

RECORDING REQUESTED BY:

MAIL TO:
Department of Water Resources
Division of Land and Right of Way
Real Estate Branch
1416 9th Street, Room 425
Sacramento, CA 95814

MAIL TO:
[Easement Grantor]

SAMPLE
Deed of Conservation Easement
and Development Rights

THIS DEED OF CONSERVATION EASEMENT AND DEVELOPMENT RIGHTS (the “**Easement**”) is made by _____ (“**Grantor**”), in favor of the _____ (“**Grantee**”).

WITNESS THAT:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in _____ County, California, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, the Property possesses floodwater conveyance and storage, wildlife habitat, open space, and recreational values (“**Conservation Values**”) of great importance to Grantee, the people of _____ County and the people of the State of California; and

WHEREAS, the Grantor desires to convey to Grantee this Deed of Conservation Easement and Development Rights; and

WHEREAS, Grantor intends, as owner of the Property, to convey the right to assure that the Conservation Values of the property are preserved and protected in perpetuity, subject to the terms of this Deed; and

WHEREAS, Grantee has jurisdiction over the conservation, protection and management of the Conservation Values and is authorized to hold easements for these purposes pursuant to Civil Code Sections 815 *et. seq.* and other provisions of California law;

NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California including, inter-alia, Section 815-816 of the California Civil Code, Grantor does hereby deed and convey to Grantee this Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth. Grantor also conveys to Grantee certain development rights associated with the Property as hereinafter described.

- 1. Purpose.** The primary purpose of this Easement is to enable the Property to remain in conservation use for floodwater conveyance, flood management, floodwater storage, and wildlife habitat and/or agriculture. Secondary uses include open space and recreation. This Easement will preserve and protect in perpetuity these Conservation Values, the Property's character, use, and utility, and prevent any use of the Property that would significantly impair or interfere with its conservation values, character, use or utility.

2. **Affirmative Rights and Interests Conveyed.** To accomplish the purpose of this Easement, the following rights and interests are conveyed to Grantee by this Easement:
- a. To identify, to preserve and to protect in perpetuity the Conservation Values, character, use and utility, including floodplain storage capacity, soil and water quality, riparian corridor, and upland and wetland communities. (The Conservation Values, character, use and utility of the property are hereinafter referred to collectively as the “**Protected Values.**”)
 - b. To enter upon, inspect, observe, and study the Property for the purposes of (1) identifying the current uses and practices thereon and the baseline condition thereof, (2) monitoring the uses and practices regarding the Property to determine whether they are consistent with this Easement, and (3) assuring restoration, adaptive management, and maintenance activities do not compromise the Protected Values. Restoration activities shall include, but not be limited to, the restoration of riparian habitat and floodplain conditions on the north side of _____ Creek a distance of _____ feet from centerline of the stream. Such entry shall be permitted upon prior notice to Grantor, and shall be made in a manner that will not unreasonably interfere with Grantor’s use and enjoyment of the property.
 - c. To prevent any activity or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use. However, it is the intention of this Easement not to limit Grantor’s discretion to employ their choices of fuel load reduction, Conservation Value uses and management practices so long as those uses and practices are reasonably consistent with the purpose of this Easement. Reasonably consistent fuel load reduction means not more than 20% any given year, subject to all fire protection requirements of the responsible fire protection agencies.
 - d. To erect and maintain a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the Property is protected by Grantee. The wording of the information shall be determined by Grantee. Grantee shall be responsible for the costs of erecting and maintaining such sign or marker.
 - e. The development rights referred to in Paragraph 11 below.
3. **Uses and Practices.** Grantee and Grantor intend that this Easement shall remain as conservation land. Examples of uses and practices which are consistent with the purpose of this Easement, and which are hereby expressly permitted, are set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, and include, without limitation, those uses and practices which are employed in connection with the preservation, enhancement, restoration and/or creation of Conservation Values. Examples of uses and practices which are inconsistent with the purpose of this Easement, and which are hereby expressly prohibited, are set forth in **Exhibit C** attached hereto and incorporated herein by this reference. The uses and practices set forth in Exhibits B and C are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities, and to provide guidance in determining the consistency of other activities with the purpose of this Easement.
4. **Baseline Data.** In order to establish the present condition of the Protected Values, Grantee has examined the Property and prepared a report (**Exhibit D “Baseline Documentation Report”**) containing an inventory of the Property’s relevant features and condition, its improvements and its natural resources (the “**Baseline Data**”). A copy of the Baseline Documentation Report has been provided to Grantor, and another shall be placed and remain on file with Grantee. The Baseline Document Report has been signed by Grantor and Grantee, and thus acknowledged accurately to represent the condition of the Property at the date of the conveyance of this Easement. The parties intend that the Baseline Data shall be used by Grantee to monitor Grantor’s future uses of the Property and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Grantor and Grantee recognize that changes in economic conditions, in conservation technologies, in

accepted farm and ranch management practices, and in the situation of Grantor may result in an evolution of conservation uses of the Property, provided such uses are consistent with this Easement.

- 5. Grantor's Duties.** Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property. If Grantor undertakes all reasonable actions to prevent the unlawful entry and trespass by persons, Grantee will not hold Grantor or its successors in interest liable for degradation or harm to the Conservation Values of the Property stemming from trespass behavior. In addition, Grantor shall undertake all reasonably necessary actions to perfect Grantee's rights under Paragraph 2 of this Easement.
 - 6. Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved: (i) all right, title and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the Property, provided that such water rights are used on the Property in a manner consistent with the purpose of this Easement; (ii) all right, title and interest in subsurface oil, gas and minerals; provided that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, and shall not damage, impair or endanger the protected values of the Property; (iii) recreational activities including but not limited to hunting, fishing, and dog training in accordance with established game laws; (iv) the ability to restore, create, improve, and maintain riparian, upland, and wetland habitat in accordance with state and federal regulations; (v) the right to develop and sell mitigation credits in accordance with state and federal regulations, provided that the funds used to develop such credits through restoration or creation do not come from funds obtained through state or federal grant programs; and (vi) the right to utilize the site for grazing purposes to the extent grazing can occur without compromising the Conservation Values.
 - 7. Grantee's Remedies.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to 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 thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue to diligently cure such violation until finally cured, Grantee may bring an action at law or in equity of court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Protected Values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Protected Value of the Property, Grantee may pursue remedies under this paragraph without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 7.1 Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by

Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

7.2 Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

7.3 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency condition to prevent, abate or mitigate significant injury to the Property resulting from such causes.

8. Costs and Taxes. 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. Grantor shall pay any and all taxes, assessments, fees and charges levied by competent authority on the Property or on this Easement. It is intended that this Easement constitute an enforceable restriction within the meaning or Article XIII Section 8 of the California Constitution and that this Easement qualify as an enforceable action under the provisions of California Revenue and Taxation Code Section 402.1.

9. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its directors, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "**Grantee Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes for action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Grantee Indemnified Parties; (2) the obligations specified in Paragraph 7.

10. Access. The Property is open to the public for recreational and educational uses at the discretion of the Grantor. The Grantee shall hold harmless, indemnify, and defend Grantor and Grantee, and the directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively, "**Grantor/Grantee Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, except to the extent of the adjudicated proportionate active fault of any of the Grantor/Grantee Indemnified Parties.

11. Development Rights. The parties acknowledge that under currently applicable zoning regulation of the County the property is so classified that upon receipt of required government approvals the Property could have a density of one single family residential unit (the "**Development Rights**"). The Grantor acknowledges that Grantee will acquire and retire all Development Rights associated with this property. Neither Grantor nor Grantee shall utilize the retired Development Right associated with this property. Neither Grantor nor Grantee shall receive or use the benefit from any increase in allowable Development Rights associated with the Property resulting from future zoning changes.

12. Amendment. This Easement may be amended by Grantor and Grantee by mutual written agreement. Any such amendment shall be consistent with the purposes of this Easement, shall not authorize

additional dwelling units and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the County of _____, State of California.

13. Assignment of Grantee's Interest. Grantee may assign its interest in this Easement only to a "qualified organization," within the meaning of section 170(h) of the Internal Revenue Code of 1954, as amended, or any successor provision, and which is authorized to acquire and hold conservation easements under California law, or other public entity, upon obtaining the prior written consent of Grantor. Any assignment without such consents shall be void and of no effect. Such consents shall not be unreasonably withheld by Grantor. If Grantee assigns its interest in this Easement, Grantee shall require that the conservation purposes that this Easement is intended to advance be carried out.

14. Executory Limitation. In the event that Grantee assigns its interest in this Easement pursuant to Section 14 above, and if Assignee shall cease to exist, or to be a qualified organization under section 170(h) of the Internal Revenue Code of 1954, as amended, or to be authorized to acquire and hold conservation easements under California law, then Assignee's rights and obligations under this Easement shall become immediately vested in the County.

15. General Provisions.

Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

Liberal Construction. Any general rule of construction to be contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the California Conservation Easement Act of 1979, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

Joint Obligation. The obligations imposed by this Easement upon Grantors shall be joint and several.

Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

Future Conveyance. Grantors agree that reference to this Deed will be made in any subsequent deed or other legal instrument by means of which they convey an interest in the Property (including but not limited to a leasehold interest). 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.

Not Governmental Approval. Neither provision of this Easement nor the approval by the County of a grant for the acquisition of this Easement shall constitute a governmental approval of any improvements, construction or other activities which may be permitted under this Easement.

IN WITNESS WHEREOF, Grantors have executed this Deed of Easement this __ day of _____, 2005.

Grantor

Name
Title

[Notarization of Grantor's signatures]

Exhibit A: Legal Description

Exhibit B: Permitted Uses and Practices

Exhibit C: Prohibited Uses and Practices

Exhibit D: Baseline Data Report

Exhibit A

Property Legal Description

THAT CERTAIN REAL PROPERTY SITUATED IN THE STATE OF CALIFORNIA,
COUNTY OF _____, UNINCORPORATED AREA DESCRIBED AS FOLLOWS:
THE NORTHEAST QUARTER OF SECTION _____, TOWNSHIP ___ NORTH, RANGE
___ EAST, MDB&M., LYING NORTH OF THE CENTER OF _____ CREEK.

APN ____ - ____ - ____ - ____

Exhibit B**Permitted Uses and Practices**

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are expressly permitted under this Easement, and they are not to be precluded, prevented, or limited by this Easement.

1. To engage in any and all Conservation uses of the Property in accordance with sound, generally accepted Conservation practices. For the purposes of this Easement "Conservation uses" shall be defined as general maintenance of property which may include understory thinning, tree thinning, and clearing of dead and down wood; however, that such Conservation uses shall not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters. The purpose of such practices shall be to maintain ecosystem health.
2. To maintain and repair existing fences, roads, ditches, and other improvements on the Property. Additional improvements accessory to the agricultural use of the Property shall be permitted, provided that Grantor obtains the express written approval of Grantee for the construction of any such additional improvements, including the size, function, capacity and location, which consent should not be unreasonably withheld. Grantor shall provide Grantee written notice of Grantor's intention to undertake such construction, together with information on its size, function, capacity and location, not less than forty-five (45) days prior to the commencement thereof. Additional fencing deemed by Grantor to be reasonably necessary to Conservation activities may be constructed without Grantee's consent. In the event of destruction, deterioration or obsolescence of any improvements, fences, corrals, roads or ditches, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this paragraph, Grantor may replace the same with improvements or structures of similar size, function, capacity and location.
3. To control predatory and problem animals by the use of selective control techniques in accordance with established game laws.
4. To utilize the Property for recreational or educational purposes including but not limited to grazing, hunting, fishing, and dog training.
6. To restore, create, improve, and maintain riparian, upland, and wetland habitat in accordance with state and federal regulations.
7. To develop and sell mitigation credits in accordance with state and federal regulations, provided that the funds used to develop such credits through restoration or creation do not come from funds obtained through state or federal grant programs.
8. To devote the Property to the preservation, enhancement, restoration and/or creation of the Protected Values.
9. To breed, raise, release, and harvest (hunting) pheasants, other fowl and fish and game in accordance with established game laws.
10. To retain grazing rights for agricultural production as a tool for habitat management, for fuel load management to reduce fire threat, and for economic gain to the extent compatible with protecting the Conservation Values.
11. All allowable uses defined by _____ County Zoning Ordinance under FBX-80 acre minimum zoning, except as otherwise specified in this document (e.g. limitations on additional dwelling unit construction).
12. To provide outdoor educational opportunities for students in grades K-12 in _____ County.

Exhibit C

Prohibited Uses and Practices

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Easement and are expressly prohibited upon or within the Property:

1. The impairment of the Protected Values, except as otherwise provided herein.
2. The establishment of commercial or industrial uses or the construction, commercial timber harvesting, placing, or erection of any signs (except as otherwise permitted as a matter of right by the Zoning Ordinance) or billboards; except as noted in Paragraph 2d of the Deed of Conservation Easement.
3. The construction, reconstruction, or replacement of any road or structure except as provided in the development plan approved by the applicable regulatory agencies and the Grantee.
4. The division, subdivision, or de facto subdivision of the Property.
5. The use of motorized vehicles, except by Grantor or others under Grantor's control for the maintenance and implementation of any conservation/restoration activities and for purposes of the operation of a commercial hunting club. Any use of motorized vehicles off of roadways is prohibited except when necessary for conservation/restoration activities and for the propagation and releasing of fowl.
6. The commercial harvesting of timber; provided, however, that Grantor shall have the right (i) to cut trees as necessary or desirable for Conservation purposes; and (ii) to develop and implement a long-range plan for the growing and removal of plants and trees in a manner that is consistent with the purpose of this Easement, upon the express written consent of Grantee, which shall not be withheld unreasonably.
7. The dumping or other disposal of wastes, refuse or debris on the Property, except for organic material generated by permitted conservation uses on the Property, provided that any such dumping or disposal of organic material shall be in accordance with applicable law and generally accepted conservation management practices.
8. Ranching, Conservation or other uses otherwise permitted under this Easement, which result in significant degradation of topsoil or water quality, such as overgrazing.
9. All restrictions that apply to F (Farm)-B-X-80 acre minimum zoning as described in _____ County Zoning Ordinance.

Exhibit D

Baseline Documentation

General Characteristics

The property containing the conservation easement as described in Exhibit A is located _____ of the City of _____ in western _____ County. The property is approximately ____ acres in size and contains aquatic, riparian, upland, and wetland vegetation communities. The current dominant characteristic of the landscape is a fallow rice field. The _____ Creek corridor presently contains, on the north side of the creek, a very narrow band of riparian vegetation typical to a valley foothill riparian habitat. Plant species present include Valley oak, Fremont’s cottonwood, Gooding’s black willow, yellow star thistle, remnant rice crop, water primrose, cattail, Himalayan blackberry, and wild radish.

Property Condition

The following information is intended to specifically describe key elements of the site's characteristics for future monitoring activities. The baseline time frame shall be _____ 2005. Baseline conditions photographs have been included here as Attachment 1.

1. The property was previously utilized for rice production. No rice production exists today on the property at the time of the establishment of the baseline condition.
2. Access to the property is from _____ Road. No paved roads are present on the property.
3. Roads on the property are limited to dirt levee roads adjacent to the west, south and east property lines.
4. The property contains no structures.
5. The property contains approximately 0.5 miles of _____ Creek. The riparian corridor is, on average, ____ feet in width from centerline of the stream to canopy edge.
6. No water diversion structures are present from _____ Creek.
7. The property contains perimeter fencing along the north, east and west property lines.
8. The site was not surveyed as a part of this baseline determination.
9. The property’s soils appear stable and undisturbed.

Signed:

Grantor:

_____ Date: _____
 Name
 Title

Grantee:

_____ Date: _____
 Name
 Title