

Exhibit ____

Conservation and Flood Easement Deed

<p>RECORDING REQUESTED BY</p> <hr/> <p>WHEN RECORDED MAIL TO:</p> <p>DEPARTMENT OF WATER RESOURCES Division of Land and Right of Way Real Estate Branch 1416 9th Street, Room 425 Sacramento, California 95814</p> <p>WITH A CONFORMED COPY TO:</p> <p>[Easement Grantor] [at Mailing Address] Attention: [Contact Person]</p>

Space Above This Line for Recorder's Use

CONSERVATION AND FLOOD EASEMENT DEED

Parcel

No.

(Corporation)

File No.

The _____ (hereafter "Grantor"),
does hereby grant, convey, and dedicate to _____
(hereafter, the "Grantee" or "Conservation Easement Steward") an exclusive and
perpetual conservation and flood easement covering the real property situated in
the County of _____, State of California, and more particularly described
on Exhibit A attached hereto (hereafter, the "Conservation Area" or the
"Property"), as follows:

Recitals

WHEREAS, Grantor [previously owned _____] [acquired fee title
to _____ through grants of funding provided by the State of

California, specifically, the California Department of Water Resources (the DWR”). DWR awarded State Proposition 13 funds to Grantor to [acquire] [convey a conservation and flood easement on] _____ [and] to carry out stewardship and management activities on _(same)_____, including maintenance, monitoring, and [ecosystem restoration][wildlife-friendly farming practices]. The DWR determined the _____ acquisition and/or easement conveyance would implement the purposes of the Grantor and DWR by (1) _____ (2) providing opportunities to restore riparian habitat; and (3)_____.

WHEREAS, in addition, the DWR awarded California Proposition 13 funds to Grantor to contribute to the cost of Grantor [acquiring fee title] [conveying an easement] to_____. The DWR determined that [acquisition] [continued ownership] of _____ by Grantor, Grantor’s continued management and use of _____ as a [transient storage area] [flood corridor] for floodwater overflow or conveyance from the _(water body)_____ and for [wildlife habitat] agricultural land] preservation purposes, and Grantor’s intention to [integrate] [continue to manage] the _____ property [into] [as part of] Grantor’s existing holdings encompassing the _____, will preserve land, protect wildlife habitat, and protect it’s floodplain area from inappropriate or incompatible development and maintain its availability for flood management purposes, consistent with the purposes of the Flood Protection Corridor Program described in Water Code section 79035 et seq..

WHEREAS, the contractual agreement which provides for the transfer of grant funds by the DWR to Grantor for Grantor’s [acquisition of] [conveyance of an easement deed to] _____, acknowledges the multiple and complementary benefits the __[property]_____ provides to the State of California for: (1) agricultural land preservation [if applicable]; (2) wildlife habitat protection [if applicable]; (3) protection of a floodplain area from potential inappropriate and incompatible development; and (4) potential role in future flood management and water management improvements (hereafter “Multiple and Complementary Benefits”).

WHEREAS, Grantor and the DWR further acknowledge that the [County] [City] of _____ is evaluating the need for floodway improvements in the _____ watershed. The [County’s] [City’s] evaluation of alternatives for such floodway improvements in the _____ area may include use of all or a portion of the Conservation Area for future flood management projects or activities.

WHEREAS, it is the intent of the Grantee and Grantor, as parties to this Conservation and Flood Easement Deed, to protect each of the existing Multiple and Complementary Benefits of _____ property and to cooperate in the implementation of any flood management project or activity on the

_____ property that may evolve from the [County's] [City's] flood management planning efforts.

NOW, THEREFORE, for good and valuable consideration provided in whole or in part by the DWR, the receipt and sufficiency of which is hereby acknowledged, based on the common law and the California law of easements, including Section 815 et seq of the Civil Code, Grantor forever grants to the [easement grantee], its successors and assigns, a conservation and flood easement, in over and across the Property ("the Conservation and Flood Easement"), subject to the terms and conditions hereinafter set forth describing the uses which may be made of the Property, and the parties agree as follows:

1. Purposes. The Property possesses significant [ecological and habitat values] [agricultural production capability]. These natural resources are of aesthetic, ecological, educational, historical, recreational, and scientific value to the people of the State of California. These natural resources are of great importance to both grantor and grantee. The purposes of this Conservation and Flood Easement are to preserve and protect each of the Multiple and Complementary Benefits of the Property. In so doing, it is also the purpose of this Conservation and Flood Easement to encourage and promote wildlife habitat, wetlands, transitory storage of floodwaters, agricultural use [if applicable] and wildlife-friendly practices on the Property.

2. Grantee's Rights and Obligations. The rights conveyed by this Conservation and Flood Easement to the Grantee include, but are not limited to, the following:

A. Grantee shall promptly record this instrument in the official records of _____ County, California, and may re-record it at any time as may be required to preserve its rights in this Easement.

B. The Conservation Area Steward may identify, monitor, research, preserve and protect forever the natural, ecological, environmental, agricultural [if applicable] and wildlife features of the Property, to the extent necessary to effectuate the express purposes of this Conservation and Flood Easement.

B. The Conservation Area Steward is hereby granted the rights of access, for itself and its agents and contractors to enter upon the Property, using appurtenant easements and rights of way, if any, and may enter upon the Property at any and all reasonable times, with reasonable prior notice to Grantor, to inspect, study and make scientific and engineering observations of the Property, to the extent necessary to effectuate the express purposes of this Conservation and Flood Easement, and to determine whether Grantor's activities are in compliance with the terms hereof. The Conservation Area Steward shall not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor, its successors in interest, and Grantor's guests, invitees, licensees,

lessees, tenants and permittees and any other legally recognized occupants of the Property.

C. The Conservation Area Steward may enjoin any activity or use of the Property that is inconsistent with the purposes of this Conservation and Flood Easement, and may enforce the restoration of such areas or features of the Property that may be damaged by any activity or use of the Property that is inconsistent with the terms of this Conservation and Flood Easement.

D. The Conservation Area Steward may assign all or any part of its interests in the Conservation and Flood Easement without the consent of the Grantor, provided that (1) the Conservation Area Steward shall provide Grantor with reasonable notice of the [easement grantee's] intention to effect such assignment and afford Grantor the opportunity to confer with the Conservation Area Steward respecting an assignee that would be acceptable to Grantor, (2) the Conservation Area Steward shall provide to Grantor written notice of such transfer within thirty (30) days of such transfer, and (3) any such assignment shall be to a governmental agency or political subdivision or non-profit group or foundation with authority to own property (such as the County for flood management purposes). Any assignee shall assume responsibility for enforcement of and be subject to all the provisions of this Conservation and Flood Easement.

E. In furtherance of the Multiple and Complementary Benefits, the above-described rights shall be exercised in a which is in harmony with, and does not materially interfere with, any of the Multiple and Complementary Benefits.

F. Because this Conservation and Flood Easement was purchased at least in part by funds provided by the DWR Division of Flood Management, the Conservation and Flood Easement is intended to be consistent with any present or future flood management project or activity implemented on the Property, and any flood control easement recorded against the Property, that may evolve from the City's or County's flood management planning efforts. In that regard, any such flood management project or activity or future flood control easement shall be a permitted use of the Property pursuant to the terms of this Conservation and Flood Easement, and the necessary property rights to implement future flood management plans and activities on the Property including rights to construct floodway improvements and rights of access for construction, inspection, and maintenance purposes shall be provided by Grantor and Grantee to the Flood Management Agency having jurisdiction for flood protection on the Property at no cost to the Flood Management Agency.

G. Upon request by Grantor, Grantee shall within 15 days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement, as may be requested by Grantor.

3. Grantor's Rights and Obligations.

A. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Multiple and Complimentary Benefits of the Conservation Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Easement.

B. Grantor shall be permitted to conduct [agricultural practices] [habitat development and passive recreation] on _____ in a manner consistent with the preservation or enhancement of the Multiple and Complementary Benefits. Notwithstanding the foregoing, Grantor may, without obtaining the consent of the Grantee, fallow areas within _____ consistent with sound agricultural practices or convert formerly agricultural land to wildlife habitat, whether terrestrial or aquatic.

C. Grantor shall comply with all applicable federal, State and local laws, statutes, rules, regulations and ordinances (collectively, the "Laws") that apply to Grantor respecting Grantor's acquisition, ownership and operation of _____ and obtain any other permits, approvals, and licenses that Grantor is required to obtain under any Law that is applicable to Grantor respecting Grantor's acquisition, ownership and operation of _____. Upon the request of the DWR, Grantor shall deliver to the DWR a copy of any requested final permit, license or approval obtained by Grantor in connection with Grantor's acquisition, ownership and operation of _____.

D. Grantor agrees to indemnify and hold the Conservation Area Steward harmless for any damage suffered by the Grantee as a result of Grantor's activities on _____; provided, that such damage shall not have been caused by the gross negligence or willful misconduct of the Conservation Area Steward.

E. Grantor shall assume all management, operation and maintenance costs associated with its ownership of the Property, including the costs of ordinary repairs and replacements of a recurring nature and costs associated with Grantor's compliance with any and all Laws that are applicable to Grantor in connection with Grantor's ownership and operation of the Property. The DWR, County, City, flood management district and the Grantee shall not be liable for any costs associated with the management, operation and maintenance of the Property, including flood management, except and to the extent of those costs associated with any flood management project or activity that is undertaken on the property in the future by DWR, County, City, flood management district, or the Conservation Area Steward.

F. Grantor shall not engage in any dumping, releasing or other disposal of noncompostable refuse, trash, unsightly, toxic or other hazardous material on the Property; except to the extent such activities are conducted in connection with those agricultural operations and activities that are permitted under this Conservation and Flood Easement and are consistent with good farming practices and wildlife habitat management practices conducted in the general area and in a manner that is in compliance with all Laws that are applicable to such activities.

G. Grantor shall not explore for or extract minerals, hydrocarbons, soils, or other materials on or below the surface of the property except as needed to fulfill and implement the resource conservation purposes of this easement, and shall not change the topography of the Property without first obtaining the written consent of the Conservation Area Steward, including, without limitation, any topographical change resulting from any mining activity or levee or berm construction, except that any topographical changes resulting from any permitted agricultural activities conducted on the Property by Grantor or permitted wildlife habitat enhancement activities on the Property conducted by Grantor shall be permitted under this Conservation and Flood Easement without obtaining the consent of the Conservation Area Steward.

H. Grantor may not manipulate, divert, or otherwise control or alter the natural watercourses or other bodies of water on the Property or adjacent property, except in connection with any permitted flood control activities, agricultural activities conducted on the Property by Grantor or permitted wildlife habitat enhancement activities on the Property conducted by Grantor, or engage in any activity that would pollute or degrade the surface or subsurface waters, except in connection with the permitted agricultural operations on the Property or as may be expressly permitted elsewhere herein. Grantee may not install wells or extract groundwater except to benefit the Conservation Area in amounts as may be reasonably required for conservation purposes on the property.

I. Grantor shall pay all applicable real property taxes, assessments, fees and charges of whatever kind levied or assessed on the underlying fee interest in the Property. If Conservation Area Steward ever pays any taxes, assessments, fees or charges on the underlying fee interest that are the responsibility of Grantor, Grantor shall promptly reimburse the Conservation Area Steward for the same.

J. Grantor shall be permitted to apply herbicides, pesticides or fungicides on the Property only in connection with permitted agricultural or wildlife enhancement activities conducted by Grantor on the Property in full compliance with all applicable Laws and consistent with good farming practices conducted in the general area of the Property.

K. Grantor reserves all rights respecting the Property that are not expressly prohibited by this Conservation and Flood Easement and which are not inconsistent with the purposes of this Conservation and Flood Easement.

L. Grantor shall include appropriate acknowledgment of DWR's and other cost-sharing entities' financial support in any written or other media describing Grantor's acquisition and management of _____.

M. Grantor shall not use, or allow any portion of the Property to be used, for mitigation to compensate for adverse environmental impacts not on the Property, without the express written consent of the DWR.

N. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conservation Area, including without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee and the DWR at least fifteen (15) days prior to the date of any Conservation Area transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

5. General Provisions.

The following provisions apply to the Conservation and Flood Easement:

A. Both Grantee and Grantor agree to work together to accomplish the preservation and protection of the Conservation Area.

B. The parties agree that they do not intend, and this Conservation and Flood Easement shall not be construed, to create any obligations on the part of the DWR or the Conservation Area Steward: (a) as an owner or operator, as those words are defined in any federal, State or local statute, regulation, ordinance, order or requirement relating to environmental conditions or hazardous materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. Sections 9601, et seq.); (b) as a person described in 42 U.S.C. 9607(a)(3); (c) as purchaser, with any obligation to investigate or remediate any hazardous materials associated with the Property; or (d) as a person with any control over Grantor's ability to investigate and remediate any hazardous materials associated with the Property. For the purposes of this Conservation and Flood Easement, the term "hazardous materials" shall mean any flammable, explosive or radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in any Law.

C. The parties agree that enforcement of this Conservation and Flood Easement is essential to achieve its purposes. Therefore, the parties agree that

any breach of the Conservation and Flood Easement may not be adequately compensated for by the recovery of damages, and that in addition to all other remedies available at law and equity, the parties shall be entitled to the remedy of injunction to restrain any actual or threatened violation or breach of this Conservation and Flood Easement and to compel the restoration of any portion of the Property affected by any unauthorized activity committed or permitted that is contrary to the purposes of this Conservation and Flood Easement. Except when an ongoing or imminent violation could significantly diminish or impair the purpose of the Conservation and Flood Easement, the Conservation Area Steward shall give Grantor written notice of any violation and thirty (30) days to correct such violation or if it cannot be cured within such thirty (30) day period, thirty (30) days to commence such cure before filing any legal or equitable action. Grantor shall not be responsible for any extraordinary damage caused primarily by any event that can reasonably be called an "Act of God." The prevailing party in any litigation shall recover the cost of suit, including reasonable attorneys' fees.

D. The terms "Grantor", "Conservation Area Steward" and "DWR," whenever used herein, and any pronouns used in place thereof, shall be held to mean and include the above-named Grantor, its successors, heirs and assigns, the [easement grantee] and its successors, heirs, and assigns, and the DWR, its successors and assigns.

E. The Grantor and Conservation Area Steward intend to create through this Conservation and Flood Easement real covenants and equitable servitudes running with the land. The covenants, terms conditions and restrictions of this Conservation and Flood Easement shall run with the land and burden and benefit the interests included in the Conservation and Flood Easement and the underlying fee of the Property (reserved interests of the Grantor), and shall be binding on and inure to the benefit of the Grantor and the Conservation Area Steward and their respective successors, heirs and assigns. If the Conservation Area Steward or its successors, heirs, and assigns become defunct and unable to fulfill the easement grantee responsibilities, the California Department of Fish and Game shall replace the easement grantee, and shall assume all rights, interests, duties and responsibilities associated with being the grantee of the aforementioned conservation and flood easement.

F. Grantor agrees to reference this Conservation and Flood Easement in any subsequent deeds or other legal instruments which are used to convey fee interests in all or any portion of the Property.

G. Any notice required by this Conservation and Flood Easement shall be in writing and shall be personally delivered or sent by prepaid first class mail, or by other commercially acceptable means to Grantor and Conservation Area Steward respectively at the following addresses, unless a party has been notified by the other of a change of address.

With an additional copy to:

To DWR: Property Management Section
 Division of Land and Right-of-Way
 1416 Ninth Street, Room 421
 Sacramento, CA 95814.

With an additional copy to:

 Chief Counsel
 Department of Water Resources
 1416 Ninth Street, Room 1118
 Sacramento, CA 94236-0001

H. 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 to be 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.

H. If any provision of this Conservation and Flood Easement is found to be invalid or inapplicable to a particular entity, the remainder of the provisions of the Conservation and Flood Easement shall not be affected thereby.

I. The provisions of this Conservation and Flood Easement shall be liberally construed to effectuate its conservation purposes.

H. This Conservation and Flood Easement shall be interpreted pursuant to the laws of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

I. Enforcement of the terms of this Easement shall be at the discretion of the respective parties, and any forbearance by Grantor or Grantee to exercise their rights under this easement shall not be deemed or construed as a waiver by Grantor or Grantee of such term or of any subsequent breach of the same or any other term of this Easement of any of their rights under this Easement. No delay or omission by Grantor or Grantee in the exercise of right or remedy upon any breach

by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.

- J. Nothing contained in this Easement shall be construed to entitle any party to bring any action against Grantor or Grantee for any injury to or change in the Conservation Area resulting from causes beyond their control, including, without limitation, fire, drought, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Area and downstream property owners from such causes.
- K. This instrument sets forth the entire agreement of the parties with respect to the Conservation Area, and supersedes all prior discussions, negotiations, understandings, or agreements related to this easement except for the funding agreement between DWR and the Grantee or Grantor by which funds are provided to acquire in whole or in part the property rights related to the Conservation Area which remains in effect for the duration of its term.
- L. In the event the Conservation Area fee title and this Easement are ever owned by the same entity, there shall be no express or implied merger by operation of law or otherwise. If any party should claim such a merger, the parties agree that any and all terms and conditions of this Easement shall be deemed covenants and restrictions upon the Conservation Area, which shall run with the land according to California and/or other applicable law and otherwise exist in perpetuity.
- M. Grantor and Grantee hereby waive, solely as to each other any defense of laches, estoppel, or prescription.
- N. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

This Conservation and Flood Easement may be amended only with the written consent of the DWR, Grantor and Conservation Area Steward, in the form of an Amended Conservation and Flood Easement, which shall be recorded in the Official Records of _____ County. Any such amendment shall be consistent with all applicable Laws.

IN WITNESS WHEREOF, the undersigned have executed this Conservation and Flood Easement as of the dates set forth besides such party's respective name.

GRANTOR:

[Name of grantor organization]

Date: _____, 2001

By: _____

Name: _____

Title: _____

GRANTEE:

[Name of grantee organization]

Date: _____, 2001

By: _____

Name: _____

Title: _____