

populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f), *et seq.*, and other provisions of federal law.

G. This Conservation Easement provides mitigation for impacts of approved projects affecting wetlands and associated habitats and species located [*insert general service area description*], County of [*insert name*], State of California, pursuant to the Mitigation Bank Enabling Instrument for the [*insert name*] Mitigation Bank, CDFG Tracking No. [*insert number*] (the "BEI"), by and between [*insert Operator name(s)*] and CDFG, the Service, Service File No. [*insert number*], the [*insert District name*] District of USACE, USACE File No. [*insert number*], and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan") and Bank Management Plan (the "Management Plan") created under the BEI. CDFG, the Service, USACE, and USEPA are together referred to in this Conservation Easement as the "BEI Signatory Agencies".

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 § 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. Purposes. The purposes of this Conservation Easement are to ensure that the 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 Property that will impair or interfere with the Conservation Values of the Property as so restored or enhanced. Grantor intends that this Conservation Easement will confine the use of the 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.

A final, approved copy of the BEI, the Development Plan and the Management Plan, and any amendments thereto approved by the BEI Signatory Agencies, shall be kept on file at the respective offices of the BEI 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 BEI Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

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

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, protect and sustain the Conservation Values of the Property.

(b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement and the Management Plan; to implement at Grantee's sole discretion Management Plan activities that have not been implemented; and

for scientific research and interpretive purposes by Grantee or its designees, 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 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 or activity that is inconsistent with the purposes of this Conservation Easement.

(d) The right to require that all mineral, air and water rights as Grantee deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement. Grantor shall not transfer, encumber, sell, lease, or otherwise separate the mineral, air or water rights for the Property, or change the place or purpose of use of the water rights, without first obtaining the written consent of Grantee, which Grantee may withhold. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of Grantor's right, title or interest in and to 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 Property including, without limitation: (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 Property; or (iv) any water from wells that are in existence or may be constructed in the future on the Property.

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

3. Prohibited Uses. Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement, the Development Plan or the Management Plan 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 adversely affect the purposes of this Conservation Easement[, *except as otherwise specifically provided in the Development Plan or the Management Plan*].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways[, *except as otherwise specifically provided in the Development Plan or the Management Plan*].

(c) Agricultural activity of any kind[, *except grazing for vegetation management as specifically provided in the Development Plan or 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 recreational activities (if any) as specifically provided in the Development Plan or the Management Plan*].

(e) Commercial or industrial uses.

- (f) Any legal or de facto division, subdivision or partitioning of the Property.
- (g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind[, *except as otherwise specifically provided in the Development Plan or 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, sands, gravel, rocks or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.
- (k) Altering the surface or general topography of the Property, including building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material[, *except as otherwise specifically provided in the Development Plan or the Management Plan*].
- (l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, (3) prevention or treatment of disease[, *or as otherwise specifically provided in the Development Plan or the Management Plan*].
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the 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.
- (n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral rights or water rights for the 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 Property.
- (o) Engaging in any use or activity that may violate, or may fail to comply with, all federal, state, or local laws, regulations, and policies applicable to Grantee, the Property, or the use or activity in question. [*Note: need some "applicability" limitation or context for this requirement, as no one is obligated to comply with all existing laws, all of the time. Would prefer earlier version, however, this draft sticks more closely to what Scott indicates is ACOE's preferred wording*]

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 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 implement the BEI, the Development Plan and the Management Plan.

5. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Property, including the right

to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

6. Grantee's Remedies. If Grantee determines that a violation of the terms 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. 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 this Conservation Easement, 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 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 violation or injury. Without limiting the liability of Grantor, 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 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 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 § 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.

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

6.1. 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.

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 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.

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. CDFG Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by CDFG. These rights are in addition to, and do not limit, the rights of enforcement under the BEI, the Development Plan or the Management Plan.

7. Fence Installation and Maintenance. Grantor shall install and maintain a fence reasonably satisfactory to Grantee around the Property to protect the Conservation Values of the Property, including but not limited to wildlife corridors.

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 Property. Grantor agrees that Grantee shall have no duty or responsibility for the operation, upkeep or maintenance of the 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 Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including permits and approvals required from Grantee acting in its regulatory capacity, 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.

9.1. 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 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 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 Property.

9.2. Hold Harmless. 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 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 this conservation easement, to the extent permitted by state law.

9.3. Extinguishment. If circumstances arise in the future that render the 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.

9.4. Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in Fish and Game Code § 1348.3.

10. Transfer of Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the BEI Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the BEI Signatory Agencies at least thirty (30) days prior written notice of the transfer. Approval of any assignment or transfer may be withheld in the reasonable discretion of the Service if the transfer will result in a single owner holding both this Conservation Easement and fee title to the Property and, upon such transfer, the doctrine of merger will apply to extinguish the Conservation Easement by operation of law, unless an alternate method or mechanism to achieve the purposes of this Conservation Easement following such merger has been provided for. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code § 815.3 (or any successor provision then applicable) or the laws of the United States and reasonably acceptable to the Service. Grantee shall require the assignee to record the assignment in the county where the 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.

11. Transfer of 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 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 Service of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee or the Service shall have the right to prevent subsequent 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). If Grantor proposes to transfer fee title to the Property to the then Grantee of this Conservation Easement, and if the doctrine of merger will apply and extinguish the Conservation Easement by operation of law upon such transfer, then the transfer shall be subject to the approval of the Service, which approval shall not be unreasonably withheld or delayed. Approval of any such transfer that is subject to the approval of the Service may be withheld in the reasonable discretion of the Service unless an alternate method or mechanism to achieve the purposes of this Conservation Easement following such merger has been provided for. 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.

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 BEI Signatory Agencies, and be 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:

To Grantor: _____

To Grantee: Department of Fish and Game
_____ Region
[REGION ADDRESS]
Attn: Regional Manager

With a copy to: Department of Fish and Game
Office of General Counsel
1416 Ninth Street, 13th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To Service: United States Fish and Wildlife Service
_____ Field Office
[FIELD OFFICE ADDRESS]

Attn: Field Supervisor

To USACE: U.S. Army Corps of Engineers
_____ District
[DISTRICT ADDRESS]

Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
San Francisco, CA 94105
75 Hawthorne Street
Attn: Director, Water Division

or to such other address a party or a BEI Signatory Agency shall designate by written notice to Grantor, Grantee and the BEI 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, five (5) 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 Service (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 Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the BEI Signatory Agencies.

14. Additional 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. 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 Civil Code § 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, 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 instrument (including its exhibits and the BEI, the Development Plan and the Management Plan incorporated by reference in it) sets forth the entire agreement of the parties and the BEI Signatory Agencies 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 13.

(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 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, 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. 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 Property, or transported to or from or affecting the Property. Without limiting the obligations of Grantor under Section 9.2, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Indemnified Parties (defined in Section 9.2) from and against any and all Claims (defined in Section 9.2) 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 Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and 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 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, 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 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
- (2) The obligations or liabilities of a person described in 42 U.S.C. § 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
- (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 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. § 6901, *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.

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 that activities upon and use of the 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 Property; there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement, and that the Property is not subject to any other conservation easement or interest that is adverse to this Conservation Easement.

(k) Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish any water or water right associated with the Property, without first obtaining the written consent of Grantee. Grantee may withhold such consent in its sole discretion if Grantee 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. 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 Property that is subject to this Conservation Easement and complies with Section 11.

(l) Recording. Grantee shall record this Conservation Easement in the Official Records of the County in which the 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 Service, USACE, and USEPA are third party beneficiaries of this Conservation Easement with the right of access to the Property and the right to enforce all of the obligations of Grantor under this Conservation Easement.

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

GRANTOR:

Approved as to form:

BY: _____

General Counsel
State of California
Department of Fish and Game

NAME: _____

TITLE: _____

BY: _____
Stephen E. Adams
Acting Assistant General Counsel

DATE: _____

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 20____, to the State of California, Grantee, acting by and through its Department of Fish and Game ("CDFG"), a governmental agency (under Government Code § 27281), is hereby accepted by the undersigned officer on behalf of the CDFG, in accordance with and pursuant to CDFG's authority in the Fish and Game Code.

GRANTEE:

STATE OF CALIFORNIA, by and through its
DEPARTMENT OF FISH AND GAME

By: _____

Title: _____
 Authorized Representative

Date: _____