

**EASEMENT DOCUMENTATION REPORT:**

**ACTERRA/AVIS PROPERTY**

SACRAMENTO COUNTY, CALIFORNIA



**April 2011**



***Prepared by:***

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## 1. INTRODUCTION

### 1.1. PURPOSE

The purpose of this report is to provide an accurate representation of the present condition of the Acterra, LLC Property (property) currently owned and managed by Joe Avis Farms as it relates to the easement language and restrictions as of the date of the recording (August 28, 2007) of the Conservation Easement. The property is named for Acterra, LLC; however, Treasure Homes Communities, Inc. is listed as “grantor” on the Conservation Easement and is responsible for managing the Conservation Easement on the property. The Conservation Easement on the property is attached to this report as **Appendix A**.

The *Biological Resources Assessment of the Simunich Property in Sacramento County* (Estep 2007) was used as a reference of the past conditions of the property. The information and photographs provided herein represent the condition of the property as of March 29, 2011.

### 1.2 LOCATION

The property is located within an agricultural region of western Sacramento County, approximately 2.5 miles to the southwest of the Elk Grove city limit. The property lies to the west of Interstate 5 (I-5), to the east of Stone Lake, to the south of Hood-Franklin Road and to the north of Lambert Road (**Figure 1**).

The property is approximately 103 acres, which is contained within a single legal parcel, assessor parcel number (APN) 132-221-006. The parcel is rectangular in shape and its eastern boundary is located roughly 600 feet west of I-5 (**Figure 2**). The northern boundary of the parcel is bordered by Stone Lake Slough, a natural channel that extends eastward from Stone Lake (**Figure 1**). The western boundary of the parcel is distinguished by an irrigation channel that borders the entire western edge (**Figure 2**). The southern boundary of the parcel is located adjacent to Kestrel Lake Road, which is an unpaved road roughly 1.25 miles to the north of Lambert Road.

The portion of the parcel covered under the Conservation Easement equals approximately 91.8 acres of leveled farmland out of the approximately 103 total acres. The remaining portion of the parcel is comprised of a 10.9-acre pond in the northeastern corner of the parcel adjacent to Stone Lake Slough (**Figure 2**). This pond is not calculated into the 91.8 acres covered under the Conservation Easement; however, due to the close proximity of the pond to the leveled farmland within the parcel, a description of this water feature and the wildlife habitat it provides is mentioned under **Section 3.7 Conservation Features**. Hereafter, for the purposes of this report, the pond will be recognized as being adjacent to and not part of the 91.8 acres of leveled farmland covered under the Conservation Easement (referred to as the “property”).

## 2. METHODS

A site visit to the property was conducted on March 29, 2011 by City of Elk Grove biologist, Angela Calderaro, to note features relevant to the Conservation Easement agreement and to take reference photos at designated photo points. On the day of the site visit, the sky was clear and sunny with an outside temperature of approximately 68 degrees Fahrenheit (The Weather Channel 2010).

County of Sacramento (2007) aerial photos, data from the City of Elk Grove (2008), and digitized parcel boundaries were used as references and as base layers for maps. Maps were created using ArcView software.

Photographs of the property were taken with a 14 megapixel Nikon Coolpix S8000 digital camera, five feet above the ground. Photo points from previous years were used, except for two photo points. Photo stations P4 and P9 were combined. Photo point P5 was inaccessible so photos were taken approximately 300 feet south of P5 (halfway along the east side of the pond). **Figure 2** shows the plotted locations of the photo stations 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 included in **Appendix C**.

### 3. DESCRIPTION OF THE PROPERTY AND EASEMENT

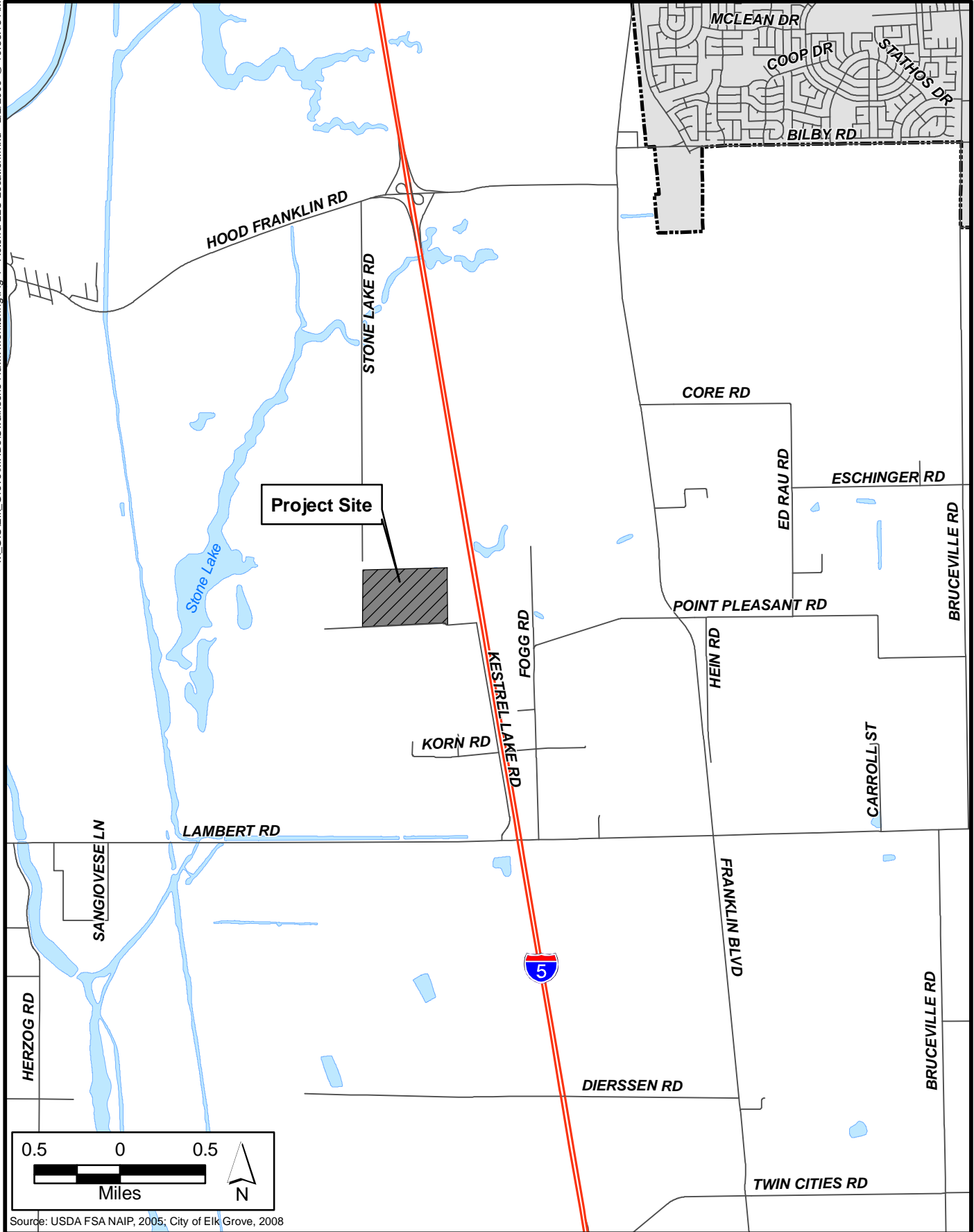
The property's legal description is contained in Exhibit A of the Conservation Easement, which is enclosed as **Appendix A** of this report. The property includes approximately 91.8 acres of leveled farmland, which currently contains five fields planted with alfalfa or hay (Figure 2). Field B was flooded and Field A was wet. As mentioned previously, there is a 10.9-acre pond not included under the Conservation Easement located to the northeast within the parcel boundaries. Also, there is an extensive emergent marsh that borders the property to the north along Stone Lake Slough (**Figure 2**). The other characteristics of the property are described below under **Sections 3.6 Infrastructure and Buildings** and **3.7 Conservation Features**.

#### 3.1. PURPOSE OF THE CONSERVATION EASEMENT

The multiple natural resource conservation purposes of the Conservation Easement are to preserve and protect in perpetuity (a) the availability of the property for agricultural use by protecting the property from development pressure; (b) the conservation and habitat values of the property as foraging and/or nesting habitat for Swainson's hawks (*Buteo swainsoni*) and for other wildlife essential for maintaining Swainson's hawk habitat including the processes which sustain that habitat; and (c) the open space character of the property, which is an important public benefit and is consistent with the availability of the property for wildlife habitat and agricultural uses.

#### 3.2. SURROUNDING PROPERTIES

Agricultural lands surround the property on all sides. The land directly to the east and south of the property is currently used as cattle pasture and the remainder of the surrounding farmed lands undergo hay, grain or row crop rotation (Estep 2007). A majority of the land surrounding the property to the west of I-5, including lands contiguous with the property on its northern and western borders, is within the Stone Lakes National Wildlife Refuge (Estep 2007). The Stone Lakes National Wildlife Refuge is an 18,200-acre preserve comprised of federally protected wetland and riparian habitats in southern Sacramento County (Stone Lakes National Wildlife Refuge Association 2009).



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



City of Elk Grove  
Development Services

Figure 1  
Location Map







Source: County of Sacramento, 2007; City of Elk Grove, 2008



City of Elk Grove  
Development Services

Figure 2  
Photo Station Location



### 3.3. HISTORIC AGRICULTURAL PRACTICES

An analysis of the soil types found on the property in the previous Biological Resources Assessment (BRA; Estep 2007) suggests that the property's soil is suitable for growing a variety of hay, grain, and row crops; therefore, it is assumed that the property was historically planted with a rotation of crops that are common to the area, including tomatoes, corn and other row crops, wheat and other grains, alfalfa hay as well as irrigated cattle pasture.

In 2006, Fields D and E had contained wheat (Estep 2007). In 2007, there were three fields planted with alfalfa (Fields A, B, and C) and the other two fields were fallow (Fields D and E) (Estep 2007). Alfalfa is a multi-seasonal crop with initial plantings typically lasting three to five years before replanting or rotation of another crop type (Estep 2007). Alfalfa is a low-lying crop. During the growing season, alfalfa is mowed once a month and irrigated generally once a week.

### 3.4. CURRENT AGRICULTURAL PRACTICES

At the time of the March 29, 2011 site visit, alfalfa and hay were planted on the fields although Field B was flooded (**Figure 2**). Since 2007, the fields have been rotated with various field crops, as described above in **Section 3.3 Historic Agricultural Practices**, which is consistent with the approved agricultural practices outlined in the Conservation Easement.

### 3.5. CURRENT WATER USES

Irrigation channels are used for the conveyance of water throughout the property. A description of these channels is included in the following section under the subheading **Ditches and Canals**. Currently, there are two water wells located in the interior of the property. The first well is located near the middle of the boundary between Fields A and C (**Figure 2**). The second well is located at the intersection of Fields C, D, and E (**Figure 2**). Irrigation water is accessed through the wells located in the interior of the property and through the pumping of water from Channel A and the pond (Estep 2007). There is a water pump located on the southwest corner of the pond (see photo P6-N; **Appendix B**). The Conservation Easement allows for the repair, maintenance, and rebuilding of existing wells, and for the establishment of new wells, as long as they support the allowable uses of property. The location, size and use of the existing water wells and the water pump located within the property are consistent with the requirements of the Conservation Easement.

### 3.6. INFRASTRUCTURE AND BUILDINGS

#### **Residences and Other Buildings**

Currently, there is an old hay barn located in the southeastern corner of the property (see photo P2-N; **Appendix B**). This barn was present at the time of the BRA (Estep 2007) and in subsequent conservation easement reports. During the March 29, 2011 site visit, several rows of bee boxes were present at the eastern entrance of the barn, as seen in photo P2-W mentioned above. The Conservation Easement allows for the maintenance, repair, replacement, or rebuilding of existing structures and improvements provided that such replacement structures/improvements shall be of the same square footage as the structures/improvements that they replace, shall be rebuilt in the same general location, and in a manner consistent with the purposes of the Conservation Easement (**Appendix A**). Currently, there are no plans to construct any new buildings on the property; therefore, the property is consistent with the requirements of the Conservation Easement.

### Fences and Roads

At the time of the March 29, 2011 site visit, the barbed wire fence on the eastern side of the property was complete. It is assumed that the fencing along the northern edge of the property is still intact. The northern portion of the property was flooded due to the heavy rains. On account of a lack of visibility due to vegetation, it could not be determined if this fencing ran the entire length of the northern edge of the property from the northeastern corner to the northwestern corner. No additional fencing was observed on the property. The type, location and size of the fencing within the property are consistent with the requirements of the Conservation Easement.

Currently, there are several dirt roads located throughout the interior of the property that are used for farm activities. Many of these roads were overgrown or flooded at the time of the survey. The type, location and size of the roads within the property are consistent with the requirements of the Conservation Easement.

### Ditches and Canals

Ditches on the property include irrigation channels located along the edges and interior of the farmland within the property. There are two irrigation channels used for water conveyance located along the western and southern boundaries of the property. These channels are referred to as Channel A and Channel B, respectively, and are shown in **Figure 2**. There is one channel located within the interior of the property, referred to as Channel D. Channel D forms the boundary between Fields A and B, running west-east from the western edge of the property to the intersection of Fields C, D and E (**Figure 2**).

According to the 2007 BRA, there was another channel, Channel C, located in the interior of the leveled farmland within the property. Channel C formed the north-south boundary between Fields A and C (Estep 2007; refer to **Figure 2**). During the July 7, 2010 site visit, the channel was no longer present at this location. The pipes were not interconnected or determined to be currently in use at the time of the survey. Another ditch (not shown on Figure 2) was located in between Field E and the dirt road adjacent to the pond and wetlands in the northern portion of the site.

The 2007 BRA states that Channel B was located along the southern edge of the property (Estep 2007). A measure of the length of Channel B could not be determined from the description provided in the 2007 BRA. As of the July 7, 2010 site visit, Channel B was present along a portion of the southern edge of the property, mostly along the southern edge of Field D (**Figure 2**).

During the March 29, 2011 site visit, the irrigation channels were present as described in the 2010 monitoring report (City of Elk Grove 2010). At the time of the survey, the channels were overflowing due to recent storm events. The size, location and use of the aforementioned irrigation channels and piping found within the property are consistent with the requirements of the Conservation Easement.

## 3.7. CONSERVATION FEATURES

### Open Water Habitat

Prior to the March 29, 2011 site visit, California had experienced record high precipitation, pulling the state out of a three year drought. The higher than average rainfall has flooded areas on the property that did not flood previously. Fields A and B were flooded along with the surrounding dirt roadways. The parcel adjacent to the property to the west was flooded as well. Although not covered under the Conservation Easement, there is a 10.9-acre pond located in the

northeastern corner of the parcel. During the time of the March 29, 2011 site visit, the pond appeared to be several feet deep at its deepest point. There are steep-sided grassy banks on the southern side of the pond and shallow banks along the northern side. There are patches of emergent marsh vegetation present along the western and northern edges of the pond by Stone Lake Slough. The pond is dominated by water hyacinth (*Eichhornia crassipes*), bulrush (*Scirpus* spp.), cattails (*Typha* spp.) and a few scattered small willows, mostly found along the perimeter of the pond. This pond provides suitable habitat for a variety of wildlife species including prey items for Swainson's hawks foraging in the region.

### **Marsh Habitat**

A large emergent marsh complex is located along the northern edge of the property, adjacent to the small section of Stone Lake Slough that runs through the property on the northern end (**Figure 2**). The marsh at the northern edge of the property is dominated by bulrush, cattail, and willow. These marshes are contiguous with the larger marsh complex associated with the Stone Lake floodplain to the west of the property (Estep 2007). These areas were flooded during the site visit. Two western pond turtles (*Emys marmorata*) were observed in the northwestern corner of the property basking on a log.

### **Riparian woodland**

The northern side of the pond borders the cottonwood-willow riparian woodland that surrounds Stone Lake Slough along the northern edge of the property (**Figure 2**). Several large cottonwood trees that are suitable nesting habitat for Swainson's hawks are located along the northern boundary. The dense riparian vegetation provides suitable foraging and cover habitat for other wildlife. The vegetation composition is variable, with stands of dense, multi-storied cottonwood and willow overstory with a Himalayan blackberry (*Rubus discolor*) shrub understory (Estep 2007). Several stands of dense willow scrub and several mature eucalyptus trees (*Eucalyptus* spp.) are present near the northern border of the property.

In addition, dense patches of willow scrub-dominated riparian vegetation occurs along the northern portion of Channel A, near the northwestern corner of the property and Stone Lake Slough (see photo P9-S; **Appendix B**).

### **Inferences Regarding Winter Role**

The northern portion of the property is protected from seasonal inundation by the dense riparian corridor along Stone Lake Slough, which borders the property to the north and bends into the interior of the property near the central-northern edge (**Figure 2**). The large patch of bulrush marsh located to the north and west of the pond provide a natural barrier, which absorbs seasonal high waters. There are also steep banks along the pond's southern edge, which is the low-end of the pond, which may occasionally experience and retain seasonally high waters. In all, there is no indication that there is considerable seasonal water stagnant on the property. The bulrush marsh and the riparian corridor along Stone Lake Slough at the property's northern edge pose as natural absorbers of seasonal flooding events. Fields A and B were flooded during the March 29, 2011 site visit.

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

Almost the entire 91.8 acres of the property covered under the Conservation Easement has been leveled and is either planted with low-lying crops (alfalfa or hay) or is fallow. Alfalfa fields provide suitable foraging habitat for Swainson's hawks because the low-lying groundcover

enables the hawks to spot and pursue prey items when flying over the property. The fallow fields contain a low-lying groundcover composed of remnants of plant material from previous crops, which serves as open space and as cover habitat for a small prey population.

Areas not used for cropland include the interior dirt roads and road shoulders, the small section of Stone Lake Slough that runs through the northern edge of the property, the riparian and marsh areas along the northern edge and western edge of the property and the pond. The roadsides of Stone Lake Road to the south of the property are thickly covered with grasses (e.g., *Lolium multiflorum*, *Hordeum murinum* ssp. *leporinum*, *Vulpia* spp.) and other weedy flora.

There are no trees located in the interior of the property; however, several large trees may serve as suitable nesting habitat for Swainson's hawk located around the perimeter of the property especially within the riparian habitat on the northern edge of the property. There are two medium-sized willow trees located adjacent to the property's fencing along the eastern property boundary near the 10.9-acre pond. As mentioned above, there are several large cottonwoods, willows, and eucalyptus trees located near the northern edge of the pond and along the northern border of the property, contiguous with the riparian habitat bordering Stone Lake Slough.

Also, there is an isolated row of large eucalyptus trees along the southern edge of the property near the southeastern corner (see photo P1-NW and P2-W; **Appendix B**). This row of eucalyptus trees is located directly to the outside of the property's southern boundary fencing, which extends along the southern edge from the southeastern corner towards the border between Fields D and E. There is also a small eucalyptus tree located near the southeastern corner, on the inside of the fencing.

## 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 current farming practices (alfalfa/hay crop) observed during the March 29, 2011 site visit are consistent with the requirements of the Conservation Easement.

The requirements set forth in the Conservation Easement state that no new structures can be built within the property and only the maintenance, repair, replacement, or rebuilding of existing structures and improvements are permitted under the Conservation Easement (**Appendix A**). Currently, there are no plans to construct any new buildings on the property, which is in compliance with the requirements of the Conservation Easement.

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

The property consists of high-quality foraging habitat for Swainson's hawks. The low groundcover provides excellent foraging habitat for Swainson's hawks because it allows for clear visibility of prey items. The large cottonwood, willow, and eucalyptus trees observed around the perimeter of the property (associated with the riparian corridor along Stone Lake Slough and the isolated row of eucalyptus trees bordering the southeastern corner of the property) represent suitable nesting habitat for Swainson's hawk.

The property supports prey items that the Swainson's hawk could eat, and therefore may be used as foraging habitat. In addition, according to the California Department of Fish and Game (CDFG) California Natural Diversity Data Base (CNDDDB) records, there are 122 previously

recorded occurrences of Swainson's hawk within a ten-mile radius of the property (CDFG 2011). Since numerous occurrences of Swainson's hawks have been recorded in the region, it is reasonable to assume that Swainson's hawks could nest in the vicinity of the property or within the riparian habitat or large trees adjacent to the property. Several small nests were observed within the riparian habitat.

The following birds were observed within or flying above the property during the March 29, 2011 survey: red-tailed hawk, California quail, double-crested cormorant, American robin, mallard, red-winged blackbird (*Agelaius phoeniceus*), tree swallow (*Tachycineta bicolor*), turkey vulture (*Cathartes aura*), great egret (*Ardea alba*), and some unidentified sparrows.

## REFERENCES

- California Department of Fish and Game (CDFG). 2011. California Natural Diversity Database (CNDDDB) Rarefind 3 computer program, Version 3.1.1. Commercial version dated April 2, 2011. Data will expire October 2, 2011. CDFG, Biogeographic Data Branch. Sacramento, CA.
- City of Elk Grove. 2010. Easement Documentation Report: Acterra/Avis Property, Sacramento County, California. July 7, 2010. Prepared by the City of Elk Grove.
- Estep, Jim. 2007. *Biological Resources Assessment of the Simunich Property in Sacramento County*. Prepared by Estep Environmental Consulting. Sacramento, CA. May 2007.
- The Weather Channel (TWC). 2011. Today's Weather for Elk Grove, CA. Accessed on April 1, 2011 from <http://www.weather.com>.
- Stone Lakes National Wildlife Refuge Association. 2009. Historical Background of the Stone Lakes National Wildlife Refuge webpage. Accessed on July 7, 2010 from <http://www.stonelakes.org/refuge/index.htm>.





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# **APPENDICES**

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## **APPENDIX A – CONSERVATION EASEMENT**





Sacramento County Recording  
 Craig A Kramer, Clerk/Recorder  
 BOOK **20070910** PAGE **0407**

Monday, SEP 10, 2007 9:12:22 AM  
 Ttl Pd \$0.00 Nbr-0005065508

SLR/81/1-28

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 August 28, 2007 by and between **Treasure Homes Communities, Inc.** as "grantor" and the **City of Elk Grove** ("City"), a municipal corporation, as "grantee."

RECITALS

A. Grantor owns real property consisting of approximately 103 acres, in Sacramento County, California, as described in Exhibit A-1 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 a portion of the Property as described in Exhibit A-2 and shown more particularly on the map attached as Exhibit B (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.

The provisions of this Easement do not apply to and the Easement does not include the one-acre area of the Property located in its south west corner, and the 10.9-acre pond located in its north east corner, as shown in Exhibit "B". The "Easement Property" is the remainder approximately 92 acres of the Property.

2. **EASEMENT DOCUMENTATION REPORT:** The parties acknowledge that an Easement Documentation Report (the "Report") of the Property ("BIOLOGICAL RESOURCES ASSESSMENT OF THE SIMUNICH PROPERTY IN SACRAMENTO COUNTY Prepared for TREASURE HOMES, by ESTEP ENVIRONMENTAL CONSULTING Dated MAY 2007") 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. The City shall repair any damage it causes to the Property. However, the City shall not be required to repair or reverse any remedial actions taken by City to restore the Property in accordance with Paragraph 6, below.



- 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, the City may designate a nonprofit conservation organization (the "Conservator"), which shall have the right to conduct Swainson's Hawk wildlife studies and associated habitat research on the 92-acre Easement Property, as well as monitoring Swainson's Hawk habitat on the 92-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. The Conservator shall be responsible for repairing any damage it causes to the Property. The City may in its sole discretion withdraw its designation of an organization as the Conservator by providing written notice to Grantor.

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 or authorize the planting of any of the plants listed in Exhibit F on the Property, but Grantor shall have no duty to remediate or remove plants listed in Exhibit F not planted on the Property by Grantor or its employees, tenants, agents or independent contractors or otherwise planted with Grantor's permission.

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 the California Department of Fish and Game as a third-party beneficiary, provided, however, that such status as a third-party beneficiary is personal to the California Department of Fish and Game 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; (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; and (3) the transferee carries a commercial general liability insurance policy that covers its activities on the Property and has a "per occurrence" limit of at least One Million and No/100ths (\$1,000,000.00) and an aggregate limit of at least Two Million and No/100ths Dollars (\$2,000,000.00). At the Grantor's request, the transferee shall provide endorsements or certificates that evidence the required insurance. 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. Notwithstanding the foregoing, City may transfer all or any of its interests in this Easement to The Nature Conservancy or the Sacramento Valley Conservancy, provided such entity meets the insurance requirements described herein.

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 November 15, 2006, issued by First American Title regarding the Property, Grantor warrants that as of the date that title to the Easement transfers it has good and sufficient title to the Property and that all mortgages, liens, and encumbrances are subordinated to this Easement.
- C. Compliance with Laws. Grantor has not received notice of and has no knowledge of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Property.
- D. No Litigation. Grantor has no actual or constructive knowledge of any 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, or the negligence or misconduct of Conservator. 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, or the negligence or misconduct of Conservator .
- 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:           Treasure Homes Communities  
1386 Lead Hill Blvd. #300  
Roseville, CA 95661

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. \$440,640 which is the product obtained when the appraised per acre value of this Easement is multiplied by 91.80, 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.

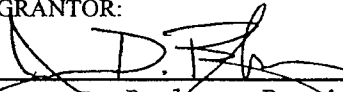
20. ACCESS. Nothing contained in this Easement shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

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.



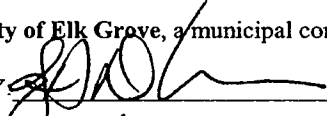
IN WITNESS WHEREOF, the parties have executed this Easement as of the date first above written.

GRANTOR:

  
\_\_\_\_\_  
James D. Bayless, President  
Treasure Homes Communities, Inc., a California corporation

CITY:

City of Elk Grove, a municipal corporation

BY:  \_\_\_\_\_

ITS: City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jonathan Hobbs, Interim City Attorney



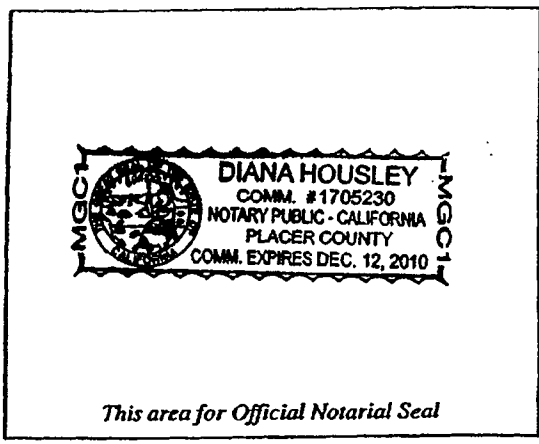
STATE OF California }  
COUNTY OF Placer } SS.

On 8/28/07, before me, Diana Housley

PERSONALLY APPEARED James D. Gayless

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 Diana Housley

This area for Official Notarial Seal

**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  
President  
TITLE(S)
- PARTNER(S)       LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

Grant deed of  
Swainson's Hawk  
Habitat Conservation  
TITLE OF TYPE OF DOCUMENT Easement

NUMBER OF PAGES

8/28/07  
DATE OF DOCUMENT

**SIGNER IS REPRESENTING:**

NAME OF PERSON(S) OR ENTITY(IES)  
Treasure Homes Communities, Inc

SIGNER(S) OTHER THAN NAMED ABOVE

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: 8-30-2007 By: [Signature]  
John Danielson, City Manager

ACKNOWLEDGEMENT

State of California )  
 ) ss.  
County of Sacramento )

On 08-31-07 before me, Peggy Jackson, personally appeared

JOHN H. 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" - I**


**DESCRIPTION OF PROPERTY**

Being the Lands of Treasure Homes Communities Inc., hereinafter described as "T.H.C.", as described in that certain Grant Deed recorded January 5, 2005 in Book 20050105, at Page 1807, Official Records of Sacramento County situate in Section 30, Township 6 North, Range 5 East, Mount Diablo Meridian, County of Sacramento, State of California, said property being more particularly described as follows:

Beginning at a found one and one-quarter inch (1-1/4") iron pipe with no tag marking the Northeast corner of the Lands of T.H.C. as shown on the certain Record of Survey entitled "Portion of Section 24, T.6 N., R.4 E., Section 19 and Portions of Sections 18, 20, 29 & 30 T.6 N., R. 5 E., M.D.B. & M." filed for record in Book 27 of Surveys, at Page 5, Sacramento County Records; thence from said **POINT OF BEGINNING** along the East line of the Lands of T.H.C., South 00°15'01" West a distance of 432.73 feet to a found one and one-half inch (1-1/2") capped iron pipe with no tag as shown on said Record of Survey; thence along said East line of the Lands of T.H.C., South 00°55'59" East a distance of 1329.30 feet to the Southeast corner of said property; thence along the South line of the Lands of T.H.C., North 64°35'19" West a distance of 123.32 feet; thence along said South line of the Lands of T.H.C., South 87°18'03" West a distance of 2504.69 feet to the West line of said Section 30 being the Southwest corner of said property; thence along the West line of the Lands of T.H.C. also being the West line of said Section 30, North 00°48'48" West a distance of 1752.29 feet to the Northwest corner of said property from which a found one and one-quarter inch (1-1/4") iron pipe stamped L.S. 3185 bears North 00°48'48" West a distance of 160.00 feet as shown on said Record of Survey; thence along the North line of the Lands of T.H.C., North 88°21'52" East a distance of 2619.48 feet to the Point of Beginning.

Containing 103.74 acres of land, more or less.

The **Basis of Bearings** for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30, as measured between NGS Station "Eschinger" and NGS station "Hood". Said bearing is North 78°53'31" West. Distances shown are ground based.

  
Craig E. Spiess P.L.S. 7944  
Expires: December 31, 2007  
Date: 8/20/07



PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA



**EXHIBIT "A"-2  
DESCRIPTION OF  
MITIGATION EASEMENT**

Being the Lands of Treasure Homes Communities Inc., hereinafter described as "T.H.C.", as described in that certain Grant Deed recorded January 5, 2005 in Book 20050105, at Page 1807, Official Records of Sacramento County situate in Section 30, Township 6 North, Range 5 East, Mount Diablo Meridian, County of Sacramento, State of California, said property being more particularly described as follows:

Beginning at a found one and one-quarter inch (1-1/4") iron pipe with no tag marking the Northeast corner of the Lands of T.H.C. as shown on the certain Record of Survey entitled "Portion of Section 24, T.6 N., R.4 E., Section 19 and Portions of Sections 18, 20, 29 & 30 T.6 N., R. 5 E., M.D.B. & M." filed for record in Book 27 of Surveys, at Page 5, Sacramento County Records; thence from said **POINT OF BEGINNING** along the East line of the Lands of T.H.C., South 00°15'01" West a distance of 432.73 feet to a found one and one-half inch (1-1/2") capped iron pipe with no tag as shown on said Record of Survey; thence along said East line of the Lands of T.H.C., South 00°55'59" East a distance of 1329.30 feet to the Southeast corner of said property; thence along the South line of the Lands of T.H.C., North 64°35'19" West a distance of 123.32 feet; thence along said South line of the Lands of T.H.C., South 87°18'03" West a distance of 2504.69 feet to the West line of said Section 30 being the Southwest corner of said property; thence along the West line of the Lands of T.H.C. also being the West line of said Section 30, North 00°48'48" West a distance of 1752.29 feet to the Northwest corner of said property from which a found one and one-quarter inch (1-1/4") iron pipe stamped L.S. 3185 bears North 00°48'48" West a distance of 160.00 feet as shown on said Record of Survey; thence along the North line of the Lands of T.H.C., North 88°21'52" East a distance of 2619.48 feet to the Point of Beginning.

**EXCEPTING THEREFROM** the following two (2) described parcels:

**Parcel A**

Beginning at the Southwest corner of the above-described parcel; thence from said **POINT OF BEGINNING**, along the West line of the above-described parcel, North 00°48'48" West a distance of 208.77 feet; thence leaving said West line, the following two (2) courses and distances:

1. North 87°18'03" East a distance of 208.77 feet; and
2. South 00°48'48" East a distance of 208.77 feet to the South line of the above-described parcel;

thence along said South line, South 87°18'03" West a distance of 208.77 feet to the Point of Beginning.



**Parcel B**

Commencing at a found one and one-quarter inch (1-1/4") iron pipe with no tag marking the Northeast corner of the Lands of T.H.C. as shown on the certain Record of Survey entitled "Portion of Section 24, T.6 N., R.4 E., Section 19 and Portions of Sections 18, 20, 29 & 30 T.6 N., R. 5 E., M.D.B. & M." filed for record in Book 27 of Surveys, at Page 5, Sacramento County Records; thence along the East line of the Lands of T.H.C., South 00°15'01" West a distance of 143.08 feet; thence leaving said East line of the Lands of T.H.C., North 89°44'59" West a distance of 21.21 feet to the True Point of Beginning; thence from said **TRUE POINT OF BEGINNING**, the following thirty-seven courses and distances:

1. South 03°19'32" East a distance of 97.18 feet;
2. South 00°21'36" West a distance of 102.02 feet;
3. South 01°29'37" East a distance of 96.99 feet;
4. South 01°35'44" East a distance of 98.41 feet;
5. South 00°02'01" West a distance of 140.21 feet;
6. South 02°58'56" East a distance of 65.14 feet;
7. South 01°29'21" West a distance of 97.54 feet;
8. South 01°04'52" East a distance of 98.68 feet;
9. South 04°03'56" West a distance of 49.89 feet;
10. South 45°56'35" West a distance of 34.41 feet;
11. North 56°09'58" West a distance of 147.09 feet;
12. North 49°47'43" West a distance of 101.29 feet;
13. North 52°33'11" West a distance of 96.48 feet;
14. North 49°15'48" West a distance of 97.56 feet;
15. North 52°39'43" West a distance of 99.64 feet;
16. North 52°09'26" West a distance of 90.03 feet;
17. North 51°18'02" West a distance of 93.20 feet;
18. North 52°22'27" West a distance of 93.67 feet;
19. North 63°35'50" West a distance of 46.86 feet;
20. North 48°55'19" West a distance of 44.54 feet;
21. North 48°04'43" West a distance of 86.26 feet;
22. North 24°36'12" East a distance of 10.12 feet;
23. North 27°28'52" East a distance of 12.20 feet;
24. North 60°47'04" East a distance of 80.53 feet;
25. North 31°14'09" East a distance of 49.82 feet;
26. North 46°07'52" East a distance of 58.36 feet;
27. North 32°48'06" East a distance of 50.63 feet;
28. North 39°07'50" East a distance of 43.49 feet;
29. North 34°44'42" East a distance of 29.87 feet;
30. North 67°47'05" East a distance of 380.93 feet;
31. South 78°40'34" East a distance of 80.98 feet;
32. South 81°08'42" East a distance of 55.89 feet;
33. South 71°09'40" East a distance of 26.78 feet;
34. South 54°15'16" East a distance of 28.70 feet;
35. South 36°31'56" East a distance of 28.82 feet;

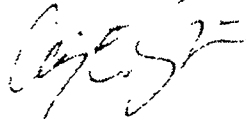


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- 36. South  $35^{\circ}20'51''$  East a distance of 30.26 feet; and
- 37. South  $22^{\circ}39'23''$  East a distance of 30.84 feet to the True Point of Beginning.

Containing 91.80 acres of land, more or less.

The **Basis of Bearings** for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30, as measured between NGS Station "Eschinger" and NGS station "Hood". Said bearing is North  $78^{\circ}53'31''$  West. Distances shown are ground based.



Craig E. Spiess P.L.S. 7944  
Expires: December 31, 2007

Date: 8/20/07



PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA

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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 agricultural fields comprising the 92-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 92-acre Easement Property, except for disease or insect control or to prevent property damage, personal injury, or to preserve the Property for permitted agricultural uses.





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 5 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 92-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 92-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 92-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:**

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



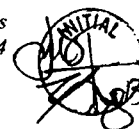
<u>Gorse</u>	<u><i>Ulex europaeus</i></u>
<u>Groundcherry, grape</u>	<u><i>Physalis viscosa</i></u>
<u>Groundcherry, long-leaf</u>	<u><i>Physalis longifolia</i></u>
<u>Halogeton</u>	<u><i>Halogeton glomeratus</i></u>
<u>Hermal</u>	<u><i>Pegamon harmala</i></u>
<u>Henbane, black</u>	<u><i>Hyoscyamus niger</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, panicled</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><i>as Hypericum perforatum</i></u> <u>(see Klamathweed)</u>
<u>Sage, meadow</u>	<u><i>Salvia virgata</i></u>
<u>Sage, Mediterranean</u>	<u><i>Salvia aethiopis</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> <u>(see also "Thistle, slenderflowered")</u>	<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>	<i><u>Onopordum tauricum</u></i>
<u>Thistle, wavyleaf</u>	<i><u>Cirsium undulatum</u></i>
<u>Thistle yellowspine</u>	<i><u>Cirsium ochrocentrum</u></i>
<u>Toadflax, Dalmatian</u>	<i><u>Linaria genistifolia subsp. Dalmatica</u></i>
<u>Tree of Heaven or Ailanthus</u>	<i><u>Ailanthus altissima</u></i>
<u>Waterlily, banana</u>	<i><u>Nymphaea mexicana</u></i>
<u>Witchweed</u>	<i><u>Striga asiatica</u></i>





## **APPENDIX B – DOCUMENTATION PHOTOS**



APPENDIX B: DOCUMENTATION SURFACE PHOTOS

P1-N: View of the southeastern corner of the property and new fence on the right.



P1-NW: View of field E from the southeastern corner of the property. A small Eucalyptus tree was removed since last year.



P1-NW: View of row of large Eucalyptus trees along southern edge of property with old hay barn in background and bee boxes in the center.



P2-W: View of row of large Eucalyptus trees along southern boundary of the property adjacent to the barn.



P3-E: View of large field along southern edge of property adjacent to Stone Lakes Road.



P3-NE: View of large field from the southwestern corner of the property.



# EASEMENT DOCUMENTATION REPORT

**P4:** No photos were taken at photo station P4 as there was no access to it from the property.

**P5-N:** The original photo point location was inaccessible due to the flooding of the pond so this photo was taken approximately 300 feet south of the original photo point.



**P5-W (300 feet south):** View of ponded area overgrown with water hyacinth.



**P5-S (300 feet south):** View of fence line along the eastern edge of the property.



**P6-S:** View of eastern edge of property with barbed wire fence. Pond also visible on the right side.



**P6-N:** View of water pump at the southwestern edge of the pond.



**P7-NE:** View of pond in the northeastern corner of the property, taken from the southern side.



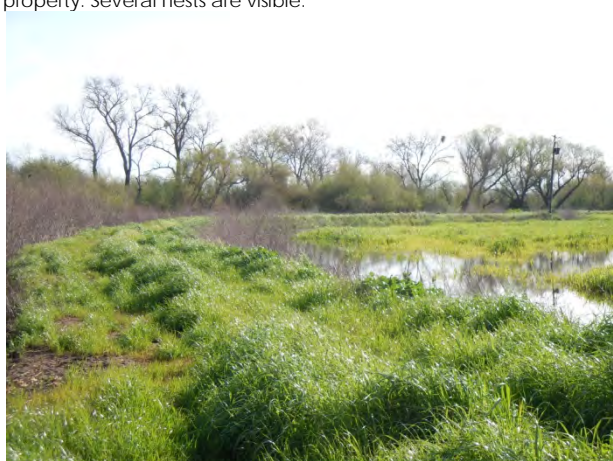
**P8-NW:** View of willow tree on the southeastern corner of the pond.



**P9-S:** View of willow-scrub riparian vegetation along irrigation channel adjacent to the western edge of the property.



**P9-NE:** View of the riparian habitat along the northwestern edge of the property. Several nests are visible.





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





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

Photo Point	UTM – E(m)	UTM – N(m)	Description
P1	633443.73	4244527.98	At the SE corner of the property, at the intersection of the property's perimeter fencing.
P2	633426.24	4244527.98	Near the SE corner of the property, taken just south of the property from Stone Lake Slough Road.
P3	632652.16	4244492.98	At the SW corner of the property, at the edge of Field B.
P4	632647.01	4245025.16	At the NW corner of the property, at the edge of Field A.
P5	633435.5	4245046.77	At the NE corner of the property, at the intersection of the property's perimeter fencing.
P6	633236.83	4244885.17	At the SW edge of the pond. View of water pump.
P7	633302.71	4244835.76	At the southern-central edge of the pond.
P8	633438.59	4244737.97	At the SE corner of the pond, adjacent to the eastern border of the property.
P9	632645.98	4244990.16	Near the NW corner of the property, at the western border of the property.