

**EASEMENT DOCUMENTATION REPORT:  
CARLI PROPERTY**

**Sacramento County, California**



**March 6, 2009**

Prepared by:  
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City of Elk Grove  
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**TABLE OF CONTENTS**

1. Introduction ..... 1

    1.1. Purpose ..... 1

    1.2 Location ..... 1

2. Methods ..... 1

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

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

    3.2 Surrounding Properties ..... 2

    3.3 Current Agricultural Practices ..... 2

    3.4 Current Water Uses ..... 2

    3.5 Infrastructure and Buildings ..... 2

    3.6 Conservation Features ..... 7

4. Conclusions ..... 8

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

    4.2. Quality of Swainson's Hawk Foraging Habitat within the Easement Property ..... 8

References ..... 9

**FIGURES**

Figure 1 – Project Location ..... 3

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

**APPENDICES**

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



## 1. INTRODUCTION

### 1.1. PURPOSE

The purpose of this report is to provide an accurate representation of the present condition of the Carli Property as it relates to the easement language and restrictions as of the date of the recording (February 14, 2006) of the Conservation Easement for the Carli Property. The information and photographs provided herein represent the condition of the Carli Property as of February 3, 2009. The Conservation Easement for the Carli Property is attached as **Appendix A**.

### 1.2 LOCATION

The Carli Property (property) is located in southern Sacramento County, California, approximately one mile southwest of Grant Line Road, to the east of State Route 99 (**Figure 1**). Deer Creek crosses through the northwestern end of the property and the Cosumnes River borders the southeastern end (**Figure 2**). The easement property line on the northwestern end extends approximately 250 feet beyond Deer Creek into a fallow field (**Figure 2**). There is a levee located adjacent to Deer Creek, approximately 750 feet to the southeast from the northwestern easement property line. A small field lies between Deer Creek and this levee. This small field is isolated from the rest of the property, which consists of a large field that is bounded by the levee adjacent to Deer Creek on the northwestern end and the levee adjacent to the Cosumnes River on the southeastern end.

## 2. METHODS

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

United States Department of Agriculture National Agriculture Imagery Program (NAIP) aerial photos (2005), data from the City of Elk Grove (2009), and digitized parcel boundaries were used as references and as base layers for maps. Maps were created using ArcView software.

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

## 3. DESCRIPTION OF THE PROPERTY AND EASEMENT

The property's legal description is contained in Exhibit A of the Conservation Easement, which is enclosed as **Appendix A** of this report. The Carli Property covered under the Conservation Easement consists of a portion of assessor parcel number (APN) 134-0130-001-0000 and all of APN 134-0130-018-0000, for a total of 150.21 acres. The property is composed of approximately 138 acres of leveled farmland, which is divided into two separate fields. The large field in the center

of the easement property is currently used for growing alfalfa. The northwestern end of the property contains a small field located between Deer Creek and its levee to the southeast (**Figure 2**). This small field was used for growing corn from early spring to late fall in 2008. The remainder of the property, which totals approximately 12 acres, contains portions of Deer Creek and the Cosumnes River in addition to the riparian habitats and levees that border these waterways within the easement property boundary. The other characteristics of the property are described below under Sections **3.6 Infrastructure and Buildings** and **3.7 Conservation Features**.

### 3.1 PURPOSE OF THE CONSERVATION EASEMENT

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

### 3.2 SURROUNDING PROPERTIES

Agricultural lands directly border the property to the north and south (**Figure 2**). To the northwest of the property, beyond Deer Creek, and to the southeast of the property, beyond the Cosumnes River, the property is surrounded by other agricultural lands, which are predominately planted with row crops or used as cattle pasture.

### 3.3 CURRENT AGRICULTURAL PRACTICES

Almost the entire property has been leveled and planted with field crops. As of the February 3, 2009 site visit, the large field within the property had been recently disked and planted with alfalfa, which is a low-lying field crop. The small field in between Deer Creek and its levee, which is located on the northwestern end of the property, had been planted with corn in early spring and then harvested in late fall of 2008. Currently, the small field was fallow.

### 3.4 CURRENT WATER USES

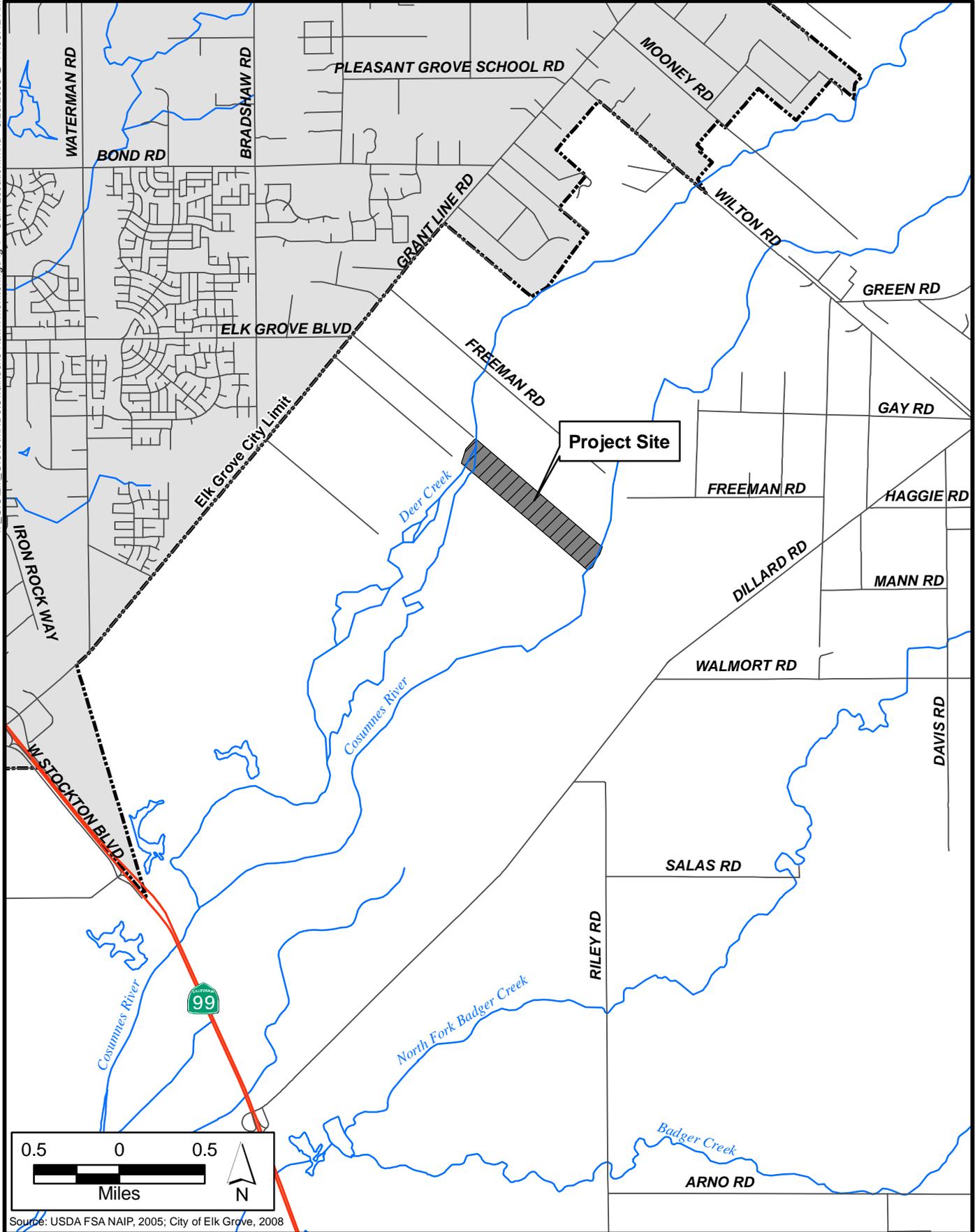
Due to the close proximity of the Cosumnes River and Deer Creek to the easement property, water is available throughout the year. Historically, the fields were irrigated using water pumped directly from the Cosumnes River. This practice was discontinued due to the frequent thefts of the pump motor and associated parts (City of Elk Grove 2008). Currently the fields are irrigated using on-site water well pumps. The existing location, size and use of the water pumps on the property are consistent with the requirements of the Conservation Easement. The Conservation Easement allows for the repair, maintenance, and rebuilding of existing wells and for the establishment of new wells, as long as they support the allowable uses of the property.

### 3.5 INFRASTRUCTURE AND BUILDINGS

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

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

T:\GIS\Elk\_Grove\MXD\Swainsons Hawk Monitoring\Fig 1 - Caril Location.mxd - 3/25/2008 @ 11:08:42 AM



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



City of Elk Grove  
Development Services

Figure 1  
Location Map





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

Figure 2  
Photo Station Locations



## Fences and Roads

There was no fencing observed along any of the property's boundaries as of February 3, 2009. As mentioned previously, the Cosumnes River serves as natural property boundary along the southeastern end of the property. A gravel road crosses through the northwestern end of the property and runs along the top of the Deer Creek levee and then exits the property and connects to Freeman Road to the northeast of the property (see photo P1-S; **Appendix B**). Another gravel road runs along the top of the Cosumnes River levee along the southeastern end of the property and connects to Freeman Road to the southeast of the property.

Unimproved interior dirt roads exist within the property for the purposes of farming activities. The Conservation Easement allows for the repair and maintenance of existing roads to current levels of improvement, as well as the creation of new unpaved roads that are reasonably necessary for agricultural purposes and that do not substantially diminish or impair the open space character, agricultural productivity, wildlife habitat or scenic qualities of the property. New paved roads, as required by state law, are also permissible. The type, location and size of the roads within the property as of February 3, 2009 site visit are similar to what has been reported in the past (City of Elk Grove 2008). The property is consistent with the requirements of the Conservation Easement for fences and roads.

## Ditches and Canals

Currently, there are few irrigation ditches that exist within the property. Most irrigation and drainage is accomplished on account of the property's close proximity to Deer Creek and the Cosumnes River. The location and size of the ditches and canals within the property are similar to what has been reported in the past (City of Elk Grove 2008). The property is consistent with the requirements of the Conservation Easement for ditches and canals.

During the February 3, 2009 site visit, there were irrigation pipes observed near the southeastern end of the property, which were arranged lying above-ground near the edges of the field. These pipes were not interconnected or determined to be currently in use as of the date of the site visit (refer to photos P3-W, P3-S; **Appendix B**).

## 3.6 CONSERVATION FEATURES

### Creek/River and Riparian Areas

At the northwestern and southeastern ends of the property, there are waterways surrounded by riparian habitat. Deer Creek crosses through the northwestern end of the property and the Cosumnes River borders the southeastern end of the property. In total, there are approximately 12 acres of non-farmland within the property that contain portions of Deer Creek and the Cosumnes River in addition to the riparian habitats and levees that border these waterways within the property. These riparian corridors contain many native trees such as oaks (*Quercus* spp.), willows (*Salix* spp.), and Fremont cottonwoods (*Populus fremontii*).

Numerous blue elderberry (*Sambucus mexicana*) shrubs were also observed in the riparian areas within the property. The elderberry shrub is the host plant for the Valley Elderberry Longhorn Beetle (VELB; *Desmocerus californicus dimorphus*), which is listed as endangered under the federal Endangered Species Act. The VELB is associated exclusively with the elderberry shrub during its entire lifecycle; therefore, damage to and removal of elderberry shrubs threatens the VELB's existence. For this reason, all elderberry shrubs are federally protected. The elderberry shrubs that are present within the property provide suitable habitat for the VELB.

### Inferences Regarding Winter Role

The property is protected by levees from seasonal flooding events. There is no indication that there is significant seasonal water on the site.

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

The large field within the property, which is currently planted with alfalfa, and the small field, which is currently fallow, provide suitable foraging habitat for Swainson's hawks. Alfalfa is a low-lying crop, which enables the hawks to spot and pursue prey items when flying over the property. The small fallow field contains a low-lying groundcover composed of dead organic matter, which are the remains of the corn crop harvested in late fall of last year. The fallow field has the potential to support prey items for Swainson's hawks, such as small rodents and grasshoppers, although none were observed during the site visit.

Areas not used for growing crops include unimproved roads and road shoulders, and the portions of the levees adjacent to Deer Creek and the Cosumnes River that cross through the property. Roadsides and levees are thickly covered with weedy vegetation typical of the region, including wild radish (*Raphanus* sp.), mustards (mostly *Brassica nigra*), thistles (milk-thistle, *Silybum marianum*) and grasses (e.g., *Lolium multiflorum*, *Hordeum murinum* ssp. *leporinum*, *Vulpia* sp.).

Along the southern end of the property, there is a row of mature oak trees, which border the southern edge. There are also several large trees located within the riparian corridors of Deer Creek and the Cosumnes River, which were previously mentioned above under subheading **Creek/River and Riparian Areas**, which may provide suitable nesting habitat for Swainson's hawks. At the time of the February 3, 2009 site visit, there were no stick nests observed in the trees within the property boundary.

## 4. CONCLUSIONS

### 4.1. ADHERENCE TO EASEMENT REQUIREMENTS

Review of the Conservation Easement (**Appendix A**) for the property revealed that the activities and practices observed during the site visit on February 3, 2009 were permitted uses. No structures have been built anywhere on the property. The farming practices (field/row crops) observed are allowed under the Conservation Easement's requirements.

There were no other bird species observed within the property during the site visit than a small group of rock pigeons (*Columba livia*) that were gathered in the small fallow field.

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

The quality of Swainson's hawk foraging habitat is relative to the crop types that are planted in their foraging range. Generally, low-growing crops such as alfalfa, are better utilized by foraging Swainson's hawks as compared to tall-growing crops such as corn. Tall-growing row crops prevent the hawk from effectively targeting its prey, which makes navigation when diving to capture the prey very difficult to impossible. Alfalfa was the only crop observed within the property during the site visit on February 3, 2009. The small field near the northwestern end of the property had been planted with corn for part of last year and then harvested in late fall of 2008. At the time of the February 3, 2009 site visit, the small field appeared to be fallow. Both the large field planted with alfalfa and the small fallow field provide suitable Swainson's hawk foraging habitat within the property.

According to California Department of Fish and Game (CDFG) California Natural Diversity Data Base (CNDDDB) records, there are 74 previously recorded occurrences of Swainson's hawk within a ten-mile radius of the property (CDFG 2009). Since numerous occurrences of Swainson's hawk have been previously recorded in the region, it is reasonable to assume that Swainson's hawks could nest in the general vicinity of the property or within the property along the riparian corridors at the northwestern and southeastern ends. It is also reasonable to assume that Swainson's hawks could use the large field (planted with alfalfa) and the small fallow field within the property as foraging habitat. Overall, the property appears to be of high value to foraging Swainson's hawk. The large trees along the southern border of the property and within the riparian corridors at the northwestern and southeastern ends also provide suitable nesting sites for Swainson's hawks.

**REFERENCES**

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

City of Elk Grove. 2008. Easement Documentation Report for the Carli Property, Sacramento County, California. February 28, 2008.

The Weather Channel. 2009. Today's Weather for Elk Grove, CA. Accessed on February 3, 2009 from <http://www.weather.com>.



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# **APPENDICES**

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## **APPENDIX A—CONSERVATION EASEMENT**



Recording requested, and when recorded,  
return to:

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

with a conformed copy to:  
Cheryl L. Allen, Sr. Real Property Agent  
City of Elk Grove  
Development Services-Public Works  
Real Estate Division  
8400 Laguna Palms Way  
Elk Grove, CA 95758

Certified to be a true copy of  
document recorded 2/14/06  
INSTRUMENT NO. \_\_\_\_\_  
Book 060214 PAGE 2156  
SACRAMENTO COUNTY RECORDS  
Fidelity National Title By PT

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

GRANT DEED OF SWAINSON'S HAWK HABITAT CONSERVATION EASEMENT

THIS GRANT DEED OF SWAINSON'S HAWK HABITAT CONSERVATION EASEMENT is made as of 11-22, 2005 by and between David J. Carli, and Elva L. Carli, successor co-trustees of the Julius Carli and Doris Carli Revocable Trust, collectively, "Grantor" and the City of Elk Grove ("City"), a municipal corporation, as "grantee."

RECITALS

A. Grantor owns real property consisting of approximately 184.63 acres, in Sacramento County, California, as described in Exhibit A and shown more particularly on the map attached as Exhibit B, attached hereto and incorporated herein, which together with all appurtenances thereto, including without limitation all mineral and mineral rights, if any, and all water and water rights appurtenant to such land (collectively, the "Property").

B. The Property is comprised of open space land, appropriate to use for agriculture, and also essential to providing foraging and/or nesting habitat for Swainson's hawks, and other significant relatively natural habitat and buffer for many species of wildlife including, but not limited to, raptors, migratory birds, and others.

C. Protection and preservation of the Property, including its wildlife habitat, will assure that this area and its existing features will continue to be available for agriculture, to provide foraging and or nesting habitat for Swainson's hawks and other natural habitat values and buffer for wildlife, a significant public benefit by preserving open space against development pressure, and scenic qualities unique to the Cosumnes River Watershed.

D. As fee owner, Grantor owns the affirmative rights to identify, preserve, and protect forever the existing features and values of the Property.

E. The State of California recognizes the public importance and validity of conservation easement by enactment of Section 815 et seq of the Civil Code, and the City is an entity qualified under such Civil Code provisions to hold a conservation easement.

F. The City is a local government agency in the State of California, and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended, qualified to acquire and hold conservation easements.

G. To accomplish all of the aforementioned purposes, Grantor intends to convey to the City and the City intends to obtain an easement restricting the use which may be made of the Property, to preserve and protect forever the agricultural uses, open-space, foraging and/or nesting habitat for Swainson's hawks and other wildlife habitat and scenic values of the Property.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for the good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California and in particular California Civil Code section 815 et seq., Grantor hereby voluntarily grants and conveys to the City, its successors and assigns, an Easement in gross, forever in, on, over, and across the Property (the "Easement"), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Property, and the parties agree as follows:

1. PURPOSES: The multiple natural resource conservation purposes of the Easement are to preserve and protect in perpetuity (a) the availability of the Property for agriculture by protecting the Property from development pressure; (b) the conservation and habitat values of the Property as foraging and/or nesting habitat for Swainson's hawks and for other wildlife including the process which sustain that habitat; and (c) the open space character of the Property which are important public benefits and are consistent with the availability of the Property for wildlife habitat and agriculture.

It is intended that this Easement shall foster agricultural practices on the Property in harmony with the protection and preservation of conservation and habitat values of the Property as foraging and/or nesting habitat for Swainson's hawks and for other wildlife habitat and the processes that sustain that habitat, and in harmony with the open space qualities of the Property. It is intended that each such purpose shall be conducted in a manner consistent with all of such multiple natural resource conservation purposes. This Easement prohibits use of the Property for any purpose that would impair, degrade or interfere with any of the multiple natural resources conservation purposes stated above.

2. EASEMENT DOCUMENTATION REPORT: The parties acknowledge that an Easement Documentation Report (the "Report") of the Property has been prepared by a competent biologist familiar with the environs and approved by the City and Grantor in writing, a copy of which is on file with the Grantor and the City at their respective address for notices, set forth below. The parties agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time of this grant, and of the historical uses of the Property, including historical water uses. Notwithstanding the forgoing, if a controversy arises with respect to the nature and extent of the physical and biological condition of the Property or the permitted historical uses of the Property, the parties shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy.

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

- A. Preserve and Protect. The City may preserve and protect forever, the agricultural, open space, natural, ecological, and wildlife features and other conservation values of the Property, including, without limitation, the foraging and/or nesting habitat for Swainson's hawks, and for other wildlife including the processes which sustain that habitat.
- B. Entry and Access Rights. The City is hereby granted rights of access to enter upon the Property, using appurtenant easements and rights of way, if required for access by City, at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Easement and to determine whether Grantor's activities are in compliance with the terms hereof. Except in cases where the City determines that immediate entry is required to prevent, terminate, or mitigate a violation of the Easement, such entry shall be upon prior reasonable notice to Grantor and will not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
- C. Enforcement. The City may prevent any activity on, or use of, the Property that is inconsistent with the terms of this Easement, may enforce the restoration of such areas or features of the

Property that may be damaged by any inconsistent activity or use and may recover money damages for any injury to the easement, to the interests being protected thereby or for the breach of the terms of this easement as set forth herein.

- D. Signs. The City may erect a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the environmental resources of the Property are protected by the City. The wording of the information on the sign shall be jointly determined by the City and the Grantor, but shall clearly indicate that the Property is privately owned and not open to the public. The City shall be responsible for the costs of erecting and maintaining its sign or marker.

4. PERMITTED USES OF THE PROPERTY. Grantor and the City intend that this Easement shall confine the uses of the Property to the multiple natural resource conservation uses of agricultural, open space, conservation, and Swainson's hawk habitat, including the processes which sustain that agricultural use and habitat, and to such other incidental uses as are expressly permitted herein. Except as prohibited or otherwise limited in Paragraph 5 below and Exhibit D attached hereto, Grantor reserves the right to use and enjoy the Property in any manner which is consistent with the multiple natural resource conservation purposes of this Easement. In that regard, except as provided in Paragraph 5 below and Exhibit D attached hereto, the uses set forth in the Report as well as the permitted uses stated in Exhibit C attached hereto, though not an exhaustive list of consistent permitted uses, are consistent with this Easement, and shall not be precluded, prevented or limited by this Easement, except for the requirement of prior approval by the City where such approval is required herein.

5. PROHIBITED USES OF THE PROPERTY. Any activity on or use of the Property which is inconsistent with the multiple natural resource conservation purposes of this Easement is prohibited. Though not an exhaustive list of prohibited uses, none of the uses described in Exhibit D attached hereto shall be made of the Property.

6. REMEDIES.

- A. Notice of Violation: Corrective Action. If the City becomes aware that 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, the right to seek a temporary or permanent injunction with respect to such activity, 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, and to recover any damages arising from the 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.

The parties agree that monetary damages shall, include but are not limited to, reimbursement of the per acre value of the easement for all acres affected by such breach. Such per acre value of the easement is hereby stipulated to be the per acre value that results from application of the formula stated in Paragraph 14.

- B. Cost of Enforcement. In any action, suit or other proceeding undertaken to enforce the provisions of this Easement, the prevailing party shall be entitled to recover from the non-prevailing all reasonable costs and expenses including attorneys' fees, and if such prevailing party shall recover judgment in any action or proceeding, such costs and expenses shall be included as part of the judgment. In addition, any costs of restoration shall be borne by the Grantor.

- C. Emergency Enforcement. If the City, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the protected values of the Property, the City may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period to cure to expire.
- D. Non-Waiver. Enforcement of the terms and provisions of this Easement shall be at the discretion of the City, and the failure of the City to discover a violation or to take action under this paragraph shall not be deemed or construed to be a waiver of the City's rights hereunder with respect to such violation in the event of any subsequent breach.
- E. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the City to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement.
- F. Agent for Enforcement. Without the prior consent of the Grantor, the City may appoint any person or entity as the City's agent for enforcing the terms of this Easement, and the Grantor shall be entitled to treat any such person or entity as the City's agent for enforcement, provided such person or entity presents written proof of such authority signed by the City.
7. TRANSFER. The City may transfer all or any of its interests in this Easement without Grantor's consent, provided that (1) the City or any successor holder of this Easement obtains the prior written consent of the California Department Fish and Game; and (2) any transfer shall be made only to an organization qualified at the time of the transfer as an eligible donee under Internal Revenue Code Section 170(h)(3) or its successor, or any regulation issued thereunder, and such organization shall be an entity qualified pursuant to Civil Code Section 815 et seq. or any subsequent state law governing the creation, transfer and enforcement of conservation easements.
8. RUNNING WITH THE LAND. The Easement created by this Grant Deed shall burden and run with the Property forever. Every provision of this Easement that applies to the Grantor or the City shall also apply forever to and shall burden or benefit, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interest may appear. The Grantor and the City agree that transfer by Grantor of any interest in the Property shall be in accordance with the terms of Paragraph 10 of Exhibit C hereto.
9. REPRESENTATION AND WARRANTIES.
- A. Hazardous Materials. Grantor represents and warrants that the Property (including, without limitation, any associated air, soil, groundwater, and surface water) is free of any conditions that individually or in aggregate (1) pose a significant risk to human health or the environment; (2) violate any Environmental Law, as that term is defined below in Paragraph 15; or (3) could reasonably be expected to cause any person to incur environmental investigation, removal, remediation, or other cleanup costs. Except as listed in Exhibit E, there are no underground tanks located on the Property. Grantor represents and warrants that Grantor shall comply with all Environmental Laws in using the Property and that Grantor shall keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials, as that term is defined below in Paragraph 15.
- B. State of Title. Subject to matters of record as disclosed in the Title Report, Grantor warrants that it has good and sufficient title to the Property and that all mortgages, liens, and encumbrances are subordinated to this Easement.
- C. Compliance with Laws. Grantor has not received notice of and has no knowledge of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Property

- D. No Litigation. There is no action, suit or proceeding which is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.
- E. Authority To Execute Easement. The person executing this Easement on behalf of the City represents that execution of this Easement has been duly authorized by the City. The person(s) executing this Easement on behalf of the Grantor represents that the execution of this Easement has been duly authorized by the Grantor.

10. COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property 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. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property before delinquency and that Grantor shall keep the City's interest in the Property free of any liens, including those arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

11. INDEMNIFICATION BY GRANTOR. Notwithstanding any other provision herein to the contrary, Grantor hereby agrees to indemnify, defend, and hold harmless the City, its members, directors, officers, employees, agents, and contractors and their heirs and assigns (the "Indemnified Parties") from and against any costs, liabilities, penalties, damages, claims or expenses (including reasonable attorneys' fees) which the Indemnified Parties may suffer or incur as a result of or arising out of the activities of the Grantor on the Property or any breach of this Easement. Without limiting the foregoing, Grantor shall indemnify, defend, and hold harmless the Indemnified Parties for all of the following:

- A. Approvals. Approvals requested by Grantor or given or withheld by the City hereunder, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against Grantor or any other person or entity, except as such claim, liability, damage, or expense is the result of the City's gross negligence or intentional misconduct.
- B. Taxes. Any real property taxes, insurance, utilities or assessments that are levied against the Property, including those for which exemption cannot be obtained, or any other costs in maintaining the Property.
- C. Hazardous Materials. Any Hazardous Material, as that term is defined in Paragraph 15, present, alleged to be present, or otherwise connected in any way to the Property, whether by or after the date of this Easement.

12. NOTICE; APPROVAL.

- A. Notice for Entry. Except in the event of emergency, where notice to Grantor of the City's entry upon Property is required herein, the City shall notify any of the persons constituting Grantor or their authorized agents by telephone or in person, or by written notice in the manner described below in subparagraph C, prior to such entry.
- B. Other Notice. Except as provided in subparagraph A above, whenever express approval, agreement or consent is required by this document, the initiating party shall give written notice, in the manner described below in subparagraph C, and detailed information to the other party. The receiving party shall review the proposed activity and notify the initiating party, within five (5)

working-days after receipt of notice of any objections to such activity. Any objections by a party shall be based upon its opinion that the proposed activity is inconsistent with the terms of this Easement.

- C. Written Notices. Except as set forth in Subsection A above, any written notice called for in this Easement may be delivered (1) in person; (2) by certified mail, return receipt requested, postage paid; (3) by facsimile with the original deposited with the United States Post office, postage prepaid on the same date as sent by facsimile; or (4) by a reputable overnight courier that guarantees next day delivery and provided a receipt, and addressed as follows:

To the Grantor: David J. Carli  
9585 Grant Line Road  
Elk Grove CA 95624

Elva L. Carli  
5118 Teichert Ave.  
Sacramento, CA 95819

To City: Environmental Coordinator  
City of Elk Grove  
8400 Laguna Palms Way  
Elk Grove, CA 95758

with a copy to: Regional Manager  
Region 2  
California Department of Fish and Game  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670

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

- D. Notice of Reserved Rights. Grantor agrees to notify the City, in writing, at least sixty (60) days before exercising any reserved right which may have an adverse impact on any of the multiple natural resource conservation purposes protected herein.
- E. Subsequent Activities. Permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.

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

14. VALUATION. Grantor and the City agrees that this grant of a perpetual Easement gives rise to a property right, immediately vested in the City, which for purposes of this Paragraph, the parties stipulate to have a fair market value of the greater of:

- A. TWO MILLION FOUR HUNDRED FIFTY-THREE AND NINETY-EIGHT AND NO/100 DOLLARS (\$2,453,098.00), which is the product obtained when applying a per acre value paid to the grantor of this Agricultural Easement by City for the purchase of this easement. The total purchase price is arrived at by multiplying 143.60 acres x \$17,000 per acre and 6.61 acres x \$1,800 per acre, for a total of 150.21 protected acres on 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, the City, on subsequent sale, exchange, or taking of the Property, shall be entitled to a portion of the proceeds at least equal to the amount determined in accordance with this Paragraph. If such extinguishment occurs with respect to fewer than all acres of the Property, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

## 15. INTERPRETATION

- A. Liberal Construction. It is the intent of this Easement to preserve the condition of the Property and each of the multiple natural resource conservation purposes protected herein, notwithstanding economic or other hardship or changes in surrounding conditions. The provisions of this Easement shall be liberally construed to effectuate the perpetual purposes of preserving and protecting the agricultural, Swainson's hawk habitat, open space and other conservation purposes described above, and allowing Grantor's use and enjoyment of the Property to the extent consistent with those purposes. Liberal construction is expressly required for purposes of effectuating this Easement in perpetuity, notwithstanding changed conditions of any kind. The multiple natural resource conservation purposes herein are the intended best and most productive use of the Property. No remedy or election given by any provision in this Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions of the State of California, the City in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.
- B. Governing Law. This Easement shall be interpreted in accordance with the laws of the State of California, and shall be subject to the provisions of Civil Code section 815 et seq. or any subsequent State law governing the creation, transfer and enforcement of conservation easements.
- C. Captions. The captions have been inserted solely for convenience of reference and are not part of the Easement and shall have no effect upon construction or interpretation.
- D. No Hazardous Materials Liability. Notwithstanding any other provision herein to the contrary, the parties do not intend this Easement to be construed such that it creates in or gives to the City:
- (a) the obligations or liabilities of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC § 9601 et seq. and hereinafter "CERCLA");
  - (b) the obligations or liabilities of a person described in 42 USC §9607(a)(3);
  - (c) the obligations of a responsible person under any applicable Environmental Laws, as defined below;

- (d) the right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property; or
- (e) any control over Grantor's ability to investigate, remove, remediate or otherwise cleanup any hazardous material associated with the Property.

E. Definitions.

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

(b) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC 9601 et seq.), the Hazardous Materials Transportation Act (49 USC §6901 et seq.), the Hazardous Waste Control Law (Cal. Health & Safety Code §25100 et seq.), the Hazardous Substance Account Act (Cal. Health & Safety Code §25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

(c) The term "Environmental Laws" includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, protection of human health, the environment or Hazardous Materials.

16. CONDEMNATION. If all or part of the property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, the Grantor and the City shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the value of City's and Grantor's interests as determined in accordance with the provisions of Paragraph 14 above, it being expressly agreed that this Easement constitutes a compensable property right. All expenses incurred by the Grantor and the City in such action shall be paid out of the recovered proceeds.

17. SUBSEQUENT LIENS ON PROPERTY. No provision of the Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage, lien, or encumbrance arising from such a borrowing shall be subordinated to the Easement.

18. INDEMNIFICATION BY CITY. The City will indemnify, defend and hold harmless Grantor from any costs, liabilities, penalties, damages, claims or expenses (including reasonable attorneys' fees) which Grantor and its employees, agents, and contractors may suffer or incur as a result of or arising out of the activities of the City on the Property, except damages caused solely by the gross negligence or willful misconduct or any breach of this Easement by Grantor or its employees, agents or contractors.

19. RE-RECORDING. The City is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, Grantor appoints the City their attorney-in-fact to execute, acknowledge and deliver any necessary instrument on their behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

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

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

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

**GRANTOR:**

*David J. Carli*  
David J. Carli, an individual

*Elva L. Carli*  
Elva L. Carli, an individual

**GRANTEE:**

City of Elk Grove, a municipal corporation

By: *[Signature]* 11-22-05  
Print Name: John Danielson  
Title: City manager

**RECOMMENDED FOR APPROVAL:**

Date: 11-14-2005  
By: *Cheryl L. Allen for*  
Julie Clute, Real Property Manager

**APPROVED AS TO FORM:**

Date: *[Signature]*  
By: Nov. 22, 2005  
City Attorney

**ATTEST:**

Date: 11-23-05  
By: *[Signature]*  
City Clerk



**ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Sacramento } SS.

On 11-23-05 before me, PEGGY E. JACKSON  
(DATE) JOHN DANIELSON CITY CLERK  
personally appeared \_\_\_\_\_  
SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Peggy E. Jackson  
CITY CLERK, CITY OF ELK GROVE

**OPTIONAL INFORMATION**

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

- INDIVIDUAL
- CORPORATE OFFICER

- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

\_\_\_\_\_  
TITLE(S)

**DESCRIPTION OF ATTACHED DOCUMENT**

GRANT DEED  
SWAINSON'S HAWK HABITAT  
CARLI, APN 134-0130-0014018  
TITLE OR TYPE OF DOCUMENT

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

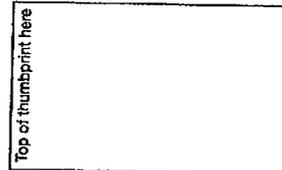
\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
OTHER

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

\_\_\_\_\_  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF  
SIGNER



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that real property being a portion of Lot 6 of the Lower Daylor Estate, lying in portions of Township 6 & 7 North, Range 6 East, M.D.B.&M., Sacramento County, State of California, said property being further described as follows:

**COMMENCING** at the most westerly corner of Parcel "B" as said parcel is shown on that certain Parcel Map filed in Book 31 of Parcel Maps at Page 24, Sacramento County Records, said corner also being the most northerly corner of Parcel 3 of that certain Settlement of Trust recorded as Document No. 199912061230, Official Records of Sacramento County; thence along the northeasterly line of said Parcel 3 South 49°13'34" East 4,385.36 feet to the POINT OF BEGINNING; thence continuing along last said line the following two (2) courses; 1) South 49°14'34" East 363.84 feet; and 2) South 48°49'34" East 4,977.82 feet to the easterly top edge of a levee road; thence along said easterly edge the following ten (10) courses; 1) South 16°33'19" West 52.59 feet; 2) South 13°31'12" West 200.23 feet; 3) South 12°34'19" West 189.20 feet to the southwesterly line of Parcel 3 of said Settlement of Trust; 4) continuing South 12°34'19" West 7.30 feet; 5) South 26°04'33" West 200.96 feet; 6) South 25°54'17" West 203.16 feet; 7) South 28°11'00" West 39.02 feet to the southwesterly line of Parcel 2 of said Settlement of Trust; 8) continuing South 28°11'00" West 155.66 feet; 9) South 34°09'52" West 195.69 feet; and 10) South 41°29'49" West 95.16 feet to the southwesterly line of Parcel 1 of said Settlement of Trust; thence along last said line North 49°21'45" West 4,925.54 feet; thence leaving last said line North 22°39'14" East 239.13 feet; thence North 34°43'16" East 169.55 feet; thence North 27°25'55" East 44.47 feet to the southwesterly line of Parcel 2 of said Settlement of Trust; thence continuing North 27°25'55" East 164.92 feet; thence North 06°49'20" East 218.77 feet; thence North 03°13'27" East 117.31 feet to the southwesterly line of Parcel 3 of said Settlement of Trust; thence continuing North 03°13'27" East 149.61 feet; thence North 23°42'27" West 106.33 feet; thence North 06°15'55" East 149.89 feet; thence North 08°51'28" West 183.75 feet; thence North 10°28'21" West 54.46 feet to the point of beginning, containing 6,543,313 square feet (150.214 acres) more or less.

The basis of bearings for the above description is the centerline of Elk Grove Boulevard as shown on that certain Record of Survey filed in Book 3 of Surveys at Page 151, S.C. R. Said centerline being taken as North 89°43' East, as determined between found monuments.

The above described land is shown on Exhibit "B" attached hereto and made a part hereof.

End of Description



**EXHIBIT B**

**Easement Map**

**[Attached]**



EXHIBIT C  
(Paragraph 4)

PERMITTED USES OF THE PROPERTY

The following are set forth both to list specific permitted activities, and to provide guidance in determining the consistency of other activities with the multiple natural resource conservation purposes of this Easement:

1. Historical Agricultural Practices. Except as prohibited or restricted in Paragraph 5 or Exhibit D of the Easement, Grantor is permitted to continue historical agricultural practices in the manner and location as set forth in the Report, to the extent that such practices are consistent with the multiple natural resource conservation purposes of this Easement. The term "historical agricultural practices" includes the continued historic use of fertilizers, pesticides, herbicides, and other biocides, provided that such use, including, but not limited to, the amount, frequency, and manner of application, shall be in accordance with all applicable laws and regulations, and such use does not injure or destroy the habitat for Swainson's hawk.

2. New Practices. Except as prohibited or restricted in Paragraph 5 or Exhibit D of the Easement, and subject to obtaining the City's prior approval in accordance with the notice and approval provisions contained therein, Grantor is permitted to carry on agricultural practices, and other practices or activities, that differ from historical agricultural practices, so long as such practices do not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters, and such practices are consistent with and do not adversely affect the multiple natural resource conservation purposes of this Easement, which purposes are to preserve and protect in perpetuity (a) the availability of the Property for agriculture by protecting the Property from development pressure; (b) the conservation and habitat values of the Property as foraging and/or nesting habitat for Swainson's hawks and for other wildlife including the processes which sustain that habitat; and (c) the open space character of the Property which are important public benefits and are consistent with the availability of the Property for wildlife, habitat and agriculture.

The following new practices are hereby found to be consistent with this Easement and do not require the notice and approval described above so long as such new practices will not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters and such new practices are consistent with and do not adversely affect the multiple natural resource conservation purposes of this Easement:

- (a) grazing;
- (b) cultivation of row and field crops;
- (c) substitution of new fertilizers, pesticides and herbicides for those Grantor presently uses, provided that such use, including, but not limited to, the amount, frequency, and manner of application shall be in accordance with all applicable laws and regulations, and such use does not injure or destroy the naturally occurring ecosystems; and
- (d) allowing row crop bottomland to revert to native hardwood forest or engaging in actions that precipitate such reversion.

3. Maintenance, Repair and Replacement. To maintain, repair, replace and rebuild existing structures and improvements, including, by way of illustration and not limitation, fences and irrigation systems, provided that such replacement improvements, structures and improvements shall be of approximately the same square footage as the improvements that they replaced, shall be rebuilt in the same general location, and in a manner consistent with the purposes of this Easement, and the agricultural productivity and natural habitat values for the Swainson's hawk, wildlife, and open space character of the Property provided, however, that Grantor shall have the right to replace existing structures and improvements in different locations, with the City's prior approval. The City shall review and respond to any such request within thirty (30) days after receipt of the request. Additional fencing deemed by Grantor to be reasonably necessary to agricultural activities may be constructed without the City's consent.

4. Roads. To maintain and repair existing roads at currently existing levels of improvement, and to construct and maintain such new, unpaved and otherwise unimproved roads as shall be reasonably necessary for agricultural purposes and will not substantially diminish or impair the open space character, agricultural productivity of the Property, or Swainson's hawk habitat qualities on the Property and shall be consistent with this Easement, provided that no new roads shall be constructed unless prior written consent has been obtained from the City. The City shall review and respond to any such request within thirty (30) days after receipt of the request.

5. Residence. Grantor reserves the right to construct and use a headquarters compound consisting of one single family residence (the "Residence") and agriculture and grazing related structures and improvements, including, without limitation, barns, corrals, fencing, equipment sheds and pads, etc., (the "Headquarters"), and improvements associated with the Residence and Headquarters, including, without limitation, utilities, driveway, septic system, water well, so long as (i) the Residence and associated improvements are contained within an area not exceeding one (1) acre; (ii) the headquarters and associated improvement are contained within an area not exceeding two (2) acres; and (iii) the one acre and two acre areas are in a reasonable compact shape and form a contiguous or single unit.

6. Fishing and Hunting. To fish or to hunt or trap wildlife not afforded protection under applicable laws or regulations, in compliance with applicable laws and regulations, and in a manner that does not significantly deplete the wildlife resources; provided, however, that while commercial hunting and fishing are permitted, commercial fish farms are prohibited. In addition, control of predatory and problem animals shall use selective control techniques, which shall be limited in their effectiveness to specific animals which have caused damage to livestock and other property, Grantor may construct duck blinds.

7. Water Resources. To develop and maintain such water resources on the Property as are necessary or convenient for agricultural, and Swainson's hawk habitat uses, in a manner consistent with this Easement.

8. Passive Recreational Uses. To conduct passive recreational uses, including, but not limited to, bird watching, hiking, horseback riding, and picnicking, provided that these uses, require no surface alteration or other development of land.

9. Signs. To erect a sign or other appropriate marker in a prominent location on the Property, visible from a public road, which state that no trespassing or no hunting is allowed on the Property.

10. Transfer of Property. To transfer the Property, provided that the transfer is not prohibited in Exhibit D, Grantor shall notify the City before the transfer of the Property, and the document of conveyance shall expressly incorporate by reference this Easement. The City shall review and respond to the request for the transfer of property or for leases in excess of five years with thirty (30) days after receipt of such request. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

11. Residual Rights; Prior Approval. Except as expressly limited herein, to exercise and enjoy all rights as owner of the Property, including the right to use the Property for any purpose which is consistent with and does not adversely affect the multiple natural resource conservation purposes of the Easement, which purposes are to preserve and protect in perpetuity (a) the availability of the Property for agriculture by protecting the Property from development pressure; (b) the conservation and habitat values of the Property as foraging and/or nesting habitat for Swainson's hawks and for other wildlife including the processes which sustain that habitat; and (c) the open space character of the Property which are important public benefits and are consistent with the availability of the Property for wildlife, habitat and agriculture.

If any question exists regarding whether historic or new practices or activities are permitted or would have an adverse impact on any of the multiple natural resource conservation purposes protected herein, Grantor shall notify the City pursuant to Paragraph 12 of the Easement and obtain the City's approval prior to engaging in such practices or activities.

In the event that the City determines that any practice or 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, and if Grantor disagrees with such decision, the matter shall be submitted to the California Department of Fish and Game for determination, and such determination shall be binding upon the Grantor and the City.

[Remainder of page intentionally left blank.]

EXHIBIT D

(Paragraph 5)

PROHIBITED USES OF THE PROPERTY

The following are set forth both to list specific prohibited activities, and to provide guidance in determining whether other activities are not consistent with the multiple natural resource conservation purposes of this Easement:

1. No Subdivision. The legal or de facto division, subdivision, or partitioning of the Property.
2. No Non-Agricultural Commercial Uses. The establishment of any commercial or industrial uses other than the continuation of agricultural, except those commercial practices allowed under Paragraph 6 of Exhibit C. Examples of prohibited commercial or industrial uses include, but are not limited to the establishment or maintenance of any commercial feedlots, which are defined as any open or enclosed area where domestic livestock owned by other than Grantor are grouped together for intensive feeding purposes.
3. No Use or Transfer of Development Rights. Except as expressly permitted by terms of Exhibit C of the Easement, the exercise of any development rights associated with the Property, including, without limitation, the construction or placement of any residential or other buildings, camping accommodations, boat ramps, bridges, mobile homes, house trailers, permanent tent facilities, Quonset huts or similar structures, underground tanks, or billboards, signs, or other advertising, and/or other structures or improvements, street lights, utility structures or lines, sewer systems or lines, except as specifically permitted herein.  
  
Except as expressly permitted by terms of Exhibit C of the Easement, the exercise of all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property, provided, however, that with prior written permission of the City, this subparagraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.
4. Natural Resource Development. Except soils, sands and other material as appropriate for the conduct of the agricultural and other activities permitted herein, the exploration for or extraction of minerals, gas, hydrocarbons, soils, sands, gravel or rock or any other material on or below the surface of the Property, except in accordance with and as permitted by the terms, conditions and restrictions contained in Schedule I attached hereto and incorporated herein.
5. No Orchards and Vineyards. The planting and cultivation of commercial orchards and vineyards.
6. No Dumping. The dumping, storage, or other disposal of non-compostable refuse, trash, sewer sludge or unsightly or toxic or Hazardous Materials or agrichemicals, except that fertilizers, pesticides, biocides, and herbicides permitted under Paragraphs 1 and 2 of Exhibit C may be stored on the Property, provided that such storage is in compliance with applicable health, safety and Environmental Laws and regulations.
7. No New Roads. The construction, reconstruction or replacement of any roadways, except as expressly provided herein, without the consent of the City. The City shall review and respond to any request for roadway construction, reconstruction or replacement within thirty (30) days after receipt of such request.
8. No Destruction of Native Trees or Shrubs. The removal, cutting or destruction of native trees or shrubs on the Property, except for disease or insect control or to prevent property damage or personal injury.
9. No Biocides. The use of fertilizers, pesticides, biocides, and herbicides or other agricultural chemicals, except as expressly permitted herein.

10. No Hunting. The use of the property for hunting, trapping, or fishing, except as expressly permitted in accordance with Paragraph 6 of Exhibit C.

11. No Alteration of Natural Water Courses; Degradation of Water Quality. Except with the prior consent of the City, the manipulation or alteration of natural water courses, wetland, streambank, shoreline, or body of water. Activities or uses detrimental to water quality, including but not limited to degradation, pollution of any surface or subsurface waters.

12. No Impairment of Water Rights. Severance, conveyance, or encumbrance of water or water rights appurtenant to the Property, separately from the underlying title to the Property, or other action which diminishes or extinguishes such water rights.

Nothing in this provision shall restrict the right of the Grantor to sell rights to use water, or to use water on the Property, or on lands other than the Property on a temporary basis (maximum one-year increments), provided that such sale or use does not permanently impair the riparian or other water rights appurtenant to the Property.

This Agricultural Easement shall not sever or impair any riparian water rights appurtenant to the Property.

13. Alteration of Grassland Landscape. Deep ripping, leveling or altering the native landscape of any portion of the property which is grassland at the time this instrument is recorded.

14. Inconsistent or Adverse Actions. Any action or practice which is or becomes not consistent with, or which adversely affects any of the multiple natural resource conservation purposes of this Easement, which purposes are to preserve and protect in perpetuity (a) the availability of the Property for agriculture by protecting the Property from development pressure; (b) the conservation and habitat values of the Property as foraging and/or nesting habitat for Swainson's hawks and for other wildlife including the processes which sustain that habitat; and (c) the open space character of the Property which are important public benefits and are consistent with the availability of the Property for wildlife, habitat and agriculture.

[Remainder of page intentionally left blank.]

**Schedule 1**  
**to**  
**Exhibit D**

The following terms and restrictions shall apply to any exploration for or extraction of minerals, hydrocarbons, soils, sands, gravel or rock, or any other material on or below the surface of the Property:

1. Except soils, sands and other material as appropriate for the conduct of the agricultural and habitat conservation activities permitted under the Easement, Grantor shall not enter upon or use, or permit entry or use of, the surface of the Property or any part thereof or the subsurface to a depth of five hundred feet (500') for the exploration for or extraction of minerals, hydrocarbons, soils, sands, gravel or rock or any other material on or below the surface of the Property except as herein specifically provided.

2. Grantor shall have the right to drill from the surface of lands other than the Property, in, into and through that portion of the subsurface of the Property lying below a depth of five hundred feet (500') measured vertically from the surface thereof, for the purposes of exploring for, extracting and removing any and all oil, gas and hydrocarbon substances; provided, however, that no drill site surface location shall be located within one hundred feet (100') of the Property's boundary.

3. Grantor or Grantor's oil and gas lessees shall have the right to use of one (1) drill and well site of not more than one and one-half (1-1/2) acres in size and in reasonably compact shape, for exploration and development of the reserved mineral estate; provided, however that, except for routine operation or maintenance of facilities in place or in the event of an emergency, all use of the surface of the Property by Grantor or Grantor's oil and gas lessees shall occur only during the period commencing May 15 and ending September 30. Upon completion of drilling at any such drillsite, the sump shall be filled, the drilling pad removed, and the surface of the land restored as nearly as reasonably practicable to its natural contours, as directed by the City. In the event a well is completed as capable of commercial production of oil or gas, the well site shall be reduced to a size not to exceed 100 feet by 100 feet and shall be fenced and locked with a gate, all reasonably designed so as to blend into the surrounding landscape. Upon abandonment of a well site, the area so occupied shall be restored as nearly as reasonably practicable to its natural contours, as directed by grantee herein. All pipelines shall be buried at least 48 inches below the surface of the ground, adjacent and parallel to then-existing roads.

4. Grantor shall indemnify, release and hold the City harmless from any and all claims, loss, expense, damage or other liability due to any damage to property or any injury to, or the death of any person arising out of any activities relating to the exploration for or development of the minerals, hydrocarbons, soils, sands, gravel or rock or any other material on or below the surface of the Property.

5. It is expressly acknowledged that if any activity is undertaken in violation of these terms and restrictions, the City shall be entitled to restoration of the lands affected by such activity, and any damages shall include, without limitation, the cost of restoring such lands to the condition that existed prior to the undertaking of such activity.

6. Grantor agrees that Grantor shall not enter into any lease for the purposes of exploration or extraction of minerals, soils, sands, gravel or rock, or any other material on or below the surface of the Property unless such lease includes each and every term and restriction set forth in the Easement and the lessee agrees not to carry out any exploration or development activity except in accordance with such terms and restrictions. Grantor further agrees to deliver in form satisfactory to the City and concurrent with execution and delivery of the Easement, a written agreement to be bound by the terms of this Easement executed by all holders of any existing ownership or rights to explore for or develop the minerals, hydrocarbons, soils, sands, gravel or rock, or any other material on or below the surface of the Property.

7. These terms and restrictions shall run with the land described in and covered by the Easement, and shall inure to the benefit of and be binding upon the heirs, devisee, personal representatives, successors and assigns of the City and the Grantor.

8. Grantor shall not conduct or permit any surface mining on the Property whatsoever.

9. Grantor shall have the right to drill additional wells within the drill and well site only for water and shall be limited to the reasonable use of water so obtained in the exploration for and development of the mineral estate. All such drilling for and use of water shall be performed in accordance with applicable laws and ordinances. Grantor shall not pollute or interfere with the surface or subsurface water in or under the Property. Any waste water resulting from Grantor's activities shall be treated so that its quality is at least equal to that in other wells in the general area or removed from the Property.

10. As soon as Grantor ceases to use any portion of the Property, Grantor shall immediately remove therefrom all foundation and foreign substances placed there in the course of exploration or development activities by Grantor or Grantor's oil and gas lessees, including, but not limited to, residues from drilling muds and any oil used to surface roads, abandon all wells as required by law, and restore such portions of the Property to their original contours, as reasonably specified by the City.

11. The Property shall not be used by Grantor for any activity which is inconsistent with the terms and restrictions of the Easement. Grantor shall give the City written notice pursuant to terms of the Easement at least forty-five (45) days prior to commencement of any operations by Grantor, Grantor's oil and gas lessees or by others on the Property, describing the proposed location and nature of such operations.

12. Grantor shall indemnify and defend the City, its agents, employees and officers (the "City") and hold the City harmless from and against, and waive and release the City from any and all claims, liability, losses, damage, costs, and expenses (including, without limitation, reasonable attorneys' fees) asserted against or suffered by the City resulting from damage to property or injury to or the death of any person arising out of the acts or omissions of Grantor or Grantor's agents, employees, lessees, successors or assigns with respect to the exercise of any rights reserved by Grantor in the Easement or any other use of the Property.

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

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

[Remainder of page intentionally left blank.]

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

The following underground tanks exist on the Property:

**NONE**

RECORDING REQUESTED BY:  
Fidelity National Title

When Recorded Mail Document To:

City of Elk Grove  
8380 Laguna Palms Way  
Elk Grove, CA 95758

Escrow No. 5001623  
Title Order No. 5001623

Certified to be a TRUE copy of  
document recorded 2/14/06  
INSTRUMENT No. \_\_\_\_\_  
Book 060214 PAGE 2157  
SACRAMENTO COUNTY RECORDS  
Fidelity National Title By: BA

NO FEE DOCUMENT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CONSENT TO EASEMENT**

Escrow Number: 5001623  
Project Name: Conservation easement  
APN: 134-0130-001  
Owner: Julius Carl and Doris Carl Revocable Trust

WHEREAS, Jeff Jacobsen and Kermit Jacobsen, the Lessee named in or duly substituted under that certain unrecorded Lease Agreement in the County of Sacramento, State of California; and

WHEREAS, there has been granted to the City of Elk Grove a political subdivision of the State of California, across the premises described in said Lease Agreement an easement/right of way for:

SEE EXHIBIT "A" ATTACHED HEREWITH FOR LEGAL DESCRIPTION

WHEREAS, Jeff Jacobsen and Kermit Jacobsen, Lessee agrees to subordinate its interest in the premises described therein to the above grant of easement.

NOW THEREFORE, the undersigned, as Lessee, hereby consents to the execution of the grant of said easement and agrees that any sales made under the provisions of said Lease Agreement shall be subject thereto.

EXECUTED this 21 day of December, 2005

BY: Jeff Jacobsen  
Jeff Jacobsen

BY: Kermit Jacobsen  
Kermit Jacobsen

STATE OF CALIFORNIA

COUNTY OF Sacramento

ON December 21, 2005

Jennifer Jacobsen

before me,

personally appeared

Kermit Jacobsen and Jeff Jacobsen

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he, she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature

Jennifer Jacobsen

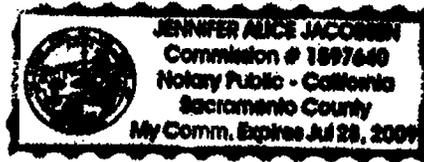


EXHIBIT "A"  
LEGAL DESCRIPTION

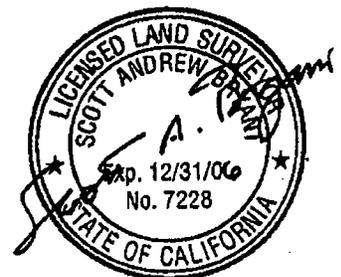
All that real property being a portion of Lot 6 of the Lower Daylor Estate, lying in portions of Township 6 & 7 North, Range 6 East, M.D.B.&M., Sacramento County, State of California, said property being further described as follows:

**COMMENCING** at the most westerly corner of Parcel "B" as said parcel is shown on that certain Parcel Map filed in Book 31 of Parcel Maps at Page 24, Sacramento County Records, said corner also being the most northerly corner of Parcel 3 of that certain Settlement of Trust recorded as Document No. 199912061230, Official Records of Sacramento County; thence along the northeasterly line of said Parcel 3 South 49°13'34" East 4,385.36 feet to the POINT OF BEGINNING; thence continuing along last said line the following two (2) courses; 1) South 49°14'34" East 363.84 feet; and 2) South 48°49'34" East 4,977.82 feet to the easterly top edge of a levee road; thence along said easterly edge the following ten (10) courses; 1) South 16°33'19" West 52.59 feet; 2) South 13°31'12" West 200.23 feet; 3) South 12°34'19" West 189.20 feet to the southwesterly line of Parcel 3 of said Settlement of Trust; 4) continuing South 12°34'19" West 7.30 feet; 5) South 26°04'33" West 200.96 feet; 6) South 25°54'17" West 203.16 feet; 7) South 28°11'00" West 39.02 feet to the southwesterly line of Parcel 2 of said Settlement of Trust; 8) continuing South 28°11'00" West 155.66 feet; 9) South 34°09'52" West 195.69 feet; and 10) South 41°29'49" West 95.16 feet to the southwesterly line of Parcel 1 of said Settlement of Trust; thence along last said line North 49°21'45" West 4,925.54 feet; thence leaving last said line North 22°39'14" East 239.13 feet; thence North 34°43'16" East 169.55 feet; thence North 27°25'55" East 44.47 feet to the southwesterly line of Parcel 2 of said Settlement of Trust; thence continuing North 27°25'55" East 164.92 feet; thence North 06°49'20" East 218.77 feet; thence North 03°13'27" East 117.31 feet to the southwesterly line of Parcel 3 of said Settlement of Trust; thence continuing North 03°13'27" East 149.61 feet; thence North 23°42'27" West 106.33 feet; thence North 06°15'55" East 149.89 feet; thence North 08°51'28" West 183.75 feet; thence North 10°28'21" West 54.46 feet to the point of beginning, containing 6,543,313 square feet (150.214 acres) more or less.

The basis of bearings for the above description is the centerline of Elk Grove Boulevard as shown on that certain Record of Survey filed in Book 3 of Surveys at Page 151, S.C. R. Said centerline being taken as North 89°43' East, as determined between found monuments.

The above described land is shown on Exhibit "B" attached hereto and made a part hereof.

End of Description



## **APPENDIX B—DOCUMENTATION PHOTOS**



APPENDIX B: DOCUMENTATION PHOTOS

**P1-NW:** Small field near NW end of easement. Deer Creek vegetation in background.



**P1-W:** View of the small field within the property. Deer Creek riparian vegetation is in the background. Photo taken from the northern end of the levee.



**P1-S:** Levee road near NW end of the property. Many oak trees and elderberry shrubs along road.



**P2-SE(1):** Border of the property near the NW end of the easement. Large oak trees are located along the border.



**EASEMENT DOCUMENTATION REPORT**

**P2-SE(2):** Border of the property near the NW end of the easement. Large oak tree in foreground.



**P3-NW:** View of large oak tree and dirt road along the northern edge of the property.



**P3-W:** View of large field with pipes in the foreground and a row of large oak trees located along the property's southern edge in the background.



**P3-S:** View of the main large field taken from the SE end of the property with the Cosumnes River levee in the background.



**P4-NW:** Row of large oak trees lining the SW edge of the easement.



**P4-N:** View of the main large field. The Cosumnes River levee road is on the right.



**P5-SE:** View of oak trees on the NW border of the property, taken from the northwestern levee road along Deer Creek.



**P5-NE:** View of northwestern levee road along Deer Creek near the NW end of the property.



**EASEMENT DOCUMENTATION REPORT**

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**P5-NW:** View of riparian vegetation next to the northwestern levee road. Small field is in the background.



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



APPENDIX C: PHOTO POINT COORDINATES AND LOCALITY NOTES

Photo Point	UTM – E(m)	UTM – N(m)	Description
P1	647579.18	4251498.77	At NW end of the property, taken from the levee road adjacent to Deer Creek.
P2	647605.22	4251471.14	At NW end of the property near the NW corner of the large field within the property.
P3	648662.62	4250757.59	Near the SE end of the property, (approximately 200 feet to the north) on the outside of the property boundary adjacent to the Cosumnes River.
P4	648517.37	4250384.36	At the SE end of the property, adjacent to the row of oak trees along the property's southern edge boundary.
P5	647463.35	4251963.31	At the NW end of the property, adjacent to the row of oak trees along the property's southern edge boundary, taken from the Deer Creek levee road.