

Appendix I Template Conservation Easement

This appendix contains a template for conservation easements that would be used to permanently protect the conservation values of habitat protected as part of the LOHCP. It is designed to be used in the following three habitat protection scenarios that are envisioned to occur as part of the conservation strategy:

1. Private landowners grant easements to the Implementing Entity to protect habitat set-asides established when the landowners develop vacant land inside the Priority Conservation Area;
2. Private landowners dedicate additional easements to the Implementing Entity to protect habitat inside the Priority Conservation Area; and
3. The County of San Luis Obispo grants an easement to the Implementing Entity to permanently protect land acquired in the Priority Conservation Area in fee title from willing sellers.

There are two separate conservation easement templates. The first is to be used when just a portion of a property is being covered by the easement (Section I.1). The second is to be used when the entire property is to be protected by the easement (Section I.2).

Details of the conservation easements will be developed as part of each habitat protection project, to ensure the conservation values of the land for the covered species are protected. Conservation easements will be subject to the review and approval by the USFWS (Section 6.2.2.2).

I.1 Conservation Easement Template for Protection of a Portion of a Property

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Name and Address of Grantee

With Copies to:

County of San Luis Obispo
Planning and Building Department
976 Osos Street
San Luis Obispo, CA 93408

Attn:

Add FWS addressees

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made this ____ day of _____, 20____, by the County of San Luis Obispo ("County" or "Grantor"), in favor of the [Name of the Implementing Entity] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property located in the County of San Luis Obispo, State of California, designated Assessor's Parcel Number _____ ("Property"). The Property is legally described in Exhibit "A" attached hereto and incorporated herein by this reference. Grantor intends to grant a conservation easement over a ____-acre portion of the Property which is the Property described in Exhibit "A" (the "Easement Area"). The Easement Area is legally described in Exhibit "B" attached hereto and incorporated herein by this reference.

B. The Easement Area possesses wildlife and habitat values of great importance to Grantee, the United States Fish and Wildlife Service (USFWS), and the people of the United States.

C. The Easement Area provides high quality habitat for [list plant and/or animal species] and contains [list habitats; native and/or non-native, restored, created, enhanced, and/or preserved jurisdictional water of the United States including wetlands]. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property. D. The Easement Area supports habitat required to be preserved and managed in perpetuity by Federal Endangered Species Act Incidental Take Permit TE - _____ ("Permit") as mitigation for certain impacts of development and associated infrastructure (collectively "County Projects") located in the County of San Luis Obispo, according to the Los Osos Habitat Conservation Plan ("LOHCP"), the terms of which are incorporated by reference into this Conservation Easement. Grantor, Grantee, and USFWS each has a copy of the LOHCP and Permit.

E. Grantee is the entity selected by the County to implement certain terms and conditions of the LOHCP. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65967. Specifically, Grantee is 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 which has as its primary purpose the preservation, protection or enhancement of land in its natural, scenic, forested, or open space condition or use.

F. The United States Fish and Wildlife Service ("USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-66c, the Fish and Wildlife Act of 1956, 16 U.S.C. §724(f), *et seq.*, and other provisions of federal law.

G. USFWS approved the Final LOHCP Preserve System Adaptive Management and Monitoring Plan ("Management Plan") for the Property, which provides the conservation requirements for and authorized activities within the Easement Area. The Management Plan is incorporated by this reference into this Conservation Easement as if fully set forth herein. A final, approved copy of the Management Plan, and any amendments thereto approved by the USFWS, along with additional specific requirements or modifications applicable to the Property, if any, approved in the future by the USFWS, will be kept on file at the addresses listed in Paragraph 12. If the Grantor, or any successors or assigns, require an official copy of the Management Plan, they may request a copy of the current Management Plan from the Agencies at the addresses listed in Paragraph 12.

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 Easement Area under the terms and conditions set forth herein.

1. Purposes. The purposes of this Conservation Easement are to ensure the Easement Area will be retained forever in its natural, restored or enhanced condition consistent with the habitat protection requirements of the LOHCP, and Permit and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. Grantor intends that this Conservation Easement will confine the use of the Easement Area to such activities that are consistent with those purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats. Grantor represents and warrants that there are no structures or improvements existing on the Property at the time this Conservation Easement is executed, except for any structures or improvements identified in the survey attached as Exhibit "C" and incorporated herein by this reference. Grantor further represents and warrants that to Grantor's knowledge there are no other previously granted easements existing on the Property that interfere or conflict with the purposes of this Conservation Easement as evidenced by the title report attached at Exhibit "D" and incorporated herein by this reference.

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

(a) For the purpose of restoring, enhancing or improving the health of the natural resources and habitats located on the Property, the right to enter the Property, along with Grantee’s agents and contractors at reasonable times and upon not less than ten (10) days’ prior notice, in order to and carry out management and restoration activities or to monitor the effects of the restoration activities, all in accordance with the Management Plan. Grantee’s habitat management and restoration activities shall not unreasonably limit or interfere with Grantor’s access to and use of the Property and shall be at Grantee’s sole cost and expense and Grantor shall not be responsible for upkeep and maintenance of Grantee’s restoration projects.

(b) To enter the Property, along with Grantee’s agents and contractors, at reasonable times and upon not less than ten days’ notice to conduct surveys of the covered species, to monitor the natural communities, or to evaluate the condition of other natural resources. Grantee’s scientific research and monitoring activities shall not unreasonably limit or interfere with Grantor’s use of the Property and shall be at Grantee’s sole cost and expense.

(c) To preserve and protect the Conservation Values of the Easement Area;

(d) To enter upon the Easement Area at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall not unreasonably interfere with Grantor’s authorized use and quiet enjoyment of the Easement Area or the Property. Grantor shall provide Grantee access to the Easement Area by crossing the Property, if necessary;

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

(f) To require that all mineral, air and water rights as Grantee deems necessary to preserve, protect, and to sustain the biological resources and the Conservation Values of the Easement Area shall be put to beneficial use upon the Easement Area, consistent with the purposes of this Conservation Easement; and

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

3. Prohibited Uses. Any activity on or use of the Easement Area 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 adversely affect the purposes of this Conservation Easement, except as otherwise specifically provided in the Management Plan;

- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways other than as otherwise specifically provided in the Management Plan;
- (c) Agricultural activity of any kind, except that grazing is permitted if done in accordance with the Management Plan or other grazing or management plan approved by Grantee and USFWS;
- (d) Recreational activities including, but not limited to, horseback riding, biking, hunting, or fishing, except as otherwise specifically provided in the Management Plan;
- (e) Commercial or industrial uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Easement Area, including a request for a certificate of compliance pursuant to the Subdivision Map Act (California Government Code section 66499.35);
- (g) Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind, except as otherwise specifically provided in the Management Plan;
- (h) Deposit 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, rocks or other material on or below the surface of the Easement Area, except as otherwise specifically provided in the Management Plan;
- (k) Altering the surface or general topography of the Easement Area, including building of roads, except as otherwise specifically provided in the Management Plan;
- (l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in conformance with the Management Plan approved by Grantee and the USFWS for (1) fire breaks, (2) maintenance of existing foot trails or roads that are otherwise permitted under this Conservation Easement, (3) prevention or treatment of disease; or (4) utility line clearance for existing utilities;
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Area, except as otherwise specifically provided in the Management Plan, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters; and
- (n) Landscaping and hardscaping.
- (o) Without the prior written consent of Grantee and the USFWS, which Grantee and the USFWS each may withhold for any reason, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air, or water rights for the Easement area; 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 Easement Area, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (4) any water from wells that are in existence or may be constructed in the future on the Easement Area; and

(p) Any activity or use that may violate or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Easement Area, or the activity or use in question.

4. **Grantor's Duties.** Grantor shall undertake all reasonable actions to prevent unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area or that are otherwise inconsistent with this Conservation Easement, including but not limited to posting signs prohibiting such unlawful entry and trespass. In addition, Grantor shall undertake all necessary actions to perfect the right of Grantee under Section 2 of this Conservation Easement, including but not limited to, Grantee's water rights, and all necessary actions to fulfill its responsibilities as identified in the USFWS Permit.

5. **Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including the right to engage in or to permit or invite others to engage in all uses of the Easement Area that are not expressly prohibited or limited by, and are consistent with the purposes of, this Conservation Easement. Notwithstanding anything set forth herein, in the event of any third-party claim against Grantor arising from the actions of Grantee or any of its employees, agents, contractors or representatives with respect to the Property, Grantor reserves any rights that Grantor may have at law or in equity to seek contribution or reimbursement from Grantee for such third-party claim.

6. **Grantee's Remedies.** If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. At the time of giving any such notice, Grantee shall give a copy of the notice to USFWS. If Grantor fails to cure the violation within fifteen (15) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin the cure within the fifteen (15)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Easement Area, Grantee may pursue its remedies under this Section 6 without waiting for the period provided for cure to expire, provided, however, that (a) Grantee shall use reasonable efforts to give Grantor notice thereof, which notice may be by email or telephone, and (b) Grantor shall have the right to have a representative present while Grantee is present on the Property. Grantee's rights under this section apply equally to

actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

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

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

6.2. Discretion of Grantee. Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of the enforcing party, and any forbearance by Grantee, to exercise their 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 by Grantee, of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee, in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

6.3. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area 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 reasonable and prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes

7. Fence Installation and Maintenance. Grantor shall install fencing in accordance with the Management Plan to protect the Conservation Values of the Easement Area, including but not limited to wildlife corridors.

8. Access. This Conservation Easement does not convey a general right of access to the public or a general right of access to the Property. Grantor or its designees shall install signage at all likely points of entry informing persons of the nature and restrictions on the Easement Area. This Conservation Easement will allow for the Agencies' access to the Easement Area. Such access may be at specific locations if so designated in easements and reservations of rights recorded in the chain of title to the Property at the time of conveyance.

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area except as specifically required of the Grantee under the Management Plan. Grantor agrees that neither the Grantee nor the USFWS shall have a duty or responsibility for the operation, upkeep or maintenance of the Easement Area, except as specifically required of the Grantee under the Management Plan, or 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 Easement Area or Property. Grantor and Grantee each remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, including those required from the USFWS acting their regulatory capacities, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

9.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and specific), fees, and charges of whatever description levied on or assessed against the Easement Area or Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and the USFWS with satisfactory evidence of payment upon request. Grantor and Grantee shall each keep the Easement Area free from any liens (other than a security interest that is expressly subordinate to this Conservation Easement as provided in Section 14(k) and(l)), 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 Easement Area or Property.

9.2. Hold Harmless. Grantor shall hold harmless, protect, and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each 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: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to Grantee's Indemnified Parties with respect to any Claim due solely to the negligence or willful misconduct of Grantee's Indemnified Parties; (2) the obligations specified in Sections 5, 10, and 10.1 and (3) the existence or administration of this Conservation Easement.

Grantor shall hold harmless, protect, and indemnify the USFWS, and their directors, officers, employees, agents, contractors and representatives, and the heirs, personal representatives, successors and assigns of each of them (each a "USFWS Indemnified Party" and, collectively, "USFWS Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause; and (2) the existence or administration of this Conservation Easement. Provided, however, that this indemnification shall be inapplicable to a USFWS Indemnified Party with respect to any Claim due solely to the negligence or willful misconduct of that USFWS Indemnified Party. If any action or proceeding is brought against any of either USFWS Indemnified Parties by reason of any Claim to which the indemnification in this Section 10.22 applies, then Grantor shall, at the election of and upon written notice from the USFWS Indemnified Party, defend such action or proceeding by counsel

reasonably acceptable to the USFW Indemnified Party or reimburse the USFWS Indemnified Party for all charges incurred for services of the U.S. Department of Justice in defending the action or proceeding .

9.3. Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantor shall provide written notice to Grantee and the USFWS at least forty-five (45) days prior to taking any action to extinguish this Conservation Easement and prior to extinguishment shall provide a conservation easement at an alternative site to Grantee, or another entity or organization authorized to acquire and hold conservation easements under California Civil Code section 815.3 (or any successor provision then applicable) or the laws of the United States, that has been approved in writing by the USFWS, or shall provide alternative mitigation acceptable to the USFWS and determined in writing by the USFWS to be adequate to mitigate for the impacts to the species covered under the Permit. No such extinguishment shall affect the value of Grantee's interest in the Easement Area, and if the Easement Area, or any interest therein, is sold, exchanged, or taken after such extinguishment, Grantee shall be entitled to receive its pro-rata share of the proceeds of such sale, exchange or taking. The amount of the compensation to which Grantee shall be entitled from any sale, exchange, or taking of all or any portion of the Property subsequent to such extinguishment shall be based on the respective fair market values of the interests of Grantee and Grantor extinguished as determined in the judicial extinguishment proceedings, and Grantee shall use any proceeds received in a manner determined in writing by the USFWS to be consistent with the purposes of this Conservation Easement and Grantor's mitigation obligations under the Permit

9.4. Condemnation. This Conservation Easement is a "conservation easement" as defined in California Code of Civil Procedure section 1240.055(a)(1) and constitutes "property appropriated to public use" as defined in California Code of Civil Procedure section 1240.055(a)(3) . USFWS is a public entity that imposed conditions upon issuance of the Permit that were satisfied, in whole or in part, by the creation of this Conservation Easement, as described in California Code of Civil Procedure section 1240.055(a)(3). A person authorized to acquire property for public use by eminent domain shall seek to acquire the Easement Area, if at all, *only* as provided in California Code of Civil Procedure section 1240.055. 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 California Code of Civil Procedure sections 1240.690 and 1240.700. If any person seeks to acquire the Easement Area for public use, Grantee shall immediately provide written notice to the USFWS and comply with all obligations of the holder of a conservation easement under California Code of Civil Procedure section 1240.055. Grantee shall use any proceeds received from condemnation of the Property in a manner determined by the USFWS in writing to be consistent with the purposes of this Conservation Easement and Grantor's mitigation obligations under the Permit. If the Conservation Easement is condemned, the net proceeds from the condemnation shall also be used in compliance with California Government Code section 65966(j) .

10. Transfer of Easement. This Conservation Easement may only be assigned or transferred by Grantee with the prior written approval of the USFWS. Grantee may assign this Conservation Easement only to an entity or organization approved in advance in writing by Grantor and the USFWS that is authorized to acquire and hold conservation easements pursuant to California Civil Code section 815.3 **and** California Government Code section 65967 (and any successor or other provisions then applicable) or the laws of the United States. Grantee shall require the transferee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act

provided in this Section 19 shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

11. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference applicable provisions of the Permit, and any amendments thereto, and the Management Plan and any amendment(s) to that document. Grantor agrees to give written notice to Grantee and the USFWS of the intent to transfer any interest at least thirty (60) days prior to the date of such transfer. Grantee or the USFWS shall have the right to prevent subsequent 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 documents incorporated by reference in it. The failure of Grantor, Grantee, or the USFWS to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. No Merger. The doctrine of merger is not intended, and shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Area 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 the USFWS otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall promptly be recorded against the Easement Area by Grantee, or its successor in interest, in favor of a third party approved in writing by the USFWS to ensure that the mitigation obligations required under the Permit identified in Recital D, which include conservation of the Easement Area in perpetuity through execution and recordation of a conservation easement or equivalent legal mechanism, and the purposes of California Civil Code section 815, are fulfilled. Until such replacement conservation easement or equivalent legal mechanism is executed and recorded, Grantee or its successor in interest shall continue to protect the Easement Area in accordance with the terms of the original Conservation Easement. Any and all terms and conditions of this Conservation Easement shall be deemed covenants and restrictions upon the Easement Area, which shall run with the land according to California law and otherwise exist in perpetuity.

13. Covenant Running with the Land. This Conservation Easement and covenants contained herein (1) are imposed upon the Easement Area; (2) shall run with and against the same and shall be a charge and burden thereon for the benefit of Grantee, or any successor in interest, and the USFWS; and (3) are perpetual and irrevocable.

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

To Grantor: County of San Luis Obispo
Planning and Building Department
976 Osos Street
San Luis Obispo, CA 93408

Attn:
Telephone:
email:

With a copy to:

Attn:
Telephone:
email:

To Grantee:

To USFWS: U.S. Fish and Wildlife Service
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003
Attn: Field Supervisor
Telephone: 805-644-1766

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

15. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and subject to the prior written consent of the USFWS. Any such amendment shall be consistent with the purposes of this Conservation Easement, the requirements of the Permit, and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of San Luis Obispo County, State of California, and Grantee shall promptly provide a conformed copy of the recorded amendment to Grantor and the USFWS.

16. General Provisions.

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

(b) Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to affect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, 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 instrument, including the documents incorporated by reference in it, sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

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

(f) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

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

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

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

(j) No Hazardous Materials Liability.

(1) Except as disclosed in any Phase 1 report provided to Grantee prior to the recordation of this Conservation Easement, Grantor represents and warrants to Grantee and the 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 Easement Area, or transported to or from or affecting the Easement Area.

(2) Without limiting the obligations of Grantor under Section 10.2 of this Conservation Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless Grantee's Indemnified Parties and USFWS Indemnified Parties (each as defined in Section 10.2 from and against any and all Claims (as defined in Section 10.2 arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about, or otherwise associated with the Easement Area at any time, except that this release and indemnification shall be inapplicable to the Grantee's Indemnified Parties or the USFWS Indemnified Parties with respect to any Hazardous Materials placed, disposed, or released by Grantee's Indemnified Parties or the USFWS Indemnified Parties. This release and indemnification includes, without limitation, claims for (a) injury to or death of any person or physical damage to any property; and (b) 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 the USFWS Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the USFWS Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the USFWS Indemnified Party or reimburse the USFWS Indemnified Party for all charges incurred for services of the U.S. Department of Justice in defending the action or proceeding.

(3) 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 the USFWS 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 or duty to investigate and remediate any Hazardous Materials associated with the Easement Area; or

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

(4) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901 *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. section 5101 *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.

(5) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, code, 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 the USFWS that activities on and use of the Easement Area by Grantor, its agents, employees, invitees, and contractors will comply with all Environmental Laws. Grantee represents, warrants, and covenants to Grantor and the USFWS that activities upon and use of the Easement Area by Grantee, its agents, employees, invitees, and contractors will comply with all Environmental Laws.

(k) Warranty. Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Easement Area; that the Easement Area is not subject to any other conservation easement; and that there are no outstanding mortgages, liens, encumbrances or other interests in the Easement Area (including, without limitation, water and mineral interests) that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a written, recorded Subordination Agreement approved in writing by Grantee and the USFWS.

(l) Additional Easements. Grantor shall not grant any additional easements, rights of way or other interests in the Easement area (other than a security interest that is expressly subordinated to this Conservation Easement), or grant, transfer, abandon, or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Easement Area, without first obtaining the written consent of Grantee and the USFWS. Grantee or the USFWS may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Area. This Section 14(l) shall not limit the provisions of Sections 2(f) and 4(o) nor prohibit transfer of a fee or leasehold interest in the Easement Area that is subject to this Conservation Easement and complies with Section 12.

(m) Recording. Grantee shall record this Conservation Easement in the Official Records of San Luis Obispo County, California, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

[Signature Page Follows]

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

GRANTOR:

GRANTEE:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

Approved as to form:

XXX

County of San Luis Obispo

I.2 Conservation Easement Template for an Entire Property

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Name and Address of Grantee

With Copies to:

County of San Luis Obispo
Planning and Building Department
976 Osos Street
San Luis Obispo, CA 93408

Attn:

Add FWS address

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made this _____ day of _____, 20____, by the County of San Luis Obispo ("County" or "Grantor"), in favor of the [Name of the Implementing Entity] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately [insert number] acres of land, located in the County of San Luis Obispo, State of California, designated Assessor's Parcel Number _____ ("Property"). The Property is legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. The Property is in an unimproved [OR a predominately unimproved] natural condition and possesses wildlife and habitat values of great importance to Grantee, the United States Fish and Wildlife Service (USFWS), and the people of the United States.

C. The Property provides high quality habitat for [*list plant and/or animal species*] and contains [*list habitats; native and/or non-native, restored, created, enhanced, and/or preserved jurisdictional water of the United States including wetlands*]. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property.

D. The Property supports habitat required to be preserved and managed in perpetuity by Federal Endangered Species Act Incidental Take Permit TE - _____ ("Permit") as mitigation for certain impacts of development and associated infrastructure (collectively "County Projects") located in the County of San Luis Obispo, according to the Los Osos Habitat Conservation Plan ("LOHCP") dated

_____, the terms of which are incorporated by reference into this Conservation Easement. Grantor, Grantee, and USFWS each has a copy of the LOHCP and Permit.

E. Grantee is the entity selected by the County to implement certain terms and conditions of the LOHCP and MOU. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65967. Specifically, Grantee is 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 which has as its primary purpose the preservation, protection or enhancement of land in its natural, scenic, forested, or open space condition or use.

F. The United States Fish and Wildlife Service ("USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-66c, the Fish and Wildlife Act of 1956, 16 U.S.C. §724(f), *et seq.*, and other provisions of federal law.

G. USFWS approved the Final LOHCP Preserve System Adaptive Management and Monitoring Plan ("Management Plan") for the Property, which provides the conservation requirements for and authorized activities on the Property. The Management Plan is incorporated by this reference into this Conservation Easement as if fully set forth herein. A final, approved copy of the Management Plan, and any amendments thereto approved USFWS, along with additional specific requirements or modifications applicable to the Property, if any, approved in the future by the USFWS will be kept on file at the addresses listed in Paragraph 12. If the Grantor, or any successors or assigns, require an official copy of the Management Plan, they may request a copy of the current Management Plan from the USFWS at the addresses listed in Paragraph 12.

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 under the terms and conditions set forth herein.

1. Purposes. The purposes of this Conservation Easement are to ensure the Property will be retained forever in its natural, restored or enhanced condition consistent with the habitat protection requirements of the LOHCP and Permit 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 such activities that are consistent with those purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats. Grantor represents and warrants that there are no structures or improvements existing on the Property at the time this Conservation Easement is executed, except for any structures or improvements identified in the survey attached as Exhibit "C" and incorporated herein by this reference. Grantor further represents and warrants that to Grantor's knowledge there are no other previously granted easements existing on the Property that interfere or conflict with the purposes of this Conservation Easement as evidenced by the title report attached at Exhibit "D" and incorporated herein by this reference.

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

(a) For the purpose of restoring, enhancing or improving the health of the natural resources and habitats located on the Property, the right to enter the Property, along with Grantee's agents and contractors at reasonable times and upon not less than ten (10) days' prior notice, in order to and carry out management and restoration activities or to monitor the effects of the restoration activities, all in accordance with the Management Plan. Grantee's habitat management and restoration activities shall not unreasonably limit or interfere with Grantor's access to and use of the Property and shall be at Grantee's sole cost and expense and Grantor shall not be responsible for upkeep and maintenance of Grantee's restoration projects.

(b) To enter the Property, along with Grantee's agents and contractors, at reasonable times and upon not less than ten days' notice to conduct surveys of the covered species, to monitor the natural communities, or to evaluate the condition of other natural resources. Grantee's scientific research and monitoring activities shall not unreasonably limit or interfere with Grantor's use of the Property and shall be at Grantee's sole cost and expense;

(c) To preserve and protect the Conservation Values of the Property;

(d) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property;

(e) 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 that is inconsistent with the purposes of this Conservation Easement;

(f) To require that all mineral, air and water rights as Grantee deems necessary to preserve, protect, and to sustain the biological resources and the Conservation Values of the Property shall be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement; and

(g) All present and future development rights appurtenant to, allocated, implied, reserved, or inherent in the Property 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 adversely affect the purposes of this Conservation Easement, except as otherwise specifically provided in the Management Plan;

- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways other than as otherwise specifically provided in the Management Plan;
- (c) Agricultural activity of any kind, except that grazing is permitted if done in accordance with the Management Plan or other grazing or management plan approved by Grantee and USFWS;
- (d) Recreational activities including, but not limited to, horseback riding, biking, hunting, or fishing, except as otherwise specifically provided in the Management Plan;
- (e) Commercial or industrial uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Property, including a request for a certificate of compliance pursuant to the Subdivision Map Act (California Government Code section 66499.35);
- (g) Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind, except as otherwise specifically provided in the Management Plan;
- (h) Deposit 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, rocks or other material on or below the surface of the Property, except as otherwise specifically provided in the Management Plan;
- (k) Altering the surface or general topography of the Property, including building of roads, except as otherwise specifically provided in the Management Plan;
- (l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in conformance with the Management Plan approved by Grantee and USFWS for (1) fire breaks, (2) maintenance of existing foot trails or roads that are otherwise permitted under this Conservation Easement, (3) prevention or treatment of disease; or (4) utility line clearance for existing utilities;
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, except as otherwise specifically provided in the Management Plan, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters; and
- (n) Landscaping and hardscaping.
- (o) Without the prior written consent of Grantee and USFWS, which Grantee and USFWS may withhold for any reason, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air, or water rights for the Easement area; 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: (1) riparian water rights; (2) appropriative water rights; (3) 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 (4) any water from wells that are in existence or may be constructed in the future on the Property; and

(p) Any activity or use that may violate or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the activity or use in question.

4. **Grantor's Duties.** Grantor shall undertake all reasonable actions to prevent 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, including but not limited to posting signs prohibiting such unlawful entry and trespass. In addition, Grantor shall undertake all necessary actions to perfect the right of Grantee under Section 2 of this Conservation Easement, including but not limited to, Grantee's water rights, and all necessary actions to fulfill its responsibilities as identified in the USFWS Permit.

5. **Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its 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. Notwithstanding anything set forth herein, in the event of any third-party claim against Grantor arising from the actions of Grantee or any of its employees, agents, contractors or representatives with respect to the Property, Grantor reserves any rights that Grantor may have at law or in equity to seek contribution or reimbursement from Grantee for such third-party claim.

6. **Grantee's Remedies.** If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. At the time of giving any such notice, Grantee shall give a copy of the notice to USFWS. If Grantor fails to cure the violation within fifteen (15) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin the cure within the fifteen (15)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 6 without waiting for the period provided for cure to expire, provided, however, that (a) Grantee shall use reasonable efforts to give Grantor notice thereof, which notice may

be by email or telephone, and (b) Grantor shall have the right to have a representative present while Grantee is present on the Property. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

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

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

6.2. Discretion of Grantee. Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of the enforcing party, and any forbearance by Grantee to exercise their 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 by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee or USFWS in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

6.3. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any reasonable and prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes

7. Fence Installation and Maintenance. Grantor shall install fencing in accordance with the Management Plan to protect the Conservation Values of the Property, including but not limited to wildlife corridors.

8. Access. This Conservation Easement does not convey a general right of access to the public or a general right of access to the Property. Grantor or its designees shall install signage at all likely points of entry informing persons of the nature and restrictions on the Property. This Conservation Easement will allow for the USFWS access to the Property. Such access may be at specific locations if so

designated in easements and reservations of rights recorded in the chain of title to the Property at the time of conveyance.

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property except as specifically required of the Grantee under the Management Plan. Grantor agrees that neither the Grantee nor USFWS shall have a duty or responsibility for the operation, upkeep or maintenance of the Property, except as specifically required of the Grantee under the Management Plan, or 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 or Property. Grantor and Grantee each remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, including those required from the USFWS acting its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

9.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and specific), fees, and charges of whatever description levied on or assessed against the Property or Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and USFWS with satisfactory evidence of payment upon request. Grantor and Grantee shall each keep the Property free from any liens (other than a security interest that is expressly subordinate to this Conservation Easement as provided in Section 17(k) and (l)), 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 or Property.

9.2. Hold Harmless. Grantor shall hold harmless, protect, and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each 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: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to Grantee's Indemnified Parties with respect to any Claim due solely to the negligence or willful misconduct of Grantee's Indemnified Parties; (2) the obligations specified in Sections 5, 10, and 10.1; and (3) the existence or administration of this Conservation Easement.

Grantor shall hold harmless, protect, and indemnify the USFWS, and their directors, officers, employees, agents, contractors and representatives, and the heirs, personal representatives, successors and assigns of each of them (each a "USFWS Indemnified Party" and, collectively, "USFWS Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause; and (2) the existence or administration of this Conservation Easement. Provided, however, that this indemnification shall be inapplicable to a USFWS Indemnified Party with respect to any Claim due solely to the negligence or willful misconduct of that USFWS-Indemnified Party. If any action or proceeding is brought against any USFWS Indemnified Parties by reason of any Claim to which

the indemnification in this Section 10.2 applies, then Grantor shall, at the election of and upon written notice from the USFWS Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the USFWS Indemnified Party or reimburse the USFWS Indemnified Party for all charges incurred for services of the U.S. Department of Justice in defending the action or proceeding

9.3. Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantor shall provide written notice to Grantee and USFWS at least forty-five (45) days prior to taking any action to extinguish this Conservation Easement and prior to extinguishment shall provide a conservation easement at an alternative site to Grantee, or another entity or organization authorized to acquire and hold conservation easements under California Civil Code section 815.3 (or any successor provision then applicable) or the laws of the United States, that has been approved in writing by the USFWS, or shall provide alternative mitigation acceptable to the USFWS and determined in writing by USFWS to be adequate to mitigate for the impacts to the species covered under the Permit. No such extinguishment shall affect the value of Grantee's interest in the Property, and if the Property, or any interest therein, is sold, exchanged, or taken after such extinguishment, Grantee shall be entitled to receive its pro-rata share of the proceeds of such sale, exchange or taking. The amount of the compensation to which Grantee shall be entitled from any sale, exchange, or taking of all or any portion of the Property subsequent to such extinguishment shall be based on the respective fair market values of the interests of Grantee and Grantor extinguished as determined in the judicial extinguishment proceedings, and Grantee shall use any proceeds received in a manner determined in writing by USFWS to be consistent with the purposes of this Conservation Easement and Grantor's mitigation obligations under the Permit.

9.4. Condemnation. This Conservation Easement is a "conservation easement" as defined in California Code of Civil Procedure section 1240.055(a)(1) and constitutes "property appropriated to public use" as defined in California Code of Civil Procedure section 1240.055(a)(3). USFWS is a public entity that imposed conditions upon issuance of the Permit that were satisfied, in whole or in part, by the creation of this Conservation Easement, as described in California Code of Civil Procedure section 1240.055(a)(3). A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, *only* as provided in California Code of Civil Procedure section 1240.055. 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 California Code of Civil Procedure sections 1240.690 and 1240.700. If any person seeks to acquire the Property for public use, Grantee shall immediately provide written notice to USFWS and comply with all obligations of the holder of a conservation easement under California Code of Civil Procedure section 1240.055. Grantee shall use any proceeds received from condemnation of the Property in a manner determined by USFWS in writing to be consistent with the purposes of this Conservation Easement and Grantor's mitigation obligations under the Permit. If the Conservation Easement is condemned, the net proceeds from the condemnation shall also be used in compliance with California Government Code section 65966(j).

10. Transfer of Easement. This Conservation Easement may only be assigned or transferred by Grantee with the prior written approval of USFWS. Grantee may assign this Conservation Easement only to an entity or organization approved in advance in writing by Grantor and USFWS that is authorized to acquire and hold conservation easements pursuant to California Civil Code section 815.3 **and** California Government Code section 65967 (and any successor or other provisions then applicable)

or the laws of the United States. Grantee shall require the transferee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this Section 11 shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

11. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference applicable provisions of the Permit, and any amendments thereto, and the Management Plan and any amendment(s) to that document. Grantor agrees to give written notice to Grantee and USFWS of the intent to transfer any interest at least thirty (60) days prior to the date of such transfer. Grantee or USFWS shall have the right to prevent subsequent 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 documents incorporated by reference in it. The failure of Grantor, Grantee, or USFWS to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. No Merger. The doctrine of merger is not intended, and 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 USFWS otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall promptly be recorded against the Property by Grantee, or its successor in interest, in favor of a third party approved in writing by USFWS to ensure that the mitigation obligations required under the Permit identified in Recital D, which include conservation of the Property in perpetuity through execution and recordation of a conservation easement or equivalent legal mechanism, and the purposes of California Civil Code section 815, are fulfilled. Until such replacement conservation easement or equivalent legal mechanism is executed and recorded, Grantee or its successor in interest shall continue to protect the Property in accordance with the terms of the original Conservation Easement. Any and all terms and conditions of this Conservation Easement shall be deemed covenants and restrictions upon the Property, which shall run with the land according to California law and otherwise exist in perpetuity.

13. Covenant Running with the Land. This Conservation Easement and covenants contained herein (1) are imposed upon the Property; (2) shall run with and against the same and shall be a charge and burden thereon for the benefit of Grantee, or any successor in interest, and the USFWS; and (3) are perpetual and irrevocable.

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

To Grantor: County of San Luis Obispo
Planning and Building Department
976 Osos Street
San Luis Obispo, CA 93408

Attn:
Telephone:
email:

With a copy to:

Attn:
Telephone:
email:

To Grantee:

To USFWS: U.S. Fish and Wildlife Service
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003
Attn: Field Supervisor
Telephone: 805-644-1766

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

15. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and subject to the prior written consent of USFWS. Any such amendment shall be consistent with the purposes of this Conservation Easement, the requirements of the Permit, and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of San Luis Obispo County, State of California, and Grantee shall promptly provide a conformed copy of the recorded amendment to Grantor and USFWS.

16. General Provisions.

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

(b) Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to affect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, 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 instrument, including the documents incorporated by reference in it, sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

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

(f) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

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

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

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

(j) No Hazardous Materials Liability.

(1) Except as disclosed in any Phase 1 report provided to Grantee prior to the recordation of this Conservation Easement, Grantor represents and warrants to Grantee and USFWS 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 10.2 of this Conservation Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless Grantee's Indemnified Parties and USFWS Indemnified Parties (each as defined in Section 10.2 from and against any and all Claims (as defined in Section 10.2 arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to the Grantee's Indemnified Parties or the USFWS Indemnified Parties with respect to any Hazardous Materials placed, disposed, or released by Grantee's Indemnified Parties or USFWS Indemnified Parties. This release and indemnification includes, without limitation, Claims for (a) injury to or death of any person or physical damage to any property; and (b) 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 the USFWS Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the USFWS Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the USFWS Indemnified Party or reimburse the USFWS Indemnified Party for all charges incurred for services of the U.S. Department of Justice in defending the action or proceeding.

(3) 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 USFWS 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 or duty 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.

(4) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901 *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. section 5101 *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.

(5) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, code, 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 USFWS that activities on and use of the Property by Grantor, its agents, employees, invitees, and contractors will comply with all Environmental Laws. Grantee represents, warrants, and covenants to Grantor and USFWS that activities upon and use of the Property by Grantee, its agents, employees, invitees, and contractors will comply with all Environmental Laws.

(k) Warranty. Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Property; that the Property is not subject to any other conservation easement; and that there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, water and mineral interests) that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a written, recorded Subordination Agreement approved in writing by Grantee and USFWS.

(l) Additional Easements. Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), or 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 USFWS. Grantee or USFWS may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 14(l) shall not limit the provisions of Sections 2(f) and 4(o) nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 12.

(m) Recording. Grantee shall record this Conservation Easement in the Official Records of San Luis Obispo County, California, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

[Signature Page Follows]

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

GRANTOR:

GRANTEE:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

Approved as to form:

XXX
County of San Luis Obispo

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State