



34
Draft
OWMP

December 12, 2007

Draft Oak Woodland Management Plan Comments
Attn: Monique Wilber
2850 Fairlane Court
Placerville CA 95667

Sent via email to: oaks@edcgov.us

Re: Comments on the Revised Public Review Draft of the Oak Woodland Management Plan

To Whom It May Concern:

Thank you for the opportunity to provide comments on the Draft Oak Woodlands Management Plan for El Dorado County. The beauty of our oak woodlands and the rural nature of this region are no doubt the primary reason people choose to live and work in El Dorado County.

Several key staff at the American River Conservancy have reviewed the Revised Draft of the Oak Woodland Management Plan (DOWMP) and offer the following comments for your consideration.

A. The proposed conservation size of 500 acres is too large

“PCAs are designed to be large expanses of oak woodland greater than 500 acres...” (Page 13 of the DOWMP). It is unclear within this section if acquisition of conservation easements and/or fee title land will be permitted if the project size is less than 500 acres. Would acquisition of a 20 acre parcel be permitted if its protection contributed to conservation of oak woodland habitat within a Priority Conservation Area? If not, the goal of only protecting 500-acre expanses is unrealistic and is severely limiting in terms of what conservation goals can be achieved. Language supporting the acquisition of properties 20 acres and larger within Priority Conservation Areas and Important Biological Corridors (see comment section C below) would serve the conservation purposes of the OWMP better.

B. Proposed per acre acquisition costs are too low

The proposed mitigation fee is based on land values for rural properties 40 acres or greater in size with a conservation easement value of 25% of fee title. The proposed per acre acquisition costs are too low for a number of reasons.

As a land trust operating in El Dorado County since 1989, the American River Conservancy has seen the cost of land rise dramatically over the years. Costs associated with acquisition such as appraisals, surveys, and easement documentation preparation

have also risen accordingly. In our experience, appraised values of conservation easements can range anywhere from 50 % to 80 % of the fee title value. To give one such example, we recently completed a project in which a Conservation Easement of 92 acres zoned RE-10 was donated to us for conservation purposes. The easement was valued at \$900,000. The valuation of the parcel before conservation easement recordation was \$1,600,000. This means that the Conservation Easement was worth almost 56% of the fee-title value of the property. In addition, the per-acre value of the Easement works out to be approximately \$9,782.

In another example, a project we are currently working towards completing is the bargain sale of a Conservation Easement on 633 acres, zoned Rural Residential-20 acres. This Easement was valued at \$2,119,000, approximately 79% of the appraised fee title value of the property (\$2,690,000). Clearly the costs associated with acquisition in the DOWMP need to be reviewed and adjusted upwards to reflect the true costs of acquisition and allow for more flexibility when administering the mitigation program.

C. Permit and encourage the acquisition of Conservation Easements within the Important Biological Corridors to reduce fragmentation of oak woodland habitat.

Oak Woodland Corridors are vital to the sustainability and viability of oak populations. Policy 7.4.2.2 of the 2004 General Plan states, “Protect critical wildlife areas and migration corridors from degradation by retaining non-disturbed natural areas through clustered development or density transfers; determine setback for corridors during environmental analysis...” In addition, policy 7.4.4.5 states, “Retain a corridor of oak trees that maintain continuity between all portions of the stand with a density equal to that of the stand.”

General Plan Measures and Policies related to the OWMP clearly state that connectivity and corridors of oak woodland habitat are to be retained. There is currently no language in the DOWMP that serves to implement these policies. Figure S-1 footnote 2 states that “programs *could be developed* to assist property owners in habitat protection that would enhance oak woodland values, using state, local, and federal grant funding.” (Emphasis added). Although this statement poses a possible tool for protecting oak woodland corridors, it does not adequately address the policies listed above relating to retaining oak woodland corridors. Language relating to the development of conservation programs such as permitting the acquisition of conservation easements in oak woodland corridors identified within the OWMP would adequately address the policies stated in the 2004 General Plan.

D. Guidelines and restrictions for conservation easements need to be identified

The draft Oak Woodland Management Plan proposes to acquire conservation easements within the Priority Conservation Areas. Successful conservation of oak woodland habitat acquired with mitigation fees depends on careful site selection and appropriate management. An easement’s restrictions must protect the property’s conservation resources (in this case oak woodland habitat) and prohibit activities such as mining, building of new structures, subdivision, road building, and agricultural development. Clearly stated guidelines that limit certain agricultural practices, such as grazing, could be

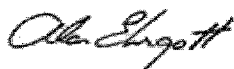
permitted so long as the season and intensity of the practice complements oak woodland conservation.

The American River Conservancy currently holds and manages a 1,178-acre Conservation Easement on the Garibaldi Ranch near the Cosumnes River in southern El Dorado County. Grazing practices on this property are limited to specific seasons and numbers of animals that do not diminish the conservation values of the property and associated oak woodland habitat. Attached is a sample Grant Deed of Conservation Easement that clearly outlines permitted and prohibited uses of the land.

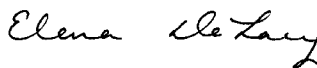
We sincerely appreciated being given the opportunity to review and comment on this important issue. Oak woodlands contribute much to the quality of life and natural beauty of El Dorado County. We hope you will keep this and the previous comments in mind in order to fulfill the intent of the General Plan Policies relating to oak woodland conservation and in creation of the final Oak Woodland Management Plan.

We look forward to working with El Dorado County in implementing the oak woodland conservation strategies set forth in the general plan. Please contact Alan Ehrigott or Elena DeLacy at (530) 621-1224 if you have any questions about these comments.

Sincerely,



Alan Ehrigott
Executive Director
ehrigott@arconservancy.org



Elena DeLacy
Conservation Project Coordinator
elena@arconservancy.org

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\Recording requested, and when recorded, return to:

The American River Conservancy
Attn: Executive Director
8914 Highway 49 - P.O. Box 562
Coloma, CA. 95613-0562

with a conformed copy to:

Attn:

Document # _____

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

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made as of _____, 2006 by and between the ("Grantor"), whose address is _____ and The American River Conservancy ("Grantee"), a State of California non-profit corporation (the "Conservancy"), with its principal offices at 348 Hwy. 49, P.O. Box 562, Coloma, CA. 95613-0562.

RECITALS

A. Grantor owns approximately 96.23 non-contiguous acres of real property in El Dorado County, California (APN's: _____) described within the First American Title Company Title Report # _____ incorporated herein and attached as "Exhibit A", and shown for reference purposes on the map attached as "Exhibit B" which together with all appurtenances thereto, including without limitation all minerals and mineral rights and all water and water rights appurtenant to such land (collectively, the "Property").

B. the Property fronts a tributary of Weber Creek and is comprised of Blue and Interior Live Oak woodland, grassland and mixed chaparral which also provides significant natural riparian and upland habitat and buffer for many species of wildlife including, but not limited to Black-tailed Deer, Beaver, River Otter, Grey Fox, Coyote, Bobcat, Mountain Lion, Western Pond Turtle, Western Toad, Pacific Tree Frog, songbirds and other species

C. Protection and preservation of the Subject Property, including its wildlife and wildlife habitat, will assure that this area and its existing features will continue to be available for conservation, habitat values and buffer for wildlife, a significant public benefit by preserving open space against development pressure within the Weber Creek Watershed.

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

E. The State of California recognizes the public importance and validity of conservation easements by enactment of Section 815 et seq. of the Civil Code.

F. The Grantee is a non-profit corporation incorporated under the laws of the State of California, as a tax-exempt public charity described in Section 815.3 of the California Civil Code and Sections 501(c)(3) and 509 (a)(1) of the Internal Revenue Code, organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a “qualified organization” within the provisions of Section 170 (h) of the Internal Revenue Code, qualified to acquire and hold conservation easements.

G. To accomplish all of the aforementioned purposes, Grantor intends to convey to the Grantee and the Grantee intends to accept a Conservation Easement restricting the use which may be made of the Property, to preserve and protect forever the open-space, wildlife habitat and scenic values of the Property.

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

1. PURPOSES. The multiple natural resource conservation purposes of the Conservation Easement are to preserve and protect in perpetuity: (a) the conservation and habitat values of the Property for wildlife including the processes which sustain that habitat; and (b) the open space character and scenic qualities of the Property which are important public benefits and are consistent with the availability of the Property for wildlife, habitat and grazing.

It is intended that this Conservation Easement shall foster land management practices on the Property that are in harmony with the protection and preservation of the wildlife habitat and the processes that sustain that habitat, and in harmony with the open space and scenic qualities of the Property. It is intended that each such purpose shall be conducted in a manner consistent with all such multiple natural resource conservation purposes. This Conservation Easement prohibits use of the Property for any purpose that would impair, degrade or interfere with any of the multiple natural resource conservation purposes stated above.

2. EASEMENT DOCUMENTATION REPORT. The parties acknowledge that an Easement Documentation Report (the “Report”) of the Property, attached as “**Exhibit C**”, has been prepared by a competent biologist familiar with the environs and approved by the Conservancy and Grantor in writing, a copy of which is on file with the Grantor and the Conservancy at their respective addresses for notices, set forth below. The parties agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time of this grant. The report will provide an inventory of known toxic materials, if any, and will prescribe a level of rangeland grazing designed to meet the conservation goals of this Conservation Easement. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical, biological condition of the Property or the permitted uses of the Property, the parties shall not be foreclosed from utilizing any and all other

relevant documents, surveys or other evidence or information to assist in the resolution of the controversy. The Report shall be approved by the Grantor and by the Conservancy prior to the close of escrow.

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

A. PRESERVE AND PROTECT. The Conservancy may preserve and protect forever, the open space, scenic, natural, ecological, and wildlife features and other conservation values of the Property.

B. ENTRY AND ACCESS RIGHTS. The Conservancy is hereby granted rights of access to enter upon the Property, using appurtenant easements and right of way, if any, and may enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, to study and make scientific observations of its natural elements and ecosystems, to determine whether Grantor's activities are in compliance with the terms hereof and to take all actions deemed necessary by Grantee to identify, preserve, protect, enhance and restore the natural values, flora and fauna on the property. Except in cases where the Conservancy determines that immediate entry is required to prevent, terminate, or mitigate environmental or natural resource damage, entry shall be upon giving notice to Grantor at least twenty four (24) hours in advance as described herein and will not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

Notwithstanding anything to the contrary herein contained, access shall be limited to no more than two individuals at any given time and no more than one such visit per month without the prior written consent of Grantor. This provision shall not be assumed to allow public access or general entry for any purpose.

C. Enforcement. The Conservancy shall prevent any activity on, or use of the Property that is inconsistent with the purposes of this Conservation Easement, and shall enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use. The enforcement provisions between the Conservancy and Grantor shall be construed as reciprocal.

4. PERMITTED USES OF THE PROPERTY. Grantor and the Conservancy intend that this Conservation Easement shall confine the uses of the Property to the multiple natural resource conservation uses of open space, scenic, conservation, and wildlife habitat and to such other incidental uses which are not specifically prohibited and are consistent with the conservation intent of this easement. Except as prohibited or otherwise limited by Paragraph 5 below and Exhibit E hereto, Grantor reserves the right to use and enjoy the Property in any manner which is consistent with the multiple natural resource conservation purposes of this Conservation Easement. In that regard, except as provided in Paragraph 5 below and **Exhibit E** hereto, the uses set forth in the Easement Documentation Report as well as the uses stated in **Exhibit D** hereto, though not an exhaustive list of consistent permitted uses, are consistent with this Conservation Easement.

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

6. REMEDIES.

A. Notice of Violation: Corrective Action. If the Conservancy becomes aware that a violation of the terms of this Conservation Easement has occurred, by or through or is threatened to occur through Grantor action, the Conservancy shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within ninety (90) days after receipt of notices from the Conservancy, or under circumstances where the violation cannot reasonably be cured with a ninety (90) day period, fails to begin curing such violation within the ninety (90) day period or fail to continue diligently to cure such violation until finally cured, the Conservancy shall have all remedies available by law or in equity to enforce the terms of this Conservation Easement, including without limitation the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity, and/or to recover any damages arising from the violation. Where violations have occurred or is threatened to occur from actions of neighbors or other trespassing parties, Grantor and the Conservancy will cooperate in communicating with each other and in seeking a cure from the offending party. The Remedies described in this paragraph shall be cumulative and shall be in addition to all remedies hereafter existing at law or in equity.

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

C. Emergency Enforcement. If the Conservancy, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the protected values of the Property, the Conservancy may pursue its remedies under this paragraph without prior notice to Grantor and without waiting for the 24 hour notification period to expire.

D. Conservancy's Discretion. Enforcement of the terms and provisions of this Conservation Easement shall be at the discretion of the Conservancy, and the failure of the Conservancy to discover a violation or to take action under this paragraph shall not be deemed or construed to be a waiver of the Conservancy's rights hereunder with respect to such violation in the event of any subsequent breach.

E. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Conservancy to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including fire, flood, storm and earth movement.

F. Remedies and Enforcement Provisions are Reciprocal. The remedies and enforcement provisions are construed as reciprocal between Grantor and the Conservancy.

7. ASSIGNMENT. The Conservancy may assign this Conservation Easement provided that the Conservancy shall provide a list of alternative successors to Grantor and mutually agree upon the

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choice of successors, provided that (1) the Conservancy requires, as a condition of such transfer, that the conservation purposes of this Conservation Easement continue to be carried out; (2) any assignment shall be made only to an organization qualified at the time of transfer as an eligible donee under Civil Code Section 815.3 and Internal Revenue Code Section 170(h)(3) or its successor, or any regulations issued thereunder, (3) the Conservancy is required to assign the entire principal amount of the management endowment to the qualified organization receiving the assigned Conservation Easement; and (4) the Conservancy shall provide Grantor with notice of the assignment, at the address last provided to the Conservancy, no less than 30 days prior to the effective date of the assignment.

8. RUNNING WITH THE LAND. The Conservation Easement created by this Grant Deed shall burden and run with the Property forever. Every provision of this Conservation Easement that applies to the Grantor or the Conservancy shall also apply forever to and shall burden or benefit, as applicable, to their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interest may appear. The Grantor agrees that transfer by Grantor of any interest in the Property shall be in accordance with the terms of **Paragraph 8 of Exhibit D** hereto.

9. REPRESENTATIONS AND WARRANTIES.

A. Hazardous Materials. Grantor represents and warrants that, to the best of his or her knowledge, the Property (including without limitation, any associated air, soil, groundwater, and surface water) is free of any conditions that individually or in the aggregate (1) pose a significant risk to human health or the environment; (2) violate any Environmental Law; or (3) could reasonably be expected to cause any person to incur environmental investigation, removal, remediation, or other cleanup costs. There are no known underground tanks located on the Property. Grantor represents and warrants the Grantor shall comply with all Environmental Laws in using the Property and that Grantor shall keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials.

B. State of Title. Subject to the matters of record as disclosed in the Title Report, Grantor warrants that it has good and sufficient title to the Property and that all mortgages are subordinated to this Conservation Easement.

C. Compliance with Laws. Grantor has not received notice of and has no knowledge of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Property.

D. No Litigation. There is no action, suit or proceeding which is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality.

E. Authority to Execute Conservation Easement. The person executing this Conservation Easement on behalf of the Conservancy represents that the execution of this Conservation Easement has been duly authorized by the Conservancy. The persons executing this Conservation Easement on behalf of the Grantor represents that the execution of this Conservation Easement has been duly authorized by the Grantor.

10. COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership of the underlying fee estate such as, operation, upkeep and maintenance of the Property and agrees that the Conservancy shall have no duty or responsibility for the operation and maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public, or any third parties from risks relating to conditions on the Property. Grantor agrees to pay all real property taxes and assessments levied by competent authorities on the Property before delinquency and that Grantor shall keep the Conservancy's interest in the Property free of any liens, including those arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Each Party shall be solely responsible for any costs related to the maintenance of general liability insurance covering its individual acts on the Property.

11. INDEMNIFICATION BY GRANTOR. The Grantor will indemnify, defend, and hold harmless, the Conservancy from any costs, liabilities, penalties, damages, claims or expenses (including reasonable attorney's fees) which the Conservancy and its members, directors, officers, agents and contractors and their heirs and assigns (the "Indemnified Parties") may suffer or incur as a result of or arising out of the activities of the Grantor on the Property, except damages caused solely by the gross negligence or willful misconduct or any breach of this Conservation Easement by Grantee or its employees, agents or contractors. The terms of this clause are reciprocal between Grantor and Grantee. Liability claims will be limited to that amount recoverable from the liability insurance provider of the negligent party.

12. NOTICE: APPROVAL.

A. Notice of Entry. Where the notice to Grantor of the Conservancy's entry upon the Property is required herein, the Conservancy shall notify any of the persons constituting Grantor or their authorized agents by telephone or in person, or by written notice in the manner described below in subparagraph C, prior to such entry.

B. Other Notice. Except as provided in subparagraph A above, wherever express agreement or consent is required by this document, the initiating party shall give written notice, in the manner described below in subparagraph C, and detailed information to the other party. The receiving party shall review the proposed activity and notify the initiating party within forty-five (45) days after receipt of notice of any objections to such activity. Any objections by a party shall be based upon its opinion that the proposed activity is inconsistent with the terms of the Conservation Easement.

C. Written Notices. Any written notice called for in this Conservation Easement may be delivered (1) in person; (2) by certified mail, return receipt requested, postage prepaid; or (3) by a reputable overnight courier that guarantees next day delivery and provides a receipt, and addressed as follows:

To the Conservancy (Grantee):	The American River Conservancy Attn: Alan Ehgott, Executive Director 8913 Hwy 49 - P.O. Box 562 Coloma, CA. 95613-0562 Ph. (530) 621-1224 Fax (530) 621-4818 email: ehgott@arconservancy.org
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To Grantor:

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

D. Notice of Residual Rights. Grantor agrees to notify the Conservancy, in writing, at least forty-five (45) days before exercising any residual rights, as described in Paragraph 8, Exhibit D, which may have an adverse impact on any of the multiple natural resource conservation purposes protected herein.

E. Subsequent Activities. Permission to carry out, or failure to object to, any proposed use or activity shall not constitute a waiver to any subsequent use or activity of the same or any different nature.

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

14. VALUATION.

A. Stipulated Fair Market Value. Grantor and the Conservancy agree that this grant of a perpetual Conservation Easement gives rise to a property right, immediately vested in the Conservancy. The values at the time of this grant are those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170 (h) of the Internal Revenue Code. For purposes of this Paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant. The Easement is understood by Grantor and the Conservancy to constitute forty-five percent (45%) of the fair market value of the property, as determined by the August 22, 2006 appraisal conducted by Cheryl Bretton, MAI. If for any reason there is an extinguishment of the restrictions of this Conservation Easement, the Conservancy, on a subsequent sale, exchange, or taking of the Property, shall be entitled to a portion of the proceeds at least equal to the stipulated fair market value of the Conservation Easement, or proportionate part thereof, as determined in accordance with this Paragraph.

B. Judicial Extinguishment. It is the intention of the parties that the conservation purposes of this Conservation Easement shall be carried out forever. Liberal construction is expressly required for purposes of effectuating this Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind.

Notwithstanding the foregoing, in the event that a later unexpected change in the conditions of or surrounding the Property makes impossible or impractical its continued use for any of the conservation purposes described herein, and the restrictions are extinguished by judicial proceeding, and the Property is subsequently sold, exchanged or condemned, the Conservancy will apply its share (determined as set forth above) of any proceeds received from such sale, exchange or taking in a manner consistent with the conservation purposes of this Conservation Easement or for the protection of a “relatively natural habitat of fish, wildlife, or plants or similar ecosystems”, as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code.

C. Condemnation. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Conservancy shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by the Grantor and the Conservancy in such action shall be paid out of the recovered proceeds. The remaining proceeds shall be divided consistent with the provision in this **Paragraph 14** using the ratio of the value of the Conservancy’s (45%) and Grantor’s (55%) interests, it being expressly agreed that this Conservation Easement constitutes a compensable property right.

15. INTERPRETATION.

A. Liberally Construed. It is the intent of this Conservation Easement to preserve the condition of the Property and each of the multiple natural resource conservation purposes protected herein, notwithstanding economic or other hardship or changes in surrounding conditions. The provisions of this Conservation Easement shall be liberally construed to effectuate the perpetual purposes of preserving and protecting the wildlife habitat, scenic, open space and other conservation purposes described above, and allowing Grantor’s use and enjoyment of the Property to the extent consistent with those purposes. Liberal construction is expressly required for purposes of effectuating this Conservation Easement in perpetuity, notwithstanding changed conditions of any kind. The multiple natural resource conservation purposes herein are the intended best and most productive use of the Property. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the State of California, the County in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions that would protect the natural resource values shall apply.

B. Governing Law. This Conservation Easement shall be interpreted in accordance with the laws of the State of California.

C. Captions. The captions have been inserted solely for convenience of reference and are not part of the Conservation Easement and shall have no effect upon construction or interpretation.

D. Definitions.

(a) The terms “Grantor” and “Conservancy” wherever used in this Conservation Easement and

any pronouns used in place thereof, shall mean and include, respectively, the above-named Grantor, its personal representatives, heirs, devisee, and assigns, and all other successors as their interest may appear and the American River Conservancy and its successors and assigns.

(b) The term "Hazardous Materials" includes without limitation: (i) explosive, or radioactive material; (ii) petroleum products; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC 9601 et seq.), the Hazardous Materials Transportation Act (49 USC section 6901 et seq.) the Hazardous Waste Control Law (Cal. Health & Safety Code section 25100 et seq.), the Hazardous Substance Account Act (Cal. 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, or regulations now in effect or enacted after this date.

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

16. SUBSEQUENT LIENS ON PROPERTY. No provision of the 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 the Conservation Easement.

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

18. RE-RECORDING. The Conservancy is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement.

19. ACCESS. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or use the Property or any portion thereof except as provided for under Paragraph 3C.

20. SUBSEQUENT TRANSFERS. The Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or legal instrument by which Grantor divests any interest in the Property, including without limitation any lease. Grantor agrees to give the Conservancy at least thirty (30) days written notice prior to the date of such transfer, and to provide therein the name, address and telephone number of the transferee. Grantor's failure to perform any act required by this Paragraph does not impair the validity of this Conservation Easement or limit its enforceability against Grantor or any transferee.

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

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

GRANTOR:



GRANTEE:

THE AMERICAN RIVER CONSERVANCY

By:

By: Alan Ehrgott, Executive Director

Date

Date

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EXHIBIT A
**PROPERTY DESCRIPTION
AND PRELIMINARY TITLE REPORT**

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EXHIBIT B
PROPERTY MAP

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EXHIBIT C

EASEMENT DOCUMENTATION REPORT

EXHIBIT D
(PARAGRAPH 4)

PERMITTED USES OF THE PROPERTY

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

1. Passive Recreation Uses. To conduct passive recreational uses, including, but not limited to, walking, maintenance of walking trails, wildlife observation, hiking, horseback riding, camping and picnicking, and recreational gold mining provided that these uses require no significant surface alteration or other development of land.
2. The Grazing of Livestock. The grazing of livestock is allowed on a rotational basis so long as the frequency and density of grazing allows for the natural succession of native plant communities and the natural regeneration of oaks and other native shrubs and does not injure or destroy the naturally occurring ecosystem. Grazing as prescribed shall be allowed as an optional method of fire management in addition to other best fire management practices. Additional fencing deemed by Grantor to be reasonably necessary to grazing may be constructed without the Conservancy's consent.

Grantor shall be allowed to graze up to ten (10) head of cattle within the Easement Property year round. Grantor and Grantee shall cooperate in monitoring forage with the expressed goal of maintaining a minimum of 800 pounds per acre of residual dry matter at the end of each grazing season. Grantor and Grantee shall utilize the "Guidelines for Residue Management on Annual Range" as provided within Attachment 2 of the Easement Documentation Report as a standard protocol for assessing residual dry matter. Grantor shall utilize whatever reasonable means are available (e.g. shifting the distribution of salt) to distribute grazing across the easement property to achieve relatively uniform levels of residual dry matter equal to or in excess of this minimum standard.

3. Conduct of Historical Research and Restoration Activities at Cultural Sites. Excavation, restoration and the conduct of historical or archaeological research at known or discovered cultural sites is allowed as long as all such work and disturbance is conducted with the oversight of a credentialed archaeologist with primary consideration given to the protection and documentation of historical artifacts and historical knowledge. All work must be recorded in a report format acceptable to the State Office of Historic Preservation. A copy of all reports must be submitted to the State Office of Historic Preservation within 90 days of fieldwork completion.

4. Water Resources. To develop and maintain such water resources, including fish and stock ponds, on the Property as are necessary or useful for wildlife habitat enhancement purposes in a manner consistent with this Conservation Easement. Grantor retains the right to access, use and maintain the well that

currently exists on the easement property. In the event a well is not feasible or fails on lands excluded from the easement, Grantor retains the rights to develop a well or alternative domestic water source on easement lands to serve residential use on those lands excluded from the easement, as well as a reasonable access road to the well site.

5. Management of Invasive Vegetation. Grantor will utilize best management practices, at their discretion, to reduce and control invasive vegetation including: Star thistle, Himalayan Blackberry, and Poison Oak. Control methods shall emphasize grazing and mechanical clearing but Grantor retains the right to utilize herbicide (Round-up or other approved herbicide) treatment as an optional method as long as no herbicide treatment is applied within 50 feet of stream courses. Should the removal of additional or uncontrolled invasive vegetation be deemed necessary by the Conservancy, then the Conservancy reserves the right to carry out such removal at the Conservancy's cost.

6. Signs. To erect or install signage or other appropriate markers not to exceed dimensions of 4' x 8' in prominent locations on the Property which identify conservation activities on the property and/or which states that no trespassing or no hunting is allowed on the Property.

7. Transfer of Property. The Grantor shall notify the Conservancy before the transfer of the Property, and the document of conveyance shall expressly incorporate by reference this Grant Deed of Conservation Easement. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

8. Residual Rights. Grantor retains the right to maintain existing road and utility easements to lands not encumbered by this easement, including the existing residence. Should the Conservancy acquire Conservation Easement or Fee Title interests on adjoining properties the Conservancy will extend and protect Grantor's right to access the Property over existing roads. Except as expressly limited herein, Grantor retains the right to exercise and enjoy all rights as a residential occupant and owner of the Property, including the right to use the Property for any purpose which is consistent with and does not adversely affect the multiple natural resource conservation purposes of this Conservation Easement.

EXHIBIT E
(PARAGRAPH 5)

PROHIBITED USES OF THE PROPERTY

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

1. No Subdivision. The legal or de facto division, subdivision, or partitioning of the Property is prohibited.
 2. No Construction of Structures for Residential, Commercial or Industrial Uses. The construction of any new structures for any residential, commercial or industrial use is prohibited except as otherwise allowed by this Agreement.
 3. No Use or Transfer of Development Rights. The construction or placement of any permanent camping accommodations, boat ramps, bridges, mobile homes, house trailers, permanent tent facilities, Quonset huts or similar structures, underground tanks, or billboards, signs or other advertising, and/or other structures or improvements, street lights, utility structures or lines, sewer systems or lines is expressly prohibited, unless otherwise allowed by this Agreement.
- All development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property are 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, nor used for the purpose of calculating permissible lot yield of the Property or any other property.
4. Natural Resource Development. The commercial extraction of minerals, gas, hydrocarbons, soils, sands, gravel or rock or any other material on or below the surface of the Property is prohibited.
 5. No Orchards or Vineyards. The planting and cultivation of commercial orchards or vineyards is prohibited.
 6. No Dumping. The dumping, storage, or other disposal of non-compostable refuse, trash, sewer sludge or unsightly or toxic or Hazardous Materials or agrochemicals is prohibited.
 7. No New Roads. The construction, reconstruction or replacement of any roadways, except as expressly provided within the Easement Documentation Report and **Exhibit D** herein, is prohibited.
 8. No Destruction of Native Trees or Shrubs. The removal, cutting or destruction of live native trees or shrubs on the Property, except for brush control and fire management using best fire management practices is prohibited.

9. No Biocides. The use of fertilizers, pesticides, biocides, and herbicides or other agricultural chemicals is prohibited except as allowed by law for the eradication of invasive species.
10. No Alteration of Natural Water Courses: Degradation of Water Quality. Except with the prior consent of the Conservancy, the manipulation or alteration of natural water courses, wetland, stream bank, shoreline, or body of water is prohibited, except as permitted by Paragraph 5 in **Exhibit D**. Activities or uses detrimental to water quality including but not limited to degradation, pollution of any surface or subsurface waters is prohibited without prior written consent of the Conservancy.
11. No Impairment of Water Rights. Severance, conveyance, or encumbrance of water or water rights appurtenant to the Property shall not be allowed, separately from the underlying title to the Property, or other action which diminishes or extinguishes such water rights. This Conservation Easement shall not sever or impair any riparian water rights appurtenant to the Property.
13. Vehicles. The use of any motorized vehicles off designated roadways, except for property management and research purposes is prohibited.
14. Introduction of Exotics. The intentional or reckless introduction of invasive or destructive plant or animal species which may in the determination of the State Department of Fish and Game threaten the Conservation Values of this Conservation Easement is prohibited.
15. Inconsistent or Adverse Actions. Any action or practice which is or becomes inconsistent with, or which adversely affects any of the multiple natural resource conservation purposes of this Conservation Easement, which purposes include preservation and protection of natural habitat values for wildlife and the processes which sustain that habitat, open space character, scenic and recreational qualities of the Property are prohibited.