

HCPA East Contra Costa County Habitat Conservation Plan Association

HCPA Coordination Group Meeting

Thursday, March 18, 2004
1 p.m. to 3 p.m.

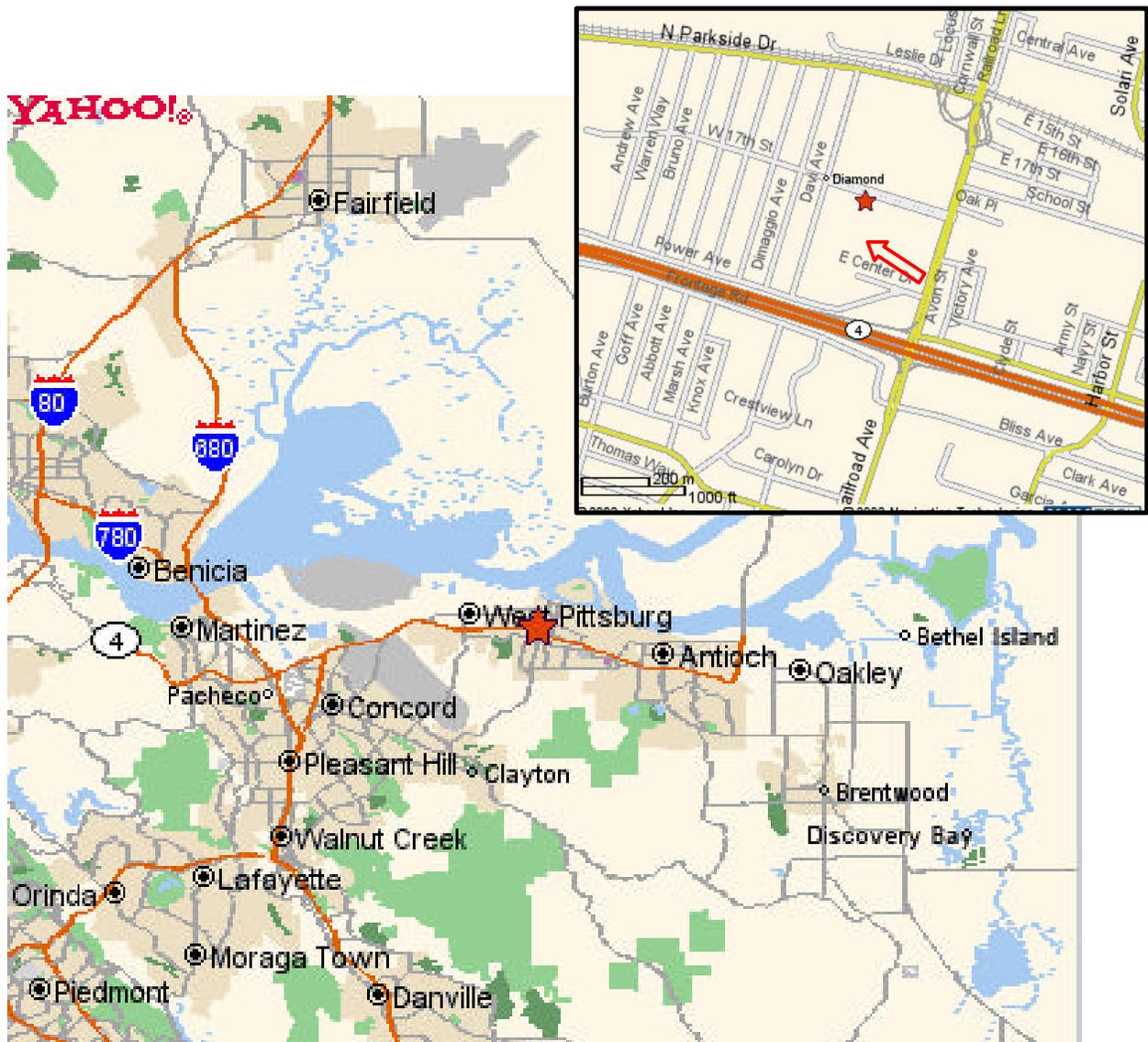
City of Pittsburg Council Chambers
65 Civic Drive in Pittsburg, 3rd Floor
(see map on reverse)

Agenda

- 1:00 Introductions. Review contents of meeting packet.
- 1:05 Review and approve Draft Meeting Record of the January 15, 2004 Coordination Group meeting.
- 1:10 Updates:
- Wetlands permitting
 - Additional comment letters
 - Science Panel Composite Report is available online at www.cocohcp.org
- 1:15 Start discussion of HCP fee structure.
- Define categories of impacts
 - Should fees be tiered or not? Pro's and con's
 - Consider how other planning efforts have addressed this question
- 1:45 Continue discussion of covering rural infrastructure projects and initiate discussion of covering rural residential projects.
- 2:00 Review Stay Ahead / Jump Start revisions (see attached)
- 2:25 Consider conservation easement template from another planning effort (see attached)
- 2:40 Memorialize any understandings reached by the Coordination Group
- 2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):
Thursday, April 15, 1 p.m. to 3 p.m.
Thursday, May 20, 1 p.m. to 3 p.m.
HCPA Executive Governing Committee: Thursday, April 8, 2004, 5:30 pm
- 2:55 Public comment.
- 3:00 Adjourn.

Times are approximate. If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Community Development Department at 925-335-1227. The HCPA will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 48 hours before the meeting.

Map and Directions to Pittsburg City Hall 65 Civic Drive



Directions from I-680, Central County

- 1) Take Hwy 4 East toward Antioch/Stockton
- 2) Follow Hwy East over the hill (Willow Pass)
- 3) Exit Railroad Ave. (the 2nd exit after the hill)
- 4) At the end of the exit ramp, turn left on Railroad Ave.
- 5) Turn left at the second intersection, East Center Drive (signs for various city offices will also point you this way)
- 6) Immediately bear right into the large parking lot next to City Hall
- 7) Meeting is on the 3rd floor

Directions from Antioch and points east

- 1) Take Hwy 4 West toward Martinez/Richmond
- 2) Exit Railroad Ave.
- 3) At the end of the exit ramp, turn right on Railroad Ave.
- 4) Turn left at the next intersection, East Center Drive (signs for various city offices will also point you this way)
- 5) Immediately bear right into the large parking lot next to City Hall
- 6) Meeting is on the 3rd floor

DRAFT MEETING RECORD

East Contra Costa County Habitat Conservation Plan Association (HCPA) Coordination Group Meeting

Thursday, February 18, 2004
1 p.m. to 3 p.m.

City of Pittsburg Council Chambers

1:00 Welcome and Introductions. Meeting attendees introduced themselves. Coordination Group members and staff in attendance were:

Chris Barton, City of Pittsburg	John Kopchik, CCC Community Dev.
Bradley Brownlow, Morrison & Foerster	Sheila Larsen, U.S. Fish & Wildlife Service
Abigail Fateman, CCC Community Dev.	Suzanne Marr, U.S. EPA
Janice Gan, CA Dept of Fish & Game	Cece Sellgren, CCC Public Works
Jim Gwerder, CCC Citizens Land Alliance	Dick Vrmeer, CNPS
Barry Hand, City of Oakley	Mike Vukelich, CC Farm Bureau
Randy Jerome, City of Pittsburg	David Zippin, Jones & Stokes, Inc.

Also in attendance: John Hopkins, Institute for Ecological Health and Cheryl Morgan

1:05 Review and approve Draft Meeting Record of the January 15, 2004 Coordination Group meeting. Cece Sellgren's name was spelled incorrectly in the meeting notes. Sheila Larsen's and Randy Jerome's last names were omitted from the comments recorded in the meeting notes on the Draft plan. Dick Vrmeer's last name was spelled incorrectly in the same section. The meeting record will be modified to reflect these corrections.

1:10 Updates: John Kopchik updated the group.

- **Science Panel meeting report from December 9 is available; composite report summarizing outcomes of all 4 meetings organized by subject is coming soon.** The Science Panel meeting report from December 9th is available on the website. The composite report is not yet available.
- **Wetlands permitting.** We are moving forward with the Wetlands Permitting Process. There is a meeting with staff of the HCPA, Jones & Stokes, U.S. EPA, and the U.S. Army Corps of Engineers (S.F and Sacramento Offices) February 27.

1:20 Discuss written comments received from Coordination Group members on Preliminary Working Draft HCP/NCCP (see comments received attached). Additional comments were submitted before the meeting from the City of Pittsburg and the U.S. EPA. Cece Sellgren also submitted comments and complete list of CCC Public Works planned projects and regular activities that she would like to see covered by the HCP. People who submitted comments had the opportunity to discuss key points with the coordination.

1:45 Overview of potential evolution of the Conservation Strategy and land acquisition priorities, including ideas for enabling the HCP to coordinate its actions with those of other mitigation-seekers not covered by the HCP. David Zippin addressed concerns with Zone 5 near Pittsburg and the Naval Weapons Station. The Conservation strategy

may revise acquisition areas in that zone to accommodate new information regarding the prevalence of CA Tiger Salamander in the area.

- 2:00 Refining survey requirements (see attachment).** David Zippin briefly reviewed the survey requirements included in the meeting packet.
- 2:15 Covering rural infrastructure projects.** John Kopchik started the discussion on rural infrastructure projects. Cece Sellgren reviewed CCC Public Works Department's list of proposed/ongoing projects and activities within the study area that
- 2:30 Initial discussion on how and if HCP fees should be tiered: defining categories of impacts.** Due to time constraints, this agenda item was not addressed at the February 18th Coordination Group meeting and will be on the agenda for March 18.
- 2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):**
 - Thursday, March 18, 1 p.m. to 3 p.m.
 - Thursday, April 15, 1 p.m. to 3 p.m.
 - HCPA Executive Governing Committee: Thursday, April 8, 2004, 5:30 pm*
- 2:55 Public comment.** None
- 3:00 Adjourn.**



City of Pittsburg

Planning and Building Department
Civic Center - 65 Civic Avenue, Pittsburg, CA 94565

Planning Division (925) 252-4920 • Building Division (925) 252-4910 • FAX: (925) 252-4814

04 FEB 18 PM 1:56

February 11, 2004

Mr. John Kopchik
ECCC Habitat Conservation Plan Association
Contra Costa County
Community Development Department
651 Pine Street, North Wing, 4th Floor
Martinez, CA 94553

**RE: CITY OF PITTSBURG COMMENTS ON PRELIMINARY WORKING DRAFT OF
THE EAST CONTRA COSTA COUNTY HCP AND NCCP**

Dear John,

Thank you for having a preliminary working draft available for the City of Pittsburg to review in the early stages of the HCP's development. While the document addresses many issues of importance, there are some areas which the City would like to see some minor changes and more detail. The City of Pittsburg has the following comments and concerns:

General Comments:

- 1) The City's General Plan calls for the construction of San Marco Boulevard (aka Bailey Road Bypass) to connect to Bailey Road in the future. San Marco Boulevard will be a 2-4 lane minor arterial designed to carry a mix of local and regional traffic. The alignment has not been determined, but is expected to span from the existing San Marco Boulevard within City limits to outside the ULL to ultimately connect with Bailey Road. Please explain the City's options for having this activity covered under the HCP.
- 2) The glossary should be expanded to include definitions for all terms used for policy measures or goals in the plan. Policies and goals should also be clearly identified. As a document both developers and agency staff will be working with, this will help facilitate a clear understanding of what is required of both parties.
- 3) To minimize the potential for any conflict of interest in having developers in charge of submitting surveys under the plan, consider having developers have their qualified biologist propose site specific methods for approval by the

Implementing Entity prior to conducting surveys. The Implementing Entity should respond within a reasonable timeframe which is clearly defined in the HCP. This will provide consistency in biological reports and eliminate the need for costly and timely peer reviews to be initiated by the City at the cost of the applicant in the future.

- 4) Consider making it clear somewhere in the plan that the developer will pay all costs associated with planning, preconstruction and construction monitoring surveys.
- 5) The land acquisition map is inconsistent with the City's General Plan land use map. The City's General Plan designates high acquisition priority areas of sub zone 1a on the draft land acquisition map for residential development (see attached).
- 6) The land use map on Figure 2.1 is inconsistent with the City's General Plan land use map. An area between Buchanan Road and Black Diamond Mines (west of Antioch's "Black Diamond Ranch" is designated by the City's General Plan for residential use. The land use map shows a portion of it designated for parks, open space, and watershed protection (see attached).

Specific Comments:

- 7) Page 1-4, second paragraph, second sentence. Clarify if this is the reason why the northern portion of Pittsburg (in the vicinity of the terminus of Loveridge Road) is not included within the Inventory Area.
- 8) Page 2-12, "activities within the permit area and urban limit lines". Consider including activities of the City's Geologic Hazard Assessment District (GHAD) under the HCP. It is also foreseeable that the City's GHAD could expand beyond the ULL with future development in the southwest hills.
- 9) Page 4-10, first paragraph, sentence five should be clarified. It is the City's understanding that the Kit Fox's range does not extend through the entire western expanse of the City's southern boundary. This is based on current info from the Contra Costa Water District Interim Service Area Listed Species Occurrences and Potential Habitat map.
- 10) Page 5-19, second bullet. This bullet is unclear; consider rewording this statement to clarify its intent.

- 11) Page 5-19, last paragraph, first sentence. Consider eliminating the sentence, "increase development densities within allowable zoning". Increasing densities within existing zoning will not necessarily result in smaller development footprints.
 - 12) Page 5-19, last paragraph. Unless a performance standard is established for "reducing project footprints", consider eliminating it and incorporating the objectives of this measure into the conservation measures for establishing buffers between development and preserves mentioned in the last sentence of page 5-19.
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- 13) Page 5-20, second paragraph, third sentence. The City (assuming the City will hold its own permit) should have discretion over determining appropriate urban-wildland interface design elements, not the implementing entity. This will help streamline the HCP process with the City's existing application review process.
 - 14) Page 5-23. Consider clarifying "adequate funds are provided by the applicant to prepare the required plan and address..." in the last sentence of the fourth paragraph by changing it to "the applicant fully funds the preparation of the required plan to address..."
 - 15) Page 5-25, first paragraph, second sentence. The City would like to see planning surveys as part of a development application at the time of project submittal. Consider changing the language, "Project proponents will conduct planning surveys for biological resources during the planning phase of a covered activity/project and before the final project design or approach has been determined" to "Project proponents shall conduct planning surveys for biological resources and before a development application is submitted to the agency with jurisdiction over the project". This will help ensure that biological constraints under the HCP are identified at the earliest stage possible in the City's application process.
 - 16) Page 5-41, fourth paragraph, "Lands within the Blast Zone.....". Figure 5.2, 5.3 is inconsistent with the statement about the low priority for acquisition within the blast zone. It appears that sub-zones 1a is within the blast zone, yet has a high acquisition value assigned to it. Sub-zone 1e does not appear to be located within the blast zone, so it may not be appropriate to apply here.
 - 17) Page 7-2, "participating local jurisdictions", second paragraph, third sentence. Specify who will determine if "the applicant has complied with all relevant terms of the HCP/NCCP".

- 18) Page 7-3, "implementing entity", second paragraph, second sentence. This is inconsistent with previous measures requiring developers to undertake surveys and monitoring efforts.
- 19) Page 7-5, "organization of the implementing entity". 15th bullet, "monitoring habitat and species" consider being more specific in identifying if the implementing entity will be responsible for conducting surveys as part of monitoring and implementation of the plan.
- 20) Page 7-9, "applicant responsibilities and the application process", second paragraph. Consider the timing for when information will be required to be submitted to the City. For example, studies for avoidance and minimization measures and other planning surveys may be required at the time of project submittal (also see comment #15).

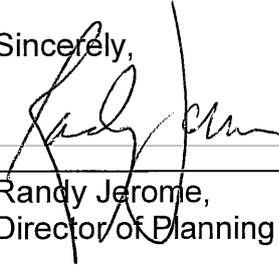
Minor spelling/text comments:

<u>Page #</u>	<u>Comment</u>
1-8	Period missing from the last sentence of the top paragraph.
2-6	"years" is misspelled in the 5th sentence, and "Buchanan" is misspelled in the last sentence of the top paragraph.
2-12	A colon appears to be missing on the last sentence of the last paragraph.
2-14	The word "Donlon" is misspelled. Also it may be useful to clarify that the Buchanan Road Bypass EIR is a programmatic EIR and that the precise alignment and impacts will be addressed in a project specific EIR in the future.
5-36	Third paragraph (acquisition credit by zone), third sentence. "decided" to "deciding".
7-3	"HCP/NCCP Governing Board", first sentence. "Species districts" to "special districts".

7-4

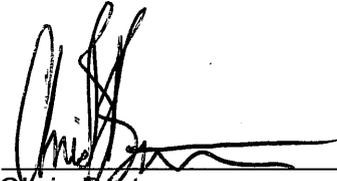
"Science Advisors", second sentence.
Clarify if "reserve assembly" should read "preserve
assembly".

Sincerely,



Randy Jerome,
Director of Planning and Building

Prepared By:



Chris Barton,
Assistant Planner

cc: Melissa Ayres, Planning Manager



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Comment 6

Jump Start and Stay Ahead Requirements

The timing and sequence of land acquisition relative to impacts is critical to the success of the HCP/NCCP. Land acquisition or purchase of easements must stay ahead of any impacts on vegetation communities and covered species habitat resulting from covered activities. This sequence ensures that impacts do not occur before adequate mitigation is identified for them, secured, and functioning. (However, some habitat restoration may not be functioning prior to impacts in cases where the habitat requires a longer time to develop). To meet this *stay ahead* provision at the beginning of HCP/NCCP implementation, some land must be acquired prior to any permits being issued under the HCP/NCCP to *jump start* the Preserve System.

Jump Start Requirements. The Implementing Entity will not extend ESA and CESA coverage until at least 500 acres of land are acquired according to the land cover and habitat requirements listed in Table 5-5. Jump start requirements constitute approximately 2% of the expected preservation requirement. Specific jump start and stay ahead requirements are not provided for some covered species habitat, plant populations, or rare landscape features. However, every effort should be made to acquire land that supports these resources to ensure that permits can be issued under the HCP/NCCP when they are needed. If these resources are not acquired in amounts sufficient to offset impacts (e.g., see Conservation Measures 1.2.2, 1.2.3, and 1.2.4), then permits for these impacts cannot be issued.

Stay Ahead Requirement. After ~~2 years~~ 1 year of implementation, the ~~proportion of the total acquisition goal achieved in land acquisition for each community must at any given time be at least 2% higher than the proportion of the total allowable impacts on that community that have resulted from covered activities. The 2-year delay will give the Implementing Entity time to collect enough fees and grants to make large acquisitions. For example, if covered activities have resulted in removal of 25% of the total expected loss of annual grassland, then at least 27% of the total acquisition goal for annual grassland must have been achieved.~~ Implementing Entity must abide by the following stay ahead provision at all times during the permit term:

- The amount of annual grassland acquired must be at least 50% greater than the impact allowed to annual grassland at the time of the ground-disturbing activity (e.g., grading). See Table 5-6 for an example of jump start and stay ahead provisions for annual grassland and Table 5-9a and 5-9b for land cover acquisition requirements.
- The amount of alkali grassland, oak savanna, oak woodland, and chaparral/scrub acquired must be at least twice the impact allowed to that land cover type at the time of the ground-disturbing activity.

- The amount of aquatic land cover types acquired must be at least equal (i.e., 1:1 ratio) to the impact allowed under the plan at the time of the ground-disturbing activity.

~~(see Table 5-6 for an example of jump start and stay ahead provisions for annual grassland).~~ This stay ahead requirement will ensure that preserve acquisition is always ahead of impacts from covered activities. It will also ~~ensure that the~~encourage the HCP/NCCP is Implementing Entity to continually contributing contribute to the recovery of covered species at the same pace as impacts. This provision recognizes that funds from public agencies to acquire land that contributes to species recovery will be available on budget cycles that may or may not correspond to the timing of development in the inventory area. Therefore, the stay ahead requirement cannot rely on the timely availability of these funds. The purpose of the stay ahead requirement is to ensure land acquisition stays ahead of impacts, so the requirements are linked to impacts. Non-compliance with the jump start or stay ahead provisions will result in local jurisdictions withholding coverage under the HCP/NCCP, so the requirements must also be realistic.

The Implementing Entity must still meet all land acquisition requirements described in this measure by the end of the permit term. As a result, the stay ahead requirement becomes less important in later phases of the permit term as the Preserve System approaches 100% of the land acquisition requirements.

~~After 2 years, permits for coverage under the HCP/NCCP cannot be issued unless land acquisition is meeting the stay ahead requirements.~~

Table 5-6. Example of Jump Start and Stay Ahead Provisions for Annual Grassland

Year	Hypothetical Impacts (acres)	% of Total Impacts	Preservation Required for Stay Ahead (acres)
0	0	0%	300 (Jump Start)
5	500	11%	750
10	1,500	32%	2,250
15	2,500	53%	3,750
20	3,000	64%	4,500
25	4,000	86%	6,000
30	4,677 ²	100%	16,500 ³

Notes:

- ¹ Preservation requirement only for annual grassland land cover type for the preliminary draft maximum permit area. More annual grasslands may need to be required to meet other requirements (e.g., as habitat for covered species). See Tables 5-9a and 5-9b for land cover acquisition requirements for each permit area scenario.
- ² Impact to annual grassland estimated under preliminary draft maximum permit area.
- ³ Total preservation requirement for annual grassland (see Table 5-9b). At the end of the permit term, all land acquisition requirements must be met, regardless of the stay ahead provision.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Yolo Land Trust
Attn: President of the Board
PO Box 1196
Woodland, CA 95776

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this _____ day of _____, 2003, by _____ ("Grantor"), in favor of the City of Woodland (Woodland) and Yolo Land Trust, a nonprofit corporation (Land Trust) (Woodland and Land Trust are collectively referred to as the "Grantee"), with reference to the following facts:

RECITALS

- A. Grantor is the sole grantor in fee simple interest in the Property located in the County of Yolo, State of California, designated Assessor's Parcel Number _____ and as legally described in Exhibit A and shown in Exhibit B attached hereto and incorporated herein by this reference (the "Property");
- B. The Property possesses prime agricultural soils, open space character, and wildlife and habitat values (collectively, "Conservation Values") of great importance to Grantee and the people of the State of California. Agricultural use of the Property not in violation of the terms of paragraph 3 below shall not be inconsistent with the Conservation Values of the Property;
- C. The Property provides high quality habitat for Swainson's hawk (*Buteo swainsonii*), a State listed species and contains cultivated farmland, farm roads, and the Willow Slough riparian corridor;
- D. Grantees are both entities qualified to hold Conservation Easements under Section 170(h)(3) of the Internal Revenue Code as required by Civil Code Section 815.3. The Yolo Land Trust is a California nonprofit organization and has as its primary purpose the preservation, protection or enhancement of agricultural, open space and natural lands pursuant to Civil Code Section 815.3(a); and is a tax exempt and qualified organization within the meaning of Sections 501 c)(3) and 170(b)(1)(A)(iv) of the

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Internal Revenue Code. The City of Woodland is a local government organized under the laws of the State of California. The Grantees, as certified by a resolution of its Board of Directors and City Council, accept the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever.

E. Section 51220 of the California Government Code declares a public interest in the preservation of agricultural lands;

F. The Yolo County General Plan, as amended in 2002, provides for the protection of viable farmlands designated as prime, of statewide importance, unique, or of local importance from conversion to and encroachment of non-agricultural uses; and

G. This Conservation Easement provides mitigation for certain impacts of the Spring Lake Specific Plan located in the City of Woodland, County of Yolo, State of California, consistent with the EIR prepared pursuant to the California Environmental Quality Act certified by Yolo County for the Project, SCH No. 99022069 dated October 1999 and the Mitigation Plan created thereunder.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement over the Property. The easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

1. Purpose. The purpose of this Conservation Easement is to ensure that the Property will retain its agricultural productive capacity, open space character and Swainson's Hawk habitat, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to agricultural production and open space uses which are consistent with the preservation of Swainson's Hawk habitat.

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 Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Conservation Easement, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property;

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

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

(a) The planting or cultivation of orchards, vineyards, cotton, or rice;

(b) Except for the access to the Homesites, no portion of the Property presently unpaved shall be paved or otherwise purposes covered with concrete, asphalt, or any other impermeable material. No road for access or other than for agricultural uses may be constructed without the advance written permission of the Grantee. The Grantee shall not give such permission, unless Grantor demonstrates to Grantee that the proposed location of any such road, will not substantially diminish or impair the Conservation Values of the Property. Unpaved farm roads that presently exist may be relocated as unpaved roads as required by agricultural operations, provided that abandoned roads will be returned to agriculture;

(c) Golf courses, swimming pools, airstrips and helicopter pads are strictly prohibited on the Property. Other facilities for any other public or private recreational use may not be built on the Property without the advance written permission of the Grantee. The Grantee shall not give such permission, unless the Grantor demonstrates to Grantee that the proposed use or facilities will not substantially diminish or impair the Conservation Values of the Property;

(d) Except as otherwise provided in this Conservation Easement, all residential uses and any non-agricultural commercial or industrial uses;

(e) The subdivision of the Property, whether by physical or legal process, is prohibited. The Grantor agrees that other than the existing legal parcels, no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance pursuant to California Government Code Section 66499.35 based on previous patent or easement conveyances,

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subdivisions, or surveys. Grantor will not apply for or otherwise seek recognition of additional legal parcels with the Property based on certificates of compliance or any other authority. This provision does not preclude or prohibit the lease of a portion of the Property for agricultural use;

(f) Existing fences and agricultural water wells, pumps, ditches, pipes, and other agricultural irrigation systems may be repaired and replaced, and new fences and agricultural water wells, pumps, ditches, pipes, and other agricultural irrigation systems may be built anywhere on the Property for purposes of reasonable and customary agricultural practices, without any further permission of the Grantee;

(g) Except as otherwise provided in this Conservation Easement, no buildings may be constructed or placed on the Property;

(h) No billboards shall be erected on the Property. Signs denoting the address of the Property, describing permitted activities on the Property, to post the Property to control unauthorized entry or use, or to identify the Property for the general public are permitted, insofar as such signs do not significantly impair the Conservation Values of the Property;

(i) The dumping or accumulation of any kind of trash, or refuse, or hazardous waste on the Property, other than farm-related trash and refuse produced on the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and byproducts on the Property, so long as it is done in accordance with all applicable government laws and regulations;

(j) The mining or extraction of soil, sand, gravel, rock, or any other mineral substance, using any method that disturbs the surface of the land, is prohibited. Notwithstanding the foregoing, the following shall be permitted: exploration, development and production of all oil, gas and other hydrocarbon substances of every kind as set forth in existing gas and oil leases. Future, new, and renewed gas and oil leases which Grantor may enter into shall allow for no more than a cumulative total of three acres disturbed by surface entry at one time on the Property and shall require the surface entry area to be restored to its former condition when no longer being utilized. Grantor shall make reasonable efforts to control the actions of existing, new, and renewed gas and oil lessees to be conducted in a manner to minimize the impact on the Conservation Values of this Conservation Easement;

(k) Removing, destroying, or cutting of trees, shrubs or other vegetation in the Willow Slough riparian corridor, except as reasonably necessary and/or prudent for (1) fire breaks, (2) prevention or treatment of disease; or (3) maintaining the riparian corridor to preserve the historical water volume by removing vegetation and debris which poses a health and safety hazard or a threat to standard

agricultural operations including, but not limited to, noxious weeds and downed trees or limbs in the channel or on the adjoining Property. Normal flood control operation conducted by Yolo County Flood Control and Water Conservation District and any other applicable agency is permitted. Nothing in this Conservation Easement limits Grantor's right to access water in Willow Slough for irrigation purposes.

4. 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. In addition, Grantor shall not interfere with Grantee's rights and Grantor shall undertake all reasonable actions to cooperate with Grantee's rights under Section 2 of this Conservation Easement.

4.1 Extinguishment of Development Rights. Except as otherwise reserved to the Grantor in this Conservation Easement, all development rights appurtenant to the Property that exist at the time this Conservation Easement is entered into or that are created at any time in the future are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of 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.

4.2 Retained Rights.

a) In the event Grantor desires to construct an otherwise allowed single family residence on any one or all of the Homesites or on property that is on a legal parcel that is not in the Conservation Easement but a portion of the legal parcel is in this Conservation Easement, Grantor shall have the right to count the property acreage of the legal parcel both inside and outside this Conservation Easement solely for the purpose of calculating the minimum acreage requirements for such residence.

b) In the event Grantor desires to construct an otherwise allowed agricultural building on the Agricultural Building Envelope or on property that is on a legal parcel that is not in the Conservation Easement but a portion of the legal parcel is in this Conservation Easement. Grantor shall have the right to count the property acreage of the legal parcel both inside and outside this Conservation Easement solely for the purpose of calculating the minimum acreage requirements for such agricultural building.

5. Reserved Rights. Subject to interpretation under Section 13b, the Grantor retains all ownership rights consistent with the preservation of the Conservation Values of the Property, including, but not limited to, the right to exclude any member of the

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public from trespassing on the Property (other than Grantee and its representatives) and the right to sell or otherwise transfer the Property to anyone Grantor chooses. No provisions of this Deed of Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed of Conservation Easement. Without limiting the generality of the foregoing, and subject to the specified restrictions of this deed and agreement, the Grantor expressly reserves the right to level the Property for agricultural purposes and use the Property for agricultural purposes.

5.1 Water. Grantor shall retain the right to develop and maintain the water resources in and on the Property that are reasonably necessary, convenient or appropriate for the ranching, agricultural and domestic purposes, which occur both within the Property and on the Property or any adjacent properties owned or operated by Grantor, permitted by this Conservation Easement including but not limited to deepening existing water wells and drilling new water wells, provided however, that the development and maintenance of water resources for domestic purposes allowed hereunder is expressly limited to the development and maintenance of water resources for the domestic needs of no more than three single family residences located on the Property or on property contiguous to the Property, and such water developed for domestic purposes shall not be transferred from the Property.

Grantor shall retain and reserve all ground water, appropriate, prescriptive, contractual or other water rights appurtenant to the Easement Area. The Grantor shall not transfer, encumber, lease, sell, or otherwise separate such rights from title to the Easement Area itself. No permanent separation of water rights shall be permitted. All water shall be retained in Yolo County for agricultural production. Water may be transferred, sold, leased, or otherwise distributed to any person or entity on an annual basis for agricultural production in Yolo County. Any transfer of water shall not impair the long-term Conservation Values of this Conservation Easement. The lack of available water for agricultural production shall never be considered as a basis for finding that this Conservation Easement may be invalidated or voided under the doctrine of changed conditions or any other legal theory.

5.2 Building Sites. The Property contains an additional nine (9) acres that are subject to the terms and conditions of this Conservation Easement but are not counted as a portion of the habitat area. These areas consist of three (3) 2-acre building sites for houses and a 3-acre area reserved for agricultural buildings and related uses. The three homesite areas are reserved in the area identified on the aerial map attached hereto as Exhibit ___ and shall be herein referred to as the "Homesite(s)." The agricultural building area shall not exceed three (3) acres and shall be in a precise location to be determined that is contiguous to the Homesites and shall be referred to as the Agricultural Building Envelope.

a) Grantor shall retain the right to construct a single-family residence and related buildings on each of the Homesites. In addition, the residents occupying the Homesites shall be allowed to conduct activities reasonably associated with residential use. For purposes of this Conservation Easement, the activities described in this Section 5.2(a) shall not be deemed inconsistent with the Conservation Values of this Conservation Easement.

b) Grantor shall retain the right to construct agricultural buildings on the Agricultural Building Envelope provided: (1) structures, confined areas or facilities for animals such as feedlots are for animals raised on the Grantor's Property, (2) horticultural and marketing structures such as greenhouses, packing plants and utility buildings are for products from Grantor's Property, for seedlings to be transplanted to Grantor's Property, or for services necessary for agricultural operations on Grantor's Property; (3) crop storage facilities are to store crops grown on Grantor's Property and other properties owned or operated by Grantor; (4) all such structures, confined areas or facilities individually or combined are consistent with the agricultural uses contemplated in this Conservation Easement. The term Grantor's Property as used in this Section 5.2(b) includes any adjacent properties owned or operated by Grantor. For purposes of this Conservation Easement, the activities described in this Section 5.2(b) shall not be deemed inconsistent with the Conservation Values of this Conservation Easement.

6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within fifteen (15) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin the cure within the fifteen (15)-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 to enforce compliance by Grantor with the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Conservation Easement or for any injury to the Conservation Values of the 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, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 6 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 the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms 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 the terms 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 Civil Code Section 815, *et seq.*, inclusive. 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.

If at any time in the future Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, notwithstanding Civil Code Section 815.7, the California Attorney General or any entity or individual with a legal interest in the preservation of this Conservation Easement has standing as interested parties in any proceeding affecting this Conservation Easement.

6.1. Costs of Enforcement. Any 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 Grantor's negligence or breach of this Conservation Easement shall be borne by Grantor.

6.2. 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 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 Conservation Easement or of any of Grantee's rights under this Conservation 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.

6.3. 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 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 Property resulting from such causes; or (ii) acts by Grantee or its employees.

6.4. Department of Fish and Game Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement Deed shall extend to and are enforceable by the Department of Fish and Game. These rights are in addition to, and do not limit, the rights of enforcement under the EIR prepared pursuant to the California Environmental Quality Act certified by Yolo County for the Project, SCH No. 99022069 dated October 1999 and the Mitigation Plan created thereunder.

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

8. 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 Property. Grantor agrees that Grantee 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 remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement Deed, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

8.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the 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. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same. Grantor shall keep Grantee's interest in the Property free from any liens, including those arising out of any obligations incurred by Grantor or any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

8.2. Hold Harmless. In view of the Grantee's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, 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 an "Indemnified Party" and, collectively, "Indemnified Parties") from and

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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: (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, except to the extent such act is caused by the acts of Grantee or any of its employees; (2) the obligations specified in Sections 4, 8, and 8.1; and (3) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the 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 Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

8.3. Condemnation. The purposes of the Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700. If all or any portion of the Property is acquired by eminent domain, or by purchase in lieu of eminent domain, the Grantee of this Conservation Easement shall be paid by the condemner (or purchaser) the value of the Conservation Easement at the time of condemnation (Public Resources Code Section 10261(a)2).

9. Assignment. This Conservation Easement is transferable by Grantee, but Grantee may assign its rights and obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3. and has similar purposes to preserve prime irreplaceable farmland, as well as agreeing to assume the responsibilities imposed by this Conservation Easement. Such a transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. Grantee shall require the assignee to record the assignment in Yolo County.

10. Subsequent Transfers. The Conservation Easement shall be recorded in the records of Yolo County and shall be a covenant running with the land. Grantor shall notify any tenant of the Property of the terms of this Conservation Easement. Grantor further agrees to give written notice to Grantee of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor or Grantee to perform any act provided in this Section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

This Conservation Easement is a covenant running with the land. Each Grantor's liability hereunder is expressly limited to the acts of Grantor and those events occurring on the Property during such Grantor's ownership of the Property. Upon each Grantor's transfer of the Property to a subsequent transferee, the Property and the subsequent transferee shall be the responsible parties under this Conservation Easement. Each Grantor shall have no liability or responsibility for acts occurring on the Property after such Grantor's transfer except for acts actually done by such Grantor.

11. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor: Joe Heidrick, Jr.
c/o Calfee & Young PC
611 North Street
Woodland, CA 95965

To the Grantee: City of Woodland
300 First Street
Woodland, CA 95695
Attn: Community Development Director

Yolo Land Trust
President of the Board
P.O. Box 1196
Woodland, CA 95776
Phone (530) 795-3110

With a copy to: Department of Fish and Game
Office of the General Counsel
1416 Ninth Street, 12th Floor
Sacramento, California 95814-2090
Attn: General Counsel

or to such other address as either party shall designate by written notice to the other. 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, five (5) days after deposit into the United States mail.

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12. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement. Any such amendment shall be consistent with the purposes of this Conservation Easement, shall comply with Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that Section, and with Section 815 et seq. of the Civil Code of California, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Yolo County, State of California.

13. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, et seq. 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 Deed, such action shall not affect the remainder of this Conservation Easement Deed. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement Deed to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 12.

(e) No Forfeiture. Nothing contained herein 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 Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the 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 Property, except that liability for acts or omissions 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. Grantor represents and warrants that it has no knowledge of any release or threatened release of Hazardous Materials (defined below) in, on, under, about or affecting the Property in violation of law. Without limiting the obligations of Grantor under Section 8.2, Grantor agrees to indemnify, protect and hold harmless the Indemnified Parties (defined in Section 8.2) against any and all Claims (defined in Section 8.2) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. If any action or proceeding is brought against any of the 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 Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

Despite any contrary provision of this Conservation Easement Deed, 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 any of the following:

- (1) The obligations or liabilities 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. Section 9601 *et seq.*; hereinafter, "CERCLA"); or
- (2) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
- (3) The obligations of a responsible person under any applicable Environmental Laws; or
- (4) The right to investigate and remediate any Hazardous Materials associated with the Property; or

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

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 Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*); the Hazardous Substance Account Act (California Health & Safety Code Section 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, regulations or orders now in effect or enacted after the date of this Conservation Easement Deed.

The term "Environmental Laws" includes, without limitation, any 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 that Grantor's activities upon and use of the Property will comply with all Environmental Laws.

(j) Warranty; Current and Subsequent Liens on the Property. Grantor represents and warrants that Grantor has good fee simple title to the Property. All holders of liens or other encumbrances upon the Property subordinate their interests in this Easement Area to this Conservation Easement, except for the exceptions listed on **Exhibit D**. No provision in this Conservation Easement shall be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing shall be subordinate to this Conservation Easement. Grantor represents and warrants that the Property is not currently subject to any other conservation easements.

(k) Additional Easements. Grantor shall not grant any additional conservation easements without first obtaining the written consent of Grantee. Grantee may withhold such consent if it determines 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 Property. Except as otherwise provided in this Conservation Easement, Grantor shall not transfer any rights of way or other interests in the Property which interfere with the agricultural use of the Property or the Conservation Values of this Conservation Easement. This Section 13(k) shall not prohibit transfer of a fee or leasehold interest in the

Property that is subject to this Conservation Easement Deed and complies with Section 10.

(l) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(m) Successors and Assigns. The terms "Grantor" and "Grantee" wherever used in this Conservation Easement, and any pronouns used in place of those terms, mean Grantor and Grantor's successors, assigns and lessee; and Grantee and Grantee's successors and assigns, respectively.

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

Witness:

"Grantor"

Accepted:

Witness:

"Grantee"

David Flory
Mayor
City of Woodland

Witness:

"Grantee"

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11/25/03

Paul Muller
President
Yolo Land Trust

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Draft 1
7/10/03

Exhibit A (Legal Description) Attached

Exhibit B (Map of Property) Attached

Exhibit C (Baseline Report) Attached

Exhibit D (Prior Encumbrances) Attached

After recording, please return to:

YOLO LAND TRUST
President of the Board
P.O. Box 1196
Woodland, CA 95776
Phone (530) 795-3110

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