



P Dixon Farms LLC

Doc#: 201400079494



Titles:	1	Pages:	17
Fees			61.00
Taxes			0.00
Other			0.00
PAID			\$61.00

Recording requested by:
The Habitat Management Foundation
Attn: Ken Whitney
P.O. Box 18
Rocklin, CA 95677

Solano County APNs: 0143-110-020

(Space above for Recorder's use only.)

The undersigned grantor declares:
Documentary transfer tax is \$ 0
() computed on full value of property conveyed, or
() computed on full value less value of liens and encumbrances remaining at time of sale.

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement" or "Easement") is granted this third day of October, 2014 ("Effective Date"), by Dixon Farms, LLC a California limited liability company ("Landowner"), to The Habitat Management Foundation, a California 501(c)(3) nonprofit corporation ("Steward").

RECITALS

A. Landowner is the sole owner of the entire fee simple interest of certain real property in Solano County, California, legally described in Exhibit A, attached hereto and incorporated herein by this reference, which consists of approximately 157 acres of land together with certain roads and other improvements. The Property is known as and referred to herein as the "Dixon Farms." The "Existing Improvements" include a single gas well pad with a gravel access road and an agricultural water well. There are no other existing buildings or improvements on the Property as of the date of this Easement. For purposes of this Easement, the Property is divided into two distinct areas: the Farmstead Area (as defined in Section 5(6) below) and the remainder of the Property outside the Farmstead Areas (the "Agricultural Production Area").

B. The Agricultural Production Area consists primarily of productive agricultural land. The Property is well endowed with the characteristics required for productive agriculture, i.e., fertile soils, an adequate supply of irrigation well water, excellent climate and a long growing season. The Property is currently fallow but has been historically used primarily for irrigated row crops. Water resources include necessary infrastructure from the Solano Irrigation District and a currently idle agricultural water well.

C. Landowner grants this Conservation Easement for valuable consideration to Steward for the primary purpose of ensuring that the agricultural productive capacity, the potential for Swainson's hawk foraging habitat, and the open-space character of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree that the current agricultural use of, and Existing Improvements to, the Property are consistent with the conservation purposes of this Conservation Easement.

D. The grant of this Conservation Easement and the protected agricultural use of the Property will have significant public benefits and will also serve the following conservation purpose as that term is defined in Section 170(h)(4)(A)(iii) of the Code: the protection of open space, including farmland, pursuant to the following clearly delineated governmental conservation policies:

Sections 815.1 and 815.2 of the California Civil Code, which define perpetual conservation easements;

California Constitution Article XIII, section 8 and Revenue and Taxation Code section 422.5, under which this agricultural conservation easement is an enforceable restriction, requiring that the Property's tax valuation may be consistent with restriction of its use;

Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands;

The California General Plan law, section 65300 et seq., and section 65400 et seq. of the California Government Code, which includes as one of its goals to protect all viable farmlands designated as prime, of statewide importance, unique, or of local importance from conversion to and encroachment of non-agricultural uses; and

Agriculture Policy No. 1 of the Solano County General Plan, as amended, which states that it is the County's objective and policy to preserve and maintain essential agricultural lands.

E. The Property's agricultural productive capacity, the quality of its agricultural soils, its important foraging habitat for Swainson's hawk, and its open-space value are collectively referred to as the "Conservation Values" of the Property. In particular, but not by way of limitation, the Property's Conservation Values include its approximately 157 acres of productive soils and important foraging habitat for Swainson's hawk (*Buteo swainsoni*).

F. This Easement is being granted to fulfill certain farmland mitigation requirements. These mitigation requirements include, but are not limited to, Mitigation Measures 4.3.1 and 4.3.4 of the Vanden Meadows Specific Plan Mitigation Monitoring and Reporting Plan (the "MMRP") which require the Vanden Meadows project to preserve certain acreages of farmland and the farmland mitigation requirements ("LAFCO Condition 9") imposed by the Solano County Local Agency Formation Commission, as a condition for annexation of the Vanden Meadows Specific Plan Area to the City of Vacaville (the 2014-03 Vanden Meadows Reorganization).

G. This Easement is also being granted to fulfill, in part, certain habitat mitigation requirements. These mitigation measures include, but are not limited to, MMRP Mitigation Measure 4.4-7b which requires, in-lieu of conservation credits, the preservation of Swainson Hawk foraging habitat.

H. Steward is a "qualified organization," as that term is defined in Code Section 170(h)(3) and California Civil Code Section 815.3, and is qualified to hold conservation easements under the laws of the State of California.

I. To effectuate the intentions of the parties, Landowner is granting to Steward a perpetual and irrevocable conservation easement over the Property in order to create certain terms of use for the Property and to extinguish irrevocably and perpetually the right of Landowner to develop and use the Property except as expressly permitted in this Conservation Easement.

J. By accepting this Conservation Easement, Steward is undertaking to preserve and protect in perpetuity the Conservation Purpose of this Conservation Easement and the Conservation Values of the Property, each as defined in Section I below.

GRANT OF CONSERVATION EASEMENT

NOW, THEREFORE, for the reasons given above, and in valuable consideration, the receipt and legal sufficiency of which is acknowledged by Landowner, as well as the mutual promises and covenants in this instrument, Landowner grants and Steward accepts a perpetual conservation easement as defined by Sections 815.1 and 815.2 of the Civil Code of California, and of the nature and character described in this Conservation Easement.

I. Statement of Purpose

The primary purpose of this Conservation Easement is to enable the Property to remain in agricultural use by preserving and protecting its soils, agricultural productive capacity, agricultural viability, utility, character and values ("Primary Purpose"). It is also the purpose of this Conservation Easement to protect the habitat values of the Property, and in particular foraging habitat for the Swainson's hawk, to the extent that such protection is consistent with the Primary Purpose of this Conservation Easement ("Secondary Purpose", together with the Primary Purpose, the "Conservation Purpose"). No activity, use or development of the Property for any purpose or in any manner that significantly impairs, interferes with, or conflicts with the Conservation Values of the Property shall be permitted, except as specifically permitted by this Conservation Easement. As used in this Easement, the terms "significantly" and "significant," when used with "impair" and "impairment," respectively, mean a greater than negligible adverse impact for more than a transient period.

2. *Rights and Interests Conveyed*

To accomplish the Conservation Purpose of this Conservation Easement, subject to the terms and conditions of this Easement, the following rights and interests are conveyed by Landowner to Steward:

(a) To identify, to preserve, and to protect in perpetuity the Conservation Values of the Property and to uphold the Conservation Purpose of this Easement.

(b) To inspect, observe, and study the Property for the purposes of (1) identifying the condition of, uses and practices occurring on the Property; and (2) to determine whether they are consistent with the Conservation Purpose and other terms and conditions of this Conservation Easement. Entry shall be made in a manner that will not unreasonably interfere with Landowner's use and quiet enjoyment of the Property.

(c) To prevent any activity on or use of the Property that is not permitted by the terms of this Easement or is otherwise inconsistent with the Conservation Purpose and other terms and conditions of this Conservation Easement, and to require the restoration of areas or features of the Property that may be damaged by any condition, activity or use that is not permitted.

(d) Except as specifically reserved in this Conservation Easement, all development rights that were previously, are now, or hereafter allocated to, implied, reserved, appurtenant to, or inherent in the Property are released, terminated, and extinguished, and may not be used on or transferred to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.

3. *Changes in Technology and Other Factors May Affect Uses of Property.* Landowner and Steward recognize that changes in economic conditions, in agricultural technologies, in accepted farm management practices, in Swainson's hawk foraging habitat needs or the common understanding of those needs, and in the global climate may result in an evolution of uses of the Property, provided such uses are consistent with the protection and preservation of the Conservation Values of the Property and otherwise consistent with the terms of this Easement; and provided, further, that, notwithstanding the foregoing, any such changes shall not result in the restrictions contained in Section 5(a)(1)(i)-(v) below to become more restrictive than what is expressly provided therein.

4. *Landowner's Reserved Rights; Landowner's Retained Responsibilities*

(a) *Landowner's Reserved Rights.* Landowner reserves the following rights: all the property rights in the Property that are not extinguished, restricted, or limited by this Conservation Easement and the right to use the Property in a manner that is not inconsistent with the Conservation Purpose and other terms and conditions of this Conservation Easement. Nothing in this Conservation

Easement shall be construed as giving rise to any right or ability in Steward to exercise physical or management control over the day-to-day operations of the Property, or any of Landowner's permitted activities on the Property. Landowner agrees to exercise these reserved rights in a manner consistent with the terms of this Conservation Easement.

(b) *Landowner's Retained Responsibilities.* Landowner retains all rights and privileges of ownership that are not prohibited or restricted by this Conservation Easement and Landowner retains all responsibilities of ownership. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on Steward, or in any way to affect any obligations of Landowner as owner of the Property, including, but not limited to, the following:

(1) *Taxes.* Landowner is solely responsible for payment of all taxes and assessments levied against the Property.

(2) *Upkeep and Maintenance.* Landowner is solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Steward shall have no obligation for the upkeep or maintenance of the Property.

(3) *General Liability and Indemnification.* Landowner shall indemnify, hold harmless, and defend Steward, its officers, directors, members, legal representatives, agents, successors, assigns, employees or contractors from and against any and all assessed or incurred liabilities, costs, losses, orders, liens, penalties, damages, claims, causes of action, demands, and/or judgments (each, a "Claim") arising from or related to any of Landowner's acts or omissions with respect to the Property or management of the Property, including but not limited to acts or omissions of Landowner's agents, successors, assigns, employees, contractors, or lessees, and including but not limited to any Claim arising from or related to a violation of this Conservation Easement; ownership or management of the Property; any violation of any law and/or regulation which is or which may in the future become applicable, and including but not limited to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.*, the Toxic Substances Control Act, as amended 15 U.S.C. § 2601 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 42 U.S.C. § 300f *et seq.*; the Hazardous Waste Control Law (Cal. Health and Safety Code § 25100 *et seq.*), the Hazardous Substance Account Act (Cal. Health and Safety Code § 25300 *et seq.*), and in the regulations adopted and publications promulgated pursuant to them; and/or the presence, release, or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment.

(c) *Compliance with Zoning Regulations, etc.* Nothing in this Conservation Easement relieves Landowner of any obligation with respect to the Property or restriction on the use of the Property imposed by law. For example, Landowner shall comply with all applicable zoning and building statutes, ordinances and regulations, and all other applicable statutes, ordinances and regulations.

5. *Permitted Uses and Actions*

The following uses, practices, and activities, though not an exhaustive list of consistent uses and practices, are generally consistent with the Conservation Purpose of this Easement and are permitted on the Property as long as they are carried out in a manner that is consistent with the Conservation Purpose and other terms and conditions of this Easement. No prior notice or approval of Steward is required before Landowner begins these uses, practices, and activities.

(1) *Agricultural Activities.* Landowner retains the right to use the Property for agricultural purposes, including maintaining the Property in fallow condition, in accordance with

applicable law and subject to the restrictions of this Section 5(a)(1), the Conservation Purpose and other terms and conditions of this Conservation Easement. In addition to the growing of crops and related soil and irrigation management and improvements (including the establishment of appropriate soil grades), agricultural purposes include normal grazing activities, including but not limited to the use of the Property as irrigated pasture, supplemental feeding operations or areas, corrals, livestock working facilities, and other areas where grazing livestock may be temporarily confined incidental to grazing activities. This Conservation Easement is not intended to limit Landowner's discretion to employ Landowner's choices of agricultural uses and management practices so long as those uses and practices are consistent with this Section 5(a)(1), the Conservation Purpose and other terms and conditions of this Conservation Easement. Landowner also retains the right to use different or new farming techniques and to construct and maintain irrigation improvements necessary or desirable to irrigate the Property for agricultural purposes. However, Landowner shall have no obligation to irrigate the Property. The parties acknowledge that preservation of the Conservation Values permits changes in farming techniques necessary or desirable to maintain economically viable farming operations. Accordingly, Landowner is not limited to those farming techniques currently known or foreseeable, but rather may use new or different farming techniques that are consistent with this Section 5(a)(1), the Conservation Purpose and other terms and conditions of this Conservation Easement.

Notwithstanding the foregoing, in order to ensure suitable foraging habitat for the Swainson's hawk, the following agricultural activities are prohibited on the Property unless otherwise specified below as being allowed in certain areas of the Property:

- i. Concentrated animal feeding operation (CAFO), i.e. feed lots;
- ii. The cultivation of horticultural specialties, including sod, nursery stock, ornamental shrubs, ornamental trees, Christmas trees, or flowers, except within the Farmstead Area;
- iii. The construction or placement of commercial greenhouses or plant nurseries, except within the Farmstead Area;
- iv. Commercial aquaculture of aquatic plants, animals, and their by-products, except within the Farmstead Area;
- v. The planting and/or cultivation of the following crops: orchards, vineyards, artichokes, asparagus, cotton, and rice, except within the Farmstead Area.

(2) **Storage of Agricultural Products and Equipment:** Storage of the following items is permitted as long as any such item is intended to be used on the Property: agricultural products, agricultural chemicals, agricultural byproducts and agricultural equipment. The term "agricultural chemicals" includes herbicides, pesticides, fungicides, fertilizers, and other materials commonly used in farming operations even though they may be classified as hazardous materials. Any such storage must be in accordance with applicable laws and labeling requirements.

(3) **Fences.** Existing fences may be repaired and replaced, and new fences may be built, on the Property for purposes of reasonable and customary management of livestock, wildlife and farm produce, and the reasonable and customary security of the farm produce and the residences and other improvements on the Property. Construction of a fence around the perimeter of the Property or portions of the perimeter to prevent trespass is permitted.

(4) **Unpaved Farm Roads and Trails.** Construction and maintenance of unpaved farm roads that are reasonably necessary and incidental to carrying out the uses permitted on the Property by this Conservation Easement are permitted. Construction and maintenance of unpaved dirt trails are also permitted. All roads and trails shall be located so as to limit impact to the soils protected by this Easement.

(5) *Recreational Improvements and Uses.* Passive, non-motorized, recreation activities like hiking and bird-watching are permitted. Private recreational improvements (e.g., swimming pool, tennis court) for the personal, non-commercial use by Landowner and Landowner's family and guests are permitted within the Farmstead Area.

(6) *Right to Designate Farmstead Area.* Landowner shall have the right to designate the location of the Farmstead Area, which shall consist of a single contiguous area of not more than three (3.0) acres. Upon designation of the location of the Farmstead Area, Landowner shall provide to Steward, at Landowner's sole cost and expense, a survey of the exact boundaries of the Farmstead Area, and this Conservation Easement shall be amended by the parties to reflect the designated location of the Farmstead Area, including by adding an exhibit to recite the legal description of the Farmstead Area and a map depicting its location.

(7) *Single-Family Residential Dwelling and Appurtenant Improvements (with prior approval).* Landowner may construct, occupy, maintain, repair, demolish and/or replace one (1) "Single-Family Dwelling" (as defined in the Solano County zoning regulations in effect as of the Effective Date of this Easement), customary appurtenant residential structures and improvements, as well as ancillary family-farm-related and cottage industry structures such as barns, private stables, corrals and sheds within the Farmstead Area. Customary appurtenant structures including an "Accessory Dwelling Unit" (as defined in the Solano County zoning regulations in effect as of the Effective Date of this Easement) shall be permitted, but all appurtenant structures shall be located within the Farmstead Area. All construction shall be subject to applicable zoning in effect as of the time of construction.

(8) *Subsequent Liens or Encumbrances on Property.* Landowner may use the Property as collateral for borrowing after the Effective Date of this Easement, provided that any subsequent obligations secured by the Property shall be subordinate to this Conservation Easement.

(9) *Emergencies.* In an emergency, Landowner may take such limited and temporary actions as are reasonably necessary to protect physical safety of persons, property, and the Property, including agricultural improvements and products, but only to the extent necessary for such protection and provided such actions are in compliance with applicable laws. The construction, placement, or use of limited temporary living quarters or mobile homes on the Property during or immediately following an emergency rendering the permitted primary residence, accessory dwelling, and/or farm-labor housing uninhabitable is permitted, provided that such construction, placement, or use is in compliance with applicable laws and any such temporary structures are removed immediately after the period of emergency is over or construction of new living quarters is completed.

(10) *Roads.* Driveways (whether paved or unpaved) within the Farmstead Area and from the Farmstead Area to the nearest road is permitted. No other portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, unless paving is required by a law or regulation related to air quality, fire safety, accessibility for disabled persons, or is otherwise required for activities permitted on the Property.

(11) *Use of Soil, Sand and Gravel.* Extraction and use on the Property of limited quantities of soil, sand, and gravel from the Property as appropriate for the conduct of the agricultural and other activities on the Property permitted herein and conducted in a manner that does not significantly impair or interfere with the Conservation Values of the Property are permitted, provided that such activities shall be carried out in full compliance with applicable laws, shall not involve more than one (1.0) acre in area, and shall include the prompt restoration of any affected area after extraction is complete.

(12) *Use of Property for Mitigation.* Entering into income-enhancement agreements (such as stewardship incentive programs) to engage in husbandry of natural resources of the Property and

to maintain, improve, enhance and develop habitat and environmental values consistent with "agricultural activities," as defined in Section 3482.5 of the Civil Code of California, is permitted so long as: (1) such agreement is consistent with the terms of this Easement; (2) the subject rights have not already been conveyed or extinguished by this Easement; (3) such agreement will not significantly impair the agricultural productive capacity of the Property; (4) such agreement will not significantly impair the foraging habitat required for Swainson's hawk.

(13) *Signs.* Signs may be placed on the Property in accordance with applicable sections of the Solano County Zoning Ordinance, including Sections 28-21 and 28-66, as it may be amended from time to time and only for the purpose of advertising (1) the name of the farm and/or the owners of the Property; (2) agricultural enterprises operating on the Property; (3) a roadside stand operating on the Property; (4) a seasonal sales lot operating on the Property; and/or (5) the sale or lease of the Property, all in accordance with this Conservation Easement.

6. *Prohibited Uses*

The following uses, practices, and activities, though not an exhaustive recital of inconsistent uses, practices, and activities, are inconsistent with this Easement and are prohibited on the Property, except as otherwise expressly permitted in Sections 5 or elsewhere in this Easement:

(a) *Buildings, etc.* Except as expressly permitted in Sections 5 above or in Section 15(i) below, the construction or placement of any buildings, residential dwellings, camping accommodations, temporary living quarters of any sort, mobile homes, signs, billboards or other advertising materials, utility towers, or other structures is prohibited. Except as expressly permitted in this Easement, all other construction, erection, installation or placement of buildings, structures, or other improvements on the Property is prohibited.

(b) *Dumping and Trash.* No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, or waste shall be placed, stored, dumped, buried or permitted to remain on the Property. However, temporary storage of waste generated on the Property for periodic removal off-site is permitted. Composting of organic materials of the Property is also permitted.

(c) *Mining.* Except as expressly permitted in Sections 5 above, mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance is prohibited.

(d) *Commercial Recreational Structures.* Resort structures, golf courses, non-residential swimming pools, non-residential tennis courts, commercial equestrian facilities, playing fields, airstrips, helicopter pads or any other commercial recreational structure are strictly prohibited on the Property. Operation of a public stable (as defined by the Article 1, In General, Section 28-10, "Definitions," Zoning Regulations, Solano County Department of Environmental Management, Chapter 28 of the Code of Solano County dated February 8, 2002) and the commercial raising, training and boarding of horses are not a land use relating to agriculture or agricultural production and are therefore prohibited on the Property.

(e) *Subsequent Easements that Restrict Agricultural Use.* The grant of any easement, other interest in land, or use restriction that might diminish or impair the Conservation Values of the Property is prohibited. Landowner shall not grant any subsequent conservation easement on the Property that restricts agricultural husbandry practices, interferes with the Conservation Purpose, diminishes the Conservation Values of the Property, or otherwise interferes with any of the terms of this Conservation Easement, as reasonably determined by Steward. "Husbandry practices" means agricultural activities, such as those specified in Section 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper accepted customs and standards, as established and followed by similar agricultural operations in the same locality.

(f) *Subdivision.* The division, subdivision, de facto subdivision or partition of the Property, including transfer of development rights, whether by physical, legal, or any other process, is prohibited. The Property is currently comprised of one (1) legal parcel. Landowner shall maintain the parcel comprising the Property, and all interests therein, under common ownership, as a single parcel. Landowner asserts that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance pursuant to California Government Code Section 66499.35 based on previous patent deed or easement conveyances, subdivisions, or surveys of any kind. Landowner shall not apply for or otherwise seek recognition of additional legal parcels with the Property based on certificates of compliance or any other authority.

(g) *Motorized Vehicle Use.* The use of motorized vehicles on the Property is prohibited except as reasonably necessary to conduct activities that are expressly permitted herein, including but not limited to farming operations, property maintenance and security, and/or to monitor this Easement; provided that any such use shall not significantly impair the Property's ability to support agricultural activity or the ability of the Property to provide foraging habitat for Swainson's hawk.

7. *Enforcement*

(a) *Monitoring.* Steward shall manage its responsibilities for this Conservation Easement, including, but not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement, for the purposes of preserving the Conservation Values and upholding the Conservation Purpose in perpetuity. Steward shall indemnify and hold Landowner harmless from and against any liabilities, costs, losses, orders, liens, penalties, damages, claims, causes of action, demands, and/or judgments claims or causes of action arising from acts or omissions of Steward in connection with the inspection or monitoring of the Property under this Conservation Easement, provided that Steward's indemnity obligation set forth above shall not apply to any liabilities, costs, losses, orders, liens, penalties, damages, claims, causes of action, demands, and/or judgments arising from the negligence or willful misconduct of, or a breach of this Easement by, Landowner.

(b) *Violations; Notice and Injunctive Relief.*

(1) Except as permitted in subsection (b)(2) below, if Steward determines that there is a violation of the terms of this Conservation Easement or that a violation is threatened, Steward shall give written notice to Landowner. The notice shall identify the violation or threatened violation, and, where known to Steward, any corrective action necessary to cure the violation. Where the violation involves injury to the Property resulting from any use or activity that is inconsistent with the Conservation Purpose and other terms and conditions of this Conservation Easement the notice may demand restoration of the portion of the Property so injured. If Landowner fails to cure the violation within sixty (60) days after Steward gives notice, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, if Landowner fails to begin curing the violation within the sixty (60) day period, or if Landowner does not continue diligently to cure the violation until finally cured, or as otherwise provided in this Conservation Easement, Steward may bring an action at law or in equity to enforce the terms of this Conservation Easement.

(2) If Steward, in its sole discretion, determines that an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity, open-space character, habitat, or any other Conservation Value of the Property, Steward may pursue its remedies under this Section without prior notice to Landowner or without waiting for the period provided for cure to expire, including but not limited to *ex parte* judicial relief. Steward shall have the right to seek injunctive relief pursuant to this Section 7 if, in Steward's reasonable discretion, an injunction is required to prevent the irreversible or significant impairment of the Conservation Values or irreversible or significant interference with the Conservation Purpose or otherwise to enforce this Conservation Easement.

(c) *Equitable Remedies.* Steward's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Landowner and Steward expressly agree that the Property, by virtue of its Conservation Values, is unique and that a violation of this Conservation Easement, and the ensuing harm or alteration of the Property, may result in damages that are irreparable and not subject to quantification. Landowner agrees that Steward's remedies at law for a violation of the terms of this Conservation Easement may be inadequate and that Steward may seek the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Steward may be entitled, including specific performance of the terms of this Easement, without necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Steward's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity. Equitable relief may include restoration of the Property to the condition that existed prior to the injury.

(d) *Recovery of Costs.* If Steward prevails in any action to enforce the terms of this Easement, any and all costs incurred by Steward in enforcing the terms of this Conservation Easement against Landowner or against others where Landowner had the legal right and/or legal obligation to have acted in a manner that would have made such enforcement action unnecessary, including, without limitation, costs of suit and reasonable attorneys' fees, and any and all costs of restoration resulting from Landowner's violation of the terms of this Conservation Easement, shall be the responsibility of Landowner.

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

8. *No Public Access*

Landowner retains the right to privacy and nothing in this Conservation Easement shall be construed as a grant to the general public of any right to enter the Property.

9. *Water*

(a) *Water Rights.* Landowner retains and reserves all groundwater, appropriative, prescriptive, riparian, contractual or other water rights appurtenant to the Property. Landowner shall not permanently transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself; but the preceding shall not restrict the right of Landowner to enter into sales, purchases, leases, exchanges and other transactions in water rights (including without limitation water sharing and water well agreements) of limited term not to exceed two (2) years. All water shall be retained in Solano County for agricultural production only. Any such transfer of water shall not impair the long-term agricultural productive capacity or open-space character of the Property.

(b) *Maintenance and Enhancement of Water Sources.* Landowner maintains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Conservation Easement, provided that Landowner does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property or reduce the net farmable acreage. Landowner may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural management potential of the Property.

10. *Transfer of Conservation Easement by Steward*

(a) *Voluntary Transfer.* Steward may transfer this Easement to either (1) a public agency authorized to hold interests in real property as provided in section 815.3(b) of the Civil Code of California; or (2) a private non-profit organization, as defined in Section 10221 of the California Public Resources Code, whose primary mission is to protect farmland, farmland soils, and farm viability and which, at the time of transfer, is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code and under Section 815.3(a) of the Civil Code of California, or successor provision. Landowner's consent shall not be unreasonably withheld. Such a transfer may proceed only if the agency or organization expressly agrees to assume the responsibility imposed on Steward by this Easement pursuant to an assignment and assumption agreement, which shall be duly recorded in the official records of Solano County, California.

(b) *Transfer Upon Dissolution of Steward, etc.* If Steward, or its successors, ceases to exist or no longer qualifies to hold the Easement under Section 170(h) of the Internal Revenue Code or applicable state law, a court of competent jurisdiction shall direct the transfer of Steward's interest in this Easement to another public agency or qualified organization having similar purposes that agrees to assume the responsibilities imposed on Steward by this Conservation Easement.

11. *Transfer of Property*

Landowner may transfer the Property or an interest therein, but each transferee shall take subject to, and be bound by, each and every term and provision of this Conservation Easement. Landowner shall refer to this Conservation Easement by name, date and official document recording identification number in any deed or other conveyance instrument in which the Property or any interest therein is transferred. Failure of Landowner to do so shall not impair the validity of this Conservation Easement, limit its enforceability in any way, or excuse the transferee from complying with the terms of this Conservation Easement.

12. *Amendment of Conservation Easement*

This Easement may be amended only with the written consent of Steward and Landowner. Any amendment shall be consistent with the Conservation Purpose, shall not result in the impairment of the Conservation Values, and shall comply with Section 815 of the Civil Code of California and Steward's amendment policies and procedures. Any amendment shall be duly recorded in the official records of Solano County.

13. *Notices*

Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Landowner and Steward respectively at the following addresses, or to such other addresses as the parties may designate by notice:

To Landowner: Dixon Farms, LLC
Attn: Carl Zocchi
4080 Port Chicago Highway
Concord, CA 94520

To Steward: The Habitat Management Foundation
Attn: Ken Whitney
P.O. Box 18
Rocklin, CA 95677

14. *Landowner's Environmental Warranty*

(a) Nothing in this Easement shall be construed as giving rise to any right or ability in Steward to exercise physical or management control over the day-to-day operations of the Property, or any of Landowner's activities on the Property, or otherwise to become an "owner" or "operator" or "responsible person" with respect to the Property as those words are defined and used in environmental laws, including The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, or any corresponding state and local statute or ordinance.

(b) Landowner warrants that it has no actual knowledge of a release or threatened release of hazardous substances, wastes, or materials on the Property or other adjacent property owned by Landowner, as such substances, wastes, and materials are defined by applicable law, or any violation of applicable environmental laws, and hereby promises to defend, hold harmless, and indemnify Steward and its members, directors, officers, employees, legal representatives, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them, against, and hold Steward harmless from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste, material or substance or violation of environmental laws, including but not limited to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.*, the Toxic Substances Control Act, as amended 15 U.S.C. § 2601 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 42 U.S.C. § Health and Safety Code § 25100 and in the regulations adopted and publications promulgated pursuant to them. Notwithstanding the foregoing, Landowner's indemnity obligation set forth above shall not apply to any liabilities, costs, losses, orders, liens, penalties, damages, claims, causes of action, demands, and/or judgments arising from the active negligence or willful misconduct of Steward.

(c) If at any time after the effective date of this Easement there occurs a release, discharge or other incident in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Landowner agrees to take all steps that are required of Landowner under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

15. *General Provisions*

(a) *Interpretation.* This Conservation Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose. Except as otherwise provided, references to authorities in this Conservation Easement shall be to the statute, rule, regulation, ordinance or other legal provision that is in effect at the time this Conservation Easement becomes effective. No provision of this Conservation Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Conservation Easement.

(b) *Successors.* Every provision of this Conservation Easement that applies to Landowner or Steward shall also apply to, and this Conservation Easement shall bind and inure to the benefit of, their respective agents, heirs, executors, administrators, assigns, and other successors in interest. However, a party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property.

(c) *Severability.* If any term, provision, covenant, condition or restriction of this Conservation Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or otherwise not effective, the remainder of the Conservation Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(d) *Perpetuation of Conservation Easement.* This Conservation Easement shall be of perpetual duration. No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion of the Property. It is the express intent of the parties that this Conservation Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Steward, or Steward's successor or assignee.

(e) *No Waiver.* Enforcement of the terms of this Conservation Easement is at the discretion of the Steward. Any forbearance by Steward to exercise its rights under this Conservation Easement shall not be deemed or construed to be a waiver by the Steward of such term or of any of the Steward's rights under this Conservation Easement. No delay or omission by the Steward in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. No forbearance or waiver by Steward of any default or breach, whether intentional or not, shall be deemed to extend to any prior or subsequent defaults or breaches, nor shall it affect in any way any rights arising by virtue of any prior or subsequent occurrence.

(f) *Recording.* This Conservation Easement shall be recorded in the official records of the County of Solano, State of California.

(g) *Integration.* This Conservation Easement is the final and complete expression of the agreement between the parties with respect to this subject matter. Any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into this written instrument.

(h) *Estoppel Certificate.* In connection with a sale or financing of the Property, Steward shall, upon not less than thirty 30 days' prior written notice from Landowner, execute and deliver to Landowner or any person designated by Landowner, an estoppel certificate in reasonable form, stating either (1) that Landowner is not in violation of this Conservation Easement or (2) if Landowner is in violation, the nature of the violation. Any such statement may be conclusively relied upon by the prospective purchaser, assignee, sublessee, lender or other person or entity reasonably requesting the estoppel certificate.

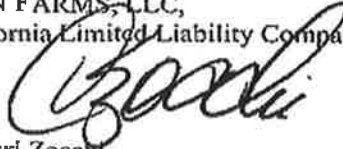
(i) *Informational Sign.* Subject to Landowner's consent, which shall not be unreasonably withheld, Steward may erect and maintain a sign in a prominent location on the Property, visible from nearby roads, if applicable, bearing information indicating that the Property is subject to a Conservation Easement held by Steward. The wording of the information shall be determined by Steward after consultation with Landowner, but shall clearly indicate that the Property is privately owned and not open to the public. Steward is responsible for the costs of erecting and maintaining the sign and obtaining necessary permits and approvals.

(j) *Counterparts.* This Conservation Easement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Landowner and Steward, intending to be legally bound, have set their hands on the date first above written. To Have and To Hold, this Conservation Easement unto the Steward, its successors and assigns, forever.

"LANDOWNER":

DEXON FARMS, LLC,
a California Limited Liability Company



By: Carl Zocchi

Its: Authorized Agent

"STEWARD":

THE HABITAT MANAGEMENT FOUNDATION,
a California 501(c)(3) nonprofit corporation



By: Kenneth Whitney

Its: CEO

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Placer

On October 1, 2014 before me, Candice Guider, Notary Public
(Here insert name and title of the officer)

personally appeared Kenneth Dean Whitney

who 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(ies), 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Candice Guider
Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Deed of Conservation Easement
(Title or description of attached document)

for Dixon Farms Property
(Title or description of attached document continued)

Number of Pages 15 Document Date October 3, 2014

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
CEO
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e., certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

State of California

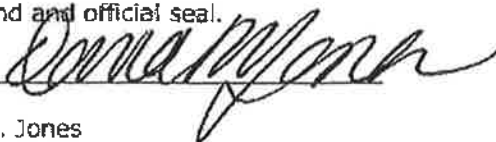
County of Contra Costa

On 2nd day of October, 2014 before me, Donna M. Jones a Notary Public, personally appeared Carl Zocchi, who 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(ies), 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____



Name: Donna M. Jones
(typed or printed)



(Seal)

DJ/dj

List of Exhibits

Exhibit A Legal Description of the Property

068909\6357871\45

EXHIBIT "A"

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SOLANO, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 6 NORTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT WHICH IS THE NORTH EAST CORNER OF ABOVE SAID SECTION 16, WHICH POINT IS MARKED BY A TWO-INCH DIAMETER PIPE IN THE MIDDLE OF SIKES ROAD, THENCE SOUTH $00^{\circ} 12' 34''$ WEST 2639.08 FEET TO A TWO-INCH PIPE MARKING THE EAST QUARTER CORNER OF SAID SECTION 16; THENCE NORTH $89^{\circ} 31' 40''$ WEST 2636.78 FEET TO A TWO-INCH PIPE MARKING THE CENTER OF SAID SECTION 16, THENCE NORTH $00^{\circ} 13' 42''$ EAST 2637.96 FEET TO A TWO-INCH PIPE MARKING THE NORTH QUARTER CORNER OF SAID SECTION 16; THENCE SOUTH $89^{\circ} 33' 07''$ EAST 2635.91 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS, GAS, OIL, PERTROLEUM, NAPTHA AND OTHER HYDROCARBON SUBSTANCES UNDERLYING THE LAND HEREIN CONVEYED PROVIDED THAT IN PROSPECTING OR DRILLING OR MINING OR REMOVING ANY MINERAL OR OTHER SUBSTANCE, THE SURFACE OF THE LAND AND THE LAND TO A DEPTH OF 500 FEET SHALL NOT BE ENTERED UPON, TRAVERSED OR DISTURBED IN ANY MANNER OR TO ANY DEGREE AS RESERVED TO GRANTORS IN GRANT DEED DATED OCTOBER 19, 1964, SERIES #28880, BOOK 1301, PAGE 27, SOLANO COUNTY OFFICIAL RECORDS.

A.P.N. 0143-110-020

END OF
DOCUMENT

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