

RECORDING REQUESTED BY

Westervelt Ecological Services
600 North Market Blvd. Suite 3
Sacramento, CA 95834

WHEN RECORDED MAIL TO:

Wildlife Heritage Foundation
563 Second Street, Suite 120
Lincoln, CA 95648

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CONSERVATION EASEMENT DEED

Cosumnes Floodplain Mitigation Bank

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the 6 day of October, 2009, by Westervelt Ecological Services ("Grantor"), in favor of Wildlife Heritage Foundation ("Grantee"), with reference to the following facts:

RECITALS

Grantor is the sole owner in fee simple of certain real property containing approximately 493 acres, located near the City of Galt, County of Sacramento, State of California, and designated Assessor's Parcel Numbers 146-0140-003, 146-0140-004 ("Property"). The Property is legally described in **Exhibit A** and depicted in **Exhibit B** attached to this Conservation Easement and incorporated in it by this reference. This Conservation Easement Deed is to be recorded on a 471.71-acre portion of the Property ("Bank Property"), as depicted on **Exhibit B** and legally described in **Exhibit C** to the Conservation Easement.

A. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide restored, created, enhanced and/or preserved jurisdictional waters of the United States. Individually and collectively, these and habitat values comprise the "Conservation Values" of the Bank Property.

B. The California Department of Fish and Game ("CDFG") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFG is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

C. The United States Fish and Wildlife Service (the "USFWS"), an agency within

the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

D. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

E. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

F. This Conservation Easement is granted pursuant to Mitigation Bank Enabling Instrument (the "BEI") by and between Westervelt Ecological Services, and Region 2 CDFG, CDFG Tracking No. 1802-2009-001-02, the Sacramento District of USACE, USACE File No 2007-1147 and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the BEI. CDFG, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the BEI, the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the BEI, the Development Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The BEI, the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

G. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the BEI, the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Conservation Values of the Bank Property. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the BEI, the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the Bank Property.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, BEI, the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.

(c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Bank Property shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement except for activities related to habitat management as specifically provided in the Management Plan.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways except for that required for Bank management, maintenance, and monitoring purposes and for emergency, law enforcement, and fire vehicle access as specifically provided in the Management Plan.

(c) Agricultural activity of any kind except grazing for vegetation management as specifically provided in the Management Plan.

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind except to erect "No Trespassing" type signs as specifically provided in the Management Plan.

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease except for activities specifically provided in the Management Plan.

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except for as specifically provided in the Development Plan.

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

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 Bank Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the BEI, the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Bank Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Bank Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in

addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

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

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the BEI, the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice

of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the BEI, the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs 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 Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use

on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) 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 Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party.

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) 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 Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, including wetland functions and values, or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the BEI, the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

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| To Grantor: | Westervelt Ecological Services 600 North Market Blvd. Suite 3 Sacramento, CA 95834 Attention: Greg Sutter |
| To Grantee: | Wildlife Heritage Foundation 563 Second Street, Suite 120 Lincoln, CA 95648 Attn: Executive Director |
| To CDFG: | Department of Fish and Game Region 2 Office 1701 Nimbus Road Rancho Cordova, CA 95670 Attn: Regional Manager |
| With a copy to: | Department of Fish and Game Office of General Counsel 1416 Ninth Street, 12th Floor Sacramento, CA 95814-2090 Attn: General Counsel |
| To USACE: | U.S. Army Corps of Engineers, San Francisco District 1455 Market Street San Francisco, CA 94103-1398 Attn: Chief, Regulatory Branch |
| To USEPA: | U.S. Environmental Protection Agency, Region IX 75 Hawthorne Street San Francisco, CA 94105 Attn: Director, Water Division |

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* and Government Code Section 65965. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the BEI, the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

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

(g) Termination of Rights and Obligations.

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

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party.

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release

and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of

human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the BEI there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement.

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Bank Property. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the CDFG, USACE, and USEPA (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the BEI and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR:

Westervelt Ecological Services

BY: Greg De Young

NAME: Greg De Young

TITLE: Vice President

DATE: 9/29/09**GRANTEE**

Approved as to form:

BY: Patrick SheaNAME: Patrick Shea

TITLE: Executive Director

DATE: 9/29/09

Approved as to form:

General Counsel
State of California
Department of Fish and GameBY: Thomas GibsonNAME: Thomas GibsonTITLE: Deputy General Counsel

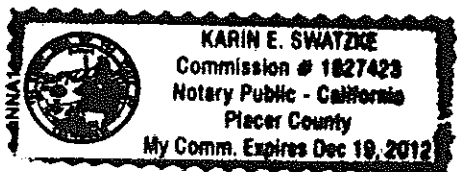
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Placer

On 9-29-2009 before me, Karin E Swatzke, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Greg De Young and Patrick Shea
Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Conservation Easement Deed

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

EXHIBIT A
LEGAL DESCRIPTION
FOR THE PURPOSES OF THE ENCUMBRANCE OF A CONSERVATION EASEMENT AND
NOT FOR TRANSFER OF REAL PROPERTY

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

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 5 EAST, M.D.B.&M., AND THE CENTER LINE OF GRIZZLY SLOUGH; THENCE WEST ALONG THE EAST AND WEST MIDSECTION LINE OF SECTIONS 26 AND 27, SAID TOWNSHIP AND RANGE; TO THE WEST LINE OF SAID SECTION 27; THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 27 TO THE EAST BANK OF THE MOKELUMNE RIVER; THENCE SOUTHERLY ALONG THE EASTERLY BANK OF SAID MOKELUMNE RIVER TO THE NORTH END OF A CUT-OFF IN SAID RIVER NEAR THE POINT WHERE THE SOUTH LINE OF SAID SECTION 27 CROSSES SAID RIVER, SAID CUT-OFF HAVING BEEN CONSTRUCTED BY THE STATE OF CALIFORNIA IN THE YEAR 1905; THENCE SOUTHERLY ALONG THE EASTERLY BANK OF SAID CUT-OFF TO ITS SOUTHERLY END AND THE EASTERLY BANK OF THE MOKELUMNE RIVER; THENCE SOUTHERLY ALONG THE EASTERLY BANK OF THE MOKELUMNE RIVER TO THE EAST AND WEST MIDSECTION LINE OF SECTION 34, SAID TOWNSHIP AND RANGE; THENCE EAST ALONG SAID LINE 19 CHAINS, MORE OR LESS, TO THE WEST LINE OF THE GALT-NEW HOPE ROAD; THENCE NORTH 1 CHAIN TO THE NORTH LINE OF SAID ROAD; THENCE EAST ALONG THE NORTH LINE OF SAID ROAD TO THE CENTER LINE OF GRIZZLY SLOUGH; THENCE NORTHEASTERLY ALONG THE CENTER LINE OF SAID GRIZZLY SLOUGH TO THE POINT OF BEGINNING.

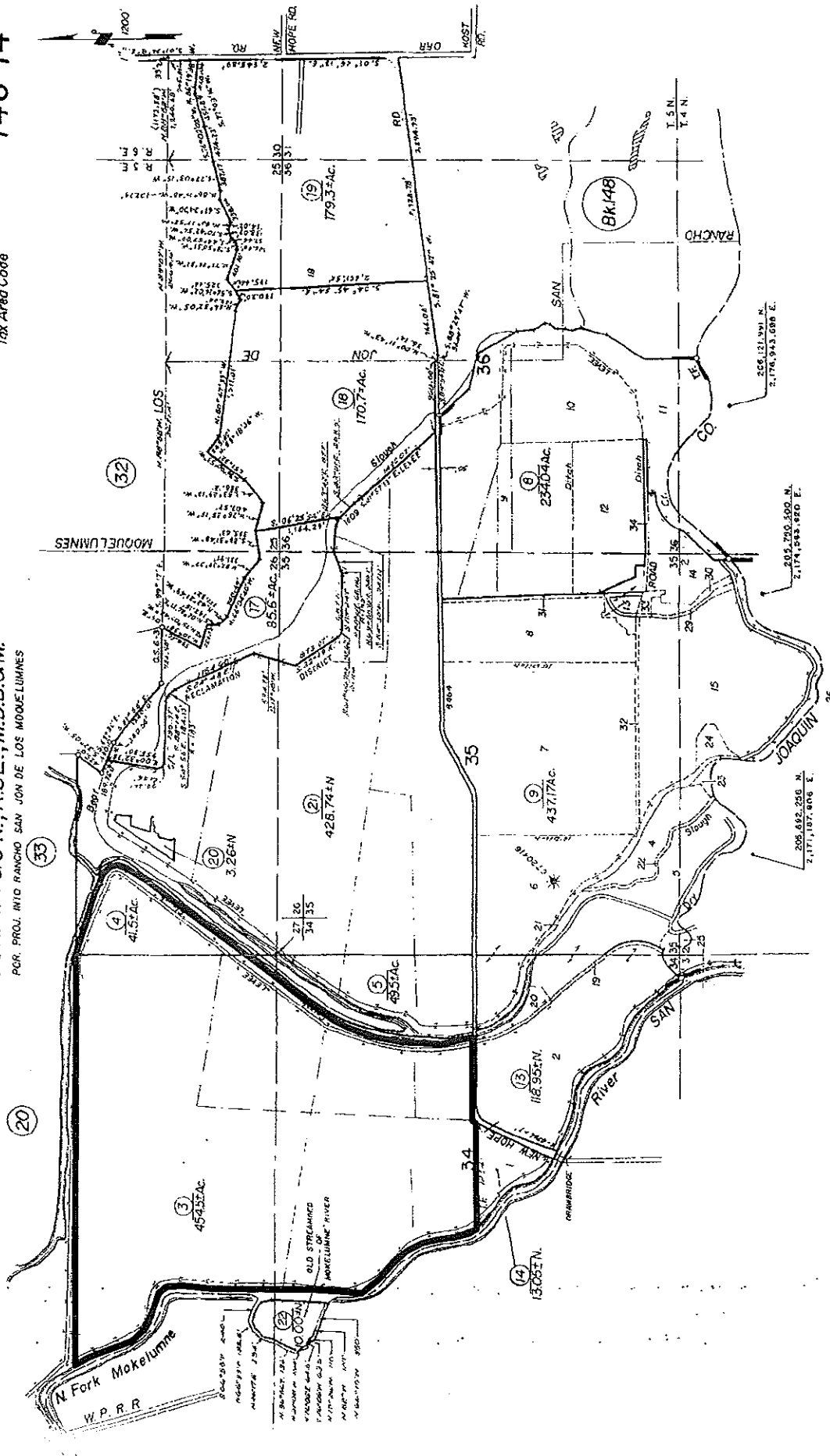
EXCEPTING ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY LYING WITHIN THE BED OF THE NORTH FORK MOKELUMNE AND GRIZZLY SLOUGH BELOW THE LINE OF NATURAL ORDINARY HIGH TIDE AND HIGHWATER MARK; AND ALSO EXCEPTING ANY ARTIFICIAL ACCRETIONS TO SAID LAND WATERWARD OF SAID LINE OF NATURAL ORDINARY HIGH TIDE, AND OR HIGHWATER.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS WHICH MAY HEREAFTER BE LAWFULLY PRODUCED ON SAID PROPERTY, AS RESERVED IN THE DEED FROM CAPITAL COMPANY, A CORPORATION, TO MANUEL H. SARDINHA, ET UX, RECORDED JANUARY 18, 1944, IN BOOK 1046 OF OFFICIAL RECORDS, PAGE 187.

POR. T.485 N., R.5E., M.D.B.&M.
 FOR. PROJ. INTO RANCHO SAN JON DE LOS MOQUELUMNES

Tax Area Code

146-14



Assess. Unrec. Map Thornton Farms
 Unrec. Survey of Rancho San Jon De Los Moquelumnes

204,452.338 N.
 2,175,555.193 E.

205,682.256 N.
 2,171,107.806 E.

205,750.500 N.
 2,174,583.620 E.

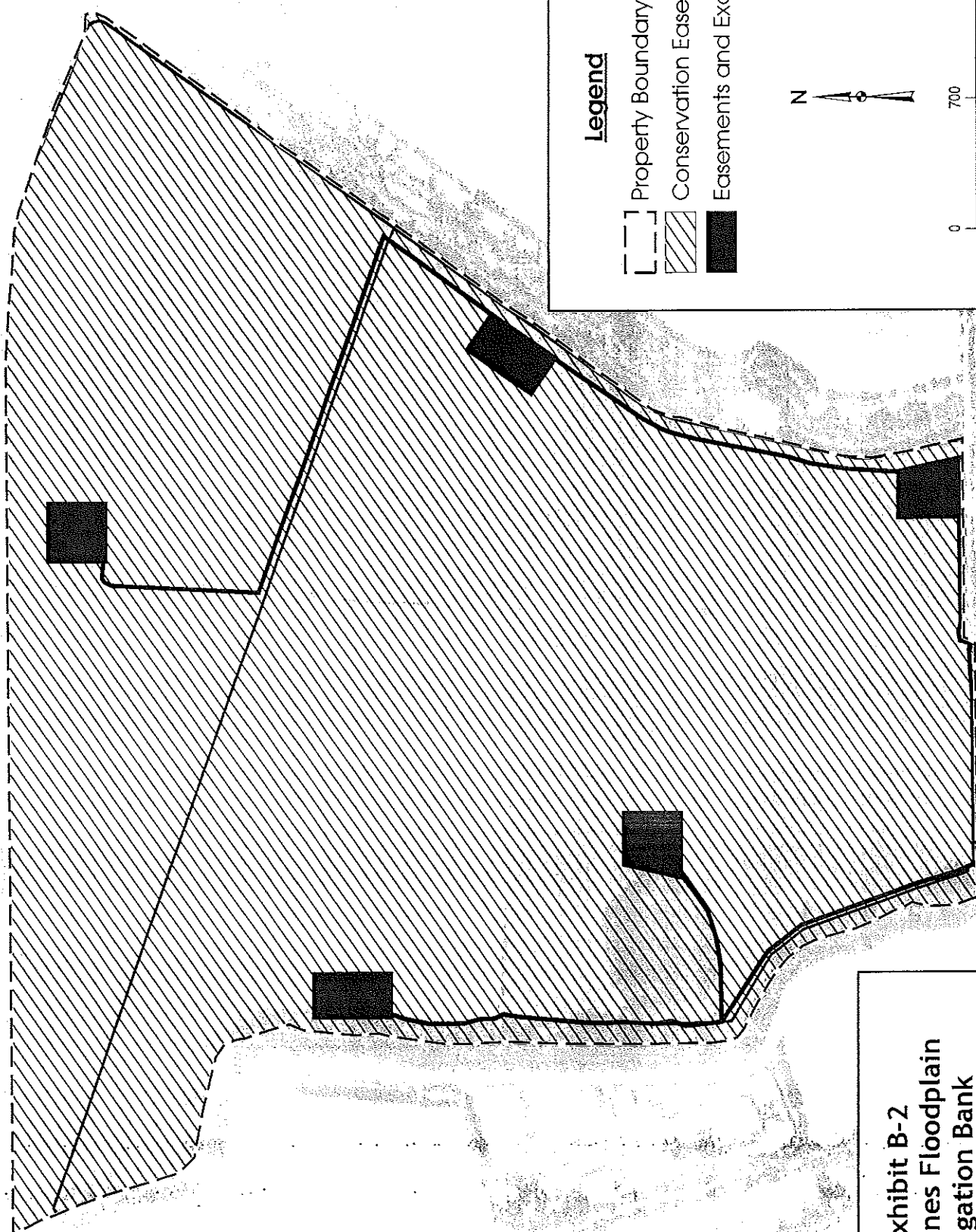
206,121.941 N.
 2,176,943.080 E.

NOTE—Assessor's Block Numbers Shown in Ellipses.
 Assessor's Parcel Numbers Shown in Circles.

Exhibit B-1
 Moquelumnes Floodplain
 Mitigation Bank
 Property Map

Not to Scale

Assessor's Map Bk.146—Pg.14
 County of Sacramento, Calif.
 SEP 19 2006



Legend

- Property Boundary
- Conservation Easement
- Easements and Exclusions

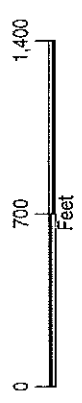
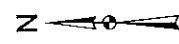


Exhibit B-2
Cosumnes Floodplain
Mitigation Bank
Conservation Easement

EXHIBIT C
LEGAL DESCRIPTION
FOR THE PURPOSES OF THE ENCUMBRANCE OF A CONSERVATION EASEMENT AND
NOT FOR TRANSFER OF REAL PROPERTY

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

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF THE SOUTHWEST ¼ OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 5 EAST, M.D.B.&M., AND THE CENTER LINE OF GRIZZLY SLOUGH; THENCE WEST ALONG THE EAST AND WEST MIDSECTION LINE OF SECTIONS 26 AND 27, SAID TOWNSHIP AND RANGE; TO THE WEST LINE OF SAID SECTION 27; THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 27 TO THE EAST BANK OF THE MOKELUMNE RIVER; THENCE SOUTHERLY ALONG THE EASTERLY BANK OF SAID MOKELUMNE RIVER TO THE NORTH END OF A CUT-OFF IN SAID RIVER NEAR THE POINT WHERE THE SOUTH LINE OF SAID SECTION 27 CROSSES SAID RIVER, SAID CUT-OFF HAVING BEEN CONSTRUCTED BY THE STATE OF CALIFORNIA IN THE YEAR 1905; THENCE SOUTHERLY ALONG THE EASTERLY BANK OF SAID CUT-OFF TO ITS SOUTHERLY END AND THE EASTERLY BANK OF THE MOKELUMNE RIVER; THENCE SOUTHERLY ALONG THE EASTERLY BANK OF THE MOKELUMNE RIVER TO THE EAST AND WEST MID-SECTION LINE OF SECTION 34, SAID TOWNSHIP AND RANGE; THENCE EAST ALONG SAID LINE 19 CHAINS, MORE OR LESS, TO THE WEST LINE OF THE GALT-NEW HOPE ROAD; THENCE NORTH 1 CHAIN TO THE NORTH LINE OF SAID ROAD; THENCE EAST ALONG THE NORTH LINE OF SAID ROAD TO THE CENTER LINE OF GRIZZLY SLOUGH; THENCE NORTHEASTERLY ALONG THE CENTER LINE OF SAID GRIZZLY SLOUGH TO THE POINT OF BEGINNING.

EXCEPTING ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY LYING WITHIN THE BED OF THE NORTH FORK MOKELUMNE AND GRIZZLY SLOUGH BELOW THE LINE OF NATURAL ORDINARY HIGH TIDE AND HIGHWATER MARK; AND ALSO EXCEPTING ANY ARTIFICIAL ACCRETIONS TO SAID LAND WATERWARD OF SAID LINE OF NATURAL ORDINARY HIGH TIDE, AND OR HIGHWATER.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS WHICH MAY HEREAFTER BE LAWFULLY PRODUCED ON SAID PROPERTY, AS RESERVED IN THE DEED FROM CAPITAL COMPANY, A CORPORATION, TO MANUEL H. SARDINHA, ET UX, RECORDED JANUARY 18, 1944, IN BOOK 1046 OF OFFICIAL RECORDS, PAGE 187.

ALSO EXCEPTING FOR THE PURPOSES OF THE ENCUMBRANCE OF A CONSERVATION EASEMENT AND NOT FOR TRANSFER OF REAL PROPERTY THE FOLLOWING EASEMENTS:

PG&E GAS PIPELINE EASEMENT – BOOK 1776 PAGES 29, 30, AND 31

PG&E GAS PIPELINE EASEMENT – BOOK 4416 PAGE 444 THRU 449

PG&E QUITCLAIM DEED RECORDED APRIL 28, 2009 IN BOOK 20090428, PAGE 1448 AND AS SHOWN ON EXHIBIT A – THORNTON GAS FIELD GATHERING LINES PREPARED BY ROBERT D. FIELDS LS NO. 5119.

SMUD UTILITY RIGHT OF WAYS – BOOK 2301 PAGE 568
BOOK 4221 PAGES 484 AND 485
BOOK 71-01-06 PAGES 282 AND 283.

MATTERS IN A DOCUMENT, "EASEMENT AGREEMENT (SURFACE AND SUBSURFACE) AND NOTICE OF CONSENT TO USE LAND" RECORDED JUNE 6, 2008 IN BOOK 20080606, PAGE 1043.