



## Fort Ord Reuse Authority

920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

Phone: (831) 883-3672 • Fax: (831) 883-3675 • [www.fora.org](http://www.fora.org)

### ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, FEBRUARY 20, 2013

920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

### AGENDA

1. **CALL TO ORDER AT 8:15 AM**
2. **PLEDGE OF ALLEGIANCE**
3. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**
  - a. February 8, 2013 Letter from Monterey County District Attorney Regarding Brown Act Violations
4. **PUBLIC COMMENT PERIOD:**

Members of the audience wishing to address the Fort Ord Reuse Authority (FORA) Administrative Committee on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes. Public comments on specific agenda items will be heard at the time the matter is under Committee consideration.
5. **APPROVAL OF MEETING MINUTES**
  - a. February 6, 2013 Administrative Committee Minutes ACTION
6. **FEBRUARY 15, 2013 BOARD MEETING – FOLLOW UP** ACTION
8. **OLD BUSINESS**
  - a. CIP Review – Phase II Study
    - i. Implementing Formulaic Approach – Update INFORMATION
  - b. Draft Habitat Conservation Plan Update
    - i. Schedule/Outstanding Policy Items INFORMATION
    - ii. California Department of Fish and Wildlife Conservation Easement Language INFORMATION
9. **NEW BUSINESS**
10. **ITEMS FROM MEMBERS**
11. **ADJOURNMENT**

**NEXT SCHEDULED MEETING: MARCH 6, 2013**

*Information about items on this agenda or persons requesting disability related modifications and/or accommodations can contact the Deputy Clerk at: 831-883-3672 \* 920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933 by 5:00 p.m. one business day prior to the meeting. Agendas can also be found on the FORA website: [www.fora.org](http://www.fora.org).*



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## ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, FEBRUARY 6, 2013

920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933 (FORA Conference Room)

### MINUTES

#### 1. CALL TO ORDER

Co-Chair Houlemard called the meeting to order at 8:20 a.m. The following were present, as indicated by signatures on the roll sheet:

Doug Yount, City of Marina\*  
Elizabeth Caraker, City of Monterey\*  
Marti Noel, County of Monterey\*  
Ray Corpuz, City of Salinas  
Anya Spear, CSUMB  
Heidi Burch, City of Carmel  
Vicki Nakamura, MPC  
Graham Bice, UC MBEST

Chuck Lande, Marina Heights  
Bob Schaffer  
Patrick Breen, MCWD  
Mike Zeller, TAMC  
Sid Williams, UVC  
Scott Hilk, MCP  
Brian Boudreau, Monterey Downs  
Beth Palmer, Monterey Downs

FORA Staff:  
Michael Houlemard  
Steve Endsley  
Jim Arnold  
Jonathan Garcia  
Stan Cook  
Crissy Maras  
Lena Spilman

\* Voting Members

#### 2. PLEDGE OF ALLEGIANCE

Heidi Burch led the Pledge of Allegiance.

#### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Co-Chair Houlemard stated that FORA planned to sponsor an informational conference in March regarding the use prevailing wage on the former Fort Ord. He also stated that Sand City Mayor David Pendergrass has been selected as the Monterey Peninsula Chamber of Commerce's Public Official of the Year.

#### 4. PUBLIC COMMENT PERIOD

None.

#### 5. APPROVAL OF JANUARY 30, 2013 MEETING MINUTES

**MOTION:** Heidi Burch moved, seconded by Doug Yount, to approve the January 30, 2013 Administrative Committee meeting minutes, as presented.

**MOTION PASSED:** Ayes: Doug Yount, Elizabeth Caraker, Abstain: Marti Noel

#### 6. FEBRUARY 15, 2013 BOARD MEETING – AGENDA REVIEW

Co-chair Houlemard reviewed items on the upcoming February 15, 2013 Board agenda. Members discussed a full range of options for the proposed Board workshop agenda and received comments from members of the public.

#### 7. NEW BUSINESS

##### a. Report of U.S. Army's January 30, 2013 Public Meeting Regarding the Proposed Plan for Group 3 Munitions response Areas.

ESCA Program Manager Stan Cook provided materials regarding the proposed plan for group 3 munitions response areas and reported on the Army's January 30, 2013 public meeting.

**8. ITEMS FROM MEMBERS**

Doug Yount requested an update as to the status of FORA's property tax revenue. Co-Chair Houlemard responded that FORA had not yet received the revenue from the County, as promised, and that staff had contacted the County Auditor to inquire as to the delay.

**9. ADJOURNMENT**

Co-Chair Houlemard adjourned the meeting at 10:05 a.m.

*Minutes Prepared by:  
Lena Spilman, Deputy Clerk*

*Approved by:*

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*Michael A. Houlemard, Jr., Executive Officer*

**PLEASE NOTE: The following sample Conservation Easement Deed is provided for reference. The Department of Fish and Wildlife updates this document as needed, and it does not necessarily contain all provisions appropriate for a given project.**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

**[Fill in Grantee Name/Address]**

Grantee Name

Grantee Address

City, State ZIP

Attn: \_\_\_\_\_

**[If Grantee is CDFW, use:]**

State of California

Wildlife Conservation Board

1807 13<sup>th</sup> Street, Suite 103

Sacramento, CA 95811

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Space Above Line for Recorder's Use Only

## **CONSERVATION EASEMENT DEED**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ ("Grantor"), in favor of [***insert Grantee's full legal name:*** \_\_\_\_\_] [***if CDFW is Grantee insert:*** the State of California] ("Grantee"), with reference to the following facts:

### **RECITALS**

A. Grantor is the sole owner in fee simple of certain real property containing approximately \_\_\_\_\_ acres, located in the in the City of [***insert City name***], County of [***insert County name***], State of California, and designated Assessor's Parcel Number [***insert Assessor's Parcel Number(s)***] (the "Property"). The Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by reference.

B. The Property possesses wildlife and habitat values of great importance to Grantee and the people of the State of California. The Property provides high quality habitat for [***list plant and/or animal species***]. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction

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

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

**[Use this version of Recital D when governmental entity is Grantee]**. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

E. This Conservation Easement is granted pursuant to the California Endangered Species Act Incidental Take Permit No. **[insert tracking number]** by and between **[Permittee]** and CDFW, dated **[insert date of execution]** (the “Permit”). The Permit provides mitigation for certain impacts of **[describe project]** located in the City of **[insert City name]**, County of **[insert County name]**, State of California and requires implementation of a final management plan (as applicable, the "Management Plan") created thereunder.

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

A final, approved copy of the Permit, the Management Plan, and any amendments thereto approved by CDFW, shall be kept on file at the offices of the Grantee. If Grantor, or any successor or assign, requires an official copy of the Permit, the Management Plan, or any amendments thereto, it should request a copy from the Grantee at its address for notices listed in Section 13 of this Conservation Easement.

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

## COVENANTS, TERMS, CONDITIONS, AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including Civil Code Section 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 Permit and the Management Plan, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to 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 Permit and the Management Plan.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the 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, the Permit, and the Management Plan and to implement at Grantee's sole discretion Permit and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the 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) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the 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 inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties, are expressly prohibited:

(a) Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [***include the following language only if the Permit or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [Permit **or** Management Plan].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [***include the following language only if the Permit or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [Permit **or** Management Plan].

(c) Agricultural activity of any kind [***include the following language only if the Permit or Management Plan, including any adaptive management measures, specifies such an exception:***], except grazing for vegetation management as specifically provided in the [Permit **or** Management Plan].

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

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

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

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [***include the following language only if the Permit or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [Permit **or** 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 extraction of minerals, loam, soil, sands, gravel, rock 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 but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Permit or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [***include the following language only if the Permit or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [Permit **or** Management Plan].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [***include the following language only if the Permit or Management Plan, including any adaptive management measures, specifies such an exception:***], except for [***insert specific exception(s)***] as specifically provided in the [Permit **or** Management Plan].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the 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, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.



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

**[Include the following section if CDFW is not the Grantee]**

4. Grantee's Duties.

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

(1) Observe and carry out the obligations of Grantee pursuant to the Permit and Management Plan.

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

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

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

5. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the 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 observe and carry out the obligations of Grantor pursuant to the Permit and Management Plan.

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

7. Grantee's Remedies. If Grantee determines that a violation of 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 ("Notice of Violation"). If Grantor fails to cure the violation within fifteen (15) days after

receipt of a Notice of Violation, 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 for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the 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 this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

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

(b) Grantee's Discretion. Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any

other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the 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.

(d) Enforcement; Standing. All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by **[insert if State of California is Grantee: CDFW and]** the Third-Party Beneficiaries (as defined in Section 15(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [Permit **or** Management Plan]. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General, the Third-Party Beneficiaries, or other individual with a justifiable interest in the preservation of this Conservation Easement each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) **[Add if nonprofit organization is Grantee]** Reversion. If CDFW determines that Grantee is not holding, monitoring or managing this Conservation Easement for the conservation purposes in the manner specified in this Conservation Easement or in the Permit or the Management Plan, then pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by CDFW.

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

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

10. 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 neither Grantee nor any Third-Party

Beneficiaries shall have any 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 for any activity or use permitted by this Conservation Easement [*insert if CDFW or another government entity is Grantee:*, 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.

(a). Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the 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, 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.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and, collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 10 (a), and 10 (b); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [*insert if CDFW is grantee:* or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(2) [*insert if there are any Third-Party Beneficiaries, including CDFW;*] Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries

and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. Provided, however, that the indemnification in this Section 10 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 10 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General in defending the action or proceeding.

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

(d) Condemnation. [***Use the appropriate paragraph:***]  
[***If CDFW or other state agency is Grantee:***] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Game Code Section 1348.3.

[***All other Grantees:***] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

## 11. Transfer of Conservation Easement or Property.

(a) [***Edit this section as appropriate if CDFW is Grantee***]  
Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee but Grantee shall give Grantor and CDFW at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to Civil Code Section

815.3 (and any successor or other provision(s) then applicable); and (ii) otherwise reasonably acceptable to CDFW. 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. Any transfer under this section is subject to the requirements of Section 12.

(b) **[Edit this section as appropriate if CDFW is Grantee]** 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 Permit, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and CDFW of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or CDFW shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 12.

12. **[Edit this section as appropriate if CDFW is Grantee]** Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and CDFW otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

13. **[Edit this section as appropriate if CDFW is Grantee]** Notices. Any notice, demand, request, consent, approval, or communication that either Grantor, Grantee, or Third-Party Beneficiary desires or is required to give to the others shall be in writing, with a copy to CDFW, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class registered United States mail, postage fully prepaid, addressed as follows:

To Grantor:            [Grantee name]  
                              [Grantee address]  
                              Attn: \_\_\_\_\_

To Grantee:            **[insert the appropriate Grantee information:]**

[Department of Fish and Wildlife]  
[Region name] Region  
[Region address]  
[Attn: Regional Manager]

**OR**

[Grantee Name]  
[Grantee address]

**[Remove/modify the following blocks as appropriate when CDFW is not the Grantee or third-party beneficiaries to the conservation easement.]**

To CDFW:            [Department of Fish and Wildlife]  
                              [Region name] Region  
                              [Region address]  
                              [Attn: Regional Manager]

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

Or to such other address as Grantor, Grantee, or CDFW shall designate by written notice to the other parties. 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 registered first class mail, five (5) days after deposit into the United States mail.

14. **[Edit this section as appropriate if CDFW is Grantee]** Amendment. This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee with written approval by CDFW. 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 **[insert county name]** County, State of California, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and CDFW.

15. 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 Section 815, *et seq* [**add if Grantee is nonprofit organization:** and Government Code Section 65965]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

(d) Entire Agreement. This document (including its exhibits and the Permit and Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 14.

(e) No Forfeiture. Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the



parties and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

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

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

(i) No Hazardous Materials Liability.

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

(2) Without limiting the obligations of Grantor under Section 10 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Indemnified Parties (defined in Section 10 (b)) from and against any and all Claims (defined in Section 10 (b)) 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 or any of its employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [**add if CDFW is Grantee**: or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 10 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 10 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation of, alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General in defending the action or proceeding.

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

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

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

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

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

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

(5) The term "Hazardous Materials" includes, without limitation, (i) material that is flammable, explosive or radioactive; (ii) petroleum products, including

by-products and fractions thereof; and (iii) 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. Section 6901 *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; hereinafter "HTA"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local, or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment, or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the 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. Grantor also represents and warrants that, [*insert if appropriate*: except as specifically disclosed to and approved in writing by CDFW and attached as an exhibit] [*choose applicable statement*: there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement have not been expressly subordinated to this Conservation Easement, and that the Property is not subject to any other conservation easement **or** the holder of any outstanding mortgage, lien, encumbrance or other interest in the Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and CDFW].

(k) [*Edit this section as appropriate if CDFW is Grantee*] 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 subordinate to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Property, without first obtaining the written consent of Grantee and CDFW. Such consent may be withheld if Grantee or CDFW determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 15(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. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and CDFW.

(l) Recording. Grantee shall record this Conservation Easement in the Official Records of [**county name**] County, California, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) [**Edit or delete this section as appropriate if CDFW is Grantee, or if there are any other third-party beneficiaries**] Third-Party Beneficiary. Grantor and Grantee acknowledge that CDFW, (the "Third-Party Beneficiary") is a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 15, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding. Endowment funding for the perpetual management, maintenance and monitoring of the Property is specified in and governed by the Permit and the Management Plan.

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

GRANTOR: [**Notarization Required**]

Approved as to form:

**[Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.]**

BY: \_\_\_\_\_

General Counsel  
State of California  
Department of Fish and Wildlife

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

BY: \_\_\_\_\_

**[Insert General Counsel**

**Representative]**

DATE: \_\_\_\_\_

General Counsel

**[Delete this page if CDFW will not be Grantee. If the Grantee will be a government agency, that agency must include its own Certificate of Acceptance.]**

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement by \_\_\_\_\_, dated \_\_\_\_\_, to the State of California, Grantee, acting by and through its Department of Fish and Wildlife ("CDFW"), a governmental agency (under Government Code § 27281), is hereby accepted by the undersigned officer on behalf of the Grantee pursuant to the Fish and Game Code.

GRANTEE:

**[Remove or modify the approval block as appropriate if CDFW is not Grantee.]**

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

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_