

## RESOLUTION NO. 2022-071

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING AND RATIFYING THE AGREEMENT FOR ACQUISITION OF SWAINSON'S HAWK HABITAT AND AGRICULTURAL CONSERVATION EASEMENT WITH THE MAHON FAMILY PARTNERSHIP FOR THE PURCHASE OF A SWAINSON'S HAWK HABITAT AND AGRICULTURAL CONSERVATION EASEMENT ON A PORTION OF PROPERTY LOCATED AT 10171 GRANT LINE ROAD [APN: 134-0190-003]; AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY AND TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECT THE PURCHASE OF THE SUBJECT CONSERVATION EASEMENT; AND FINDING THE ACQUISITION OF THE SUBJECT CONSERVATION EASEMENT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CONSISTENT WITH THE GENERAL PLAN**

**WHEREAS**, in 2003, the City established and adopted Chapter 16.130 of the Elk Grove Municipal Code ("Swainson's Hawk Impact Mitigation Fees"), which established mitigation policies tailored for projects in Elk Grove that have been determined through the California Environmental Quality Act ("CEQA") process to result in a "potential significant impact" on Swainson's Hawk foraging habitat; and

**WHEREAS**, the Mahon Family Partnership ("Mahon") is the owner of an approximate 490-acre property located at 10171 Grant Line Road, in Sacramento County, Assessor Parcel Number 134-0190-003 (the "Property"); and

**WHEREAS**, the City wishes to purchase a 127.72-acre Swainson's Hawk Habitat and Agricultural Conservation Easement (the "Conservation Easement") on the Property, to augment the City's Swainson's Hawk mitigation credits for future City projects, or for the application of mitigation credits to small, private development projects, where mitigation fees have been collected; and

**WHEREAS**, the terms of the purchase and sale the Conservation Easement are set forth in the Agreement, attached hereto as Exhibit A; and

**WHEREAS**, the purchase of the Conservation Easement will be funded through uncommitted cash balances in the Agriculture Preservation Fund and Swainson's Hawk Fund.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Elk Grove hereby finds that the approval of the Agreement for Acquisition of Swainson's Hawk Habitat and Agricultural Conservation Easement is exempt from the California Environmental Quality Act (CEQA) based upon the following finding and evidence:

Finding: the acquisition of the Conservation Easement is exempt from review under CEQA pursuant to CEQA Guidelines Section 15325 (Class 25: Transfers of Ownership in Land to Preserve Existing Natural Conditions and Historical Resources).

Evidence: CEQA Guidelines Section 15325 (Class 25: Transfers of Ownership in Land to Preserve Existing Natural Conditions and Historical Resources) exempts the transfers of ownership interest in land in order to preserve open space, habitat, or historical resources. The proposed purchase will preserve the site as agricultural, open space, and habitat lands because the site will be encumbered with a conservation easement in perpetuity, which ensures the site will retain these characteristics. Therefore, the proposed action qualifies for the exemption under CEQA Guidelines Section 15325.

**AND, BE IT FURTHER RESOLVED**, that the City Council of the City of Elk Grove hereby finds the purchase of the Conservation Easement to be consistent with the City's General Plan as required by Elk Grove Municipal Code Section 23.10.030 and Government Code Section 65402(a) based upon the following finding:

Finding: The purchase of the Conservation Easement is consistent with the General Plan.

Evidence: The purchase of the Conservation Easement is consistent with the General Plan as it would present an opportunity to preserve the Property as agricultural, open space, and habitat lands consistent with General Plan Policy NR-1-2 "preserving and enhancing natural areas that serve, or may potentially serve, as habitat for special-status species"; Policy NR-1-3 "supporting the establishment of multipurpose open space areas to address a variety of needs, including but not limited to maintenance of agricultural uses, wildlife habitat, recreational open space, aesthetic benefits, and flood control."; and Policy AG-1-5: Protect agricultural lands from future risk of conversion by requiring mitigation of the loss of qualified agricultural lands at a 1:1 ratio.

**AND, BE IT FURTHER RESOLVED**, that the City Council of the City of Elk Grove hereby approves and ratifies the Agreement for Acquisition of a Swainson's Hawk Habitat and Agricultural Conservation Easement with the Mahon Family Partnership, attached hereto as Exhibit A and incorporated herein by reference, for a portion of the property located at 10171 Grant Line Road [Assessor Parcel Number 134-0190-003] in the amount of \$1,669,480 together with closing costs, not to exceed \$7,000, all in a total amount not to exceed \$1,676,480.

**AND, BE IT FINALLY RESOLVED**, that the City Council of the City of Elk Grove hereby authorizes the City Manager to take all actions necessary and to execute all documents necessary to effect the purchase of the Conservation Easement consistent with the Agreement and this Resolution;

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 13<sup>th</sup> day of April 2022




BOBBIE SINGH-ALLEN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,  
CITY ATTORNEY

**EXHIBIT A**

**C-22-104**

File No.: ACQ (HAB) 22-01  
Project: Swainson’s Hawk Ordinance IW2022-02L  
APN: 134-0190-003  
Escrow #: 01005953-010  
Title Company: Fidelity National Title Company  
Date of Preliminary Title Report: January 12, 2022

**Grantor: MAHON FAMILY PARTNERSHIP, a California General Partnership**

**Grantee: CITY OF ELK GROVE, a municipal corporation**

**AGREEMENT FOR ACQUISITION OF SWAINSON’S HAWK HABITAT AND AGRICULTURAL CONSERVATION EASEMENT**

This Agreement for Acquisition of Swainson’s Hawk Habitat and Agricultural Conservation Easement (“Agreement”) is made this 11th day of March, 2022, by and between the **MAHON FAMILY PARTNERSHIP**, a California General Partnership (“**GRANTOR**”), and the **CITY OF ELK GROVE**, a municipal corporation (“**CITY**”), individually referred to as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

**WHEREAS**, GRANTOR is the fee title owner of certain real property located at 10171 Grant Line Road in Elk Grove, California, identified as Sacramento County Assessor Parcel Number 134-0190-003 and more particularly described in the legal description attached hereto and incorporated herein by this reference as **Exhibit “A” (“Grantor’s Property”)**; and

**WHEREAS**, in order to have available mitigation credits for future CITY use, CITY intends to purchase from GRANTOR, an easement interest in a portion of Grantor’s Property, consisting of 127.72 acres, for Swainson’s Hawk Habitat and Agricultural Conservation purposes, as described in **Exhibit “B” (“Conservation Easement”)**, attached hereto and incorporated herein by this reference, for the protection and preservation, in perpetuity, of the existing features and values of a portion of Grantor’s Property; and

**WHEREAS**, GRANTOR agrees to sell, and CITY agrees to buy, the Conservation Easement pursuant to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the payment and other obligations set forth below, GRANTOR and CITY mutually agree as follows:

**1. Recitals**

The above recitals are true and correct and incorporated into this Agreement by reference.

**2. Execution and Delivery to Escrow**

CITY shall open an escrow with Fidelity National Title Company (“**Escrow Holder**”) by delivery of a fully executed copy of this Agreement. Upon full execution of this Agreement by the Parties (“**Effective Date**”), GRANTOR shall execute, notarize and deliver to Escrow Holder the Conservation Easement Deed in the form of the deed contained in **Exhibit “B.”**

**3. Payment and Consideration**

**A. Purchase Price**

The purchase price for the Conservation Easement shall be **One Million Six Hundred Sixty-Nine Thousand Four Hundred Eighty Dollars and 00/100 (\$1,669,480.00)** (“**Purchase Price**”), which is specifically agreed to by the Parties to be the full amount of compensation for conveyance of the Conservation Easement to the CITY.

**B. Earnest Money Deposit**

Within fourteen (14) business days following the Effective Date of the Agreement, City shall deposit with Escrow Holder, the sum of Ten Thousand Dollars (\$10,000) (the “Deposit”), which shall be applied to the Purchase Price at the close of escrow. The Deposit will become nonrefundable upon the expiration of the Due Diligence Period (as defined in Section 4, below), except in the event of a material default by GRANTOR.

**C. Monitoring and Reporting Fee**

GRANTOR agrees to fully fund the required Monitoring and Reporting Fee in order for the City, as the conservator, to monitor the easement in perpetuity. The Monitoring and Reporting fee shall be shown as a credit to the CITY in escrow and deducted from the Purchase Price as follows:

- 1) Pursuant to Elk Grove Municipal Code Chapter 16.130 (“**Swainson’s Hawk Impact Mitigation Fees**”), a monitoring and reporting fee in the amount of **One Hundred Sixty-Six Thousand Nine Hundred Forty-eight Dollars and 00/100 (\$166,948.00)** (“**Monitoring and Reporting Fee**”), representing 10% of the Purchase Price, shall be credited to CITY in escrow.
- 2) The Purchase Price shall be paid by CITY on or before the closing date, as defined below, and shall be deposited with the Escrow Holder.

**D. Property Interest Free of Encumbrances**

The Close of Escrow, defined below, is conditioned on the Conservation Easement being conveyed to CITY free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind of which GRANTOR is aware, except: (a) easements or rights-of-way for public roads or public utilities, if any; and (b) items specifically identified as Title Exceptions and shown on **Exhibit “C,”** attached hereto and made a part hereof.

**E. Taxes**

Taxes for the fiscal year in which the escrow closes shall be cleared and paid for in the manner required by Section 5086 of the Revenue and Taxation Code. As a deduction from the amount shown in Section 3A, above, the CITY shall be authorized to pay any delinquent taxes due in any fiscal year, except the fiscal year in which this escrow closes, together with penalties and interest thereon.

**4. Due Diligence Period**

City shall have until April 15, 2022 (“Due Diligence Period”), to satisfy itself in its complete discretion of the feasibility of the transaction contemplated herein and to have City Council approve and ratify the Agreement.

City's obligation to purchase the Conservation Easement is conditioned upon City's review and approval of the condition of the Conservation Easement area and City Council approving and ratifying the Agreement. Should City, in its sole and absolute discretion, fail to approve the condition of the Conservation Easement Area or if City Council does not approve and ratify the Agreement, at any time prior to the end of the Due Diligence Period, City shall have the right, exercisable by giving written notice to GRANTOR, to cancel the escrow, terminate this Agreement, and recover any and all amounts deposited with the Escrow Holder, by or on behalf of the CITY. The exercise of this right by CITY shall not constitute a waiver by CITY of any other rights CITY may have at law or equity.

**5. Waiver under Section 1542**

The Parties intend that this Agreement shall result in a full, complete, and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them as to the acquisition, possession and/or use of the Conservation Easement by the CITY, except as expressly provided herein. It is therefore understood that the waiver, under this Agreement, of any rights, damages, compensation or benefits to which a party is, or may be, entitled is intended to be full and complete. Accordingly,

**A. GRANTOR hereby waives any and all rights or benefits arising from and/or related to the CITY's acquisition, possession and/or use of the Conservation Easement that it may have under section 1542 of the Civil Code of the State of California which provides:**

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

**B. GRANTOR represents and warrants that it understands the effect of this waiver of section 1542 and has had the opportunity to discuss the effect of this waiver with legal counsel of its choice.**

**6. Title Insurance**

CITY may obtain a CLTA extended coverage owner's policy of title insurance in the amount of the Purchase Price insuring that clear title to the Conservation Easement is vested in CITY upon recording of the Conservation Easement Deed.

**7. Escrow**

Unless extended by the mutual agreement of the Parties, the escrow shall close within sixty (60) days after the Effective Date of this Agreement, or the date the Conservation Easement Deed is recorded in the Recorder's Office for Sacramento County ("**Close of Escrow**"), whichever occurs first.

**A. The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Conservation Easement, including, but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the escrow closes, or debts secured**

by deeds of trust or mortgages, and/or to defray any other incidental costs other than those specified in Section 3B hereof to be borne by the CITY. The Escrow Holder shall release payment to GRANTOR, return any credited amounts to CITY, and record the Conservation Easement Deed in the Recorder's Office for Sacramento County upon the Close of Escrow. Title to the Conservation Easement shall pass to CITY immediately upon Close of Escrow.

- B.** This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of CITY. The GRANTOR agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

**8. Fees**

The CITY shall pay all escrow, recording and title insurance fees incurred in this transaction.

**9. 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 Conservation 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, it being expressly agreed that this Conservation 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.

**10. Amendment**

This Agreement may be modified, changed or rescinded only by an instrument in writing executed by the Parties hereto.

**11. GRANTOR's Representations and Warranties**

- A.** GRANTOR makes the following representations and warranties:
- i.** GRANTOR owns full legal title to Grantor's Property and has full power and authority to convey all property rights described herein to CITY.
  - ii.** This Agreement constitutes a legal, valid, and binding obligation of GRANTOR enforceable in accordance with its terms.
  - iii.** There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against Grantor's Property, or any portion thereof, or pending or threatened against GRANTOR which could (a) affect GRANTOR's title to Grantor's Property, or any portion thereof, (b) affect the value of the Conservation Easement, or any portion thereof, or (c) subject any GRANTEE of the Conservation Easement, or any portion thereof, to liability.
  - iv.** There are no uncured notices, which have been served upon GRANTOR from any governmental agency notifying GRANTOR of any violations of law, ordinance, rule, or regulation, which would affect the Conservation Easement, or any portion thereof.

- v. There are no Hazardous Substances (as defined below), or storage tanks containing Hazardous Substances, in, on, under, or about the Conservation Easement.
- vi. There has been no production, storage, disposal, presence, observance, or release of any Hazardous Substances in, on, under, or about the Conservation Easement.
- vii. There are no violations, notices or other information of any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Grantor's Property and relating to Hazardous Substances and/or environmental compliance.
- viii. There is no license, permit, option, right of first refusal, or other agreement, written or oral, which affects the Conservation Easement or any portion thereof.
- ix. Conveyance of the property rights described herein shall not constitute a breach or default under any agreement to which GRANTOR is bound and/or to which the Conservation Easement is subject.

**B.** Each of the above warranties and representations is material and is relied upon by CITY separately and collectively. Each of the above representations shall be deemed to have been made as of the date that the Conservation Easement Deed is recorded and shall survive the recording of the Conservation Easement Deed by a period of two years following the date that the Conservation Easement Deed is recorded. If, before the recording of the Conservation Easement Deed, GRANTOR discovers any information or facts that would materially change any of these warranties and representations, GRANTOR shall immediately give notice in writing to CITY of such facts and information. If any of the foregoing warranties and representations cease to be true before the recording of the Conservation Easement Deed, the CITY may, at its unfettered discretion, either cancel and terminate this Agreement or give the GRANTOR the option to remedy the problem before the recording of the Conservation Easement Deed or deduct from the payments required by Section 3A, above, as a credit to CITY, in an amount as determined by the CITY reasonably required to remedy the problem.

## **12. Liability for Hazardous Substances**

The Parties acknowledge, understand, and agree that any liability associated with the presence of any Hazardous Substances, as defined below, on or below any portion of the Conservation Easement shall be governed by applicable law, regardless of whether any inspection, examination, sampling, testing, assessment, or other investigation is conducted by CITY.

“Hazardous Substance(s)” includes, but is not limited to, any hazardous or toxic substance, material or waste, or any solid waste, pollutant, or contaminant that is:

- (i) Regulated by any local governmental agency, the State of California, or the United States Government;
- (ii) defined as such in any federal, State, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25330.2-25395), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25);

- (iii) listed in the United States Department of Transportation Table (49 CFR § 172.101) or by the Environmental Protection Agency, or listed as hazardous substances by any equivalent State of California or local governmental agency, or any successor agency (40 CFR Part 302);
- (iv) asbestos or asbestos containing material;
- (v) radon gas;
- (vi) petroleum or petroleum fractions;
- (vii) any explosive substances;
- (viii) polychlorinated biphenyl;
- (ix) a radioactive material; and
- (x) per chlorate.

**13. Indemnification**

GRANTOR agrees to hold harmless, indemnify, and defend (with counsel acceptable to the CITY which consent shall not be unreasonably withheld) CITY, its officers elected and appointed, officials, agents, employees, and volunteers (hereinafter “Indemnified Party”), and hold the Indemnified Party harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys’ fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property or economic damage, or violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with: (i) any acts or omissions related to the performance of this Agreement, (ii) any breach of this Agreement, or (iii) the occupancy or use of the Conservation Easement (including, but not limited to, the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Conservation Easement), by the GRANTOR, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on their behalf.

**14. Notices**

Any notice that either Party may or is required to give the other shall be in writing, and shall be either (1) personally delivered or (2) sent by regular U.S. Mail with a copy also transmitted via email, to the following addresses:



**To City:**  
City of Elk Grove  
Public Works Department  
8401 Laguna Palms Way  
Elk Grove, CA 95758  
Attention: Real Estate Manager  
Email: [agrava@elkgrovecity.org](mailto:agrava@elkgrovecity.org)

**To Grantor:**  
Tom Mahon  
Mahon Family Partnership  
10171 Grant Line Road  
Elk Grove, CA 95624  
Email: [tom@mahonranch.com](mailto:tom@mahonranch.com)

**15. Recording**

Either Party may record this Agreement in the Recorder's Office for Sacramento County.

**16. Binding on Successors**

This Agreement shall be binding on and shall inure to the benefit of the CITY and GRANTOR, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both Parties, and any attempt to assign this Agreement without such consent shall be void.

**17. Brokers**

GRANTOR and CITY each warrant to the other that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. If any broker or finder makes any claim for a commission or finder's fee, the Party through which the broker or finder makes such claim shall indemnify, defend and hold the other Party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out of such broker's or finder's claims.

**18. Time of Essence**

Time is of the essence for each condition, term, and provision in this Agreement.

**19. Waivers**

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

**20. Severability**

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either Party. Upon such determination that any term or provision is illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

**21. Construction**

The Parties agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each Party has had a full and fair opportunity to revise the provisions

of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.

**22. Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the Sacramento County Superior Court.

**23. Entire Agreement**

The Parties have herein set forth the whole of their Agreement with regard to acquisition of the Conservation Easement by CITY. All prior oral discussions, representations, and/or agreements, if any, are specifically superseded by this Agreement, which is intended by the Parties to contain all of the terms and conditions agreed to by them with regard to acquisition of the Conservation Easement by CITY.

**24. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. Photocopied or electronic signatures shall be enforceable as originals.

**25. Authority**

Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

*[Signatures on following page]*

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

**GRANTOR:**  
**MAHON FAMILY PARTNERSHIP,**  
**a California General Partnership**

By: Thomas Mahon  
Thomas Mahon, Managing Partner

Date: 3/10/2022

By: Jack Mahon  
Jack Mahon, Partner

Date: 3-10-22

**GRANTEE:**  
**CITY OF ELK GROVE,**  
**a municipal corporation**

By: Jason Behrmann  
Jason Behrmann, City Manager

Date: 3/10/2022 | 5:00 PM PST

**RECOMMENDED FOR APPROVAL:**

By: Ann Grava  
Ann Grava, Real Estate Manager

Date: 3/10/2022 | 2:52 PM PST

**APPROVED AS TO FORM:**

By: Jonathan P. Hobbs  
Jonathan P. Hobbs, City Attorney

Date: 3/10/2022 | 3:02 PM PST

**ATTEST:**

By: Jason Lindgren  
Jason Lindgren, City Clerk

Date: 3/11/2022 | 7:55 AM PST

**EXHIBIT "A"**  
**Grantor's Property**

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

All that portion of Lot 10 of the Lower Daylor Estate, as shown on the "Map of the Rancho de los Omochumnes, filed in the office of the Recorder of Sacramento County, California, on February 18, 1856, in [Book 1 of Maps, Map No. 32](#), which portion is more particularly shown on a record of survey filed in the office of said Recorder on February 9, 1955, in [Book 11 of Surveys, Map No. 11](#), described as follows:

Beginning at a point on the Southwesterly line of the property shown on plat of survey of Mosher property, filed in the office of the Recorder of Sacramento County, on May 9, 1946, in [Book 5 of Surveys, Map No. 5](#), from which point the most Westerly corner of said property bears North 49 degrees 50' West 3317.47 feet; which corner is located North 39 degrees 16' 40" East 2656.05 feet and South 49 degrees 50' East 30.00 feet from the intersection of the centerline of the Grant line Road and the line common to Sections 7 and 8, Township 6 North, Range 6 East, Mount Diablo Base and Meridian; thence from said point of beginning South 49 degrees 50' East 1025.53 feet; thence South 49 degrees 34' East 6784.40 feet to the centerline of the old channel of Cosumnes River; thence along said centerline South 28 degrees 06' 24" West 663.32 feet; South 17 degrees 19'30" West 618.28 feet; South 36 degrees 07'50" West 1204.32 feet; South 63 degrees 04' 35" West 117.66 feet; and South 31 degrees 26'50" West 105.52 feet; thence leaving said old channel, North 49 degrees 35'30" West 5108.91 feet; thence North 49 degrees 45'20" West 3103.10 feet; thence North 39 degrees 29' East 2638.47 feet to the point of beginning.

TOGETHER with an easement for road purposes through a strip of land 30 feet in width the North line of which extends North 49 degrees 50' West 3317.47 feet from the most Northerly corner of the foregoing described property to the Grant Line Road.

APN: 134-0190-003-0000

**EXHIBIT "B"**  
**Conservation Easement**  
Following twenty-six (26) pages

**Recording Requested by:**  
**Fidelity National Title – 01005953-PA**

No Fee Document – for the benefit of the City of Elk Grove  
per Government Code §6103 & §27383  
No Documentary Transfer Tax – Per R&T Code §11922

**WHEN RECORDED RETURN TO:**

CITY OF ELK GROVE  
Attn: CITY Clerk  
8401 Laguna Palms Way  
Elk Grove, CA 95758

Property Address: 10171 Grant Line Road  
APN: 134-0190-003

The Above Space for Recorder's Use Only

**GRANT OF SWAINSON’S HAWK HABITAT  
AND  
AGRICULTURAL CONSERVATION EASEMENT DEED**

THIS GRANT OF SWAINSON’S HAWK HABITAT AND AGRICULTURAL CONSERVATION EASEMENT DEED (“Deed”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by the **MAHON FAMILY PARTNERSHIP, a California General Partnership (“GRANTOR”)**, in favor of the **CITY OF ELK GROVE, a municipal corporation (“CITY”)**, collectively referred to as (“Parties”), for the purpose of forever conserving the Swainson’s Hawk foraging habitat and conserving the agricultural productive capacity and opens space character of the subject property.

**RECITALS**

**A.** GRANTOR owns fee title to that certain real property located at 10171 Grant Line Road, in the County of Sacramento, State of California, identified as Sacramento County Assessor Parcel Number 134-0190-003, consisting of approximately 127.72 acres, and more particularly described in the legal description attached hereto as **Exhibit “A”** and depicted on the attached map marked **Exhibit “B”**, attached hereto and incorporated herein by this reference, 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, including 103.8 acres of Prime Farmland, 0.2 acres of Farmland of Local Importance, and 6.0 acres of Grazing Land, as identified by CA Farmland Mapping & Monitoring Program (“FMMP”) Classifications, and an additional 17.72 acres of Other Land, all essential to providing foraging and/or nesting habitat for Swainson’s hawks, and other 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)(3) 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 non-exclusive 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.

### **COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

**NOW, THEREFORE,** in consideration of the above recitals 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 non-exclusive Easement in gross, forever in, on, over, and across the Property (the “**Easement**”), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Property, and the Parties agree as follows:

1. **RECITALS.** The above recitals are true and correct and incorporated into this Agreement by reference.
2. **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.

3. **EASEMENT DOCUMENTATION REPORT.** The Parties acknowledge that an Easement Documentation Report (“Swainson’s Hawk and Farmland Resources Assessment – Mahon Proposed Easement dated March 2022”) or (the “Report”) of the Property has been prepared by Joyce Hunting of Hunting Environmental (“CITY consultant biologist”), 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 CITY at their respective addresses for notice, set forth below. In addition, the CITY consultant biologist

completed a field review of the Property on November 18, 2021, and the CITY has confirmed the Property represents suitable mitigation habitat and supports 103.8 acres of Prime Farmland, 0.2 acres of Farmland of Local Importance, 6.0 acres of Grazing Land, and an additional 17.72 acres of Other Land. The Parties agree that the Report contains an accurate representation of the biological and physical condition of the Property, 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, including this Easement and Exhibits, which go into detail on prohibited uses, surveys or other evidence or information to assist in the resolution of the controversy.

**4. EASEMENT MONITORING AND REPORTING FEE.** The Parties acknowledge that GRANTOR has paid-in-full the Easement Monitoring and Reporting Fee for the maintenance of this Easement.

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

- A. Preserve and Protect. The CITY may preserve and protect forever the Natural Resource Conservation Purposes of the Property.
- B. Entry and Access Rights. The CITY is hereby granted rights of access to enter upon the Property, using appurtenant easements and rights of way, if required for access by CITY, at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Easement and to determine whether GRANTOR's activities are in compliance with the terms hereof. Except in cases where the CITY determines that immediate entry is required to prevent, terminate, or mitigate a violation of the Easement, such entry shall be upon prior reasonable notice to GRANTOR and will not in any case unreasonably interfere with GRANTOR's use and quiet enjoyment of the Property.
- C. Enforcement. The CITY may prevent any activity on, or use of, the Property that is inconsistent with the terms of this Easement, may enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use and, subject to Section 8.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 shall have the right to conduct Swainson's Hawk wildlife studies and associated habitat research on the 127.72-acre Easement Property, as well as monitoring Swainson's Hawk habitat on the 127.72-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.

**6. GRANTOR'S 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 7 below and **Exhibit "D"** attached hereto and incorporated herein by this reference, 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 7 below and **Exhibit "D,"** the uses set forth in the Report as well as the permitted uses stated in **Exhibit "C."** attached hereto and incorporated herein by this reference, 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.

**7. PROHIBITED USES OF THE PROPERTY.**

- A.** 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 cultivate any of the plants listed in **Exhibit "F,"** attached hereto and incorporated herein by this reference, on the Property.
- B.** 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 Wildlife ("**CDFW**") for advice. If after submitting the matter to CDFW for advice, GRANTOR and the CITY still disagree regarding the practice or activity, GRANTOR agrees that CDFW may intervene in any legal action commenced by the CITY regarding the dispute.

**8. 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 16) 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.

- 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 party 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 Wildlife ("CDFW") as a third-party beneficiary, provided, however, that such status as a third-party beneficiary is personal to CDFW 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.
- 9. TRANSFER.** The CITY may transfer all or any of its interests in this Easement, except the CITY may not transfer any interest in this Easement to The Nature Conservancy so long as the property remains under the ownership of Mahon Family Partnership or the biological Children of Tom Mahon. Should the City intend to transfer the Easement it will provide written notice to CDFW

and 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.

**10. RUNNING WITH THE LAND.** The Easement created by this Easement 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 12 of **Exhibit “C”** hereto.

**11. 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 17; 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,”** attached hereto and incorporated herein by this reference, 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 17.
- B. State of Title.** Subject to matters of record disclosed in that certain Title Report dated January 12, 2022, issued by Fidelity National Title Company regarding the Property, GRANTOR warrants that as of the date that title to the Easement transfers it has good and sufficient title to the Property and that all mortgages, liens, and encumbrances are subordinated to this Easement.
- C. Compliance with Laws.** GRANTOR has not received notice of and has no knowledge of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Property.
- D. No Litigation.** There is no action, suit or proceeding which is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.
- E. Authority To Execute Easement.** The person executing this Easement on behalf of the CITY represents that execution of this Easement has been duly authorized by the CITY.

The person(s) executing this Easement on behalf of the GRANTOR represents that the execution of this Easement has been duly authorized by the GRANTOR.

12. **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, excepting those fees collected by the CITY in escrow for monitoring and reporting purposes, as further described in Section 16 below. 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.
13. **INDEMNIFICATION BY GRANTOR.** Notwithstanding any other provision herein to the contrary, GRANTOR hereby agrees to indemnify, defend, and hold harmless the CITY, its elected and appointed officials, employees, agents, and volunteers (the "Indemnified Parties") from and against any costs, liabilities, penalties, damages, claims or expenses (including reasonable attorneys' fees) which the Indemnified Parties may suffer or incur as a result of or arising out of the activities of the GRANTOR on the Property, except as such claim, liability, damage, or expense is the result of the CITY's gross negligence or intentional misconduct. Without limiting the foregoing, GRANTOR shall indemnify, defend, and hold harmless the Indemnified Parties for all of the following:
- A. **Third Party Claims.** Any claim, liability, damage, or expense suffered or incurred by or threatened against GRANTOR by any other person or entity, except as such claim, liability, damage, or expense is the result of the CITY's gross negligence or intentional misconduct, as determined by a court of competent jurisdiction, unless and until such judicial determination is made or as otherwise agreed to by the Parties, GRANTOR shall remain obligated to defend, indemnify and hold harmless the CITY, its members, directors, officers, employees, agents and contractors pursuant to this Agreement. The provisions of section 13. shall survive termination or suspension of the Agreement.
  - 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 11.A. regarding the historic uses of the Property, any Hazardous Material, as that term is defined in Paragraph 17, present, alleged to be present, or otherwise connected in any way to the Property, whether by or after the date of this Easement.

**14. 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 Subsection C, prior to such entry.
- B. Other Notice. Except as provided in Subsection 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 Subsection 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: Tom Mahon  
Mahon Family Partnership  
10171 Grant Line Road  
Elk Grove, CA 95624  
916-813-3263

To CITY: Development Services Director  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758  
916-627-3466

with a copy to: Regional Manager  
Region 2  
California Department of Fish and Wildlife  
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.

- 15. **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.

16. **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. One Million Six Hundred Sixty-nine Thousand Four-eighty Hundred Dollars (\$1,669,480.00) which is the product obtained when the per acre value of Thirteen Thousand Seventy-one Dollars and Forty-one Cents (\$13,071.41) paid to the GRANTOR of this Easement for the purchase of this easement is multiplied by 127.72, 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.

In compliance with the terms of Chapter 16.130 of the Elk Grove Municipal Code (Swainson's Hawk Impact Mitigation Fees), a monitoring and reporting fee in the amount of \$166,948.00, representing 10% of the easement purchase cost shall be fully funded by GRANTOR upon recordation of this Easement.

17. **INTERPRETATION.**

- A. **Liberally Construed.** 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);
  - (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.

18. **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 16 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.
19. **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.
20. **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. CITY may re-record at any time as may be required to preserve its rights in this Easement.
21. **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.
22. **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.

*[Signatures on the following page]*



IN WITNESS WHEREOF, the Parties have executed this Easement on the dates set forth below.

**GRANTOR:**

**MAHON FAMILY PARTNERSHIP,  
a California General Partnership**

By: \_\_\_\_\_  
Thomas Mahon, Managing Partner

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

By: \_\_\_\_\_  
Jack Mahon, Partner

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

**CITY:**

**CITY OF ELK GROVE,  
a municipal corporation**

By: \_\_\_\_\_  
Jason Behrmann, City Manager

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Jonathan P. Hobbs, City Attorney

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

**ATTEST:**

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

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

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**SWAINSON'S HAWK MITIGATION AREA**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, BEING A PORTION OF LAND DESCRIBED IN GRANT DEED RECORDED ON DECEMBER 18, 2000, IN BOOK 20001218 AT PAGE 0833, OFFICIAL RECORDS OF SACRAMENTO COUNTY, ALSO BEING A PORTION OF LOT 10 OF LOWER DAYLOR ESTATES, AS SHOWN ON THE "MAP OF RANCHO DE LO OMOCHUMNES" FILED IN BOOK 1 OF MAPS AT PAGE 32, SACRAMENTO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A 1/2" IRON BAR AT THE MOST EASTERLY CORNER OF SAID GRANT DEED AND SHOWN ON THE RECORD OF SURVEY FILED IN BOOK 11 OF SURVEYS AT PAGE 11, SACRAMENTO COUNTY RECORDS, THENCE ALONG THE NORTHEASTERLY LINE OF SAID GRANT DEED, NORTH 49°51'20" WEST 2747.16 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 40°06'55" WEST 185.58 FEET TO THE BEGINNING OF A TANGENT CURVE; THENCE ALONG THE ARC OF SAID TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, THROUGH A CENTRAL ANGLE OF 56°08'56" FOR AN ARC LENGTH OF 196.00 FEET; THENCE SOUTH 16°02'00" EAST 796.40 FEET TO THE BEGINNING OF A TANGENT CURVE; THENCE ALONG THE ARC OF SAID TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1000.00 FEET, THROUGH A CENTRAL ANGLE OF 24°38'48" FOR AN ARC LENGTH OF 430.17 FEET; THENCE SOUTH 08°36'48" WEST 488.15 FEET TO THE BEGINNING OF A TANGENT CURVE; THENCE ALONG THE ARC OF SAID TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 32°18'24" FOR AN ARC LENGTH OF 281.93 FEET; THENCE SOUTH 40°55'12" WEST 607.52 FEET TO THE BEGINNING OF A TANGENT CURVE; THENCE ALONG THE ARC OF SAID TANGENT CURVE THE THE RIGHT, HAVING A RADIUS OF 460.00 FEET, THROUGH A CENTRAL ANGLE OF 31°43'38" FOR AN ARC LENGTH OF 254.72 FEET TO THE SOUTHWESTERLY LINE OF SAID GRANT DEED; THENCE ALONG SAID SOUTHWESTERLY LINE, SOUTH 49°47'25" EAST 1895.52 FEET TO THE MOST SOUTHERLY CORNER OF SAID GRANT DEED; THENCE ALONG THE CENTERLINE OF THE OLD CHANNEL OF COSUMNES RIVER THE FOLLOWING FIVE (5) COURSES: 1) NORTH 31°13'04" EAST 105.58 FEET; 2) NORTH 62°50'49" EAST 117.72 FEET; 3) NORTH 35°54'04" EAST 1204.98 FEET; 4) NORTH 17°05'44" EAST 618.62 FEET; 5) NORTH 27°58'24" EAST 668.84 FEET TO THE **POINT OF BEGINNING**.

CONTAINING A TOTAL AREA OF 127.72 ACRES, MORE OR LESS.

THE ATTACHED PLAT ENTITLED "EXHIBIT B" IS MADE A PART OF THIS LEGAL DESCRIPTION.

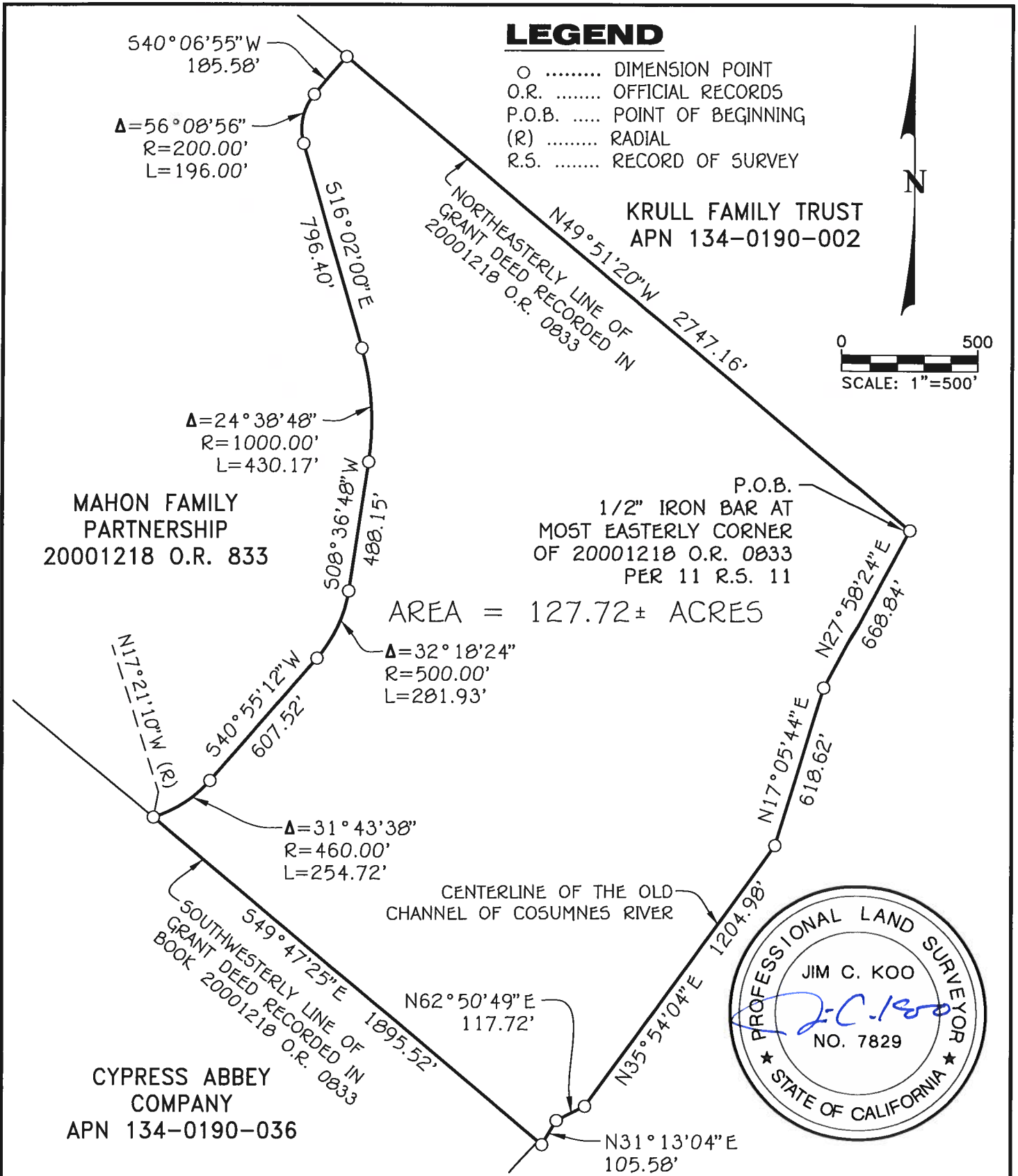
**END OF DESCRIPTION**

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION PURSUANT TO THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYOR'S ACT.



PREPARED BY: JIM C. KOO, P.L.S. 7829  
DATE: FEBRUARY 17, 2022





**B BURRELL CONSULTING GROUP, INC.**  
1001 Enterprise Way, Suite 100  
Roseville, CA 95678 (916) 783-8898

**EXHIBIT "B"**  
MAHON FAMILY PARTNERSHIP  
APN 134-0190-003  
**SWAINSON'S HAWK MITIGATION AREA**  
COUNTY OF SACRAMENTO CALIFORNIA

DRAWN BY: JCK CHECKED BY: JCK  
DATE: 2/17/2022  
**SHEET 1 OF 1**  
JOB NO. 1658-01-0951

**EXHIBIT “C”**  
**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 **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 **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 a reasonable period of time after receipt of the request. Additional fencing deemed by GRANTOR to be reasonably necessary to agricultural activities may be constructed without the CITY’s consent.

4. Roads. To maintain and repair existing roads at currently existing levels of improvement, and to construct and maintain such new, unpaved and otherwise unimproved roads as shall be reasonably necessary for agricultural purposes and will not substantially diminish or impair the 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 a reasonable period of time.

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 14 of the Easement and obtain the CITY's approval prior to engaging in such practices or activities.

**EXHIBIT “D”**  
**PROHIBITED USES OF THE PROPERTY**

The following set forth a list of specific prohibited activities and 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 area comprising the 127.72-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 2 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 a reasonable time after receipt of such request.

8. No Destruction of Native Trees. The removal, cutting or destruction of native trees on the 127.72-acre Easement Property, except for disease or insect control or to prevent property damage or personal injury.

9. No Biocides. The use of fertilizers, pesticides, biocides, and herbicides or other agricultural chemicals, except as expressly permitted in accordance with Paragraphs 1 and 2 of **Exhibit “C.”**

10. No Hunting. The use of the property for hunting, trapping, or fishing, except as expressly permitted in accordance with Paragraph 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 127.72-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 drill site, 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, its elected and appointed officials, employees, agents, and volunteers, 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 wastewater 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 127.72-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 127.72-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 elected and appointed officials, employees, agents, and volunteers (the "Indemnified Parties") and hold the Indemnified Parties harmless from and against, and waive and release the Indemnified Parties from any and all claims, liability, losses, damage, costs, and expenses (including, without limitation, reasonable attorneys' fees) asserted against or suffered by the Indemnified Parties resulting from damage to property or injury to or the death of any person arising out of the acts or omissions of GRANTOR or GRANTOR's agents, employees, lessees, successors or assigns with respect to the exercise of any rights reserved by GRANTOR in this Schedule.

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

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

**EXHIBIT "E"**  
**UNDERGROUND TANKS**

There are no underground tanks on the easement property.

**EXHIBIT "F"**  
**PROHIBITED PLANT LIST**

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

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

<u>Gaura, wavy-leaved</u>	<u><i>Gaura sinuata</i></u>
<u>Goatgrass, barb</u>	<u><i>Aegilops triuncialis</i></u>
<u>Goatgrass, jointed</u>	<u><i>Aegilops cylindrica</i></u>
<u>Goatgrass, ovate</u>	<u><i>Aegilops ovata</i></u>
<u>Gorse</u>	<u><i>Ulex europaeus</i></u>
<u>Groundcherry, grape</u>	<u><i>Physalis viscosa</i></u>
<u>Groundcherry, long-leaf</u>	<u><i>Physalis longifolia</i></u>
<u>Halogeton</u>	<u><i>Halogeton glomeratus</i></u>
<u>Hermal</u>	<u><i>Pegamon harmala</i></u>
<u>Henbane, black</u>	<u><i>Hyoscyamus niger</i></u>
<u>Himalayan Blackberry</u>	<u><i>Rubus discolor.</i></u>
<u>Hoarycress, globe-podded</u>	<u><i>Cardaria pubescens</i></u>
<u>Hoarycress, heart-podded</u>	<u><i>Cardaria draba</i></u>
<u>Hoarycress, lens-podded</u>	<u><i>Cardaria chalepensis</i></u>
<u>Horsenettle, Carolina</u>	<u><i>Solanum carolinense</i></u>
<u>Horsenettle, white</u>	<u><i>Solanum elaeagnifolium</i></u>
<u>Hydrilla</u>	<u><i>Hydrilla verticillata</i></u>
<u>Iris, Douglas</u>	<u><i>Iris douglasiana</i></u>
<u>Iris, western blue flag</u>	<u><i>Iris missouriensis</i></u>
<u>Johnsongrass</u>	<u><i>Sorghum halepense</i></u>
<u>Jointvetch, rough</u>	<u><i>Aeschynomene rudis</i></u>
<u>Kangaroothorn</u>	<u><i>Acacia paradoxa</i></u>
<u>Kelp</u>	<u><i>Polygonum amphibium var. emersum</i></u>
<u>Kikuyugrass</u>	<u><i>Pennisetum clandestinum</i></u>
<u>Klamathweed</u>	<u><i>Hypericum perforatum</i></u>
<u>Knapweed, diffuse</u>	<u><i>Centaurea diffusa</i></u>
<u>Knapweed, Russian</u>	<u><i>Acroptilon repens</i></u>
<u>Knapweed, spotted</u>	<u><i>Centaurea maculosa</i></u>
<u>Knapweed, squarrose</u>	<u><i>Centaurea squarrosa</i></u>
<u>Knotweed, giant</u>	<u><i>Polygonum sachalinense</i></u>
<u>Knotweed, Himalayan</u>	<u><i>Polygonum polystachyum</i></u>
<u>Knotweed, Japanese</u>	<u><i>Polygonum cuspidatum</i></u>
<u>Loosestrife, purple</u>	<u><i>Lythrum salicaria</i></u>
<u>Lettuce, water</u>	<u><i>Pistia stratiotes</i></u>
<u>Mallow, alkali</u>	<u><i>Malvella leprosa</i></u>
<u>Marigold, wild</u>	<u><i>Tagetes minuta</i></u>
<u>Medusahead</u>	<u><i>Taeniatherum caput-medusae</i></u>
<u>Melon, dedaim</u>	<u><i>Cucumis melo var. Dudaim</i></u>
<u>Melon, paddy</u>	<u><i>Cucumis myriocarpus</i></u>
<u>Mesquite, creeping</u>	<u><i>Prosopis strombulifera</i></u>
<u>Mistletoe, European</u>	<u><i>Viscum album</i></u>
<u>Mustard, purple</u>	<u><i>Chorispora tenella</i></u>
<u>Nightshade, heartleaf</u>	<u><i>Solanum cardiophyllum</i></u>
<u>Nightshade lanceleaf</u>	<u><i>Solanum lanceolatum</i></u>
<u>Nightshade, Torrey's</u>	<u><i>Solanum dimidiatum</i></u>
<u>Nightshade, white-margined</u>	<u><i>Solanum arginatum</i></u>
<u>Nimblewill</u>	<u><i>Muhlenbergia schreberi</i></u>
<u>Nutsedge, purple</u>	<u><i>Cyperus rotundus</i></u>

<u>Nutsedge, yellow</u>	<u><i>Cyperus esculentus</i></u>
<u>Onion, paniced</u>	<u><i>Allium paniculatum</i></u>
<u>Osage orange</u>	<u><i>Maclura pomifera</i></u>
<u>Pampas Grass</u>	<u><i>Cortaderia jabata or C. selloana</i></u>
<u>Peaweed, Austrian</u>	<u><i>Sphaerophysa salsula</i></u>
<u>Peppercress, perennial</u>	<u><i>Lepidium latifolium</i></u>
<u>Periwinkle</u>	<u><i>Vinca major</i></u>
<u>Povertyweed</u>	<u><i>Iva axillaris</i></u>
<u>Punagrass</u>	<u><i>Achnatherum brachychaetum</i></u>
<u>Puncturevine</u>	<u><i>Tribulus terrestris</i></u>
<u>Quackgrass</u>	<u><i>Elytrigia repens</i></u>
<u>Ragweed, giant</u>	<u><i>Ambrosia trifida</i></u>
<u>Ragwort, Oxford</u>	<u><i>Senecio squalidus</i></u>
<u>Ragwort, tansy</u>	<u><i>Senecio jacobaea</i></u>
<u>Restharrow, foxtail</u>	<u><i>Ononis alopecuroides</i></u>
<u>Rice, red</u>	<u><i>Oryza rufipogon</i></u>
<u>Russianthistle, barbwire</u>	<u><i>Salsola paulsenii</i></u>
<u>Russionthistle, 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> <i>(see Klamathweed)</i></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> (see also “Thistle, slenderflowered”)	<u><i>Arduus pycnocephalus</i></u>
<u>Thistle, Japanese</u>	<u><i>Cirsium japonicum</i></u>
<u>Thistle, musk</u>	<u><i>Carduus nutans</i></u>
<u>Thistle, plumeless</u>	<u><i>Carduus acanthoides</i></u>
<u>Thistle, Scotch</u>	<u><i>Onopordum acanthium</i></u>
<u>Thistle, slenderflowered</u>	<u><i>Carduus tenuiflorus</i></u>
<u>Thistle, Taurian</u>	<u><i>Onopordum tauricum</i></u>
<u>Thistle, wavyleaf</u>	<u><i>Cirsium undulatum</i></u>
<u>Thistle yellowspine</u>	<u><i>Cirsium ochrocentrum</i></u>
<u>Toadflax, Dalmatian</u>	<u><i>Linaria genistifolia subsp. Dalmatica</i></u>
<u>Tree of Heaven or Ailanthus</u>	<u><i>Ailanthus altissima</i></u>
<u>Waterlily, banana</u>	<u><i>Nymphaea mexicana</i></u>
<u>Witchweed</u>	<u><i>Striga asiatica</i></u>

**EXHIBIT "C"**

**Title exceptions that shall be removed as noted in preliminary title report dated January 12, 2022;  
Items 10, 14-17 are outside of the acquisition area:**

4. Prior to close of escrow, please contact the Tax Collector's Office to confirm all amounts owing, including current fiscal year taxes, supplemental taxes, escaped assessments and any delinquencies.
8. Any unpaid amounts now owing, for delinquent utilities, of record or not. Amounts can be ascertained by contacting the following:

County of Sacramento at (916) 875-5555, and/or including :  
City of Sacramento at (916) 808-5454.  
City of Folsom at (916) 355-7200.  
City of Galt at (209) 366-7150.  
City of Elk Grove at (916) 478-3642.  
City of Rancho Cordova at (916) 638-9000.  
City of Isleton at (916) 777-7770.  
City of Citrus Heights at (916) 725-2448, and for waste charges - Allied Waste at (916) 725-9060, and as required, fax request to (916) 463-0297.  
Sacramento Suburban Water District at (916) 972-7171.

10. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Sacramento Municipal Utility District, a municipal utility district  
Purpose: Electrical Facilities  
Recording Date: December 6, 1961  
Recording No: [Book 4355, Page 487, of Official Records](#)

14. Matters contained in that certain document

Entitled: Memorandum of Agreement for Acquisition of Grant of Easement  
Dated: August 17, 2009  
Executed by: Mahon Family Partnership and CT Wateman Park LLC  
Recording Date: September 10, 2009  
Recording No: [Book 20090910, Page 1044, of Official Records](#)

Reference is hereby made to said document for full particulars.

15. Matters contained in that certain document

Entitled: Memorandum of Exclusive option to purchase Conservation Easement  
Dated: May 12, 2009  
Executed by: Mahon Family Partnership and CT Wateman Park LLC  
Recording Date: September 10, 2009  
Recording No: [Book 20090910, Page 1046, of Official Records](#)

Reference is hereby made to said document for full particulars.

16. Matters contained in that certain document

Entitled: Memorandum of Agreement for Acquisition of Grant of Easement  
Dated: June 19, 2013  
Executed by: Mahon Family Partnership and Capital Valley Partners  
Recording Date: July 5, 2013  
Recording No: [Book 20130705, Page 717, of Official Records](#)

Reference is hereby made to said document for full particulars.



**EXHIBIT "C"**  
**Page 2 of 3**

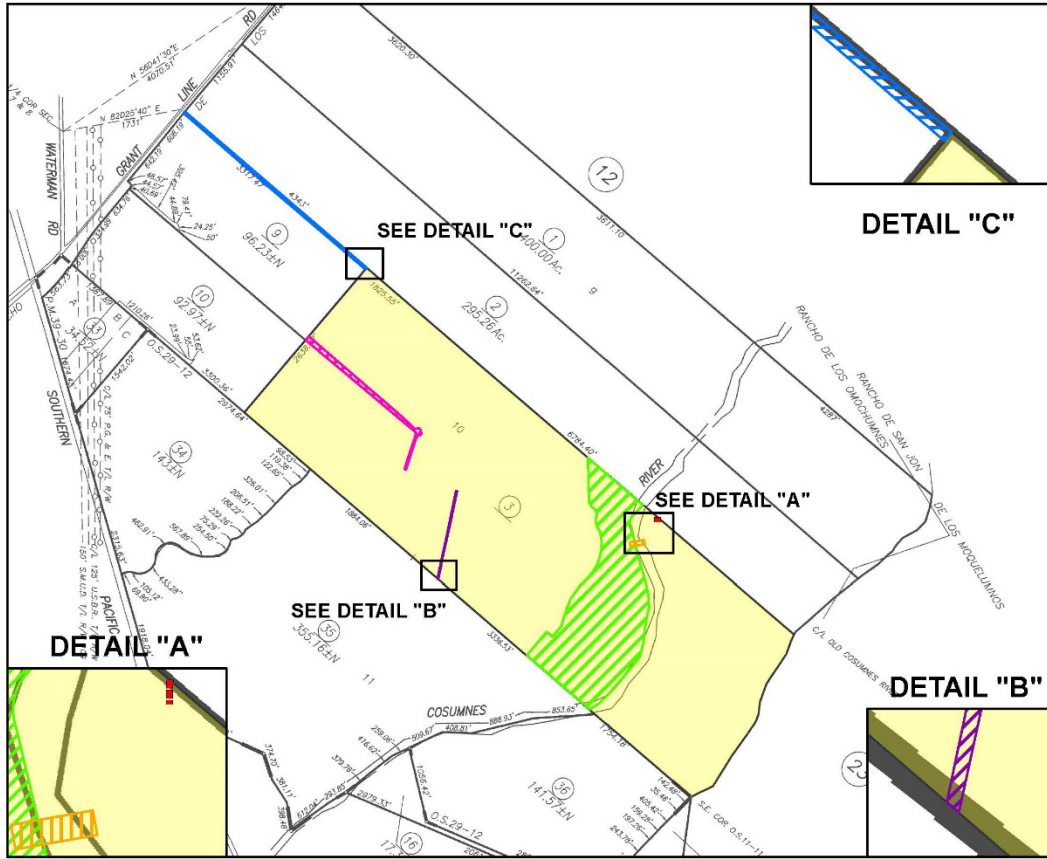
17. Matters contained in that certain document

Entitled: Swainson's Hawk Habitat and Agricultural Conservation Easement Deed  
Dated: October 25, 2018  
Executed by: Mahon Family Partnership, a California General Partnership and the City of Elk Grove, a municipal corporation  
Recording Date: November 7, 2018  
Recording No: [Book 20181107, Page 0295, of Official Records](#)

Reference is hereby made to said document for full particulars.

**Exhibit "C"**  
**Page 3 of 3**

1 inch = 2006.97 feet



**Legend**

- Property In Question - Fee
- Together with an Easement
- Item No. 9 - Easement for Electrical Facilities  
 In 10/05/1959 Bk3896 Pg294 of Official Records  
 Affects said portion as described in the document  
 (Centerline of Undisclosed width strip)
- Item No. 10 - Easement for Electrical Facilities  
 In 12/06/1961 Bk4355 Pg487 of Official Records  
 Affects said portion as described in the document
- Item No. 11 - Easement for Operation of a Dam,  
 Ingress & Egress  
 In 09/12/1968 Bk680912 Pg377 of Official Records  
 Affects said portion as described in the document
- Item No. 14 - Matters Contained  
 In 09/10/2009 Bk20090910 Pg1044 of Official Records  
 Affects said portion as described in the document
- Item No. 15 - Matters Contained  
 In 09/10/2009 Bk20090910 Pg1046 of Official Records  
 Affects said portion as described in the document
- Item No. 16 - Matters Contained  
 In 07/05/2013 Bk20130705 Pg717 of Official Records  
 Affects said portion as described in the document
- Item No. 17 - Matters Contained  
 In 11/07/2018 Bk20181107 Pg0295 of Official Records  
 Affects said portion as described in the document

©2022  
**Fidelity National Title Company**  
 1200 Concord Ave., #400  
 Concord, CA 94520  
 (925) 288-6000

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

Title Order No. : 1005953, Preliminary Report Dated January 12, 2022  
 Reference :  
 Property : 10171 Grant Line Road, Elk Grove, CA

Drawing Date : 02/02/2022 - FNFI  
 Assessor's Parcel No. : 134-0190-003-0000  
 Data :

Plat Showing : A PORTION OF LAND IS SITUATED IN THE UNINCORPORATED AREA, IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

Sheet  
 1 of 1  
 Archive #

**CERTIFICATION**  
**ELK GROVE CITY COUNCIL RESOLUTION NO. 2022-071**

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

*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 13, 2022 by the following vote:*

**AYES:**            **COUNCILMEMBERS:** *Singh-Allen, Suen, Hume, Spease, Nguyen*

**NOES:**           **COUNCILMEMBERS:** *None*

**ABSTAIN:**       **COUNCILMEMBERS:** *None*

**ABSENT:**       **COUNCILMEMBERS:** *None*

  
\_\_\_\_\_  
**Jason Lindgren, City Clerk**  
**City of Elk Grove, California**