

## Staff Report

TO: Chair and Board Members  
Yolo County Habitat JPA

FROM: Maria Wong  
Executive Director

DATE: July 19, 2010

SUBJECT: Approve amendments to the Chickahominy Creek Ranch #1 conservation easement and approve the First Amendment to the Chickahominy Creek Ranch #1 Mitigation Credit Agreement.

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### ***Requested Action:***

1. Approve amendments to the Chickahominy Creek Ranch #1 conservation easement; and
  2. Approve the First Amendment to the Chickahominy Creek Ranch #1 Mitigation Credit Agreement and authorize the Executive Director to execute same pending final approval by JPA counsel as to form.
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### **REASON FOR RECOMMENDED ACTION**

Approval of the requested actions will create additional conservation opportunities while sustaining and enhancing existing protected habitat.

### **BACKGROUND**

The JPA approved the Chickahominy Creek Ranch as a mitigation receiving site in October 2008. The property supports Swainson's hawk foraging habitat, restored riparian areas, hedgerows, and seasonal ponds. California Waterfowl Association holds the conservation easement and is responsible for management and monitoring of the protected habitat values. Although mitigation receiving site credits have been transferred, unsold credits exist in sufficient quantity to allow the recommended changes to go forward with the assurance that retired credits will not be resold.

### **ANALYSIS**

In its current form the Chickahominy Creek Ranch #1 conservation easement provides inadequate protection for the resource values that have been restored on the site. These values, including hedgerows and riparian habitat, are important to the developing Yolo NHP. The proposed changes to the conservation easement and the Mitigation Credit Agreement will accomplish the following:

- Recognize the value of 1.1 acres of restored wetland habitat and create an associated mitigation opportunity.

- Recognize the value of 9.87 acres of restored riparian habitat and create an associated mitigation opportunity, including an opportunity to accept mitigation for the loss of Swainson hawk nest trees.
- Retain the opportunity to offer 140.93 acres of Swainson's hawk foraging habitat credits (32.46 of which have been transferred).
- Add language that limits the transfer of water resources during the first three (3) years after the planting of vegetation in restored seasonal wetland and riparian areas to ensure that sufficient water is available to allow vegetation to become established.
- Incorporate Exhibit B, "Chickahominy Creek Ranch Conservation Area Project" Map, depicting current site conditions ( i.e., habitat restoration efforts complete).

Provisions in the original text in Attachments A and B that are proposed to be amended depict revisions in track changes mode: added text is **underlined**; omitted text is shown in **~~strikethrough~~** text.

### **FISCAL IMPACT**

The proposed changes do not affect the value of credits that have been transferred, or the JPA's investment in the project. Creating multiple habitat mitigation opportunities provides a more resilient investment from the landowner's perspective.

### **OTHER AGENCY INVOLVEMENT**

Staff consulted with JPA legal counsel, Department of Fish and Game, and California Waterfowl Association in the preparation of this proposal and associated documents.

### Attachments

- A. First Amendment To Conservation Easement Deed
- B. First Amended And Restated Mitigation Credit Agreement Regarding Chickahominy Creek Ranch 1

**EXHIBIT A**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

California Waterfowl Association  
4630 Northgate Blvd., Suite 150  
Sacramento, CA. 95834  
Phone: (916) 648-1406

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Space Above Line for Recorder's Use Only

**FIRST AMENDMENT TO CONSERVATION EASEMENT DEED  
(Including Third Party Beneficiary)**

THIS FIRST AMENDMENT TO THE CONSERVATION EASEMENT DEED ("First Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by Reynier Fund, LLC ("Grantor"), in favor of the California Waterfowl Association ("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 Yolo, State of California, designated Assessor's Parcel Number 040-160-13-1 and as legally described in Exhibit A attached hereto and incorporated herein by this reference (the "Property");

B. On December 31, 2008, the parties recorded a Conservation Easement Deed (the "Conservation Easement") encumbering the Property in the Official Records of the County of Yolo (Document No. 2008-38073);

C. The Conservation Easement preserved in perpetuity certain wildlife and habitat values of the Property, including its high quality natural, restored, and/or enhanced nesting and foraging habitat for the Swainson's hawk, as more fully described therein;

D. Following the recording of the Conservation Easement, Grantee completed the restoration of 1.1 acres of seasonal wetlands and 9.87 acres of riparian habitat along existing water courses depicted on Exhibit C within and along the Property and other adjacent land controlled by Grantor consistent with the Chickahominy Creek Conservation Area Project depicted on Exhibit B hereto. Such habitat restoration and enhancement work is consistent with the Conservation Values described in the Conservation Easement;

E. The purpose of this First Amendment is to document the physical changes to the Property described in these Recitals and shown in Exhibit B, and to make certain other minor modifications to the Conservation Easement to reflect these physical changes and clarify certain terms. This Addendum is consistent with the original purposes of the Conservation Easement (as described in Section 1 thereof) and the Conservation Values, and is intended to supplement but not supplant the terms and conditions of the Conservation Easement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

**AGREEMENT**

1. Revisions to Section 3. The following subsections of Section 3 of the Conservation Easement shall be revised to read as follows (deleted text is struck out; new text is underlined):

(f) Any legal or de facto division, subdivision, partition of the Property (including but not limited to an application for certificates of compliance under California Government Code section 66499.35), or lot line adjustment thereon (collectively, a "Subdivision"), that would create one or more new, reconfigured, or remainder parcels of less than 80 acres other than, subject to the approval by Grantee in accordance with Section 4.2 below, parcels located entirely within the Development Envelope. Any other Subdivision is permitted, so long as it does not (1) decrease the amount of acreage available as Swainson's hawk foraging habitat, **nesting habitat, or the amount of riparian or restored seasonal wetland habitats,** (2) increase the amount of acreage initially designated by Grantor in the Conservation Easement as one of the Development Envelope, (3) alter the areas delineated on Exhibit C as acceptable locations for the Development Envelope, or (4) result in the relocation of any previously-recorded Development Envelope. A separate conservation easement identical to this document shall be executed and recorded against each newly created, reconfigured, or remainder parcel prior to or concurrent with the approval of any Subdivision. Grantor shall bear all costs associated with the preparation, review, and recording of such conservation easement(s);

(j) The establishment, operation, or maintenance of a commercial feedlot. As used herein, the term "commercial feedlot" is defined as a permanently constructed confined area or facility which is used and maintained to feed cattle, horses, sheep, or swine ("Livestock") which are not grazed or cropped annually. The term "commercial feedlot" shall not include the establishment, use, or maintenance of corrals, holding pens, loading chutes, or pastures. Subject to the foregoing, **on areas of the property that are maintained as foraging habitat for the Swainson's hawk,** nothing in this Conservation Easement shall prevent Grantor from raising Livestock or other animals for commercial purposes, confining Livestock for seasonal feeding, or from leasing grazing rights for Livestock owned by others;

(k) Removing, destroying, or cutting of trees, shrubs or other vegetation in riparian corridors located on the Property, except as reasonably necessary and/or prudent for (1) fire breaks, (2) prevention or treatment of disease; (3) removing vegetation and debris which poses a health and safety hazard or a threat to standard agricultural operations including, but not limited to, noxious weeds and downed trees or limbs in the channel or on the adjoining Property, (4) flood control and (5) to carry out the planned restoration of riparian and wetland habitat in substantial conformance with Exhibit B [again, if we can reference a plan here, that would be helpful]. Unless authorized by the restoration or habitat management plan approved or authorized for the Chickahominy Creek Conservation Area Project by CDFG, the activities identified in (1) and (2), above, shall not occur during the Swainson's hawk nesting season (for the purposes of this Conservation Easement, the nesting season shall be March 15 through September 1 of each calendar year, unless ~~Grantee~~ Grantor advises Grantor in writing that a different nesting season will apply based on published CDFG guidance regarding changed nesting practices). No standing tree taller than 15 feet in height shall be removed until it has

been verified by Grantee at Grantor's request that the tree is not an active Swainson's hawk nest tree. Flood control operations conducted by any authorized agency and any and all activities for which a permit has been granted by the state or local agency responsible for streambed management shall be permitted. Nothing in this Conservation Easement limits Grantor's right to access, store, and convey water for irrigation purposes;

(n) Any agricultural activities or uses, including but not limited to the construction of agricultural facilities or improvements, that are inconsistent with the Purposes of this Conservation Easement. Grantor and Grantee specifically contemplate the continued agricultural use of portions of the Property reserved as Swainson's hawk foraging habitat, recognizing that certain agricultural activities and uses are consistent with the Purposes of this Conservation Easement while other agricultural activities and uses could be inconsistent with those Purposes.

The Grantor and Grantee further agree that the following activities and uses shall be considered inconsistent with the Purposes of the Conservation Easement: an agricultural use or activity that (a) is not specifically authorized or reserved in this Conservation Easement, and (b) would regularly render any portion of the Property (except the Development Envelope) ~~unsuitable for use reserved~~ as Swainson's hawk foraging habitat unsuitable for such use by the species. To aid in the interpretation and implementation of this subsection (n), the parties agree that the following activities and uses are representative examples of agricultural activities or uses that would be inconsistent with the Purposes of this Conservation Easement:

- Installation of outdoor hydroponic facilities that create ponding or otherwise cover the ground surface of the Property on a continuous basis;
- Installation of crop protection netting to cover or otherwise shield crops from birds, insects, or other pests, thereby blocking Swainson's hawk access to the ground surface of the Property; and
- Construction of storage or processing facilities with a capacity greatly exceeding the needs of the agricultural operations on the Property itself.

These examples were selected because they represent agricultural activities and uses that would, within the meaning of this Conservation Easement, be inconsistent with the purposes of the Conservation Easement. Foraging habitat on the Property would be either destroyed or rendered regularly inaccessible to the Swainson's hawk in these examples, directly undermining the Purposes of this Conservation Easement and the Conservation Values set forth in Recital B, above.

2. Revisions to Section 4. Sections 4. 1 and 4.6 shall be amended to read as follows (deleted text is struck out; new text is underlined):

4.1 Water. Grantor retains the right to develop and maintain the surface water and groundwater resources associated with the Property, including but not limited to (i) deepening existing water wells, drilling new water wells, (ii) creating and maintaining tail water ponds not to exceed a total surface acreage of six (6) acres, (iii) dredging, bridging and maintaining channels or conveyances reasonably necessary to facilitate the production of agricultural commodities on the Property, and (iv) developing, pumping, storage, and conveyance facilities, in any manner that is reasonably necessary, convenient or appropriate for any and all activities that are allowed on the Property

pursuant to this Conservation Easement and all applicable local, state, and federal laws. Said facilities and improvements may also serve the Development Envelope and any adjacent properties owned or operated by Grantor. Grantor retains and reserves all groundwater, appropriative, prescriptive, contractual or other water rights appurtenant to the Property and may use, enjoy, and/or transfer, on a temporary or permanent basis, said water right as may from time to time be authorized by law. Notwithstanding the foregoing, in no case shall water resources be transferred from the Property for a period greater than three (3) years in any ten (10) year period in sufficient quantities to preclude the agricultural use of the Property in a manner that is consistent with crop rotation and other conventional agricultural practices in this region at the time of the transfer. **Further, in no case shall water resources be transferred from the property during the first three (3) years after the planting of vegetation in restored seasonal wetland and riparian areas in sufficient quantities to preclude the provision of sufficient water to allow such vegetation to become established.** Grantee recognizes that some water associated with the Property is controlled by the Yolo County Flood Control and Water Conservation District, and nothing in this Conservation Easement shall in any way deny such District access to water it controls or be interpreted to restrict such District's activities relating to such water in a manner consistent with easements or other legal rights held by the District as of the date of this Conservation Easement.

4.4 Agricultural Use. Subject only to the specified restrictions in Sections 3, above, including subsections (a), (i), (k) and (n) of this Conservation Easement, the Grantor expressly reserves the right to level **portions** of the Property **reserved as Swainson's hawk foraging habitat** for agricultural purposes and to use the Property for agricultural purposes. Without limiting the generality of the foregoing, as set forth in Section 3(j) above, the grazing of sheep, cattle, horses, and other livestock on the Property shall be permitted.

3. Revision to Section 12(j). Section 12(j) shall be amended to read as follows (new text is underlined):

(j) No Hazardous Materials Liability. Grantor represents and warrants that, except for the lawful and proper above-ground storage and use of farm chemicals and fuel, it has no knowledge or notice of any Hazardous Materials (as defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property. Without limiting the obligations of Grantor under Section 7.2, Grantor hereby agrees to indemnify, defend, protect and hold harmless the Indemnified Parties (as defined in Section 7.2) from and against any and all Claims (as defined in Section 7.2) arising from or connected with any breach of the representation or warranty in the first sentence of this Section 12(j), except that this indemnification shall be inapplicable to any Indemnified Party with respect to any Hazardous Materials placed, disposed or released by such Party or Beneficiary, including its employees or agents. This 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 Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from an Indemnified Party or Parties, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or Parties or **at the discretion of the Indemnified**

Party or Parties reimburse said Party or Parties for all charges incurred for in defending the action or proceeding (including but not limited to charges for the legal services of the California Attorney General, if incurred by CDFG).

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 Beneficiaries any of the following:

- (1) The obligations or liability of an “owner” or “operator,” as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, “CERCLA”); or
- (2) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
- (3) The obligations of a responsible person under any applicable Environmental Laws; or
- (4) The right to investigate and remediate any Hazardous Materials associated with the Property; or
- (5) Any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

The term “Hazardous Materials” includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*; hereinafter “RCRA”); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter “HTA”); 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 Deed.

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 CDFG that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

4. Effect of Amendment. Except as specifically amended by this document, the original Conservation Easement shall remain in full force and effect according to its terms.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first above written.

Witness:

“Grantor”

\_\_\_\_\_

\_\_\_\_\_

Accepted:  
Witness:

“Grantee”

California Waterfowl Association

\_\_\_\_\_

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

Exhibit A (Legal Description) Attached

**Exhibit B** (Chickahominy Creek Ranch Conservation Area Project) Attached

Exhibit C (Map of Chickahominy Creek Ranch 1 Easement) Attached

**ATTACHMENT B**

*Recording Requested by:*  
Yolo Habitat Joint Powers Agency

*When Recorded, Mail to:*  
Yolo Habitat Joint Powers Agency  
120 W. Main Street, Suite C  
Woodland, Ca. 95695

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Space above line for Recorder's use only

**FIRST AMENDED AND RESTATED  
MITIGATION CREDIT AGREEMENT REGARDING  
CHICKAHOMINY CREEK RANCH 1**

This First Amended and Restated Agreement is entered into as of July \_\_\_\_\_, 2010, by and between the Yolo County Habitat Joint Powers Authority ("Habitat JPA") and Reynier Fund, LLC ("Reynier") (collectively with the Habitat JPA, the "Parties").

**RECITALS**

A. Reynier formerly owned that certain real property described and depicted in Exhibits A and B attached hereto and commonly known as the Chickahominy Creek Ranch 1 (the "Ranch"), and retained the right to sell or use mitigation credits with the sale of the Ranch. The Ranch has unique qualities, natural and restored, which make it a valuable resource for mitigating the loss of Swainson's hawk habitat and seasonal wetlands to urban uses; and

B. The Habitat JPA is developing a county-wide multi-species conservation plan which will address the conservation needs of several special status species, including Swainson's hawk, and has been pursuing Swainson's hawk conservation easements in the vicinity of the Ranch; and

C. On April 15, 1994 California Department of Fish and Game, Yolo County, and the cities of West Sacramento, Davis, Woodland and Winters entered into a Management Authorization under former section 2018 of the Fish and Game Code to address mitigation of impacts to Swainson's hawk as a result of urban development within Yolo County, including the authority to collect mitigation in lieu fees; and

D. The Management Authorization, after a three year extension approved in 1997, expired on December 31, 2000 and could not be reviewed under CESA as that statute was revised effective 1998; and

E. On or about July 22, 2002, the Habitat JPA Member Agencies entered into an agreement establishing the Yolo County Natural Community Conservation Plan Joint Powers Agency, which Agreement was amended and restated in 2006; and

F. Since the expiration of the Management Authorization, the Habitat JPA has continued to routinely consult with CDFG regarding the biological suitability of land proposed for acquisition and related matters, but the Habitat JPA retains sole discretion over the implementation of Swainson's hawk mitigation in Yolo County in connection with mitigation under the California Environmental Quality Act; and

G. The Amended and Restated Joint Powers Agreement sets forth the requirements for the collection of Swainson's hawk in lieu fees by Habitat JPA Member Agencies and use of said fees by Habitat JPA; and

H. On January 9, 2006, as a condition of approval for urban development approved by JPA Member Agencies, the Habitat JPA adopted Resolution 2006-01 updating the Swainson's Hawk Interim Mitigation Fee and adopting revisions to the Swainson's Hawk Interim Mitigation Fee program; and

I. On November 10, 2008, the Habitat JPA Board of Directors adopted Resolution 2008-02, titled "Resolution Supporting the Creation of Receiving Sites for Swainson's Hawk Mitigation and the Subsequent Sale of Mitigation Credits"; and

J. The Ranch has been identified as a valuable parcel for mitigation purposes; and

K. Reynier granted the Conservation Easement defined below on December 30, 2008 for the purposes set forth therein; and

L. The Parties previously entered into an agreement (the "Original Agreement") providing for the sale of mitigation credits to third parties on or about December 30, 2008, and now desire to amend and restate the Original Agreement to modify the range of mitigation credits which can be utilized by others, and this First Amended and Restated Agreement is necessary to provide the terms and conditions governing the future use or sale of such Mitigation Credits.

M. The First Amended and Restated Agreement supersedes the Original Agreement, which shall be of no further force or effect upon the recording hereof;

Based on the foregoing recitals, the Parties hereby agree as follows:

### **AGREEMENT**

1. Grant of easement. Reynier granted to the California Waterfowl Association a Conservation Easement concurrent with the recording of the Original Agreement, Recorder's Document No. 2008-38073. The original Conservation Easement was later amended in several minor respects (see Recorder's Document No. [insert]). All references to the "Conservation Easement" hereinafter shall be to the amended easement.

2. Mitigation Credits.

a. Mitigation Credits. The Ranch consists of 151.9 acres. Recordation of the Conservation Easement created a total of 148.9 acres of Swainson's hawk foraging habitat on the Ranch. Additional work has been completed to restore, create and enhance riparian and seasonal wetland habitat compatible with the original conservation values outlined in the Conservation Easement. The parties agree that upon the recording of this First Amended and Restated Agreement, a total of 140.93 acres of

Swainson's hawk foraging habitat, 1.10 acres of seasonal wetlands, and 9.87 acres of riparian habitat, including nesting habitat for Swainson's hawk will be preserved as generally shown in Exhibit C.

This preserved acreage shall constitute "Mitigation Credits" which may be sold by Reynier (including its heirs, successors, and assigns) in the manner described in this Amended and Restated Agreement to enable other parties to discharge their mitigation obligations arising from projects located within the County of Yolo. As of the date of this Agreement 32.46 acres of Swainson's hawk foraging habitat Mitigation Credits have been transferred. The remaining Mitigation Credits may be sold or otherwise used following the recording of an addendum to the original Conservation Easement and this Amended and Restated Agreement to mitigate for the impact of projects within the County of Yolo. Mitigation Credits may be used to discharge Reynier's own mitigation obligations, or may be sold or otherwise conveyed to any other person or entity in connection with development located in the County of Yolo.

b. Habitat JPA Obligations. The Habitat JPA shall advise the County of Yolo and the cities of Winters, Woodland, Davis and West Sacramento that Mitigation Credits on the Ranch are available for those needing to discharge mitigation obligations in connection with projects in those jurisdictions. The Habitat JPA will make a good faith effort to encourage the use of all such available Mitigation Credits.

c. Certificate of Mitigation Credits. The Habitat JPA shall maintain an accounting of the Mitigation Credits available to Reynier and any other heir, successor, or assignee ("Credit Holders") under the Agreement. Upon reasonable notice, the Habitat JPA shall provide the Credit Holders and the general public with a copy of said accounting. The Credit Holders shall provide the Habitat JPA with notice of any pending transaction regarding the sale of credits or use of credits to the Habitat JPA at least ten (10) calendar days prior to the anticipated close of each such transaction, and the Habitat JPA shall prepare a Certificate of Mitigation Credits in connection therewith. The accounting provided by the Habitat JPA shall reflect a complete history of the sale and use of all Mitigation Credits, including a running account of the Mitigation Credits that remain available for future projects. Said Certificate of Mitigation Credits shall be in a form which shall be recorded in the Official Records of Yolo County concurrent with the close of any sale or other use of Mitigation Credits.

3. Applicable Law. This Agreement has been made and delivered within the State of California, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with California law.

4. Successors and Assigns. This First Amended and Restated Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective representatives, heirs, predecessors, affiliated entities, transferees, assigns and successors in interest.

5. Severability. Should any paragraph, clause or provision of this First Amended and Restated Agreement be construed to be against public policy or determined by a court of competent jurisdiction to be void, invalid or unenforceable, such construction and decisions shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no event affect the remaining paragraphs, clauses or provisions of this First Amended and Restated Agreement, which shall remain in force.

6. No Third Party Beneficiaries. This First Amended and Restated Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

7. Authority to Execute; Counterparts. Each party represents that it has legal authority to enter into this First Amended and Restated Agreement and to perform its obligations hereunder. This First Amended and Restated Agreement may be signed in counterparts, and all counterparts when taken together shall constitute one document.

8. Cooperation. Each party agrees to cooperate with the other to ensure that the terms, provisions, and purpose of this First Amended and Restated Agreement are effectively carried out at all times. To that end, each party agrees to execute any and all documents that may be reasonably necessary, helpful, or appropriate to carry out the terms, provisions, and purpose of this First Amended and Restated Agreement.

9. Conflicts of Interest. No member, official or employee of either party hereto shall have any personal interest, direct or indirect, in this First Amended and Restated Agreement, nor shall any such member, official, or employee participate in any decision relating to the First Amended and Restated Agreement with affects his or her personal interests or the interests of any corporation, partnership, association, or other entity in which he or she is directly or indirectly interested.

10. Entire Agreement; Modification. This First Amended and Restated Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Each party has cooperated in the drafting and preparation of this First Amended and Restated Agreement and this Agreement shall not be construed against any party on the basis of drafting. This Agreement may be amended only by an agreement in writing, signed by each of the parties hereto.

11. Recording. This First Amended and Restated Agreement shall be recorded in the Official Records of Yolo County.

IN WITNESS WHEREOF, the parties have executed this First Amended and Restated Agreement as of the day and year first set forth above.

YOLO COUNTY HCP/NCCP JOINT  
POWERS AGENCY

REYNIER FUND, LLC

By \_\_\_\_\_  
Maria Wong, Executive Director

By \_\_\_\_\_  
Charles Tyson

Exhibit A—Legal Description of the Chickahominy Creek Ranch  
Exhibit B—Map of the Chickahominy Creek Ranch  
Exhibit C—Map Depicting the Easement Area