

RECORDING REQUESTED BY)
 Westervelt Ecological Services)
 600 North Market Boulevard, Suite 3)
 Sacramento, CA 95816)
)
 AND WHEN RECORDED MAIL TO:)
 Center for Natural Lands Management)
 27258 Via Industria, Suite B)
 Temecula, CA 92590)
)
 WITH CONFORMED COPIES TO:)
 United States Department of the Interior)
 Fish and Wildlife Service)
 Sacramento Fish and Wildlife Office)
 2800 Cottage Way #W-2605)
 Sacramento, CA 95825-1846)
)
 California Department of Fish and Game)
 1416 Ninth Street, 12th Floor)
 Sacramento, CA 95814)

Space Above Line for Recorder's Use Only

AMENDED CONSERVATION EASEMENT DEED
Burke Ranch Conservation Bank

THIS AMENDED CONSERVATION EASEMENT DEED (“Conservation Easement” or “Amended Conservation Easement”), which amends and supersedes that Conservation Easement executed January 31, 2008 and recorded February 8, 2008 in County of Solano as Document Number 200800009519 (“2008 Conservation Easement”), is made as of the _____ day of _____, 2012 by Westervelt Ecological Services, LLC, a Delaware limited liability company (“Grantor” or “Westervelt”), in favor of the Center for Natural Lands Management, a California nonprofit public benefit corporation (“Grantee”), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately nine hundred sixty four and 14/100 (964.14) acres, located in the County of Solano, State of California, designated as Assessor’s Parcel Numbers 042-020-030, 042-020-040, 042-020-070, 042-020-110, 042-020-120, and 042-020-160 (the “Land”). The Land is legally described in Exhibit “A” attached hereto and incorporated herein by this reference.

B. Grantor granted to Grantee the 2008 Conservation Easement over all of the Land except for a two-acre area. The 2008 Conservation Easement encumbers an approximately nine hundred sixty two and 14/100 (962.14) acre-portion of the Land (the “Burke

Ranch Conservation Bank Property” or “Property”). The Property is legally described in Exhibit B (map and legal description of the Easement Area) attached to this Conservation Easement and incorporated in it by this reference.

C. The Property possesses wildlife and habitat values (collectively, "Conservation Values") of great importance to Grantee, the people of the State of California and the people of the United States, including, among other things, the specific Conservation Values identified in Recital D, below.

D. The Property provides high quality habitat for vernal pool tadpole shrimp (*Lepidurus packardii*), vernal pool fairy shrimp (*Branchinecta lynchi*), Conservancy fairy shrimp (*Branchinecta conservatio*), delta green ground beetle (*Elaphrus viridis*), California tiger salamander (*Ambystoma californiense*), Swainson’s hawk (*Buteo swainsonii*), and burrowing owl (*Athena cunicularia*), and contains vernal pools and associated uplands, and other waters of the United States including wetlands.

E. Grantee is authorized to hold conservation easements pursuant to Civil Code section 815.3 and Government Code section 65967. Specifically, Grantee is a tax-exempt nonprofit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, a “qualified organization” as defined in section 170(h)(3) of the Internal Revenue Code, and qualified to do business in California which has as its principal purpose and activity the direct preservation of land in its natural, scenic, forested or open space condition or use.

F. The United States Fish and Wildlife Service ("USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. section 742(f), *et seq.*, and other provisions of federal law. The USFWS is also referred to in this Conservation Easement as a "Signatory Agency".

G. The California Department of Fish and Game ("CDFG") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to Fish and Game Code section 1802. CDFG is authorized to hold conservation easements for these purposes pursuant to Civil Code section 815.3, Fish and Game Code section 1348, and other provisions of California law. CDFG is also referred to in this Conservation Easement as a "Signatory Agency." CDFG and USFWS are together referred to as the “Signatory Agencies.”

H. On December 27, 2007, the USFWS and Westervelt entered into the original Conservation Bank Agreement for the Burke Ranch Conservation Bank (the “Original Conservation Bank Agreement”). The Original Conservation Bank Agreement required, in part, that a conservation easement be recorded over the Property to provide mitigation for impacts of

approved projects affecting wetlands and associated habitats and species located in and around the County of Solano, State of California.

I. Pursuant to the Original Conservation Bank Agreement, USFWS and Westervelt created and entered into the Burke Ranch Conservation Bank Operations and Management Plan, an adaptive habitat management plan which was created for purposes of monitoring compliance with the terms and conditions of the Original Conservation Bank Agreement.

J. On August 13, 2008, USFWS and Westervelt entered into Amendment #1 to the Original Conservation Bank Agreement (“Amendment #1). Amendment #1 was entered into to reflect the addition of credits for California tiger salamander habitat to the Original Conservation Bank Agreement. The Original Conservation Bank Agreement as amended by Amendment #1 shall be referred to as the “USFWS/Westervelt Amended Conservation Bank Agreement.”

K. USFWS, CDFG, and Westervelt are parties to Amendment #2 to the Original Conservation Bank Agreement. Amendment #2 adds CDFG as a signatory to the USFWS/Westervelt Amended Conservation Bank Agreement and also adds burrowing owl credits and CDFG approved California tiger salamander credits to that Agreement. The USFWS/Westervelt Amended Conservation Bank Agreement as amended by Amendment #2 shall be referred to as the “Conservation Bank Agreement.”

L. In accordance with the Conservation Bank Agreement, the Burke Ranch Conservation Bank Operations and Management Plan was updated by USFWS, CDFG, and Westervelt to include CDFG’s participation and the addition of new species and credits. This updated Burke Ranch Conservation Bank Operations and Management Plan shall be referred to as the “Management Plan.” The Management Plan is an adaptive habitat management plan which may be revised from time to time with appropriate Signatory Agencies approval(s) and provided to Grantee for compliance monitoring purposes. Any revisions to the Management Plan shall be consistent with the terms and conditions of this Conservation Easement.

M. This Amended Conservation Easement shall supersede the 2008 Conservation Easement.

N. Grantor has transferred to the Grantee a certain sum, agreed upon as noted in Exhibit K of the Conservation Bank Agreement, for the purpose of fulfilling Grantee’s obligation in perpetuity for monitoring compliance with the terms of the 2008 Conservation Easement and, by extension, to monitor for compliance with the terms of this Amended Conservation Easement.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California,

including California Civil Code section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. Purposes. The purposes of this Conservation Easement are to ensure that the Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the Conservation Bank Agreement and the Management Plan, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property as so restored or enhanced. Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the Conservation Bank Agreement and the Management Plan.

A final, approved copy of the Conservation Bank Agreement is on file with the Signatory Agencies as File No. 81420-2008-B-0244. The Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the Conservation Bank Agreement or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The Conservation Bank Agreement and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein. In the event of any conflict between the terms of this Conservation Easement and the Conservation Bank Agreement or the Management Plan, the terms of the Conservation Easement shall control.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee and to USFWS and CDFG as third-party beneficiaries of this Conservation Easement:

(a) To preserve and protect the Conservation Values of the Property.

(b) To enter the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the Conservation Bank Agreement and the Management Plan; and to implement at the Grantee's or third-party beneficiary's sole discretion Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property.

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

(d) The right to require that all mineral, air and water rights as the Grantee or third-party beneficiary deems necessary to preserve and protect the biological resources and

Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement.

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

3. Prohibited Uses. Any activity on or use of the Property that impairs or interferes with the Conservation Values or is otherwise inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, or other agricultural chemicals except as otherwise specifically permitted in the Management Plan provided that such use does not impair or interfere with the Conservation Values; weed abatement activities except as otherwise specifically permitted in the Management Plan provided that such use does not impair or interfere with the Conservation Values; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement except as otherwise specifically permitted in the Management Plan, provided that such Management Plan permitted use does not impair or interfere with the Conservation Values.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways or as specifically permitted in the Management Plan, provided that such Management Plan permitted use does not impair or interfere with the Conservation Values.

(c) Agricultural activity of any kind except grazing for vegetation management as specifically permitted in the Management Plan, provided that such Management Plan permitted use does not impair or interfere with the Conservation Values.

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

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

(f) Any legal or de facto division, subdivision or partitioning of the Land e.g. dividing the Property from the Land. The Land consists of 6 legal parcels. All legal parcels comprising the Land shall be retained in common ownership; none of the legal parcels shall be sold separately from any other legal parcel(s).

(g) Construction, reconstruction, erecting or placement of any building or structure, of any kind, on the Property.

(h) Construction, reconstruction, erecting or placement of any sign, billboard, or improvement of any kind except as otherwise specifically permitted in the Management Plan, provided that such Management Plan permitted uses do not impair or interfere with the Conservation Values.

(i) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(j) Planting, introduction or dispersal of non-native or exotic plant or animal species.

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

(l) Altering the surface or general topography of the Property, including building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except as otherwise specifically permitted in the Management Plan, provided that such Management Plan permitted use does not impair or interfere with the Conservation Values.

(m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, (3) prevention or treatment of disease or as otherwise specifically permitted in the Management Plan, provided that such Management Plan permitted use does not impair or interfere with the Conservation Values.

(n) Manipulating, impounding or altering any natural water course, 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 or sub-surface waters except as otherwise specifically permitted in the Management Plan, provided that such Management Plan permitted use does not impair or interfere with the Conservation Values.

(o) Without the prior written consent of Grantee, which Grantee may withhold in its sole discretion; transferring, encumbering, selling, leasing, or otherwise separating the mineral rights or water rights for the Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property.

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

4. Grantor's Duties.

(a) Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend rights of Grantee and third-party beneficiaries under Section 2 of this Conservation Easement, and to implement the Conservation Bank Agreement and the Management Plan.

(b) Grantor shall not transfer, encumber, sell, lease, or otherwise separate the mineral, air or water rights for the Property, or change the place or purpose of use of the water rights, without first obtaining the written consent of Grantee, which Grantee may withhold. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of Grantor's right, title or interest in and to any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property including, without limitation: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; or (iv) any water from wells that are in existence or may be constructed in the future on the Property.

(c) Grantor shall install and maintain a fence reasonably satisfactory to Grantee around the Property to protect the Conservation Values of the Property, including but not limited to wildlife corridors.

(d) If Grantor is obligated by the Management Plan or the Conservation Bank Agreement to give notice to a Signatory Agency or if Grantor is obligated to give notice to any other federal, state or local governmental entity about a use or activity on the Property, Grantor shall concurrently give the same notice to Grantee. Grantor shall provide Grantee written notice of any and all decisions made by a Signatory Agency or other federal, state or local governmental entity with respect to said notifications. Grantor shall give Grantee a copy of any proposed amendment to the Management Plan at the same time an amendment is proposed. Grantor shall give Grantee a copy of any amendment to the Management Plan promptly upon execution of an amendment.

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

6. Grantee's Remedies. USFWS and CDFG, each as third-party beneficiaries under this Conservation Easement, shall have the same rights as Grantee under this Section 6 (including its subsections) to enforce the terms of this Conservation Easement. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within thirty (30) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce this Conservation Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

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

6.2. Grantee's Discretion. Enforcement of the terms of this Conservation Easement by Grantee, USFWS, or CDFG shall be at the discretion of Grantee, USFWS, or CDFG, and any forbearance by Grantee, USFWS, or CDFG to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement

shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee (or any rights of the USFWS or CDFG, as a third-party beneficiary) under this Conservation Easement). No delay or omission by Grantee, USFWS, or CDFG in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

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

6.4. Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by USFWS or CDFG. These rights are in addition to, and do not limit, the rights of enforcement under the Conservation Bank Agreement or the Management Plan. If at any time in the future Grantor or any successor in interest or subsequent transferee uses or threatens to use the Property for purposes inconsistent with or in violation of this Conservation Easement then, notwithstanding Civil Code section 815.7, CDFG, the California Attorney General and any third-party beneficiary of this Conservation Easement has standing as an interested party in any proceeding affecting this Conservation Easement.

6.5. Baseline Report. Grantor and Grantee acknowledge that a Baseline Report (the "Report") of the Property was prepared and that the Report was approved in writing by the Grantee and the Grantor before the recording of the 2008 Conservation Easement. A copy of the Report is, and will be kept, on file with Grantor and Grantee at their respective addresses for notices set forth in Section 12. Grantor and Grantee agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time this Conservation Easement is recorded in the Official Records of Solano County. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical or biological condition of the Property or the permitted uses of the Property, Grantor and Grantee shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy.

6.6. Reversion. If a Signatory Agency determines that Grantee is not holding, monitoring, managing, or stewarding this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement, Conservation Bank Agreement, or the Management Plan then, pursuant to California Government Code section 65967(f), this Conservation Easement shall revert to the State of California, or to another public agency, special district, or nonprofit organization qualified pursuant to Civil Code section 815.3 and Government Code section 65967 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies. Any reference to the Conservation Bank Agreement in this

Section 6.6 shall not be applicable after the date upon which the Conservation Bank Agreement terminates pursuant to its terms and conditions.

7. Fence Installation and Maintenance. Grantor installed and will continue to maintain a fence as described in Subsection 4(c), Grantor's Duties.

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

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that neither Grantee nor USFWS or CDFG shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including permits and approvals required from USFWS or CDFG acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

9.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and Signatory Agencies with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14 (k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

9.2. Hold Harmless. Grantor shall hold harmless, protect and indemnify the Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each an "Indemnified Party" and, collectively, "Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of Grantee or any of its employees; (b) the obligations specified in Sections 4, 9, and 9.1; and (c) the existence or administration of this Conservation Easement. 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 Grantee, defend such action

or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

9.3 Third-Party Beneficiary Hold Harmless. Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. Provided, however, that the indemnification in this Section 9.3 shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9.3 applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

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

9.5. Condemnation. This Conservation Easement is "property appropriated to public use," the condemnation of which is prohibited except as provided in Code of Civil Procedure section 1240.055.

10. Transfer of Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed transfer. Approval of any assignment or transfer may be withheld in the reasonable discretion of the Signatory Agencies if the transfer will result in a single owner holding both this Conservation Easement and fee title to the Property and, upon such transfer, the doctrine of merger would apply to extinguish the Conservation Easement by operation of law. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code section 815.3, Government Code section 65967 (or any successor provision then applicable) or the laws of the United States

and reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

10.1 Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

11. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Land, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the Conservation Bank Agreement, the Management Plan and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies 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 of this Conservation Easement (including the exhibits and documents incorporated by reference in it). If Grantor proposes to transfer fee title to the Property to the then Grantee of this Conservation Easement, and if the doctrine of merger would apply and extinguish the Amended Conservation Easement by operation of law upon such transfer, then the transfer shall be subject to the prior written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Approval of any such transfer that is subject to the approval of the Signatory Agencies may be withheld in the reasonable discretion of the Signatory Agencies unless, prior to such transfer, an alternate method or mechanism to achieve the purposes of this Amended Conservation Easement following such merger has been provided for. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Notices. Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: Westervelt Ecological Services
600 North Market Blvd, Suite 3
Sacramento, CA 95834
Attn: Vice President

To Grantee: Center for Natural Lands Management

27258 Via Industria, Suite B
Temecula, CA 92590
Attn: Executive Director

To USFWS: United States Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, CA 95826-1846
Attn: Field Supervisor

To CDFG: California Department of Fish and Game
Bay Delta Region
7329 Silverado Trail
Napa, Ca 94558
Attn: Regional Manager

California Department of Fish and Game
Office of General Counsel
1416 9th Street, 12th Floor
Sacramento, CA 95814
Attn: General Counsel

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. 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.

13. Amendment. This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee, and written approval of the Signatory Agencies (which approval shall not be unreasonably withheld or delayed). Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and each of the Signatory Agencies.

14. Additional Provisions.

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

(b) Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code section 815, *et seq.* and Government Code section 65967. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

(d) Entire Agreement. This instrument (including its exhibits and the Conservation Bank Agreement and Management Plan incorporated by reference in it) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

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

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

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

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

(i) No Hazardous Materials Liability. (i) No Hazardous Materials Liability. Grantor represents and warrants to Grantee, USFWS and CDFG that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Land, or transported to or from or affecting the Land. Without limiting the obligations of Grantor under Section 9.2, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Indemnified Parties (defined in Section 9.2) from and against any and all Claims (defined in

Section 9.2) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and 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 Grantee, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

Without limiting the obligations of Grantor under Section 9.3, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9.3) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Land at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

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, USFWS or CDFG 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.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code section 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code section 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

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

(j) Warranty. Grantor represents and warrants that Grantor is the sole owner of the Property; there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement, and that the Property is not subject to any other conservation easement or interest that is adverse to this Conservation Easement.

(k) Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish any water or water right associated with the Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Grantee or Signatory Agencies may withhold such consent in their sole discretion if they determine that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(o), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 11.

(l) Recording. Grantee shall record this Conservation Easement in the Official Records of the County in which the Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiaries. Grantor and Grantee acknowledge that the USFWS and CDFG is each a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all of the obligations of Grantor under this Conservation Easement.

(n) Funding. Funding shall be held in trust or by other means specified in the Management Plan for the perpetual management, maintenance, monitoring and reporting of this conservation easement and the Property in accordance with the Management Plan.

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

******SIGNATURES ON FOLLOWING PAGES******

GRANTOR: WESTERVELT ECOLOGICAL SERVICES, LLC
a Delaware limited liability company

By: _____

Name : Greg DeYoung
Title: Vice President

Date _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me,

_____ personally appeared

_____, 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 of Notary Public (Notary Seal)

**GRANTEE:
CENTER FOR NATURAL LANDS MANAGEMENT,
a California nonprofit public benefit corporation**

By: _____

Name : David R. Brunner

Title: Executive Director

Date _____

STATE OF CALIFORNIA)

COUNTY OF _____) ss.

On _____ before me,

_____ personally appeared

_____,
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 of Notary Public

(Notary Seal)

APPROVED BY COUNSEL

David A. Monroe

General Counsel

ACKNOWLEDGMENTS AS TO FORM

This is to acknowledge that the interest in real property conveyed by the Conservation Easement Deed dated _____, 2012, by Westervelt Ecological Services, LLC to The Center for Natural Lands Management (Grantee), a California nonprofit public benefit corporation, is hereby accepted as to form by the undersigned:

By: _____

Title: _____

Agency: United States Fish & Wildlife Service

Date _____

By: _____

Title: _____

Agency: California Department of Fish and Game

Date _____