qualities of the Conservation Easement Property. It is intended that each such purpose shall be conducted in a manner consistent with all of such multiple natural resource conservation purposes. This Grant prohibits use of the Conservation Easement Property for any purpose that would impair, degrade or interfere with any of the multiple natural resources Conservation Purposes stated above.

2. **Easement Documentation Report.** The parties acknowledge that an Easement Documentation Report (the "Report") of the Conservation Easement Property has been prepared by a competent biologist familiar with the environs and approved by Grantor and Grantee in writing, a copy of which is on file with Grantor and Grantee at their respective address for notices, set forth below. The parties agree that the Report contains an accurate representation of the biological and physical condition of the Conservation Easement Property at the time of this Grant, and of the historical uses of the Conservation Easement Property, including historical water uses. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical, biological condition of the Conservation Easement Property or the permitted historical uses of the Conservation Easement 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. **Grantee's Rights.** To accomplish the purpose of the Conservation Easement, the rights and interests which are conveyed to Grantee by this Grant include, but are not limited to, the following:

- A. **Preserve and Protect.** Grantee may identify, preserve, protect, enhance, monitor and restore in perpetuity the Conservation Values of the Conservation Easement Property.
- B. **Entry and Access Rights:** Grantee and Grantee's employees and agents are hereby granted rights of access to enter upon the Property, including the Excluded Property, using appurtenant easements and rights-of-way, if any, to access the Conservation Easement Property, and may enter upon the Conservation Easement Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Grant, to study and make scientific observations of the natural elements and ecosystems of the Conservation Easement Property, to determine whether Grantor's activities are in compliance with the terms of this Grant and to take all actions deemed necessary by Grantee to identify, preserve, protect, enhance, monitor and restore in perpetuity the Conservation Values. Except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of the Conservation Easement, such entry shall be upon prior reasonable notice to Grantor and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
- C. **Enforcement.** Grantee may prevent or enjoin any activity on, or use of, the Conservation Easement Property that is inconsistent with the purposes of this Grant and the Conservation Easement, and may enforce the restoration of such areas or features of the Conservation Easement Property that may be damaged by any inconsistent activity or use.
- D. **Signs.** Grantee may erect a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the environmental and scenic resources of the Conservation Easement Property are protected by Grantee. The wording of the information on the sign shall be jointly determined by Grantee and Grantor, but shall clearly indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the costs of erecting and maintaining its sign or marker.

- E. **Scientific Studies.** Subject to Grantor's approval, which approval shall not be unreasonably withheld or denied, Grantee shall have the right to conduct, at Grantee's sole cost and expense, fish, wildlife, plant, and habitat studies on the Conservation Easement Property, as well as research and monitoring on the Conservation 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 Conservation Easement Property by Grantor, its successors in interest, or any legally recognized occupant(s) or user(s) of the Conservation Easement Property. Any other parties interested in conducting scientific studies on the Conservation Easement Property are subject to the prior written approval of Grantor, in consultation with Grantee, and such approval shall not be unreasonably withheld or denied.

4. **Permitted Uses of the Conservation Easement Property.** Grantor and Grantee intend that the Conservation Easement shall confine the uses of the Conservation Easement Property to the multiple natural resource conservation uses of agriculture, open space, scenic, conservation, and wildlife habitat, including the processes which sustain those certain agricultural uses and habitat, and to such other incidental uses as are expressly permitted herein, all in accordance with the terms and conditions of this Conservation Easement. Except as prohibited or otherwise limited by the terms of this Grant, Grantor reserves the right to use and enjoy the Conservation Easement Property in any manner which is consistent with the Conservation Purposes of the Conservation Easement. In that regard, the uses set forth in **Exhibit D** attached hereto, though not an exhaustive list of consistent permitted uses, are consistent with the Conservation Easement, and shall not be precluded, prevented or limited by this Grant, except: (a) to the extent otherwise prohibited under the terms of this Grant; (b) in those instances in which prior approval by Grantee is required under this Grant, until such approval is obtained; and (c) in those instances in which any action or practice is or becomes inconsistent with the Conservation Purposes or diminishes or impairs any of the specific Conservation Values, as determined by Grantee and the City of Elk Grove in the exercise of each party's reasonable discretion.

5. **Prohibited Uses of the Conservation Easement Property.** Any activity on or use of the Conservation Easement Property that is inconsistent with the Conservation Purposes (including, without limitation, any activity or use that materially diminishes or impairs the Conservation Values) is prohibited. Though not an exhaustive list of prohibited uses, none of the uses described in **Exhibit E** attached hereto and incorporated herein by reference shall be made of or on the Conservation Easement Property. In making this Grant, Grantor has considered the possibility that uses prohibited by the terms of this Grant may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination, extinguishment, or modification of this Grant or the Conservation Easement. In addition, the inability of Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Grant, or the unprofitability of doing so, shall not impair the validity of this Grant or the Conservation Easement or be considered grounds for the termination, extinguishment, or modification of same.

6. **Remedies.**

A. **Notice of Violation: Corrective Action.** If Grantor or Grantee becomes aware that a violation of the terms of this Grant has occurred or is threatened to occur, Grantor or Grantee shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Easement Property resulting from any use or activity inconsistent with the Conservation Values or the Conservation Purposes, to restore the portion of the Conservation Easement Property so

injured. If the noticed party fails to cure the violation within thirty (30) days after receipt of notice, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured, the noticing party shall have all remedies available at law or in equity to enforce the terms of this Grant, including without limitation the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the Conservation Easement Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity, to pay monetary amounts which, if not paid, could result in the extinguishment, modification, non-enforcement or impairment of the Conservation Easement, and/or to recover any damages arising from the violation. Rights under this paragraph apply equally to actual or threatened violations of the terms of this Grant. Both parties agree that the remedies available at law for any violation of the terms of this Grant are inadequate and that either party shall be entitled to seek the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief including specific performance of the terms of this Grant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 *et seq.* are incorporated herein by this reference, and this Grant shall include all of the rights and remedies set forth therein.

B. Cost of Enforcement. In any action, suit or other proceeding undertaken to enforce the provisions of this Grant, the prevailing party shall be entitled to recover from the non-prevailing all reasonable costs and expenses including, without limitation, attorneys' and experts' fees and costs, and if such prevailing party shall recover judgment in any action or proceeding, such costs and expenses shall be included as part of the judgment. In addition, any costs of restoration shall be borne by the party responsible for the violation of the terms of this Grant.

C. Emergency Enforcement. If either party, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values or to prevent breach or extinguishment of the Conservation Easement, Grantee may pursue its remedies under this paragraph without prior notice to the other or without waiting for the period to cure to expire.

D. Non-Waiver. Enforcement of the terms and provisions of this Grant shall be up to the discretion of the non-violating party, and the failure to discover a violation or to take action under this paragraph shall not be deemed or construed to be a waiver of any party's rights hereunder with respect to such violation in the event of any subsequent breach. In no event shall any delay or omission in exercising any right or remedy constitute an impairment of or a waiver or such right or remedy.

E. Acts Beyond Grantor's Control. Nothing contained in this Grant shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Easement Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement.

7. Transfer. Grantee may, in Grantee's sole and absolute discretion, transfer all or any of its interests in the Conservation Easement with the City of Elk Grove's prior written consent, which consent shall not be unreasonably withheld, provided that: (1) Grantee requires, as a condition of such transfer, that the Conservation Purposes of the Conservation Easement continue to be carried out following such transfer; (2) any assignment shall be made only to an organization satisfactory to the City of Elk Grove

and qualified at the time of the transfer as an eligible donee under Internal Revenue Code Section 170(h)(3) or its successor, or any regulation issued thereunder, and such organization shall be an entity qualified pursuant to Civil Code Section 815 *et seq.* or any subsequent State law governing the creation, transfer and enforcement of conservation easements; and (3) Grantee shall provide Grantor with notice of the assignment, at the address last provided by Grantor to Grantee, within thirty (30) days prior to the effective date of the assignment.

8. **Running with the Land.** The Conservation Easement created by this Grant is perpetual and shall burden and run with the Conservation Easement Property forever. Every provision of this Grant that applies to the Grantor or Grantee shall also apply forever to and shall burden or benefit, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interest may appear. Grantor agrees that transfer by Grantor of any interest in the Conservation Easement Property shall be in compliance with all applicable provisions of this Grant.

9. **Representation and Warranties.**

- A. **Hazardous Materials.** Grantor represents and warrants that Grantor shall comply with all Environmental Laws (as defined below in this Grant) in using the Conservation Easement Property and that Grantor shall keep the Conservation Easement Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials, as that term is defined below in this Grant.
- B. **Authority to Grant Easement.** Grantor has full right and authority to grant the Conservation Easement to Grantee.
- 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 Conservation Easement Property.
- D. **No Litigation.** There is no action, suit or proceeding which is pending or, to the best of Grantor's knowledge, threatened against the Conservation Easement Property or any portion thereof relating to or arising out of the ownership or use of the Conservation Easement Property, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.
- E. **Authority To Execute Conservation Easement.** The person executing this Grant on behalf of Grantee represents that execution of this Grant has been duly authorized by Grantee. The person(s) executing this Grant on behalf of the Grantor represents that the execution of this Grant has been duly authorized by the Grantor.

10. **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Conservation Easement Property and agrees that Grantee shall have no duty or responsibility for the operation or maintenance of the Conservation Easement 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 Conservation Easement Property. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Conservation Easement Property before delinquency and that Grantor shall keep Grantee's interest in the Conservation Easement Property free of any liens,

including those arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Conservation Easement Property. Grantee shall not be responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Grant, and any activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

11. **Indemnifications.**

- A. **Indemnification by Grantor.** Notwithstanding any other provision herein to the contrary, Grantor hereby agrees to indemnify, defend, and hold harmless Grantee, its directors, officers, employees, agents, and contractors and their heirs and assigns (the "Grantee Indemnified Parties") from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, reasonable attorneys' fees and costs) and litigation costs (collectively, "Damages") which the Grantee Indemnified Parties may suffer or incur, to the extent that they are a result of or arise out of any of the following: (a) the activities of Grantor on the Property; (b) the inaccuracy of any representation or warranty made by Grantor; (c) the breach by Grantor of any provision of this Grant; or (d) any injury to or the death of any person or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, caused by Grantor, except to the extent caused by the negligence or willful misconduct of any of the Grantee Indemnified Parties. Without limiting the foregoing, Grantor shall indemnify, defend, and hold harmless the Grantee Indemnified Parties for all of the following:
1. **Taxes.** Any real property taxes, insurance, utilities or assessments that are levied against the Conservation Easement Property, including those for which exemption cannot be obtained, or any other costs of maintaining the Conservation Easement Property.
 2. **Hazardous Materials.** Any Hazardous Material, as that term is defined in Paragraph 15, present, alleged to be present as a result of Grantor's actions, or otherwise connected in any way to the Conservation Easement Property, whether by or after the date of this Grant.
- B. **Indemnification by Grantee.** Notwithstanding any other provision herein to the contrary, Grantee hereby agrees to indemnify, defend, and hold harmless Grantor, its officers, employees, agents, and contractors and their heirs and assigns (the "Grantor Indemnified Parties") from and against any Damages which the Grantor Indemnified Parties may suffer or incur, to the extent that they are a result of or arise out of any of the following: (a) the activities of Grantee on the Property; (b) the inaccuracy of any representation or warranty made by Grantee; (c) the breach by Grantee of any provision of this Grant; or (d) any injury to or the death of any person or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, caused by Grantee, except to the extent caused by the negligence or willful misconduct of any of the Grantor Indemnified Parties.

12. **Notice; Approval.**

- A. **Notice for Entry.** Where notice to Grantor of Grantee's entry upon Property is required herein, Grantee shall notify any of the persons constituting Grantor or their authorized

agents by 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, and detailed information to the other party. The receiving party shall review the proposed activity and notify the initiating party, within sixty (60) days after receipt of notice of any objections to such activity. Any objections by a party shall be based upon its opinion that the proposed activity is inconsistent with the terms of the Conservation Easement.

C. Written Notices. Any written notice called for in this Conservation Easement may be delivered (1) in person; (2) by certified mail, return receipt requested, postage paid; (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: City of Elk Grove
 Development Services
 8401 Laguna Palms Way
 Elk Grove, CA 95758
 Attn: Real Property Manager
 Fax: (916) 691-3175

with a copy to: City of Elk Grove
 8380 Laguna Palms Way
 Elk Grove, CA 95758
 Attn: City Attorney
 Fax: (916) 691-4007

To Grantee: The Nature Conservancy
 201 Mission Street, 4th Floor
 San Francisco, CA 94105
 Attn: Legal Department
 Fax: (415) 777-0244

with a copy to: The Nature Conservancy
 Cosumnes River Preserve
 13501 Franklin Blvd
 Galt, CA 95632
 Attn: Project Director
 Fax: (916) 683-1702

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

D. Notice of Reserved Rights. Grantor shall notify Grantee, in writing, at least sixty (60) days before exercising any reserved right which may have a material adverse impact on any Conservation Values.

- E. Subsequent Activities. Permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.

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

14. Valuation; Extinguishment; Condemnation.

- A. Stipulated Fair Market Value. Grantor and Grantee agree that this Grant of a perpetual Conservation Easement gives rise to a property right, immediately vested in Grantee, which for purposes of this paragraph, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Conservation Easement Property unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) 48%, which is the ratio of the value of the Conservation Easement at the time of this grant to the value of the Conservation Easement Property, without the deduction for the value of the Conservation Easement. For Purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the Conservation Easement Property unencumbered by the Conservation Easement shall remain constant.

If for any reason there is an extinguishment of any of the restrictions of this Grant on a subsequent sale, exchange, or taking of the Conservation Easement Property, Grantee 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 Conservation Easement Property, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment. If there is no extinguishment of any of the restrictions of this Grant on a subsequent sale, exchange, or taking of the Conservation Easement Property, Grantee shall have no rights to any portion of the proceeds.

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

Government Code Section 65864 *et seq.*, the City of Elk Grove, by its signature hereon as Grantor, agrees not to condemn the Conservation Easement Property.

15. **Interpretation.**

- A. **Liberal Construction.** It is the intent of this Grant to preserve the condition of the Conservation Easement Property and each of the Conservation Purposes protected herein, notwithstanding economic or other hardship or changes in surrounding conditions. The provisions of this Grant shall be liberally construed to effectuate their purposes of preserving and protecting in perpetuity the Conservation Values and other Conservation Purposes described above, and allowing Grantor's use and enjoyment of the Conservation Easement Property to the extent consistent with the Conservation Purposes. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. The Conservation Purposes described herein are the intended best and most productive use of the Conservation Easement Property. No remedy or election given by any provision in this Grant 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 Grant, and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Grant. In the event of any conflict between the provisions of this Grant and the provisions of any use and zoning restrictions of the State of California, the county in which the Conservation Easement Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.
- B. **Governing Law.** This Grant 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 of the various paragraphs and subparagraphs of this Grant and its exhibits have been inserted solely for convenience of reference and are not part of the Conservation Easement and shall have no effect upon construction or interpretation.
- D. **No Hazardous Materials Liability.** Notwithstanding any other provision herein to the contrary, the parties do not intend this Grant to be construed such that it creates in or gives to Grantee:
- (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 Conservation Easement Property; or

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

E. Definitions.

(a) The terms "Grantor" and "Grantee," wherever used in this Grant and any pronouns used in place thereof, shall mean and include, respectively, the above-named Grantor, its personal representatives, heirs, devisee, personal representatives, and assigns, and all other successors as their interest may appear and Grantee and its successors and assigns.

(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 Environmental Laws 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. **Subsequent Liens on Conservation Easement Property.** No provision of this Grant is intended to be, nor should it be, construed as impairing the ability of Grantor to use the Conservation Easement Property as collateral for subsequent borrowing, provided that any subsequent deed of trust, mortgage, lien, or encumbrance arising from such a borrowing must, at all times, be subordinated to the Conservation Easement and this Grant. Any successor interest of Grantor, by acceptance of a deed, lease or other document purporting to convey an interest in the Conservation Easement Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Grant.

17. **Access.** Nothing contained in this Grant shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Grant. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities might materially diminish or impair the Conservation Values; provided, however, that Grantee acknowledges that Grantor may allow public access to the Conservation Easement Property or a portion thereof, so long as such public access does not materially diminish or impair the Conservation Values.

18. **Subsequent Transfers; No Merger.** Grantor shall incorporate the terms of this Grant by reference in any deed or legal instrument by which Grantor divests any interest in the Conservation Easement Property, including without limitation, any lease. Grantor shall give Grantee at least thirty (30) days written notice prior to the date of such transfer, which notice shall include the name, address and telephone number of the transferee. Grantor's failure to perform any act required by this paragraph shall not impair the validity of the Conservation Easement or this Grant, or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the Conservation Easement Property, shall be deemed to have consented to,

reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Grant and the Conservation Easement.

19. **Entire Agreement.** This Grant, 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.

20. **Amendments.** This Grant may be amended only by way of a written instrument signed by Grantor and Grantee and recorded with the Sacramento County Recorder's office. Any such amendment shall be consistent with the Conservation Purposes, and shall comply with Section 815 *et seq.* of the California Civil Code.

21. **Counterparts.** This Grant may be signed in one or more counterparts, all of which shall constitute one and the same instrument.

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

City Of Elk Grove,
a municipal corporation

By:

Name:

Its:

Laura A. Gill
Laura S. Gill
City Manager

The Nature Conservancy,

a District of Columbia nonprofit corporation

By:

Name:

Its:

George W. Vandell III
George W. Vandell III
Director of Real Estate

EXHIBITS:

Exhibit A – Legal Description of Property

Exhibit B – Map of Property, Excluded Property and Conservation Easement Property

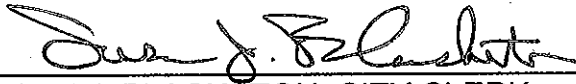
Exhibit C – Legal Description of Conservation Easement Property

Exhibit D - Permitted Uses of the Conservation Easement Property

Exhibit E – Prohibited Uses of the Conservation Easement Property

Exhibit F – Prohibited Plants

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

January 4, 2010

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY



State of California)
County of San Francisco) ss.

On December 10, 2009 before me, M. Inama, a Notary Public, personally appeared George W. Yandell III, 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

M. Inama
Notary Public

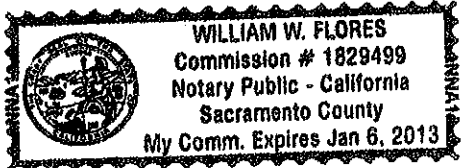


State of California)
County of Sacramento) ss.

On January 4, 2010 before me, William W. Flores, a Notary Public, personally appeared Laura S. Gill, 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

William W. Flores
Notary Public



LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA , COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

All that portion of Sections 4 and 5, Township 5 North, Range 5 East, M.D.B. & M., described as follows:

Beginning at the intersection of the Easterly line of California Interstate 5, as described in the "Final Order of Condemnation to the State of California", recorded May 23, 1978, in Book 780523, Page 956, Official Records of the County of Sacramento, with the South line of said Section 5; thence, from said point of beginning, along said South line, North 89°11'52" East 1,420.27 feet and North 89°13'00" East 2,642.00 feet to the Southeast corner of said Section 5, also being the Southwest corner of said Section 4; thence, along the South line of said Section 4, North 89°12'52" East 1,363.58 feet to its intersection with the Westerly line of the Lower Stockton Road, also known as Franklin Boulevard; thence, along said Westerly line, North 05°38'15" West 2,599.45 feet to its intersection with the centerline of an existing dirt road; thence, along said centerline, the following five (5) courses: 1) South 89°44'24" West 2,631.95 feet, 2) North 83°18'31" West 138.76 feet, 3) South 89°47'23" West 975.74 feet, 4) South 81°41'39" West 141.48 feet, and 5) South 89°04'20" West 1,727.85 feet to its intersection with said Easterly line of California Interstate 5; thence, along said Easterly line, South 09°37'18" East 2,651.08 feet to the point of beginning.

Shown as "Proposed Parcel 2" in that certain Lot Line Adjustment Resolution No. 97-BLS-0001 recorded March 28, 1997, in Book 19970328, Page 624, of Official Records.

EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas, asphaltum, minerals and other hydrocarbon substances in or on the realty herein described, together with the right to produce, develop, explore for and extract said substances, but without the right of surface entry on the surface of said land or within 500 feet from the surface thereof, as reserved by Alfred Kuhn and Betty Kuhn, his wife, in the deed recorded October 2, 1978, in Book 781002, Page 24, of Official Records.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas, asphaltum, minerals and other hydrocarbon substances below a depth of 500 feet from the surface thereof, but without the right of surface entry thereto, as described in those deeds recorded in Book 891031, Page 4147, and Book 891031, Page 4151, by and between Caroline G. Gwerder and Alice G. Lenz and Goodwin-Gwerder Co.

APN: 146-0040-040

Parcel 2:

All that portion of Sections 4 and 5, Township 5 North, Range 5 East, M.D.B. & M., described as follows:

Beginning at the intersection of the Easterly line of California Interstate 5, as described in the "Final Order of Condemnation to the State of California", recorded May 23, 1978, in Book 780523, Page 956, Official Records of the County of Sacramento, with the North line of said Section 5, also being the South line of Section 31, Township 6 North, Range 5 East, M.D.B. & M.; thence, from said point of beginning, along the common line between said Sections 5 and 31, North 89° 32' 25" East 410.05 feet to the Southeast corner of said Section 31, also being the Southwest corner of Section 32, Township 6 North, Range 5 East, M.D.B. & M.; thence, along the common line between said Sections 5 and 32, North 88° 29' 29" East 4,247.07 feet to the Northeast corner of said Section 5, also being the Northwest corner of said Section 4; thence, along the common line between said Sections 4 and 32, North 88° 29' 29" East 1,014.60 feet to its intersection with the Northerly production of the Westerly boundary of "Parcel 1", as described in that certain deed recorded in Book 840110, Page 1178, Official Records of said County; thence, along said production, South 05° 38' 15" East 30.08 feet to the Northwest corner of said "Parcel 1"; thence, along the boundary of said "Parcel 1", the following two (2) courses: 1) South 05° 38' 15" East 107.22 feet, and 2) North 84° 21' 45" East 100.00 feet to a point on the Westerly line of the Lower Stockton Road, also known as Franklin Boulevard; thence along said Westerly line South 05° 38' 15" East 3,122.12 feet to its intersection with the centerline of an existing dirt road; thence, along said centerline, the following five (5) courses: 1) South 89° 44' 24" West 2,631.95 feet, 2) North 83° 18'

EXHIBIT "A" (continued)

31" West 138.76 feet; 3) South 89° 47' 23" West 975.74 feet, 4) South 81° 41' 39" West 141.48 feet, and 5) South 89° 04' 20" West 1,727.85 feet to its intersection with said Easterly line of California Interstate 5; thence, along said Easterly line, the following three (3) courses: 1) North 09° 37' 18" West 1,484.51 feet, 2) North 07° 01' 09" West 1,211.09 feet, and 3) North 09° 37' 18" West 480.92 feet to the point of beginning.

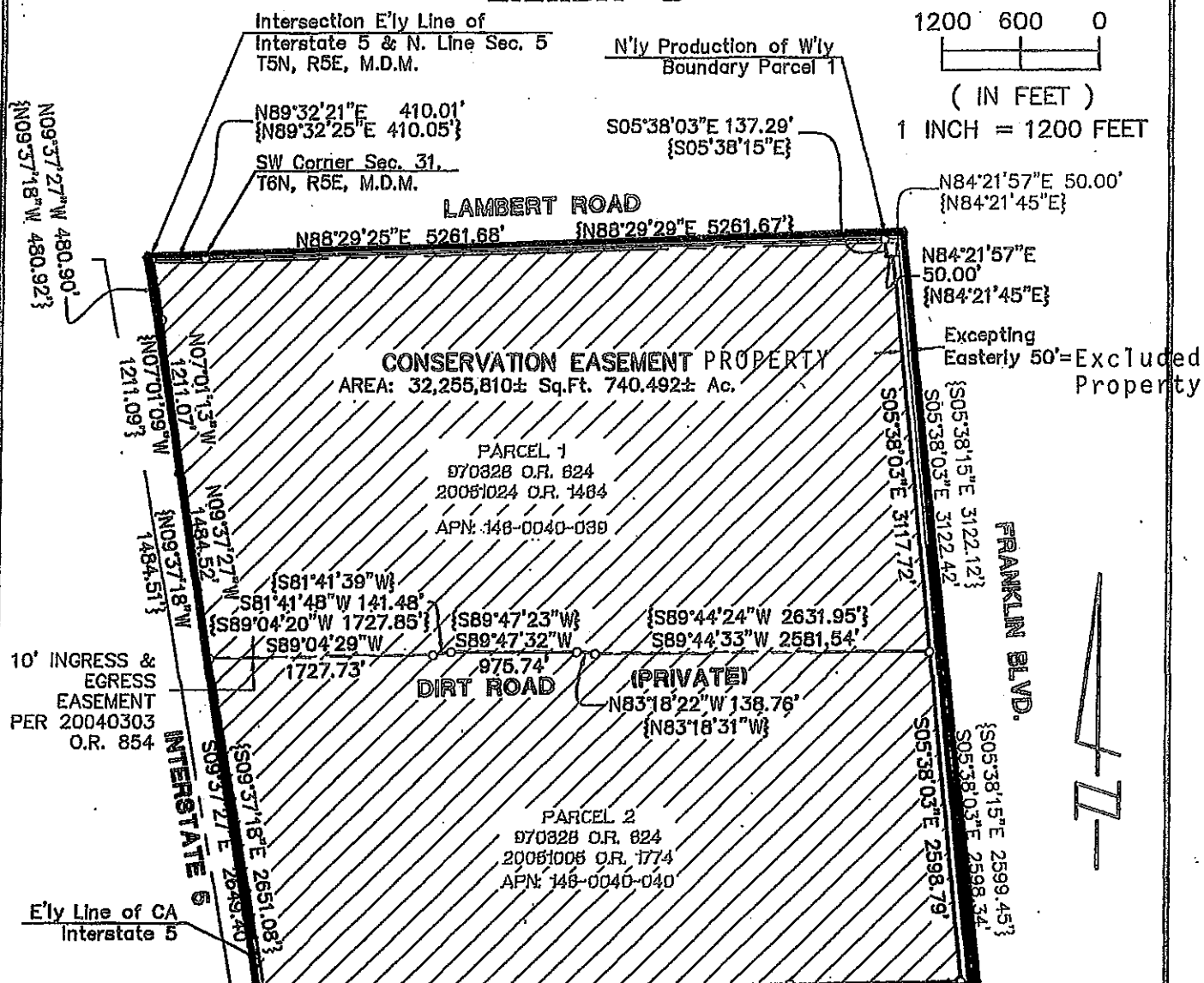
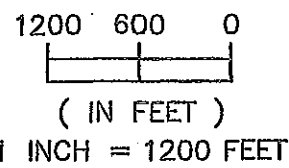
Shown as "Proposed Parcel 1" in that certain Lot Line Adjustment Resolution No. 97-BLS-0001 recorded March 28, 1997, in Book 19970328, Page 624, of Official Records.

EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas, asphaltum, minerals and other hydrocarbon substances in or on the realty herein described, together with the right to produce, develop, explore for and extract said substances, but without the right of surface entry on the surface of said land or within 500 feet from the surface thereof, as reserved by Alfred Kuhn and Betty Kuhn, his wife, in the deed recorded October 2, 1978, in Book 781002, Page 24, of Official Records.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas, asphaltum, minerals and other hydrocarbon substances below a depth of 500 feet from the surface thereof, but without the rights of surface entry thereto, as described in those deeds recorded in Book 891031, Page 4147, and Book 891031, Page 4151, by and between Caroline G. Gwerder and Alice G. Lenz and Goodwin-Gwerder Co.

APN: 146-0040-039

EXHIBIT 'B'



LEGEND

- Dimension Point
- Record per 970328 O.R. 624
- ▨ Conservation Easement Property
- Right of Way
- Centerline

CITY OF ELK GROVE CONSERVATION EASEMENT

CITY OF ELK GROVE		COUNTY OF SACRAMENTO		STATE OF CALIFORNIA	
DATE: 03/30/2009	SCALE: 1" = 1200'	PSOMAS 1075 Creekside Ridge Drive, Suite 200 Roseville, CA 95878 (916) 788-8122 (916) 788-0800 (FAX)			
DRWN. BY: PEB	CHK. BY: SAB				

Mar. 31, 2009 - DWG Name: P:\ELK032001\SURVEY\EXHIBITS\X-EX-EG_VINEYARD.dwg - Updated By: plostley

LEGAL DESCRIPTION

EXHIBIT C

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA , COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

All that portion of Sections 4 and 5, Township 5 North, Range 5 East, M.D.B. & M., described as follows:

Beginning at the intersection of the Easterly line of California Interstate 5, as described in the "Final Order of Condemnation to the State of California", recorded May 23, 1978, in Book 780523, Page 956, Official Records of the County of Sacramento, with the South line of said Section 5; thence, from said point of beginning, along said South line, North 89°11'52" East 1,420.27 feet and North 89°13'00" East 2,642.00 feet to the Southeast corner of said Section 5, also being the Southwest corner of said Section 4; thence, along the South line of said Section 4, North 89°12'52" East 1,363.58 feet to its intersection with the Westerly line of the Lower Stockton Road, also known as Franklin Boulevard; thence, along said Westerly line, North 05°38'15" West 2,599.45 feet to its intersection with the centerline of an existing dirt road; thence, along said centerline, the following five (5) courses: 1) South 89°44'24" West 2,631.95 feet, 2) North 83°18'31" West 138.76 feet, 3) South 89°47'23" West 975.74 feet, 4) South 81°41'39" West 141.48 feet, and 5) South 89°04'20" West 1,727.85 feet to its intersection with said Easterly line of California Interstate 5; thence, along said Easterly line, South 09°37'18" East 2,651.08 feet to the point of beginning.

Shown as "Proposed Parcel 2" in that certain Lot Line Adjustment Resolution No. 97-BLS-0001 recorded March 28, 1997, in Book 19970328, Page 624, of Official Records.

EXCEPTING THEREFROM the Easterly fifty (50) feet.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas, asphaltum, minerals and other hydrocarbon substances in or on the realty herein described, together with the right to produce, develop, explore for and extract said substances, but without the right of surface entry on the surface of said land or within 500 feet from the surface thereof, as reserved by Alfred Kuhn and Betty Kuhn, his wife, in the deed recorded October 2, 1978, in Book 781002, Page 24, of Official Records.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas, asphaltum, minerals and other hydrocarbon substances below a depth of 500 feet from the surface thereof, but without the right of surface entry thereto, as described in those deeds recorded in Book 891031, Page 4147, and Book 891031, Page 4151, by and between Caroline G. Gwerder and Alice G. Lenz and Goodwin-Gwerder Co.

APN: 146-0040-040

Parcel 2:

All that portion of Sections 4 and 5, Township 5 North, Range 5 East, M.D.B. & M., described as follows:

Beginning at the intersection of the Easterly line of California Interstate 5, as described in the "Final Order of Condemnation to the State of California", recorded May 23, 1978, in Book 780523, Page 956, Official Records of the County of Sacramento, with the North line of said Section 5, also being the South line of Section 31, Township 6 North, Range 5 East, M.D.B. & M.; thence, from said point of beginning, along the common line between said Sections 5 and 31, North 89° 32' 25" East 410.05 feet to the Southeast corner of said Section 31, also being the Southwest corner of Section 32, Township 6 North, Range 5 East, M.D.B. & M.; thence, along the common line between said Sections 5 and 32, North 88° 29' 29" East 4,247.07 feet to the Northeast corner of said Section 5, also being the Northwest corner of said Section 4; thence, along the common line between said Sections 4 and 32, North 88° 29' 29" East 1,014.60 feet to its intersection with the Northerly production of the Westerly boundary of "Parcel 1", as described in that certain deed recorded in Book 840110, Page 1178, Official Records of said County; thence, along said production, South 05° 38' 15" East 30.08 feet to the Northwest corner of said "Parcel 1"; thence, along the boundary of said "Parcel 1", the following two (2) courses: 1) South 05° 38' 15" East 107.22 feet, and 2) North 84° 21' 45" East 100.00 feet to a point on the Westerly line of the Lower Stockton Road, also known as Franklin Boulevard; thence along said Westerly line

EXHIBIT C (continued)

South 05° 38' 15" East 3,122.12 feet to its intersection with the centerline of an existing dirt road; thence, along said centerline, the following five (5) courses: 1) South 89° 44' 24" West 2,631.95 feet, 2) North 83° 18' 31" West 138.76 feet, 3) South 89° 47' 23" West 975.74 feet, 4) South 81° 41' 39" West 141.48 feet, and 5) South 89° 04' 20" West 1,727.85 feet to its intersection with said Easterly line of California Interstate 5; thence, along said Easterly line, the following three (3) courses: 1) North 09° 37' 18" West 1,484.51 feet, 2) North 07° 01' 09" West 1,211.09 feet, and 3) North 09° 37' 18" West 480.92 feet to the point of beginning.

Shown as "Proposed Parcel 1" in that certain Lot Line Adjustment Resolution No. 97-BLS-0001 recorded March 28, 1997, in Book 19970328, Page 624, of Official Records.

EXCEPTING THEREFROM the Easterly fifty (50) feet.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas, asphaltum, minerals and other hydrocarbon substances in or on the realty herein described, together with the right to produce, develop, explore for and extract said substances, but without the right of surface entry on the surface of said land or within 500 feet from the surface thereof, as reserved by Alfred Kuhn and Betty Kuhn, his wife, in the deed recorded October 2, 1978, in Book 781002, Page 24, of Official Records.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas, asphaltum, minerals and other hydrocarbon substances below a depth of 500 feet from the surface thereof, but without the rights of surface entry thereto, as described in those deeds recorded in Book 891031, Page 4147, and Book 891031, Page 4151, by and between Caroline G. Gwerder and Alice G. Lenz and Goodwin-Gwerder Co.

APN: 146-0040-039

Exhibit D

Permitted Uses of the Conservation Easement Property

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

1. Historical Agricultural Practices. Except as prohibited or restricted under the terms of this Grant, Grantor may continue historical agricultural practices on the Conservation Easement Property in the manner and location as set forth in the Report, to the extent that such practices are consistent with the Conservation Values and Conservation Purposes of the Conservation Easement. All farming operations on the Conservation Easement Property shall be consistent with reasonable farming practices and shall be in full compliance with all applicable federal, state and local statutes, laws, rules, regulations and ordinances (collectively, the "Laws"). The term "historical agricultural practices" includes the continued historic use of fertilizers, pesticides, herbicides, and other biocides, provided that such use, including, without limitation, the amount, frequency, and manner of application, shall be in accordance with all applicable Laws, and such use does not diminish or impair the Conservation Values or the Conservation Purposes of the Conservation Easement and shall not diminish or impair the naturally occurring ecosystem on and around the Conservation Easement Property.

2. New Practices. Except as prohibited or restricted under the terms of this Grant, and subject to obtaining Grantee's prior approval in accordance with the notice and approval provisions contained herein, it shall be permissible to carry on agricultural practices, and other practices or activities, that differ from historical agricultural practices, so long as such practices do not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters, and such practices are consistent with and do not diminish or impair the Conservation Purposes of the Conservation Easement. The following new practices are hereby found to be consistent with the Conservation Purposes of the Conservation Easement and do not require compliance with the notice and approval procedures described above so long as such new practices shall not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters and such new practices are consistent with and do not diminish or impair the Conservation Purposes of the Conservation Easement:

- (a) grazing of livestock;
- (b) cultivation and harvest of alfalfa, clover and other permanent pasture; and
- (c) substitution of new fertilizers, pesticides and herbicides for those Grantor presently uses, provided that such use, including, without limitation, the amount, frequency, and manner of application, shall be in accordance with all applicable Laws, and such use does not diminish or impair the Conservation Values or the Conservation Purposes of the Conservation Easement and shall not diminish or impair the naturally occurring ecosystems existing on or around the Conservation Easement Property.

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

3. Fences. Grantor may maintain, repair, replace and rebuild the fences that exist on the Conservation Easement Property as of the date of this Grant. Grantor, with Grantee's prior written approval, may construct and maintain new fences anywhere on the Conservation Easement Property for purposes reasonable and customary management of agriculture, livestock, and wildlife.

4. Irrigation Systems. Grantor may maintain, repair, replace and rebuild any irrigation systems that exist on the Conservation Easement Property as of the date of this Grant, and may construct and maintain new irrigation system improvement anywhere on the Conservation Easement Property for purposes reasonable and customary management of agriculture, livestock, and wildlife. Grantor may use recycled water in connection with Grantor's permitted uses of the Conservation Easement Property. Grantor may construct, maintain, repair, replace and rebuild one pond on up to a one-acre portion of the Conservation Easement Property to store such recycled water and associated infrastructure and improvements for transporting recycled water onto the Conservation Easement Property for such permitted uses; provided, however, that (a) such pond shall only store water that will be used on the Conservation Easement Property in connection with Grantor's permitted uses hereunder, and (b) the location, size and dimensions of the pond shall be subject to the prior written consent of Grantee, which approval shall not be unreasonably withheld.

5. Roads. Grantor may maintain and repair existing roads at currently existing levels of improvement, and construct and maintain such new unpaved and otherwise unimproved roads as may be reasonably necessary for Grantor's agricultural activities on the Conservation Easement Property and in a manner that shall not diminish or impair the Conservation Values of the Conservation Easement Property or the Conservation Purposes of the Conservation Easement, provided, however, that any new roads may not be constructed unless prior written consent has been obtained from Grantee, which approval shall not be unreasonably withheld.

6. Fishing and Hunting. Grantor may fish or hunt or trap wildlife on the Conservation Easement Property, to the extent that fish or animals subject to such activities are not afforded protection under applicable Laws and provided such fishing, hunting or trapping is conducted in compliance with applicable Laws, and in a manner that does not significantly deplete the wildlife resources on the Conservation Easement Property; and provided, further, that hunting on the Conservation Easement Property shall be subject to regional hunting season restrictions applicable to individual hunters at local State Wildlife Areas, which shall in no event include any special regulation hunting seasons that would increase hunting activities on the Conservation Easement Property in a manner that would be inconsistent with the Conservation Purposes or the Conservation Values of the Conservation Easement. Commercial hunting and fishing are permitted so long as conducted in accordance with the provisions of this paragraph, provided, however, that commercial fish farms are prohibited. Control of predatory and problem animals shall use selective control techniques, which shall be limited in their effectiveness to specific animals which have caused damage to agriculture, livestock and other property.

7. Water Resources. Grantor may develop and maintain such groundwater resources on the Conservation Easement Property as are necessary or convenient for agricultural, livestock, and wildlife habitat uses in a manner consistent with this Grant. Grantor may maintain such surface water resources on the Conservation Easement Property as are noted in the Report as currently existing on the Conservation Easement Property.

8. Passive Recreational Uses. Grantor may conduct passive recreational uses on the Conservation Easement Property, including, but not limited to, bird watching, hiking, horseback riding, and picnicking, provided that these uses require no surface alteration or other development of the Conservation Easement Property.

9. Signs. Grantor may erect a reasonable number of signs or other appropriate markers in prominent locations on the Conservation Easement Property, visible from a public road, which identify agricultural or open space activities on the Conservation Easement Property and/or state that no trespassing or no hunting is allowed on the Conservation Easement Property.

10. Transfer of Conservation Easement Property. Grantor may transfer the Conservation Easement Property, provided that the transfer is not prohibited under the terms of this Grant, and that Grantor notifies Grantee before the transfer of the Conservation Easement Property, and the document of conveyance shall expressly incorporate by reference this Grant. Leasing of the Conservation Easement Property for a period of five (5) or more years must be approved in writing by Grantee, whose approval shall not unreasonably be withheld. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Grant or the Conservation Easement or limit the enforceability in any way.

11. Residual Rights; Prior Approval. Except as expressly limited herein, Grantor may exercise and enjoy all rights as fee owner of the Conservation Easement Property, including the right to use the Conservation Easement Property for any purpose which is consistent with and does not diminish or impair the Conservation Values of the Conservation Easement Property or the Conservation Purposes of the Conservation Easement. If any question exists regarding whether historic or new practices or activities are permitted or would impair or diminish the Conservation Values of the Conservation Easement Property or the Conservation Purposes of the Conservation Easement, Grantor shall notify Grantee in the manner provided in this Grant and obtain Grantee's written approval prior to engaging in such practices or activities.

Exhibit E

Prohibited Uses of the Conservation Easement Property

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

1. No Subdivision. The legal or de facto division, subdivision, or partitioning of the Conservation Easement Property, any fee transfer of less than the entire Property.

2. No Non-Agricultural Commercial Uses. The establishment of any commercial or industrial uses on the Conservation Easement Property, other than the agricultural uses and commercial practices expressly permitted by the terms of this Grant. Examples of prohibited commercial or industrial uses include, but are not limited to, (a) the establishment or maintenance of any commercial feedlots, which are defined as any open or enclosed area where domestic livestock are grouped together for intensive feeding purposes; (b) the planting and cultivation orchards or vineyards; (c) the establishment or maintenance of any commercial greenhouses or plant nurseries; the (d) establishment or maintenance of any gravel mines; and (e) the establishment of any multi-family dwellings.

3. No Use or Transfer of Development Rights. Except as expressly permitted by the terms of this Grant, the exercise of any development rights associated with the Conservation Easement Property, including without limitation, the construction or placement of any residential or other buildings, golf courses, camping accommodations, boat ramps, bridges, mobile homes, house trailers, permanent tent facilities, Quonset huts or similar structures, underground tanks, billboards, signs, or other advertising, and/or other structures or improvements, street lights, utility structures or lines, sewer systems or lines.

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

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

5. Prohibited Agriculture. Any annual crop not historically planted on the Conservation Easement Property or approved in writing by Grantor, in consultation with Grantee. Any non-annual crop not expressly permitted by the terms of this Grant or approved in writing by Grantor, in consultation with Grantee. The planting, cultivation and harvest of any orchards, vineyards, artichokes, asparagus, sod, rice, safflower, or cotton. Without Grantee's prior written approval, the Conservation Easement Property, or portions of the Conservation Easement Property, may be left fallow for no more than one crop year provided that the fallowed area is managed in a way to provide foraging habitat for Swainson's hawks and other species of wildlife including raptors, migratory birds and others. Grantee's prior written approval is required to leave the Conservation Easement Property fallow for more than one consecutive crop year.

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 expressly permitted under the terms of this Grant may be stored on the Conservation Easement Property, provided that such storage is in full compliance with applicable Laws, best management practices, and does not diminish or impair the Conservation Values of the Conservation Easement Property.

7. No New Roads. The construction, reconstruction or replacement of any roadways, except as expressly permitted under the terms of this Grant, without the consent of Grantee.

8. No Destruction of Native Trees or Shrubs. The removal, cutting or destruction of native trees or shrubs on the Conservation Easement Property, except for disease or insect control or to prevent property damage or personal injury and except for the removal of native trees that are four inches or less in diameter when measured at chest height from those areas of the Conservation Easement Property that are used by Grantor for agricultural purposes permitted under this Grant.

9. No Destruction of Nesting Habitat. The removal, cutting or destruction of trees, shrubs, or vegetation on the Conservation Easement Property when in use by Swainson's hawks, raptors or migratory birds for nesting habitat.

10. No Biocides. The use of fertilizers, pesticides, biocides, and herbicides or other agricultural chemicals on the Conservation Easement Property, except as expressly permitted under the terms of this Grant.

11. No Long-Term Leases. Leasing the Conservation Easement Property for a period of five (5) or more years without the prior written approval of Grantee.

12. No Alteration of Natural Water Courses; Degradation of Water Quality. Except with the prior consent of Grantee, the manipulation or alteration of natural water courses, wetland, streambank, shoreline, or body of water. Activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or subsurface waters; provided, however, that Grantor shall be allowed to conduct any of the uses specifically permitted in this Grant even if such uses result in some adverse impact on water quality so long as such permitted uses are conducted in full compliance with all applicable Laws and consistent with those good farming practices that are customary in the general geographic area in which the Conservation Easement Property is located.

13. No Impairment of Water Rights. Severance, conveyance, or encumbrance of water or water rights appurtenant to the Conservation Easement Property, separately from the underlying title to the Conservation Easement 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 Conservation Easement Property, or on lands other than the Conservation Easement Property on a temporary basis (maximum one-year increments), provided that such sale or use does not permanently impair the riparian or other water rights appurtenant to the Conservation Easement Property nor reduce water rights below what is necessary for present or future agricultural production on the Conservation Easement Property. This Agricultural Easement shall not sever or impair any riparian water rights appurtenant to the Conservation Easement Property.

14. Inconsistent or Adverse Actions. Any action or practice which is or becomes not consistent with, or which diminishes or impairs the Conservation Values of the Conservation Easement Property or the Conservation Purposes of the Conservation Easement.

15. Vehicles. The use of any motorized vehicles off designated roadways, except for agricultural purposes.

16. Introduction of Non-native Species. The intentional or reckless introduction of non-native plant or animal species which may in Grantee's determination threaten the Conservation Values of the Conservation Easement Property or the Conservation Purposes of the Conservation Easement, which species include, but are not limited to, the plants, trees and weeds described in Exhibit F which is attached to this Grant and incorporated herein by reference. Grantor shall not be considered reckless for failure to prevent, investigate or research any potential manner that such items may be introduced to the Conservation Easement Property if such prevention, investigation or research is not within Grantor's normal business practices, or such potential manner has not been brought to Grantor's attention.

17. Subsequent Transfers. Conveyance by Grantor of any interest in the Conservation Easement Property in a manner that would directly or indirectly violate the prohibitions of this Exhibit E, or in any other manner that does not comply with the requirements of this Grant.

18. No Hazing. The hazing or other disturbance of Swainson's hawks or other migratory birds on, approaching, or leaving the Conservation Easement Property for the purpose of, without limitation, discouraging the presence of or habitat use by Swainson's hawks and other migratory birds on the Conservation Easement Property.

19. Junkyards. The storage or disassembly of inoperable automobiles, machinery, equipment, trucks, and similar items for purposes of storage, sale, or rental of space for any such purpose.

Exhibit F

Prohibited Plants

For purposes of the Conservation Easement, an "Invasive Species" is defined as a plant species that is (i) non-native to the ecosystem under consideration and (ii) whose introduction causes or is likely to cause economic or environmental harm. Grantor and Grantee agree that the planting of any Invasive Species which is at the time of planting listed with a rating of "High" in the California Invasive Plant Inventory (the "CIPI"), published by the California Invasive Plant Council (Cal-IPC) shall be prohibited by this Grant. If Cal-IPC ceases to exist or if its CIPI ceases to be updated regularly, then a similar listing prepared by an organization of the same caliber and endorsed by the same supporters of Cal-IPC shall be substituted for the CIPI for the purposes of this exhibit, as mutually agreed by Grantor and Grantee, each acting in good faith. The following Invasive Species are listed in the CIPI with a rating of "High" as of the date of this Grant:

<u>Common Name</u>	<u>Scientific Name</u>
barb goatgrass	<i>Aegilops triuncialis</i>
alligatorweed	<i>Alternanthera philoxeroides</i>
European beachgrass	<i>Ammophila arenaria</i>
giant reed	<i>Arundo donax</i>
Saharan mustard, African mustard	<i>Brassica tournefortii</i>
red brome	<i>Bromus madritensis</i> ssp. <i>Rubens</i> (= <i>B. rubens</i>)
downy brome, cheatgrass	<i>Bromus tectorum</i>
Hottentot-fig, iceplant	<i>Carpobrotus edulis</i>
spotted knapweed	<i>Centaurea maculosa</i> (= <i>C. biebersteinii</i>)
yellow starthistle	<i>Centaurea solstitialis</i>
jubatagrass	<i>Cortaderia jubata</i>
pampasgrass	<i>Cortaderia selloana</i>
Scotch broom	<i>Cytisus scoparius</i>
Cape-ivy, German-ivy	<i>Delairea odorata</i>
Brazilian egeria	<i>Egeria densa</i>
purple veldtgrass	<i>Ehrharta calycina</i>
water hyacinth	<i>Eichhornia crassipes</i>
leafy spurge	<i>Euphorbia esula</i>
fennel	<i>Foeniculum vulgare</i>
French broom	<i>Genista monspessulana</i>
English ivy, Algerian ivy	<i>Hedera helix</i> , <i>H. canariensis</i>
hydrilla	<i>Hydrilla verticillata</i>
perennial pepperwood, tall whitetop	<i>Lepidium latifolium</i>
Uruguay water-primrose	<i>Ludwigia hexapetala</i> (= <i>L. uruguayensis</i>)
creeping water-primrose	<i>Ludwigia peploides</i> ssp. <i>montevidensis</i>
purple loosestrife	<i>Lythrum salicaria</i>
parrotfeather	<i>Myriophyllum aquaticum</i>

(list continues on next page)

<u>Common Name</u>	<u>Scientific Name</u>
Eurasian watermilfoil	<i>Myriophyllum spicatum</i>
Scotch thistle	<i>Onopordum acanthium</i>
Himalaya blackberry, Armenian blackberry	<i>Rubus armeniacus</i>
giant salvinia	<i>Salvinia molesta</i>
red sesbania, scarlet wisteria	<i>Sesbania punicea</i>
smooth cordgrass, Atlantic cordgrass	<i>Spartina alterniflora</i>
dense-flowered cordgrass	<i>Spartina densiflora</i>
Spanish broom	<i>Spartium junceum</i>
medusahead	<i>Taeniatherum caput-medusae</i>
smallflower tamarisk	<i>Tamarix parviflora</i>
salt cedar, tamarisk	<i>Tamarix ramosissima</i>
gorse	<i>Ulex europaeus</i>