

Recording Requested by:
County of Tulare,
Resource Management Agency

When recorded, mail to:
County of Tulare
Clerk of the Board of Supervisors
2800 Burrell Street
Visalia, CA 93291

(This space for Recorders use only.)

No recording fee required; this document is exempt from fee pursuant to Sections 6103 and 27383 of the California Government Code. This deed is exempt from tax pursuant to Section 11922 of the California Revenue and Taxation Code.

APNs 196-050-065
196-040-001, 002, 003, 004, 005
196-030-011, 012

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made this ____ day of _____,
20__, by the County of Tulare.

RECITALS:

A. WHEREAS, the County of Tulare (hereinafter "County") is the Owner of the real property described at Exhibit A (hereinafter the "Property"). The Property possesses wildlife and habitat values (collectively, "conservation values") of great importance to the County, the U.S. Fish and Wildlife Service (hereinafter "USFWS"), and the people of the State of California and the United States.

B. This Declaration of Restrictions is being executed and delivered pursuant to the County of Tulare Resource Management Agency, Solid Waste Division Habitat Conservation Plan for the Woodville Solid Waste Disposal Site Expansion Project (hereinafter the "Conservation Instrument"), whereby conservation requirements set out in the Conservation Instrument may be satisfied through establishment of restrictions on the Property. All attachments, amendments, and any Management Plan incorporated in the Conservation Instrument, is incorporated into this Declaration of Restrictions by reference and attached hereto in relevant part at Exhibit B. Any and all references herein to the Conservation Instrument shall be construed to include reference to any incorporated Management Plan, including such conservation requirements as may be contained therein.

C. The Property provides, or is capable or providing, significant ecological and habitat values that benefit endangered, threatened, and other special status wildlife species (collectively, "conservation values"), as set forth in the Conservation Instrument.

D. The 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.* ("ESA"), the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. §§ 742(f), *et seq.*, and other provisions of Federal law.

E. The County, through this Declaration of Restrictions, declares that the Property described above is held, and will be held, used, transferred, sold, conveyed, leased, or occupied subject to the covenants, restrictions, and limitations set forth in this Declaration of Restrictions, all of which are declared and agreed to be in the furtherance of a permanent conservation area to compensate for impacts on covered species resulting from project activities covered by the Habitat Conservation Plan for the Woodville Solid Waste Disposal Site Expansion Project (hereinafter the "Woodville HCP").

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, in consideration of the above recitals and covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and the State of California, the County hereby restricts in perpetuity use of the Property consistent with the Conservation Instrument, to the extent hereinafter set forth.

1. Purpose. The purpose of the restrictions are to ensure that the Property will be retained forever in a condition contemplated by the Conservation Instrument and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. The County intends that the restrictions will confine the use of the Property to such activities including, without limitation, those involving the preservation and enhancement of native species and their habitats in a manner consistent with the conservation purposes of the Conservation Instrument.

2. Rights of USFWS. To accomplish the purposes of the restrictions, the County hereby conveys the following rights, along with the right of enforcement, to the USFWS, its successors, assigns, or designee hereof:

A. To preserve, protect, sustain, and enhance and/or restore the conservation values of the Property.

B. To enter upon the Property at reasonable times to monitor the County's compliance with and to otherwise enforce the terms of this instrument; provided that the USFWS shall not unreasonably interfere with the County's authorized use and quiet enjoyment of the Property.

C. To prevent any activity on or use of the Property that is inconsistent with the habitat conservation purposes, and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Declaration of Restrictions.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the conservation purposes of this Declaration of Restrictions and the Conservation Instrument is prohibited unless required by a governmental entity or to otherwise provide for required

regulatory compliance. Without limiting the generality of the foregoing, the County, its personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or permitting any of the following on the Property unless specifically authorized by the Conservation Instrument and any related Management Plan:

A. Construction, reconstruction, or placement of any building, billboard, sign, structure, or other improvement.

B. Unseasonable watering; use of fertilizers, herbicides, pesticides, biocides, or other agricultural chemicals; mosquito abatement activities; weed abatement activities; incompatible fire protection activities; and any and all other uses which may adversely affect the conservation purposes of this Declaration of Restrictions.

C. Grazing and agricultural activity of any type, except for an agricultural activity that is already in existence, to the extent such pre-existing activity is consistent with the Conservation Instrument.

D. Commercial or industrial uses.

E. Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material.

F. Filling, dumping, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.

G. Altering the surface or general topography of the Property, including building roads, paving or otherwise covering the Property with concrete, asphalt, or any other impervious material.

H. Removing, destroying, or cutting trees, shrubs or other vegetation, except as required for: (i) fire breaks; (ii) maintenance of existing foot trails or roads; (iii) prevention or treatment of disease; or (iv) utility line maintenance.

I. Use of motorized vehicles, including off-road vehicles, except on existing roadways.

J. Transferring any water right necessary to maintain or restore the biological resources of the Property.

K. Planting, introduction, or dispersal of non-native or exotic plant or animal species.

L. Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Property and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface, sub-surface, or ground waters.

M. Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing.

N. Permitting a general right of access to the property.

4. County's Duties. The County shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities either may degrade or harm the conservation values of the Property, or are otherwise inconsistent with the Conservation Instrument.

5. County's Reserved Rights. All rights accruing from the County's ownership of the Property, including the right to engage in or permit or invite others to engage in those uses of the Property that are not prohibited herein and are not inconsistent with the purposes of the Conservation Instrument, are reserved to the County and the County's personal representatives, heirs, successors, and assigns.

6. Remedies for Violation and Corrective Action. If the USFWS, or its designee, determines there is a violation of the terms of these restrictions or that a violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to the County. Measures to cure the violation shall be reviewed and approved by USFWS prior to their implementation, unless otherwise authorized by the USFWS based on the urgency of the need to implement such corrective measures. If a violation is not cured within 30 days after receipt of written notice and demand, or if the cure reasonably requires more than 30 days to complete and there is failure to begin the cure within the 30-day period or failure to continue diligently to complete the cure, the USFWS or its designee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance with the terms of this Declaration of Restrictions, to recover any damages to which the USFWS or its designee may be entitled for violation of the terms of this Declaration of Restrictions or for any injury to the conservation values of the Property, 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 violation or injury. Without limiting violator's liability for remediation of the Property, any damages recovered may be applied to the cost of undertaking any corrective action on the Property.

6.1 Injunctive Relief. If the USFWS, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the USFWS may pursue its remedies under this Section without prior notice or without waiting for the period provided for cure to expire 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, and to require the restoration of the Property to the condition that existed prior to any such injury. The 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 §815 *et seq.*; inclusive. The failure of the USFWS or County to discover a violation or to take immediate legal action shall not bar taking such action at a later time.

6.2 Standing. If at any time the County, or any successor in interest or subsequent transferee uses or threatens to use the Property for purposes not in conformance with the stated conservation purposes contained herein, or releases or threatens to abandon these restrictions in whole or in part, then, notwithstanding California Civil Code § 815 *et seq.*, the California Attorney General and the USFWS or its designee shall have standing as an interested party in any proceeding affecting these restrictions.

6.3 Costs of Enforcement. All reasonable costs incurred in enforcing the terms of this Declaration of Restrictions including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by violation or negligence under the terms of this Conservation Easement shall be borne by the violator.

6.4 Enforcement Discretion. Enforcement of the terms of this instrument shall be at the discretion of the USFWS or its designee, and any forbearance to exercise rights of enforcement under this Declaration of Restrictions, in the event of any breach of any term of said Declaration of Restrictions, shall not be deemed or construed to be a waiver of such term as regards any subsequent breach of the same or any other term of this Declaration of Restrictions. Neither shall any delay nor omission in the exercise of any rights or remedies upon any breach of the terms of this Declaration of Restrictions shall be construed as a waiver of such rights or remedies.

6.5 Acts Beyond USFWS' or County's Control. Except as provided in the Woodville HCP, these restrictions shall not be construed to entitle the USFWS or its designee to bring any action for any injury to or change in the Property resulting from causes beyond the County's control, including, without limitation, fire not caused by County, flood, storm, and earth movement, or from any prudent action taken by County under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

7. Costs and Liabilities. The County retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including transfer costs, costs of title and documentation review. County remains solely responsible for obtaining any applicable permits and approvals required for any activity or use permitted on the Property, and any such activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

7.1 Taxes; No Liens. County shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "taxes"), and shall furnish USFWS with satisfactory evidence of payment upon request.

7.2 Hold Harmless. County shall hold harmless, indemnify, and defend USFWS and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively, "Indemnified Parties"), from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, orders, liens, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to the Property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; and (b) the obligations, covenants, representations, and warranties relating to Costs and Liabilities of this Section 7.

7.3 No Hazardous Materials Liability. The County represents and warrants that it has no knowledge of any release or threatened release of hazardous materials in, on, under, about, or affecting the Property.

8. Best and Most Necessary Use. The habitat conservation purposes of the Conservation Instrument are presumed to be the best and most necessary public use as defined in equity and pursuant to California Code of Civil Procedure § 1240.680, notwithstanding Code of Civil Procedure §§ 1240.690 and 1240.700.

9. Subsequent Property Transfer. The County agrees to incorporate the terms of these restrictions in any deed or other legal instrument by which County divests itself of any interest in either all or a portion of the Property, including, without limitation, a leasehold interest. The County further agrees to give the USFWS written notice of the County's intent to transfer any interest at least thirty (30) days prior to the date of such transfer. The USFWS shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions contained in this Declaration of Restrictions.

10. Estoppel Certificates. The USFWS shall execute and deliver to the County a document certifying, to the best knowledge of the person executing the document, that the County is in compliance with the obligations of the County contained in this document, or otherwise evidencing the status of such obligation to the extent of the USFWS' knowledge thereof, as may be reasonably requested by County, within thirty (30) business days after receiving a request for such document from the County.

11. Notices. Any notice, demand, request, consent, approval, or other communication that the County or USFWS desires or is required to give under this Declaration of Restrictions shall be in writing and either served personally or sent by first-class mail, postage prepaid or by recognized overnight courier that guarantees next-day delivery addressed as follows:

To County: Tulare County Resource Management Agency
5961 South Mooney Blvd.
Visalia, CA 93277
Attn: Solid Waste Manager
Telephone: (559) 733-6291
Facsimile: (559) 740-4448

To USFWS: United States Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846
Attn: Field Supervisor
Telephone: (916) 414-6600
Facsimile: (916) 414-6713

or to such other address as a party shall designate by written notice to the other party.

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.

12. Recordation. The County shall promptly record this instrument in the official records of the county in which the Property is located, and shall thereafter promptly provide a conformed copy of the recorded instrument to the USFWS.

13. Amendment. This instrument may be amended only by mutual written agreement by and between the County and the USFWS. Any such amendment shall be consistent with the purposes of this Conservation Instrument and shall not affect its perpetual duration. The County shall promptly record any such amended instrument in the official records of the county in which the Property is located, and shall thereafter promptly provide a conformed copy of the amended instrument to the USFWS.

14. Funding. Funding shall be established and held as specified in the Conservation Instrument for the perpetual management, maintenance, and monitoring of the Property, in accordance with the Conservation Instrument.

15. Additional Interests. The County shall not grant any additional interest in the Property, nor shall the County grant, transfer, abandon, or relinquish any water or water right associated with the Property without the prior written authorization of the USFWS. Such consent may be withheld if the proposed interest or transfer is inconsistent with the purposes of the Conservation Instrument or will impair or interfere with the conservation values of the Property. This Section shall not prohibit the transfer of a fee title or leasehold interest in the Property that is otherwise subject to and complies with the terms of this Declaration of Restrictions.

16. USFWS Right of Access. The County expressly acknowledges that the USFWS has the right of access to the Property for monitoring or conservation activities contemplated by the Conservation Instrument, and to ensure compliance with, and to enforce as necessary, all of the provisions of this Declaration of Restrictions.

17. General Provisions.

17.1 Controlling Law. The interpretation of, and performance under the terms of this Declaration of Restrictions shall be governed by the laws of the State of California and applicable Federal law, including the ESA.

17.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of effecting the conservations purposes enumerated in the Recitals of this Declaration of Restrictions. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

17.3 Severability. If any provision of this instrument or the application thereof is found to be invalid the remaining provisions of this instrument or the application of such provisions other than that found to be invalid shall not be affected thereby.

17.4 Entire Agreement. This instrument, together with the Conservation Instrument incorporated by reference herein, including all of the exhibits and attachments thereto, together set forth the entire agreement of the parties and supersede all prior discussions, negotiations, understandings, or agreements, all of which are merged herein. No alteration or

variation of this instrument shall be valid or binding unless contained in an amendment in accordance with the provisions herein.

17.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of County's title in any respect.

17.6 Successors. The covenants, terms, conditions, and restrictions of this instrument 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.

17.8 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.

17.9 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed 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.

IN WITNESS WHEREOF, Grantor has executed and delivered this Conservation Easement Deed as of the day and year first above written.

COUNTY OF TULARE

Dated this _____ day of _____, 2007

BY: _____
Chairman, Board of Supervisors

STATE OF CALIFORNIA)
COUNTY OF TULARE)

On _____, before me _____, a Notary Public, personally appeared

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____