

SONOMA COUNTY OPEN SPACE FISCAL OVERSIGHT COMMISSION

COMMISSIONERS

Mike Sangiacomo (Sonoma)
Todd Mendoza (Petaluma)
Regina De La Cruz (Rohnert Park)

Bob Anderson (Healdsburg)
Eric Koenigshofer (Occidental)
Jeff Owen (Alternate)

Special Meeting
747 Mendocino Avenue – Suite 100, Santa Rosa, CA 95401
September 14, 2017 5:00 pm

AGENDA

1. **Call to Order.**
2. **Agenda Items to be Held or Taken Out of Order; Off-Agenda Items.**
3. **General Announcements Not Requiring Deliberation or Decision.**
4. **Public Comment.**
The Brown Act requires that time be set aside for public comment on items not agendized.
5. **Correspondence/Communication.**
6. **Approval of Commission Minutes.** [Attachment 1]
7. **Financial Reports.** [Attachment 2]
August 2017
8. **Ad Hoc Committee Reports.**
 - Annual Report/Audit Review (Anderson/Owen)
 - Finance/Investment (Sangiacomo/Owen)
 - Matching Grant Program (De La Cruz/Owen)
 - District Office Location Scenarios (Anderson/Koenigshofer)
9. **Stewardship Reserve Review.** *(Carried over from 8/31/17)*
10. **Mark West Creek Regional Park and Open Space Preserve
Initial Public Access Operation and Maintenance.** [Attachment 3]
11. **Closed Session.** [Attachment 4]
Conference with Property Manager
Property: Mark West Transfer
Address: 3000 Porter Creek Road, Santa Rosa
APNs: 079-090-008, 079-090-016 (the "Cresta I property"),
079-090-0013, 079-090-014 (the "Cresta II property"),
079-090-015 (the "Cresta III property"),

028-060-062, 028-060-063, 028-070-036, 028-060-047, 028-060-048, 028-060-053,
028-060-054, 028-060-056 (the "McCullough I property"),
028-060-058 (the Wendle property")

Owner: Sonoma County Agricultural Preservation and Open Space District

Negotiating Parties:

Owners' Representative: William J. Keene, General Manager

County of Sonoma's Representative: Bert Whitaker, Director – Regional Parks

Under Negotiation:

Transfer of Interests in Real Property by the Open Space District. The Commission will give instruction to its negotiator(s) on the price. (*Government Code Section 54954.5(b)*)

12. **Report On Closed Session.**

13. **Suggested Next Meeting.** October 5, 2017

14. **Adjournment.**

In compliance with Government Code §54954.2(a), the Sonoma County Open Space Fiscal Oversight Commission will, on request, make this agenda available in appropriate alternative formats to persons with a disability, as required by Section 202 of the ADA of 1990 (42 U.S.C. §12132), and the Federal rules and regulations adopted in implementation thereof. Individuals who need this agenda in another format or need a disability-related modification or accommodation should contact Sue Jackson at 707.565.7346 at least 72 hours prior to the meeting to ensure arrangements for accommodation. Pursuant to Government Code § 54957.5, a copy of all documents related to an item on this agenda submitted to the Fiscal Oversight Commission may be obtained from the Fiscal Oversight Commission office, 747 Mendocino Avenue, Santa Rosa, CA 95401.

Agenda Addenda

10. **Mark West Creek Regional Park and Open Space Preserve
Initial Public Access Operation and Maintenance.**

[Attachment 3]

“Attachment 3” consists of the following documents:

1. Mark West Transfer Staff Report (3 pages)
2. Mark West Transfer Location Map (1 page)
3. Mark West Transfer Site Map (1 page)
4. Mark West Regional Park & Open Space Preserve Riparian Protection Area (1 page)
5. Cresta Building Envelope Riparian Overlay (1 page)
6. Mark West Creek Regional Park & Open Space Preserve Conservation Easement (30 pages)
7. McCullough Conservation Easement (22 pages)
8. Mark West Creek Regional Park & Open Space Preserve Recreation Covenant (8 pages)
9. Mark West Creek Regional Park & Open Space Preserve Land Transfer Agreement (17 pages)

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UNAPPROVED

Minutes for the Meeting of August 31, 2017

Commissioners Present: Todd Mendoza, Chair; Bob Anderson, Eric Koenigshofer.

Staff Present: Bill Keene, General Manager; Misti Arias, Acquisition Program Manager; Mary Dodge, Administrative and Fiscal Services Manager; Sheri Emerson, Stewardship Program Manager; Robert Pittman, Assistant County Counsel; Aldo Mercado, Deputy County Counsel; Sue Jackson, Deputy Clerk.

Also Present: Elizabeth Tyree, Sonoma County Regional Parks, Department Program Manager

1. Call to Order.

Commissioner Mendoza called the meeting to order at 5:05 pm.

2. Agenda Items to be Held or Taken Out of Order; Off Agenda Items.

There were none.

3. General Announcements Not Requiring Deliberation or Decision.

Mr. Keene made the following announcements:

- The Advisory Committee/Fiscal Oversight Commission field trip has been moved from Sept. 28th to Oct 26th. The site is to be determined.
- Several activities in support of the Vital Lands Initiative are scheduled:
 - Oct. 12th – Oct. 21st: Community meetings
 - Nov. 6th: Draft Plan released for public review
 - Nov. 8th – 18th: Community meetings
 - Nov. 16th: Advisory Committee/Fiscal Oversight Commission joint meeting
 - Dec. 5th: Draft Plan presentation to the Board of Directors
- Wendell Property Acquisition – A component of the Mark West Creek Regional Park and Open Space Preserve, is scheduled to close within 30 days.
- Hansen/McClelland Acquisition – An agreement has been reached and the project will go before the Board of Directors on Oct. 3rd.
- Initial Public Access, Operation and Maintenance Extension, requested by Sonoma County Regional Parks for Lawson and North Sonoma Mountain projects will go before the Board of Directors on Oct. 10th.

- Annual Audit – Field Work has been completed. The report will go to the Annual Report/Audit Report subcommittee in October.
- Sales Tax – Fiscal Year 2016-2017 = \$23,189,660 (an increase over prior year of 4.44%)
Fiscal Year 2015-2016 = \$22,203,169
- The District is bringing several items to the Board of Directors in the next few weeks:
 - Transfer of Westerbeke Open Space Easement (Sept. 12th)
 - Sustainable Agricultural Lands Conservation Program Grant Application for Joseph Camozzi Dairy (Sept. 12th)
 - Andy's Unity Park Matching Grant (Sept. 19th)
 - Hansen Conservation Easement (Oct. 3rd)
 - Extension of IPAOM for Transfer Properties (Oct. 10th)
 - Mark West Transfer/Cresta 3 Acquisition (Oct. 24th)
 - Forever Forestville Conservation Easement Amendment (Oct. 24th)
 - Stewardship Update and Reserve Fund Calculation (Nov. 14th)
 - Comprehensive Plan/Vital Lands Initiative (Dec. 5th)

4. **Public Comment.**

There was none.

5. **Correspondence/Communication.**

There was none.

6. **Approval of Commission Minutes.**

On a motion by Commissioner Anderson and second by Commissioner Koenigshofer, the minutes of August 3, 2017, were approved as submitted.

7. **Financial Report.**

Ms. Dodge reviewed the July 31, 2017 reports.

8. **Ad Hoc Committee Reports.**

- Annual Report/Audit Review (Anderson/Owen) – Nothing to report.
- Finance/Investment (Sangiacomo/Owen) – Nothing to report.
- Matching Grant Program (De La Cruz/Owen) – Nothing to report.
- District Office Location Scenarios (Anderson/Koenigshofer) - Nothing to report.

9. **Andy's Unity Park Matching Grant.**

Resolution No. 2017-006

Ms. Arias presented an overview and requested approval of a proposed Matching Grant Agreement to partially fund construction by Sonoma County Regional Parks of Andy's Unity Park. On a motion by Commissioner Koenigshofer and second by Commissioner Anderson the resolution was adopted. Commissioner Anderson commended Elizabeth Tyree and Regional Parks for their actions in soliciting community input and support for the project given the somber circumstances under which it was conceived.

10. **Stewardship Reserve Review.**

The Commission determined that the item would be carried over to the September 14th meeting when more commissioners will be available to review the information.

11. **Suggested Next Meeting.** September 14, 2017 (Special Meeting)

12. **Adjournment.**

The meeting was adjourned at 5:46 p.m. to a Special Meeting on September 14, 2017 at 5:00 p.m.

Respectfully submitted,

Sue Jackson
Deputy Clerk

Sonoma County Agricultural Preservation and Open Space District
Consolidated Balance Sheet - District and OSSTA Funds
August 31, 2017

Assets

Cash and Investments	\$61,688,410
Accounts Receivable	178,790
Prepaid Expenditures	1,364
Other Current Assets	50,000
Intergovernmental Receivables	335,317
Total Assets	<u><u>\$62,253,881</u></u>

Liabilities and Fund Balance

Current Payables	\$42,884
Customer Deposits	51,279
Long-Term Liabilities	30,000
Total Liabilities	<u><u>124,163</u></u>

Fund Balance

Nonspendable - Prepaid Expenditures	1,364
Restricted - District Activities	62,128,354
Total Fund Balance	<u><u>62,129,718</u></u>
Total Liabilities and Fund Balance	<u><u>\$62,253,881</u></u>

Cash by Fund

OSSTA - Measure F	\$55,663,327
Open Space District	805,895
Fiscal Oversight Commission	12,923
Stewardship Reserve	
Cooley Reserve	149,252
Operations and Maintenance	5,057,013
Total Cash by Fund	<u><u>\$61,688,410</u></u>

Sonoma County Agricultural Preservation and Open Space District
Consolidated District and OSSTA Budget to Actual
For the two months ended August 31, 2017
17% of Year Complete

	Budget Final	Actual Year to Date	Encumbrances Year to Date	Remaining Balance	% of budget Remaining
Revenues					
Tax Revenue	\$23,043,630			\$23,043,630	100.00%
Intergovernmental Revenues	6,304,363			6,304,363	100.00%
Use of Money & Prop	390,000	245,116		144,884	37.15%
Miscellaneous Revenues	750,000	16,720		733,280	
Other Financing Sources	685,980			685,980	100.00%
Total Revenues	<u>31,173,973</u>	<u>261,836</u>		<u>30,912,137</u>	<u>99.16%</u>
Expenditures					
Salaries and Benefits	4,298,999	499,475		3,799,524	88.38%
Services and Supplies	7,665,010	230,258	\$2,775,632	4,659,120	60.78%
Other Charges	4,353,724		1,563,759	2,789,965	64.08%
Capital Expenditures	25,366,642		201,018	25,165,624	99.21%
Other Financing Uses	8,186,190	1,239,167		6,947,023	84.86%
Total Expenditures	<u>49,870,565</u>	<u>1,968,900</u>	<u>4,540,409</u>	<u>43,361,256</u>	<u>86.95%</u>
Net Earnings (Cost)	<u>(\$18,696,592)</u>	<u>(1,707,064)</u>	<u>(\$4,540,409)</u>	<u>(\$12,449,119)</u>	
Beginning fund balance		63,836,782			
Ending Fund Balance		<u><u>\$62,129,718</u></u>			

Note: Sales tax collected as of August 31, 2016 was zero due to the Board of Equalization timing for distributions.



DATE: September 6, 2017 (Meeting September 14, 2017)

TO: Fiscal Oversight Commissioners

FROM: Stuart Martin, Land Acquisition Specialist

SUBJECT: Mark West Transfer

Summary

Between 2002 to the present, the District acquired, or will acquire soon, five properties in fee and an overlapping conservation easement in the Mark West area (see Table 1), northeast of Santa Rosa (see location map): Cresta I, McCullough I (easement and fee), Cresta II, Cresta III (set to close by December 8, 2017), and Wendle (set to close no later than March 7, 2018) which comprise the approximately 900-acre Mark West property ("Property") (see site map).

Table 1
Mark West Property Acquisitions

Property	Acres	Acquisition Date	District Funds	Other Funding
McCullough I CE*	285	2002	\$2,898,500	
Cresta 1 fee	340	2007	\$3,060,000	
McCullough I fee	461	2009	\$8,463,000	
Cresta II	21.5	2014	\$170,000	\$150,000
Cresta III***	46.4	12.2017	\$1,940,000	\$160,000
Wendle **	37.84	3.2018	\$2,340,000	\$160,000
Total	906.74		\$18,871,500	\$470,000

*overlaps with the McCullough I fee acquisition

** This assumes Regional Parks will sell the 8.56-acre improved portion of the property to a private buyer. The proceeds aren't counted in the total because it is unknown how much money the sale will generate to be reimbursed to the District.

*** District funds don't include the sale of the life estate back to Bill Cresta for \$55,000. District funds include the purchase of the modular house for \$40,000.

The conveyance that is now before the Commission is the transfer of the District's fee interest in the Mark West properties to the County of Sonoma ("County") for operation of the Mark West Creek Regional Park and Open Space Preserve by Sonoma County Regional Parks. In exchange for fee title, the County will convey to the District a conservation easement, which

will generally restrict use of the property to natural resource preservation and public outdoor recreation, and a recreation covenant, which will ensure that the property remain open to the public for low-intensity outdoor recreation in perpetuity. The District and the County will also enter into a Transfer Agreement which outlines the responsibilities of both parties, including the funding of initial public access and operations and maintenance (IPAOM). Consistent with State law, the County will also agree not to convey any interest in the property without voter approval.

The transfer will occur immediately after the fee acquisition of the Cresta III property on or before December 8, 2017.

Transfer Agreement

As part of the transfer, the District and Regional Parks will enter into a Transfer Agreement, which provides among other provisions:

- Regional Parks will open the property to the general public on an interim basis starting in three years.
- The District will provide \$1,693,716 in funding for initial public access, and operations and maintenance (IPAOM).

Initial Public Access and Operations and Maintenance Policy and Fund Status

In accordance with the District's Measure F Expenditure Plan and its Initial Public Access, Operation and Maintenance Policy, the District may expend up to 10% of its annual sales tax revenue on initial public access, operation and maintenance. As of June 30, 2016, the District had an estimated \$3,525,440 available in this fund. In addition to the existing reserve, the District will record 10% of annual open space tax revenue each year (annual average estimate is over \$2M) into this fund, as outlined below.

Beginning reserve balance as of June 30, 2016:	\$3,525,440
Estimated 10% of FY 2016-17 Sales Tax revenues:	\$2,278,130
Estimate of FY 2016-17 expenditure of eligible Initial Public Access, Operation and Maintenance costs:	(\$2,379,000)
Committed Initial Public Access, Operation and Maintenance funds for future fiscal years:	(\$1,024,433)
The Estimated Initial Public Access, Operation and Maintenance reserve as of June 30, 2017, accounting for committed future funds:	\$2,400,137

The District anticipates requests from Regional Parks for at least the Carrington Ranch property in fiscal year (2017-18).

Initial Public Access and Operation and Maintenance Funding Request and Recommendation

As outlined in Table 2, Regional Parks has requested \$1,693,716 in funds related to the County's acceptance of fee title of the properties. The District is recommending granting \$1,693,716, on a reimbursement basis, to be spent within three years of the transfer.

Regional Parks is requesting \$1,444,211 for initial public access costs, and \$249,505 from the District for three years of on-going operation and maintenance activities, for a total request of \$1,693,716, which the District is recommending. Regional Parks will use revenue from day use parking, camping, special events, overnight visitor accommodations, and special use permits to cover any remaining O&M costs.

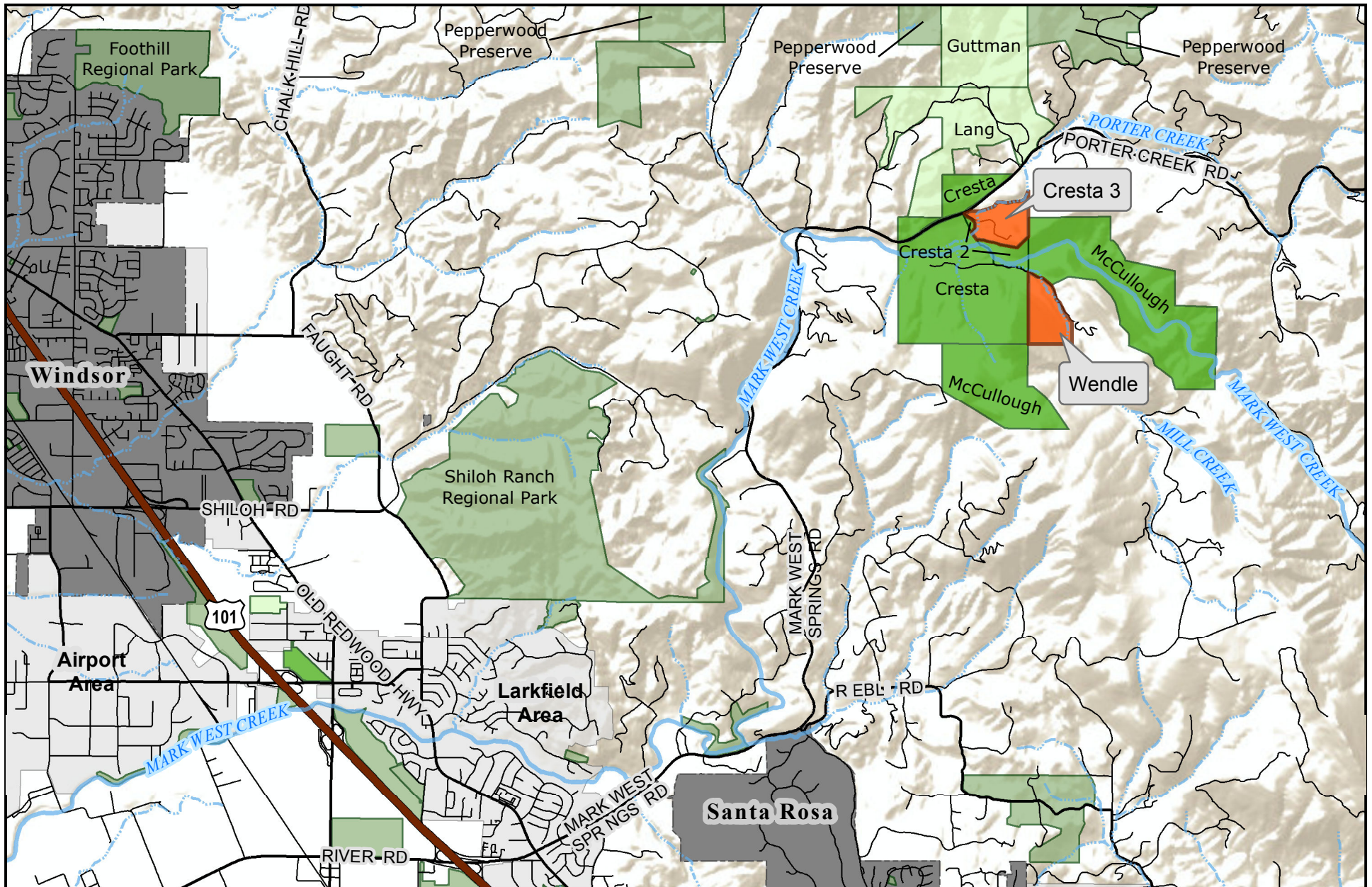
To summarize, the District is recommending **\$1,693,716** in funding to Regional Parks as outlined in Table 2.

Table 2
IPAOM Funding Recommendation

Initial Public Access		
Planning, Design & Engineering (Consultant & Staff Costs)	Subtotal	\$181,000
Resource Studies, CEQA, & Permits (Consultant & Staff Costs)	Subtotal	\$152,000
Construction Management & Construction (Consultant & Staff Costs)	Subtotal	\$1,111,211
	Subtotal	\$1,444,211
Operation and Maintenance		
For Three Years	On-going operations	\$104,632
	On-going maintenance	\$99,083
	Public outings and education	\$45,790
	Subtotal	\$249,505
	Total	\$1,693,716

Next Steps

District staff will bring the proposed property transfer, the Cresta III acquisition, and the IPAOM funding request to the Board of Directors on October 24, 2107 for consideration, including the proposed conservation easement, recreation covenant, and transfer agreement.



Mark West Transfer Location Map

0 0.5 1
Miles



— Perennial Waterway
- - - Intermittent Stream
— Street or Road

Under Contract

District Fee Title

District Conservation Easement

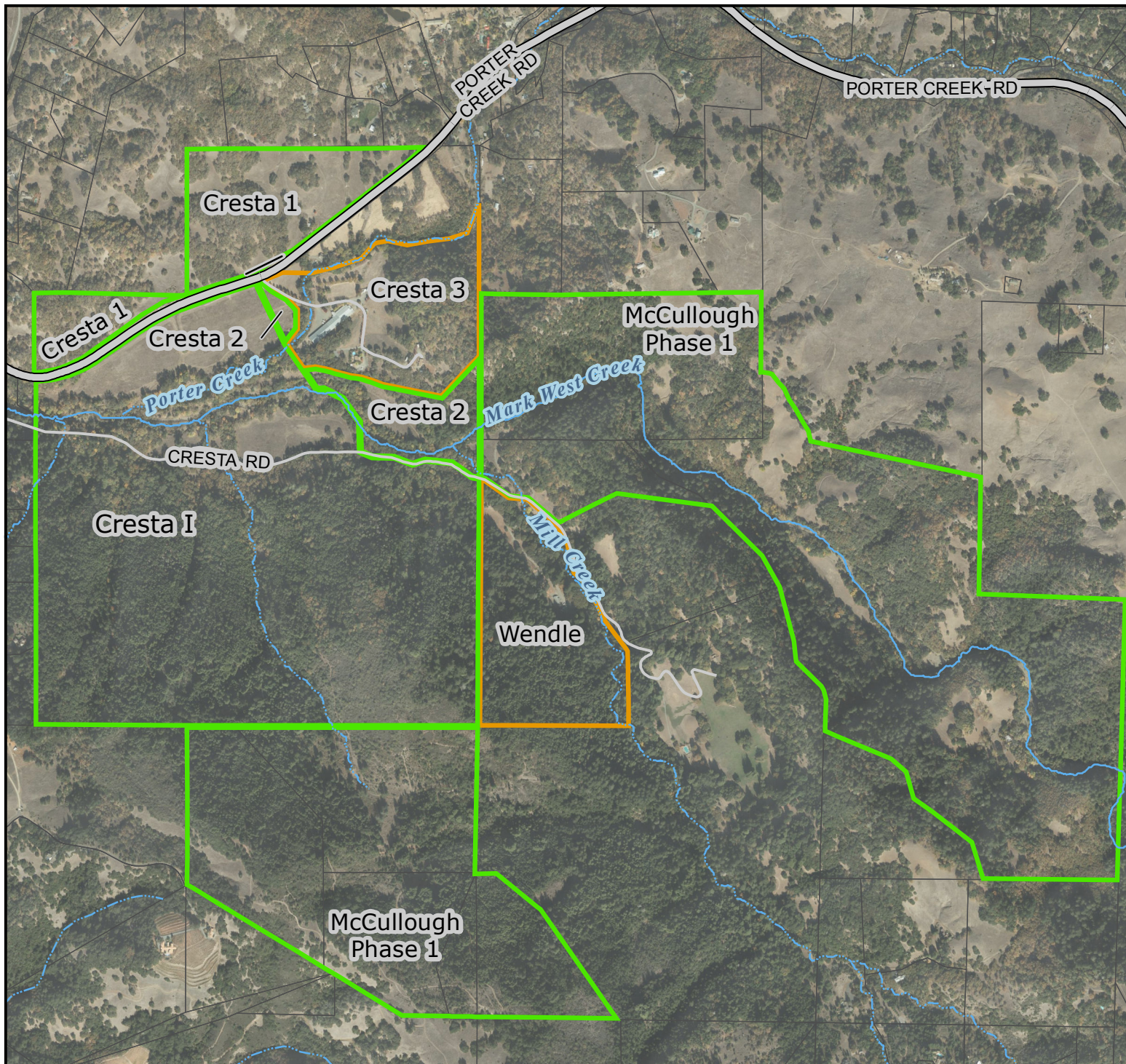
Other Protected Land

Incorporated City Land

Urban Service Area

Map Date: 8/29/2017

Sources: CPAD (protected lands); SCWA (streams);
County GIS (roads, communities); ESRI (shaded relief)
This map is for illustrative purposes; it is not a definitive
property description.



Mark West Transfer Site Map

- Perennial Waterway
- - - Intermittent Stream
- Public Road
- Ranch Road
- Under Contract
- District Property
- Assessor Parcel



0 500 1,000 1,500
Feet

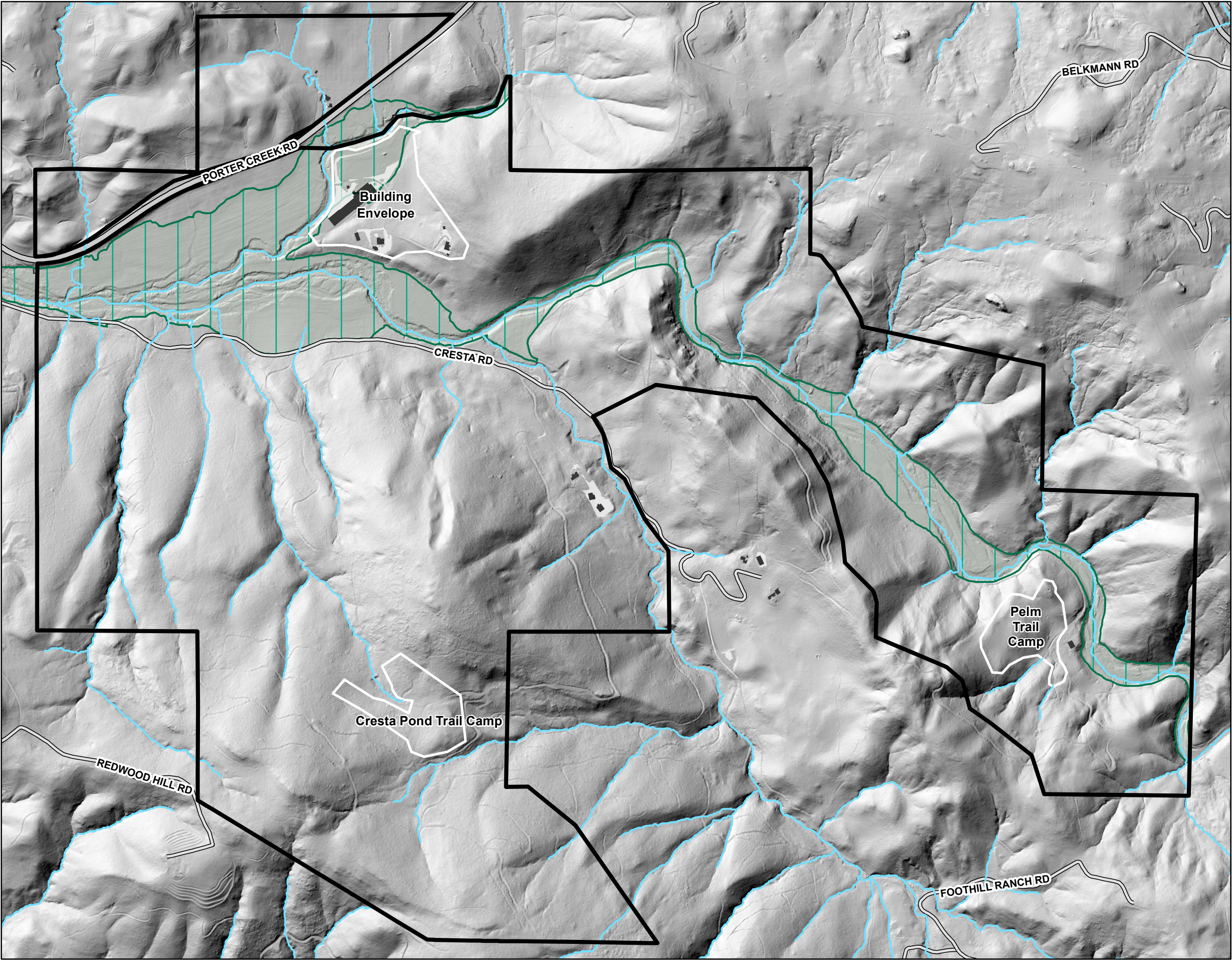



SONOMA COUNTY
AGRICULTURAL PRESERVATION
AND OPEN SPACE DISTRICT


Map Date: 8/29/2017
Sources: County GIS (roads, parcels);
NASA/UMD/WSI/Tuckman (imagery)
This map is for illustrative purposes; it
is not a definitive property description.


Mark West Regional Park
& Open Space Preserve


Riparian Protection Area (draft)




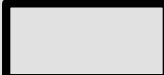
 Stream Centerlines

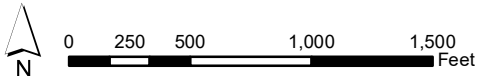
 Building Envelope

 Buildings

 Other Impervious

 Riparian Protection Area (per channel & floodplain)

 Mark West Regional Park and Open Space Preserve



Map Date: 9/7/2017
Sources: APOSD (roads), Stream Centerlines (Sonoma Veg Map), Impervious Surfaces (Sonoma Veg Map), Parcel Boundaries (Sonoma County ISD-GIS), Bare Earth Hillshade (Sonoma Veg Map)



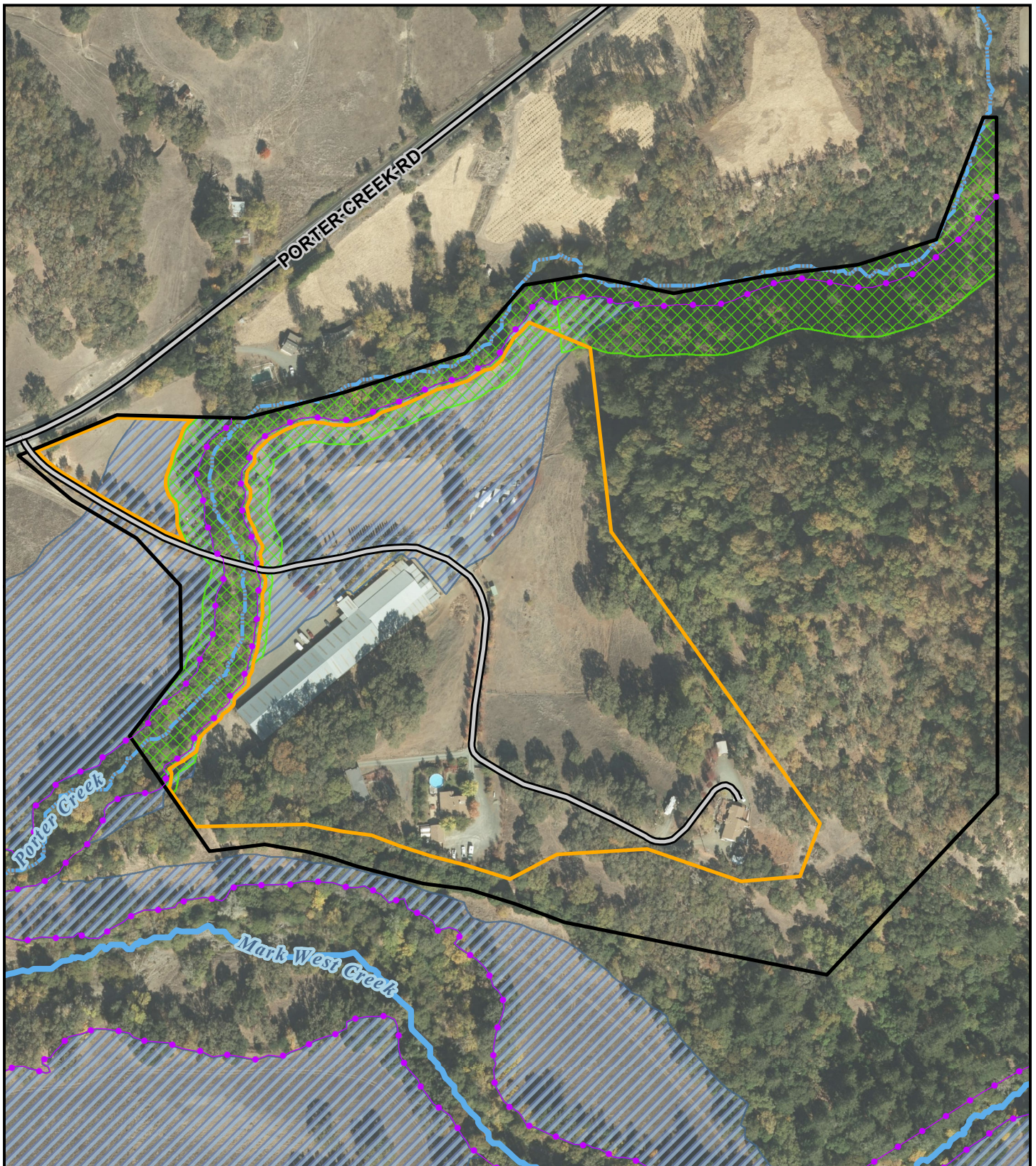







Exhibit "X" Building Envelope Riparian Overlay



-  Intermittent Stream
-  Perennial Waterway
-  District Identified Top Of Bank

-  Riparian Protection Area
-  Creek Buffer

-  Building Envelope
-  Cresta 3 Boundary



0 200 400
Feet

Map Date: 8/9/2017
Sources: County GIS (parcels, roads);
WSI/UMD/NASA/Tukman (stream,
centerlines, 2013 imagery)
This map is for illustrative purposes; it
is not a definitive property description.

DEED AND AGREEMENT
BY AND BETWEEN
THE COUNTY OF SONOMA
AND
THE SONOMA COUNTY AGRICULTURAL PRESERVATION
AND OPEN SPACE DISTRICT
CONVEYING A CONSERVATION EASEMENT
AND
ASSIGNING DEVELOPMENT RIGHTS

THE COUNTY OF SONOMA ("GRANTOR") and the Sonoma County Agricultural Preservation and Open Space District, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 et seq. ("DISTRICT"), agree as follows:

RECITALS

A. GRANTOR and DISTRICT are owners in fee simple of certain parcels of real property located in Sonoma County northeast of Santa Rosa, more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("the Property"). As set forth in Section G below, DISTRICT's interest in said Property is to be transferred to GRANTOR, with the retention of the present easement and assignment of development rights.

B. In 1990 the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax by the Sonoma County Open Space Authority ("the Authority"). The purpose for the creation of DISTRICT and the imposition of the tax by the Authority was to provide for the preservation of agriculture and open space through the acquisition of interests in appropriate properties from willing sellers. The DISTRICT was created and the tax imposed in order to further the state policy for the preservation of agricultural and open space lands, to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 et seq., and to advance the implementation of the open space elements of their respective general plans. In order to accomplish those purposes, DISTRICT and the Authority entered into a contract whereby, in consideration of the Authority's financing of DISTRICT's acquisitions, DISTRICT agreed to and did adopt an acquisition program that was in conformance with the Authority's voter approved Expenditure Plan. In 2006, the voters of Sonoma County approved an extension of the transaction and use tax, a transfer of the taxing authority to the County of Sonoma, and an update of the Expenditure Plan. The DISTRICT's acquisition program remains in full compliance with that updated voter-approved Expenditure Plan.

C. On _____, DISTRICT's Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. _____, that the acquisition of a conservation easement in the Property was consistent with the Sonoma County General Plan (specifically the Plan's Land Use and Open Space and Resource Conservation Elements) because it preserves important biotic resource areas and scenic features with consistent uses and intensities; protects and enhances the county's natural habitats and diverse plant and animal communities; and contributes to the establishment of a countywide park and trail system that meets future recreational needs of the county's residents. By that same resolution, the DISTRICT's Board of Directors determined that the acquisition of the conservation easement is consistent with the voter-approved Expenditure Plan.

D. DISTRICT has the authority to acquire conservation easements by virtue of Public Resources Code section 5540 and possesses the ability and intent to enforce the terms of this Easement.

E. GRANTOR agrees that the Property will become the Mark West Creek Regional Park and Open Space Preserve which will, at a minimum, consist of the Cresta I property (APN 079-090-008, 079-090-016) (the "Cresta I property"), Cresta II property (APN 079-090-0013, 079-090-014) (the "Cresta II property"), Cresta III property (APN 079-090-015) (the "Cresta III property"), the McCullough I property (APNs 028-060-062, 028-060-063, 028-070-036, 028-060-047, 028-060-048, 028-060-053, 028-060-054, 028-060-056) (the "McCullough I property"), and a portion of the Wendle property (APN 028-060-058) (the Wendle property") and other such adjacent properties that may be acquired by the DISTRICT for the Mark West Creek Regional Park and Open Space Preserve.

F. DISTRICT currently holds a conservation easement over a portion of the McCullough Property, entitled "Deed and Agreement By and Between the John McCullough and Martha McCullough Trust and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement," recorded on August 22, 2002 in the Sonoma County Official Records as Document No. 2002126087 ("McCullough Easement"). GRANTOR and DISTRICT now desire to amend, replace, and supersede the 2002 Easement, with this Conservation Easement (1) to enhance natural resource protections; (2) to clarify permitted natural resource management and recreation and education uses; and (3) to clarify the procedural provisions of the easement. This Conservation Easement provides protections equal to or greater than those provided by the 2002 Easement and supersedes the 2002 Easement in conformance with the requirements of California Public Resources Code 5540.

G. On _____ the DISTRICT and the GRANTOR entered into a Land Transfer Agreement pursuant to which the DISTRICT has agreed to transfer its fee title ~~to~~ interest in the Property to the GRANTOR under certain conditions, including the retention of a conservation easement and recreation conservation covenant by the DISTRICT.

H. In a companion transaction of even date, the DISTRICT and GRANTOR will enter into a Recreation Conservation Covenant to assure that the Property will be available to the public in perpetuity for low-intensity outdoor recreation that protects the sensitive natural resources on the property.

I. On March 6, 2014, amended July 7, 2014, and amended August 7, 2017, GRANTOR entered into a Habitat Conservation Fund grant contract with California Department of Parks and Recreation for the “Acquisition of approximately 85 acres as a portion of the future Mark West Creek Regional Park and Open Space Preserve near the City of Santa Rosa,” described as the grant scope. This includes the Cresta III and Wendle properties. Following acquisition GRANTOR will record a Deed Restriction required by the California Department of Parks and Recreation over the Cresta III and Wendle properties to ensure that these properties are used for a purpose consistent with the grant scope through June 30, 2033.

THEREFORE, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions herein set forth and other valuable consideration receipt of which is hereby acknowledged, GRANTOR and DISTRICT agree as follows:

EASEMENT

PART ONE: GRANT OF EASEMENT

1. Grant and Acceptance of Conservation Easement and Assignment of Development Rights. Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts a conservation easement over the Property in perpetuity under the terms and conditions set forth herein (“the Mark West Conservation Easement” or “Conservation Easement”). GRANTOR hereby irrevocably assigns to DISTRICT all development rights associated with the Property, except those rights, which are specifically permitted through this Easement.

2. Conservation Values. The Property is located in the Mark West Creek watershed, a sub-watershed of the Russian River containing important natural resources and intact endangered species habitats and watershed lands. Critical resources on the Property (collectively “the Conservation Values”) include scenic and open space resources, natural resources, habitat connectivity and recreational and educational resources.

These resources include, but are not limited to, the following:

2.1 Scenic and Open Space Resources. The Property is part of the natural hillside and mountain range landscapes surrounding the Santa Rosa Plain, contributing to the scenic backdrop and creating unified natural landscape views from the Santa Rosa Plain and the Mark West Corridor along Porter Creek Road, a County designated Scenic Corridor. In addition, there are important scenic and open space views and view sheds

within the Property, including panoramic views of the Santa Rosa Plain, and dramatic views of adjacent mountain range landscapes, including Mount St. Helena.

2.2 Natural Resources. Property consists of significant natural resources, including grasslands, woodlands and forestlands, important watershed, water storage and floodplain resources, and critical intact stream, creek, and riparian habitats. The physical and ecological processes and landscape features of these resources support long term functional habitats spanning more than three miles of intact portions of Mark West, Porter and Mill Creeks, which converge within the Park. The Property is within a District-designated Core Coniferous Forest and Core Oak Woodland, and also within a District-identified Species Rich Area for wildlife. In combination, these varied and intact terrestrial and aquatic habitats support diverse wildlife communities, including critical habitat for federally listed endangered steelhead and salmon species. This Conservation Easement intends to protect these special-status species and critical habitats, as well as surface waters and subsurface groundwater basin resources.

2.3 Habitat Connectivity. The Property is part of a connected mosaic of publicly and privately protected natural lands managed for their conservation values. It provides habitat connectivity and wildlife passage through intact native landscapes, creating essential wildlife corridors and linkages. In combination with the protected lands to the north, the Property would create a contiguous 4,500 acre corridor linking the Mayacamas to Mark West Creek and its tributaries, strengthening landscape-level regional conservation, expanding protected habitat for plants and wildlife, and potentially providing for adaptation to climate change.

2.4 Recreational and Educational Resources. The Property provides several unique opportunities for public access and low intensity public recreation, as well as environmental education, and opportunities for enjoyment of the natural features and natural history of the area. The Property connects with trails in the adjacent protected lands to the north and eventually throughout the region. Given its rich natural resources and its high elevations, the Property provides recreational and educational opportunities for residents and visitors to experience the natural environment and spectacular views of Sonoma County and the greater Bay Area. In addition, both the 1989 and the 2020 Sonoma County General Plans identify a park at this location.

3. Conservation Purpose. It is the purpose of this Easement to preserve and protect forever the Conservation Values of the Property, as described in Section 2. This purpose shall hereinafter be referred to as “the Conservation Purpose of this Easement.” GRANTOR and DISTRICT intend that this Easement will confine the use of the Property to activities that are consistent with the Conservation Purpose of this Easement and will prohibit and prevent any use of the Property that will materially impair or interfere with the Conservation Values of the Property. GRANTOR and DISTRICT intend that all Conservation Values of the Property will be fully preserved and protected in perpetuity. In the event, however, that the preservation and protection of one Conservation Value becomes irreconcilably inconsistent with the preservation and protection of another Conservation Value, the following priorities shall be followed: preservation and

protection of natural resources, habitat connectivity, scenic and open space resources, and then recreational and educational uses.

PART TWO: RESTRICTIONS ON USE; RIGHTS AND OBLIGATIONS OF PARTIES

4. Affirmative Rights of DISTRICT. DISTRICT shall have the following affirmative rights under this Easement:

4.1 Protecting Conservation Values. DISTRICT shall have the right to preserve, protect and document in perpetuity the Conservation Values of the Property.

4.2 Property Inspections. DISTRICT shall have the right to enter upon the Property and to inspect, observe, and study the Property for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms, conditions and Conservation Purpose of this Easement, (iii) enforcing the terms, conditions and Conservation Purpose of this Easement, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at least once a year at reasonable times, upon one week's prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with GRANTOR's use and quiet enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Section 4.2, but shall not necessarily be limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT's General Manager have a reasonable belief that GRANTOR is in breach of this Easement, DISTRICT shall have the right at any time, upon twenty-four hours' prior notice to GRANTOR, to enter upon the Property for the purpose of determining whether such breach has occurred. The rights of entry provided by this Section 4.2 shall extend to the officers, agents, consultants, and volunteers of DISTRICT.

4.3 Enforcement. DISTRICT shall have the right to enforce the rights herein granted and to prevent or stop, by any legal means, any activity or use on the Property that is inconsistent with the terms, conditions or Conservation Purpose of this Easement and to require restoration of such areas or features as may be damaged by such activities or uses.

4.4 Audit. DISTRICT shall have the right to inspect, copy and audit GRANTOR's financial and programmatic records, of any type, nature or description, as DISTRICT deems necessary to ensure GRANTOR's compliance with Section 5.1.8.

4.5 Approval of Certain Uses. DISTRICT shall have the right to review and approve proposed uses and activities on the Property as more specifically set forth in Section 5 and Section 6.

4.6 DISTRICT Signage. DISTRICT shall have the right to erect and maintain a sign or other appropriate marker in a location on the Property acceptable to GRANTOR, visible from a public road, bearing information indicating that the Property is protected by DISTRICT and acknowledging the sources of DISTRICT funding for the

acquisition of this Easement. The wording and design of the sign or marker shall be determined by DISTRICT with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size nor be artificially illuminated. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.

5. GRANTOR's Reserved and Restricted Rights. GRANTOR shall confine the use of the Property to activities and uses that are consistent with the Conservation Purpose of this Easement. Any activity or use that is inconsistent with the Conservation Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the GRANTOR may engage in the following activities and uses restricted below. GRANTOR shall not engage in any use or activity prohibited below. GRANTOR and DISTRICT acknowledge that the following list does not constitute an exhaustive recital of consistent and inconsistent activities and uses, but rather (i) establishes specific allowed activities and uses, (ii) establishes specific prohibited activities and uses, and (iii) provides guidance for determining the consistency of similar activities and uses with this Easement, in accordance with the procedures set forth in Section 6.

5.1 General Requirements for All Uses.

5.1.1 Compliance with Governmental Regulations. All activities and uses on the Property shall be undertaken in a manner consistent with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

5.1.2 Compliance with Terms, Conditions and Conservation Purpose of this Easement. All activities and uses on the Property shall be undertaken in a manner consistent with the terms, conditions and Conservation Purpose of this Easement.

5.1.3 Protection of Conservation Values. All activities and uses on the Property shall be undertaken in a manner that protects and preserves the Conservation Values.

5.1.4 Protection of Soil and Water. No activity or use on the Property shall be undertaken in a manner that results in significant soil degradation or pollution, or significant degradation or pollution of any surface or subsurface waters.

5.1.5 Project Structure Map and Areas. The Project Structure Map, attached hereto as Exhibit B and incorporated herein by this reference (the "Project Structure Map"), identifies and designates several types of areas of the Property within which particular uses may be permitted, or within which particular restrictions on use may apply. These areas are likewise depicted on the Baseline Documentation Report Site Map (the "Baseline Site Map"), as identified in Section 9.

The areas are further described as follows:

a) Building Envelope. One Building Envelope (“Building Envelope”) has been designated to include the area of the Property which contains the majority of the structures existing on the Property at the time of recordation of this Easement. The purpose of the Building Envelope is to provide an area in which the use of these structures as well as the structures themselves are defined and limited. Use of the structures is further defined in pertinent part in Section 5.2 and Section 5.4.3.

b) Riparian Protection Areas (“Riparian Protection Areas”) are designated creek and watercourse areas on the Property including their floodway and floodplain features. The purpose of these areas is to ensure the protection of riparian vegetation and wildlife to allow for the stabilization of stream banks, and to prevent sedimentation of watercourses. Public access and recreational uses are restricted within the Riparian Protection Areas in Section 5.2, Land Uses, and more specifically in Section 5.2.2.1 below.

c) Trail Camping Areas. Two Trail Camping Areas (“Trail Camping Areas”) have been designated on the Property to identify where outdoor camping is allowed on the property outside of the Building Envelope. Access is limited to non-motorized use. The use of these Trail Camping Areas is further defined in pertinent part in Section 5.2 below.

5.1.7 Notice and Approval Procedures. Whenever in this Section 5, prior notice to or approval by DISTRICT is required, such notice shall be given or approval shall be obtained in accordance with Section 6 of this Easement.

5.1.8 Revenue Generation. Any revenue generated from activities and uses on the Property shall be used toward the cost of operating, maintaining, restoring, and enhancing the Property, and/or towards the costs of permitted educational or recreational uses or programs that take place on Mark West Creek Regional Park and Open Space Preserve.

5.1.9 Master Plan. Within six (6) years of the transfer of the Mark West Creek Regional Park and Open Space Preserve properties from the District to the GRANTOR or prior to resource management activities under Sections 5.5.1 through 5.5.6, GRANTOR shall develop and submit to the DISTRICT, for the DISTRICT’s review and approval, a long-term comprehensive management plan for the Property, referred to as a Master Plan (the “Master Plan”), which shall be consistent with the terms and conditions of this Easement. The Master Plan will focus on best management practices to assure that management activities are conducted in a manner that is beneficial to the Conservation Values of the Property. The Master Plan shall contain at a minimum a Resource Management Plan, and a Road Assessment Plan as defined in Section 5.4.4 below.

The Master Plan and future updates and amendments will be subject to review and approval by DISTRICT in accordance with Section 6 of this

Easement. DISTRICT's review and approval of the Master Plan shall be based solely on the Master Plan's consistency with the terms, conditions and Conservation Purpose of this Easement and does not constitute issuance of entitlements to engage in or undertake a particular use or activity described in the Master Plan.

The Master Plan shall not be implemented on the Property until written approval by the DISTRICT. Once the Master Plan is approved by DISTRICT, uses and improvements described in that approved Master Plan, and all development necessary to implement those described uses and improvements, shall be deemed to be consistent with the Conservation Purpose of this Easement and shall be permitted on the Property without further notice to or approval by DISTRICT required. All such uses and improvements shall be undertaken in accordance with the terms and conditions of this Easement and in compliance with all applicable laws and regulations.

5.1.10 Duty to Prevent Waste, Nuisance, and Trespass. Without limiting the generality of the foregoing, GRANTOR shall maintain the Property in a condition consistent with the Conservation Purpose of this Easement, which obligation shall include the undertaking of reasonable and necessary steps to prevent harm to the Conservation Values of the Property due to foreseeable acts or omissions of third parties. Without limiting the generality of the foregoing, GRANTOR shall remove garbage or materials dumped on the Property by third parties.

5.2 Land Uses. Use of the Property is restricted solely to natural resource preservation and protection, scenic and open space protection, and recreational and educational uses as defined in this Section 5.2. Residential, commercial, or industrial use on the Property is prohibited except as expressly set forth in Section 5.2.3 and 5.2.4.

5.2.1 Natural Resource Preservation, Protection, Restoration and Enhancement. GRANTOR may protect, preserve, restore and enhance the natural resources of the Property in accordance with scientifically sound, generally-accepted conservation practices and the provisions of Section 5.4 and 5.5.

5.2.1.1 Environmental Mitigation. Mitigation projects and mitigation funding may be used to restore and enhance Conservation Values, to mitigate for impacts due to on-site permitted uses, and as otherwise permitted by administrative policies adopted by DISTRICT.

5.2.2 Recreational and Educational Use. GRANTOR shall make the Property available to the public for low-intensity outdoor recreation and education, including, hiking; bicycling; horseback riding; picnicking; trail camping, nature study and public educational programs; and other such uses similar in nature and intensity, except as set forth in Section 5.6. All public outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with natural resource

preservation and protection and the particular management needs associated with ensuring the promotion of wildlife movement and passage.

5.2.2.1 Limitations on Access and Use in Riparian Protection Areas. No open public access or recreational uses are allowed in the Riparian Protection Areas except on trails and viewpoints as shown on the Project Structure Map and the Baseline Site Map. GRANTOR may designate no more than two (2) access viewpoints along Porter Creek and Mill Creek. . Uses in the Riparian Protection Areas are restricted to scientific study, natural resource conservation, restoration, and docent-led educational outings authorized by GRANTOR.

5.2.2.2 Public Recreational and Educational Special Events. Public Recreational and educational special events over 50 participants, such as non-motorized trail race events, shall be allowed up to six (6) times per year subject to prior District approval. Any such event shall not exceed 250 participants per event, and shall not take place within any area designated as a Riparian Protection Area, except for the use of designated trails. Public Recreational and educational special events under 50 participants and under shall be allowed. Any such event are only allowed on trails and in the designated Building Envelope. Any such event on trails outside of the Building Area shall take place only during daylight hours.

5.2.3 Residential Use. GRANTOR reserves the right to maintain residences on the Property for use by land manager, caretaker, worker or ranger in accordance with Section 5.4.2.

5.2.4 Commercial. GRANTOR may not use the Property commercial uses except the following:

a) Recreation and Education. Reasonable fees that don't limit access to the public for permitted recreational and educational uses in accordance with Section 5.2.2.

b) Special Events. Reasonable fees for special events held in accordance with Section 5.2.2.2.

c) Leases and Rentals.

- i. Leases or rentals for recreational and educational uses in accordance with Section 5.2.2.
- ii. Leases for grazing for vegetation management and fire management in accordance with Sections 5.5.1 and 5.5.5.

d) Ancillary. Subject to DISTRICT approval, other minor recreational and educational commercial uses found to be consistent with Conservation Values of this Easement.

5.3 Subdivision and Parcels. GRANTOR and DISTRICT acknowledge and agree that the Property shall always remain under one common ownership. GRANTOR shall not divide the Property, whether by subdivision, conveyance, lot line adjustment, or any other means, nor shall GRANTOR gain or seek to gain recognition, by certificate of compliance under the Subdivision Map Act or otherwise, of additional parcels which may have previously been created on the Property by prior patent or deed conveyances, subdivisions, or surveys, nor shall GRANTOR place or convey any portion of the Property into ownership separate from the whole of the Property.

5.3.1 Exceptions. This prohibition against division of the Property shall be inapplicable to:

a) Conveyance to Government or Non-Profit Entity. Subject to prior written approval by DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or non-profit entity exclusively for conservation or public access purposes.

5.3.2 Historic Parcels. GRANTOR acknowledges that one or more additional historic parcels may exist on the Property, previously created by patent or deed conveyances, subdivisions, lot line adjustments, surveys, recorded or unrecorded maps or other documents. GRANTOR waives all rights to recognition of such historic parcels, whether through certificate of compliance under the Subdivision Map Act or otherwise.

5.4 Structures and Improvements. Except as authorized in a Master Plan pursuant to Section 5.1.9 of this Easement, GRANTOR may repair, replace, construct, place and maintain structures and improvements on the Property only as provided below.

5.4.1 Maintenance, Repair or Replacement of Structures and Improvements. GRANTOR may maintain, repair, remove or replace structures and improvements existing at the date hereof or constructed subsequently pursuant to the provisions of this Easement, as follows:

a) If the maintenance, repair or replacement does not increase the height of the structure or improvement, increase the land surface area it occupies or change its location or function, no notice to or approval by DISTRICT shall be required.

b) Any maintenance, repair or replacement that increases the height of the structure or improvement, increases the land surface area it occupies, or changes its location or function shall be treated as new construction and shall be subject to the provisions of Sections 5.4.2 through 5.4.6.

5.4.2 Structures and Improvements Accessory to Natural Resource Preservation, Protection, Restoration and Enhancement.

Subject to prior written notice to DISTRICT, GRANTOR may place or construct temporary minor accessory structures and improvements reasonably necessary for natural resource restoration and enhancement activities on the Property. Where such structures or improvements are outside of the designated Building Envelope, DISTRICT approval shall be required in addition to prior written notice.

5.4.3 Structures and Improvements for Recreational and Educational Uses. All structures and improvements associated with permitted low-intensity public recreational and educational uses shall be designed, located, and constructed in a manner that protects sensitive natural resources, including creek, riparian and flood plain resources. No sound amplification or loudspeakers of any form are allowed except in the Building Envelope with prior written District approval during daylight hours. Outdoor lighting is prohibited except as provided within the Building Envelope.

All construction shall follow low-impact development practices, which is defined in general as development that avoids impacts to natural hydrology and ecological functions and supports ecological sustainability.

GRANTOR may construct or place structures and improvements associated with permitted outdoor recreational and educational uses, only as follows:

- a) Within the designated Building Envelope, GRANTOR may locate or construct:
 - i. Permeable trails and pathways, ADA pathways, benches, picnic tables, refuse and recycling containers, directional, educational and interpretive signage and other similar minor improvements without any notice to or approval from DISTRICT,
 - ii. Parking and staging facilities, restrooms, outdoor camping, visitor buildings, indoor environmental education classrooms, storage sheds and similar improvements with prior written notice to the DISTRICT. No new structure or improvement shall exceed 24 feet in height. No new improvements or construction shall result in impervious surfaces on, cumulatively, more than 114,000 square feet within the Building Envelope. Subject to prior written approval by the DISTRICT, GRANTOR may construct indoor, short-term, visitor accommodations.
 - iii. Ranger Residence. Subject to prior written approval by the DISTRICT, GRANTOR may restore or construct within the Building Envelope one residential structure for a land manager, caretaker, worker, County law enforcement officer, or County Regional Parks ranger.

iv. Outdoor lighting is prohibited except for minimal “night-friendly” outdoor lighting for purposes of safety and security within the Building Envelope.

v.) Any portions of a designated Building Envelope that also fall within a Riparian Protection Area, except as allowed by the Life Estate Deed and Agreement, within the Life Estate Area described in Exhibit “C” and only during the term of the Life Estate, have the following additional restrictions:

- No new construction or expansion of existing structures and septic systems is allowed.
- Only those uses set forth in Subsection i) are allowed,
- Permanent or overflow parking may be allowed if the areas closest to existing buildings and away from Porter Creek have been prioritized for parking and are insufficient to meet parking needs.
- All parking must be designed to filter run-off with native vegetation prior to reaching Porter Creek.
- For Interim Public Access, the rectangular shape designated for temporary parking on the Project Structure Map may be used.
- No improvements other than native habitat restoration, an access viewpoint and its associated trail, an access bridge, and as allowed under 5.2.2.1, shall be located within the 50 foot area from the top of bank of Porter Creek upstream of the access bridge to the Building Envelope boundary.

No improvements other than native habitat restoration, and an access viewpoint and its associated trail, as allowed under 5.2.2.1, shall be located within the 25 foot area from the top of bank of Porter Creek downstream of the access bridge to the Building Envelope boundary.

- b) Outside the Building Envelope, GRANTOR may locate or construct benches, individual picnic tables, refuse and recycling containers, and other similar minor, non-permanent improvements with prior written approval of DISTRICT. GRANTOR may construct and maintain a trail staging area north of Porter Creek Road with parking and staging facilities. The location and size of the trail staging area shall require prior approval of DISTRICT.
- c) Within the Trail Camping Areas, GRANTOR may construct and maintain, with prior written approval of the DISTRICT, 2-4 primitive camp sites per Area, which may include tent sites, picnic tables, food lockers, and similar improvements associated with low-impact trail camping. Sites may provide pit toilets if designed and built to fit landscape but shall not provide, electricity, or outdoor lighting.

5.4.4 Roads. Subject to prior written approval of DISTRICT or as part of the Master Plan set forth in Section 5.1.9 above, GRANTOR may construct new roads and reconstruct or repair existing roads provided that such roads (i) are directly required for uses and activities allowed herein, including Park access and maintenance, (ii) are the minimum necessary for such uses and activities and (iii) are designed so as to minimize potential impacts on designated Riparian Protection Areas. GRANTOR and DISTRICT agree that there are more roads existing at the time of recordation of this Easement than needed for such uses and activities. Any road that is not necessary according to the above guidelines shall be decommissioned or converted to a trail in accordance with the Master Plan or Road Assessment approved by the District. .

5.4.4.1 Drainage and Erosion. Roads shall be located or reconstructed and maintained so as to avoid erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for roads as recommended by the California Department of Fish and Wildlife or other similar or successor entity. Roads re-constructed subsequent to this Easement may not be paved with asphalt, concrete or other impervious surface unless approved by DISTRICT. Roads that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized and ensured of proper drainage.

5.4.5 Fences and Gates. GRANTOR may construct, place and erect fencing and gates only as necessary for permitted uses of the Property. Fencing must be the minimum necessary for such use. All fencing and gates must i) preserve the scenic values of the Property; ii) not impede wildlife movement except in cases where necessary to protect the allowed natural resources preservation, protection, restoration or enhancement activities described in this Easement; and iii) comply with the DISTRICT's then current guidelines for fences on conservation lands. Notwithstanding the provisions of Section 5.4.1, in the event of destruction or deterioration of any fences and gates, whether existing at the date hereof or constructed subsequently in accordance with the provisions of this Easement, GRANTOR may maintain and/or replace such fencing and gates only pursuant to the provisions of this Section 5.4.5. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.5, GRANTOR shall remove such fencing or gate from the Property.

5.4.6 Utilities and Energy Resources. Subject to prior written approval of DISTRICT, GRANTOR may expand existing or develop or construct new utilities, including but not limited to electric power, septic or sewer, communication lines, and water storage and delivery systems that are directly required for permitted uses on the Property and are reasonably scaled to serve only those uses.

5.4.7 Signs. Signs shall be limited to those reasonably necessary for permitted recreation and education uses, including entry, trailhead, boundary, directional, interpretive signs, and those setting forth park rules. The size and

number of such signs shall be limited to that which is reasonably necessary to accomplish the permitted uses herein, and shall be sited and constructed in a manner that does not create a significant visual impact. At no time shall any sign exceed thirty-two (32) square feet or be artificially illuminated.

5.5 Land and Resource Management. All land and resource management activities shall be designed and implemented in accordance with sound, generally-accepted conservation practices.

5.5.1 Natural Resource Preservation, Protection, Restoration and Enhancement. GRANTOR may undertake natural resource preservation, restoration and enhancement activities that enhance native plant and wildlife habitat, and activities that promote biodiversity and habitat connectivity including native plant revegetation and instream habitat restoration under the direction of a qualified restoration ecologist following established ecological restoration standards. GRANTOR may remove or control invasive, non-native plant and animal species that threaten the Conservation Purpose of this Easement or impede the growth of native species, provided the techniques avoid harm to native wildlife and plants and are in accordance with standards established by invasive plant organizations such as the California Invasive Plant Council, and all applicable laws.

5.5.2 Surface Alteration. Alteration of the contour of the Property in any manner whatsoever is prohibited, including, but not limited to, excavation, removal or importation of soil, sand, gravel, rock, peat or sod, except as reasonably necessary in connection with the uses allowed under Section 5 of this Easement.

5.5.3 Water Resources. Draining, filling, dredging, diking, damming or other alteration, development or manipulation of watercourses, including all creeks and streams, subsurface water, springs, ponds and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development and expansion of water storage and delivery systems allowed under Section 5.4.6, and (ii) the preservation, restoration and enhancement of natural resources allowed under Section 5.5.1.

5.5.4 Mineral Exploration. Exploration for, or development and extraction of, minerals and hydrocarbons by any surface or sub-surface mining or any other method is prohibited.

5.5.5 Fire Management. GRANTOR may undertake vegetation management activities for the purpose of fire control provided the techniques used avoid harm to native wildlife and plants. Subject to prior written approval by the District, fire management methods are limited to: (a) targeted and sensitive brush removal in the understory of native forest and woodlands, mowing, limited grazing of the Property, other methods of similar nature and intensity and (b), prescriptive burning undertaken in a manner that supports biological diversity and ecological function, and consistent with the standards and requirements of the

local fire protection agency having jurisdiction. The requirement for notice under this Section 5.5.5 may be satisfied by the submission of an annual fire management plan.

5.5.6 Native Tree Removal. Harvesting, cutting, removal or destruction of any native trees is prohibited, except as reasonably necessary and with prior written approval of the District (i) to control insects and disease; (ii) to prevent personal injury and property damage; (iii) for the purpose of fire management, in accordance with Section 5.5.5; (iv) for natural resource preservation, restoration and enhancement as set forth in Section 5.5.1 of this Easement; and (v), within the footprint of permitted trails. Native trees removed pursuant to this Section 5.5.6 may be used for firewood and other improvements associated with permitted uses.

5.5.7 Native Non-tree Vegetation Removal. Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) within footprint of permitted structures and improvements; (ii) to control insects and disease; (iii) to prevent personal injury and property damage; (iv) for the purpose of fire management, in accordance with Section 5.5.5; and (v) for natural resource preservation, restoration and enhancement, as set forth in Section 5.5.1 of this Easement.

5.5.8 Native Animal Removal. Killing, hunting, trapping, injuring or removing native animals is prohibited except (i) under imminent threat to human life or safety; or (ii) as reasonably necessary to promote or sustain biodiversity in accordance with natural resource preservation, protection, restoration and enhancement activities as set forth in Section 5.5.1, using selective control techniques consistent with the policies of the Sonoma County Agricultural Commissioner and other governmental entities having jurisdiction.

5.5.9 Non-Native Plant and Animal Removal. GRANTOR may remove or control non-native plant and animal species provided that techniques used to avoid harm to native wildlife and plants and are in accordance with scientifically sound conservation practices.

5.5.10 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways is prohibited, except for the minimum necessary in connection with permitted construction, maintenance, emergency access and property management activities.

5.5.11 Dumping. Dumping, releasing, burning or other disposal of wastes, refuse, debris, non-operative motorized vehicles or hazardous substances is prohibited.

5.6. Public Access Limitations. GRANTOR and DISTRICT understand and agree that the Property will be developed for and will continue to be a public park and open space preserve in perpetuity. GRANTOR, however, may exclude the public from the Property on a temporary basis to the extent necessary for public health or safety or for preservation of the Conservation Values of the Property. Nothing in this Easement shall

be construed to preclude GRANTOR's right to grant access to third parties to the Property consistent with the terms, conditions and Conservation Purpose of this Easement.

5.7. Easements. GRANTOR may continue the use of existing easements of record granted prior to this Easement. The granting of new temporary or permanent easements, and the modification or amendment of existing easements is prohibited without the prior written approval of the DISTRICT. It is the duty of GRANTOR to prevent the use of the Property by third parties that may result in the creation of prescriptive rights.

PART THREE: PROCEDURES AND REMEDIES

6. Notice and Approval Procedures. Some activities and uses permitted by this Easement require that prior written notice be given by GRANTOR to DISTRICT, while other activities and uses permitted by this Easement require the prior written approval of DISTRICT. Unless and until such notice is given or approval is obtained in accordance with this Section 6, any such activity or use shall be deemed to be prohibited on the Property. GRANTOR shall use the procedures set forth below to provide notice to DISTRICT or to obtain DISTRICT's approval. All notices and requests for approval shall include all information necessary to permit DISTRICT to make an informed judgment as to the consistency of the GRANTOR's request with the terms, conditions and Conservation Purpose of this Easement. Forms for notices and requests for approval shall be available at DISTRICT's offices.

6.1 Approval, Amendments, Revisions and Updates of Master Plan. GRANTOR and DISTRICT acknowledge that it is GRANTOR's intent to prepare a Master Plan for the Property to define and guide future use and development of the Property and to streamline DISTRICT approvals under this Easement. For purposes of this Easement, it is agreed that the Master Plan and any amendments, revisions or updates (collectively "Revisions") will be deemed sufficient for its purpose provided the plan identifies (a) all major components of use of the Property (including recreational, educational, and resource management use); (b) the nature of each proposed use and its intended location; (c) all proposed structures; and (d) all actions to be taken to protect natural resources. The Master Plan shall include a full property road and sediment assessment and set of recommendations to minimize sediment contributions to aquatic ecosystems and landslides, a fire and fuel load management section that outlines mechanisms to reduce fuel loading and fire risk while avoiding biodiversity impacts and a habitat restoration section which outlines habitat enhancement opportunities and approaches. Pursuant to Section 5.1.7 of this Easement, GRANTOR shall secure DISTRICT's approval of such Master Plan and any Revisions prior to their implementation. DISTRICT's approval shall be based solely upon its reasonable determination as to whether the Master Plan or Revisions are consistent with the terms, conditions and Conservation Purpose of this Easement. DISTRICT acknowledges that time is of the essence and DISTRICT's approval shall may not be unreasonably withheld or delayed. GRANTOR shall use the following procedure to obtain DISTRICT's approval for the Master Plan and Revisions.

6.1.1 GRANTOR shall submit a Master Plan or Revision to DISTRICT for its review and approval. DISTRICT shall have sixty (60) days from the receipt of the Master Plan or Revision, plus twenty-one (21) days from any subsequent or follow up submittal, to review the Master Plan or Revision and either approve the Master Plan or Revision or notify GRANTOR of any objection thereto. DISTRICT's response, whether tentative approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. If DISTRICT has any objections to the Master Plan or Revision, it shall state such objections in sufficient detail to enable GRANTOR to modify the Master Plan or Revision so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

6.1.2 In connection with any environmental review of the Master Plan or Revision under the California Environmental Quality Act or any successor statute then in effect, GRANTOR shall provide DISTRICT with notification of and opportunity to comment on any draft environmental document made public under the statute, prior to adoption or certification of that environmental document.

6.1.3 Upon DISTRICT's approval and GRANTOR's adoption of a Master Plan or Revision, all uses and improvements described therein and all development reasonably necessary to implement those described uses and improvements, shall be deemed to be consistent with the terms, conditions and Conservation Purpose of this Easement and shall be permitted on the Property with no further notice to or approval by DISTRICT required. All such uses, development, improvements and activities shall at all times remain subject to the substantive limitations of Section 5. Any update or amendment to the Master Plan or Revision shall be subject to DISTRICT approval.

6.2 Uses/Activities Requiring Notice or Approval to DISTRICT. In the absence of a Master Plan or Revision approved by DISTRICT, or for uses and activities not described in a Master Plan or Revision approved by DISTRICT, the following procedures shall be followed for giving notice or obtaining DISTRICT approval where such notice or approval is required by this Easement. Unless and until such notice is given or approval is obtained in accordance with this Section 6.2, any such activity or use shall be deemed to be prohibited on the Property. In any instance in which DISTRICT approval is required, DISTRICT's approval shall be based solely upon its reasonable determination as to whether the activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement. DISTRICT acknowledges that, in light of the public processes required for development of the Property for recreation and educational use and natural resource preservation, time is of the essence and DISTRICT's approval shall not be unreasonably withheld or delayed.

6.2.1 Uses/Activities Requiring Notice to DISTRICT. For any activity or use that requires prior written notice to DISTRICT, GRANTOR shall deliver such notice to DISTRICT at least forty-five (45) days prior to the commencement of such activity or use. That forty-five (45) day time period provides DISTRICT an opportunity to evaluate whether the proposed activity or use is consistent with

the terms, conditions and Conservation Purpose of this Easement before the activity or use is begun.

6.2.2 Uses/Activities Requiring Prior Approval from DISTRICT. For any activity or use that requires prior written approval from DISTRICT, GRANTOR shall file a request for such approval (“GRANTOR’s request”) at least forty-five (45) days prior to the intended commencement of such activity or use. DISTRICT shall have forty-five (45) days from the receipt of a complete request to review the request and to approve, conditionally approve, disapprove or notify GRANTOR of any objection thereto. Disapproval or objection, if any, shall be based on DISTRICT’s reasonable determination that the proposed activity or use is inconsistent with the terms, conditions or Conservation Purpose of this Easement or that GRANTOR’s request is incomplete or contains material inaccuracies. If, in DISTRICT’s judgment, the proposed activity or use would not be consistent with the terms, conditions or Conservation Purpose of this Easement or the request is incomplete or contains material inaccuracies, DISTRICT’s notice to GRANTOR shall inform GRANTOR of the reasons for DISTRICT’s disapproval or objection. Only upon DISTRICT’s express written approval, given by DISTRICT’s General Manager, may the proposed activity or use be commenced, and then only in accordance with the terms and conditions of DISTRICT’s approval.

6.2.3 DISTRICT’s Failure to Respond. Should DISTRICT fail to respond to GRANTOR’s request for approval within forty-five (45) days of the receipt of GRANTOR’s request, GRANTOR may, after giving DISTRICT ten (10) days written notice by registered or certified mail, commence an action in a court of competent jurisdiction to compel DISTRICT to respond to GRANTOR’s request. In the event that such legal action becomes necessary to compel DISTRICT to respond and GRANTOR prevails in that action, DISTRICT shall reimburse GRANTOR for all reasonable attorney fees incurred in that action. In the alternative, GRANTOR may commence a proceeding in arbitration under Section 13.

6.2.4 Uses Not Expressly Addressed: DISTRICT’s Approval. In the event GRANTOR desires to commence an activity or use on the Property that is neither expressly permitted nor expressly prohibited in Section 5, GRANTOR shall seek DISTRICT’s prior written approval of such activity or use in accordance with the procedure set forth in Section 6.2. The exercise of any activity or use not expressly permitted in Section 5 may constitute a breach of this Easement and may be subject to the provisions of Section 10.

7. Costs and Liabilities Related to the Property.

7.1 Operations and Maintenance of the Property. GRANTOR agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and hold DISTRICT harmless therefrom. Without limiting the foregoing, GRANTOR agrees to pay any and all real property taxes, fees, exactions, and assessments levied or imposed by local, state or federal authorities on

the Property. GRANTOR further agrees to maintain general liability insurance or adequate self-insurance covering acts on the Property. Except as specifically set forth in Section 8.2 below, DISTRICT shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. Except as otherwise provided in Section 8.1, GRANTOR hereby agrees to indemnify and hold DISTRICT harmless from and against any damage, liability, claim, or expense, including attorneys' fees, relating to such matters.

7.2 Hazardous Materials.

7.2.1 No DISTRICT Obligation or Liability. Notwithstanding any other provision of this Easement to the contrary, the parties do not intend and this Easement shall not be construed such that it creates in DISTRICT:

- a) The obligations or liabilities of an “owner” or “operator” as those words are defined and used in environmental laws, as defined below, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq.) (“CERCLA”);
- b) The obligations or liabilities of a person described in 42 United States Code section 9607(a) (3) or any successor statute then in effect;
- c) The right to investigate and remediate any hazardous materials, as defined below, on or associated with the Property; or
- d) Any control over GRANTOR’s ability to investigate and remediate any hazardous materials, as defined below, on or associated with the Property.

7.2.2 Warranty of Compliance. GRANTOR represents, warrants, and covenants to DISTRICT that GRANTOR’s use of the Property shall comply with all environmental laws, as defined below.

7.2.3 Definitions. For the purposes of this Easement:

- a) The term "hazardous materials" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 United States Code sections 6901 et seq.), sections 25117 and 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after the date of this Easement.

b) The term "environmental laws" includes, but is not limited to, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

8. Indemnification.

8.1 GRANTOR's Indemnity. GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, volunteers, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, 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 Property, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of DISTRICT; and (ii) the obligations specified in Section 7; and (iii) any approvals given under Section 6. In the event of any claim, demand, or legal complaint against DISTRICT, the right to the indemnification provided by this Section 8.1 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to DISTRICT's written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR has acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by GRANTOR, which approval shall not be unreasonably withheld.

8.2 DISTRICT's Indemnity. DISTRICT shall hold harmless, indemnify, and defend GRANTOR, its heirs, devisees, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with 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 and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR. In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this Section 8.2 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to GRANTOR's written notice of such claim, demand, or legal complaint to DISTRICT, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by DISTRICT, which approval shall not be unreasonably withheld. DISTRICT hereby also agrees to hold harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses, including attorneys' fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee or volunteer on behalf of DISTRICT, except to the extent that such injury is attributable to the negligence, gross negligence or intentional misconduct of GRANTOR.

9. Baseline Documentation for Enforcement. In order to establish the present condition of the Property, DISTRICT will prepare a Baseline Documentation Report, which will be maintained on file with DISTRICT and will serve as an objective information baseline for monitoring compliance with the terms of this Easement. Before the Baseline Documentation Report is finalized, GRANTOR shall be provided a complete copy of the Report and shall be given forty-five (45) days in which to inform DISTRICT of any errors in the Report. If any errors in the Baseline Documentation Report are identified by GRANTOR and verified by DISTRICT, appropriate corrections shall be made and then GRANTOR shall sign the Report. The Baseline Documentation Report will include a Baseline Site Map, which designates Building Envelope. The parties agree that, once finalized by DISTRICT, the Baseline Report will provide an accurate representation of the Property at the time of the recordation of this Easement.

10. Remedies for Breach.

10.1 DISTRICT's Remedies. In the event of a violation or threatened violation by GRANTOR of any term, condition or restriction contained in this Easement, DISTRICT may, following notice to GRANTOR, institute a suit to enjoin and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. The DISTRICT's notice to GRANTOR shall contain a general description of the condition claimed by DISTRICT to be a violation and shall contain a reasonable and specific cure period by which the violation is to cease and the Property is to be restored to the condition that existed prior to the violation. The notice shall be provided in accordance with Section 19. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (a) may pursue any and all remedies available under law without waiting for the cure period to expire, and (b) shall have the right, upon the giving of 24 hours' notice, to enter the Property for the purpose of assessing damage or threat to the Conservation Values protected by this Easement and determining the nature of curative or mitigation actions that should be taken. DISTRICT's rights under this Section 10 shall apply equally in the event of either actual or threatened violations of the terms of this Easement. GRANTOR agrees that DISTRICT's remedies at law for any violation of the terms of this Easement are inadequate and that DISTRICT shall be entitled to injunctive relief, both prohibitive and mandatory and including specific performance, in addition to such other relief, including damages, to which DISTRICT may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

10.2 DISTRICT's Discretion. Enforcement of the terms of this Easement shall be at the sole discretion of DISTRICT, and any forbearance by DISTRICT to exercise its rights under this Easement in the event of any violation or threatened violation of any term of this Easement shall not be deemed or construed to be a waiver by DISTRICT of such term or of any subsequent violation or threatened violation of the same or any other term of this Easement. Any failure by DISTRICT to act shall not be deemed a waiver or forfeiture of DISTRICT's right to enforce any terms or conditions of this Easement in the future.

10.3 Liquidated Damages. Inasmuch as the actual damages that would result from the loss or deprivation of the Conservation Values of the Property caused by a violation by GRANTOR of the terms of this Easement are uncertain and would be impractical or extremely difficult to measure, GRANTOR and DISTRICT agree that the damages allowed by Civil Code section 815.7(c) shall be measured as follows:

a) For an improvement prohibited by this Easement, an amount equal to the product of (i) the market value of the improvement, (ii) the length of time that the improvement exists on the Property (in terms of years or portion thereof) after notice of violation has been given, and (iii) the then current annual interest rate for post judgment interest; and

b) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement, an amount equal to any economic gain realized by GRANTOR because of the activity or change in use; and

c) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement and where there is no measurable economic gain realized by GRANTOR, the product of (i) the cost of restoration, as set forth in a written estimate by a qualified person selected by DISTRICT, (ii) the length of time that the prohibited activity or use continues (in terms of years or portion thereof) after notice of the violation has been given, and (iii) the then current annual interest rate for post judgment interest.

10.4 GRANTOR's Compliance. If DISTRICT, in the notice to GRANTOR, demands that GRANTOR remove an improvement, discontinue a use or both and claims the damages allowed by Civil Code section 815.7(c), then GRANTOR may mitigate damages by fully complying with DISTRICT's notice within the cure period provided therein. If GRANTOR so complies, then in the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, if GRANTOR prevails, then GRANTOR shall be entitled to economic damages, if any, resulting from its compliance with DISTRICT's notice. Neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice.

10.5 Remedies Nonexclusive. The remedies set forth in this Section 10 are in addition to, and are not intended to displace, any other remedy available to either party as provided by this Easement, Civil Code sections 815 et seq. or any other applicable local, state or federal law.

11. Acts Beyond GRANTOR's Control. Nothing contained in this Easement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or change in the Property resulting from causes beyond GRANTOR's control, including, but not limited to, fire, flood, storm, earth movement, or a tortious or criminal act of a third party which GRANTOR could not have reasonably prevented, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes so long as such action, to the extent that GRANTOR has control, is designed and carried out in such a way as to further the Conservation Purpose of this Easement.

12. Arbitration. If a dispute arises between the parties concerning the consistency of any activity or use, or any proposed activity or use, with the terms, conditions or Conservation Purpose of this Easement, or any other matter arising under or in connection with this Easement or its interpretation, either party, with the written consent of the other, may refer the dispute to arbitration by a request made in writing upon the other. Provided that GRANTOR agrees not to proceed with any activity or use that is the subject of the dispute pending resolution of the dispute, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired United States District Court or California Superior Court judge; provided, however, if either party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance, a proper court, on petition of any party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with California Code of Civil Procedure sections 1280 et seq., or any successor statutes then in effect. The arbitration shall be conducted in accordance with said statute, including, without limitation, the provisions of Section 1283.05 of the Code of Civil Procedure, which are incorporated into, made a part of, and made applicable to any arbitration pursuant to this Section 12. The Conservation Purpose of this Easement, the terms and conditions of this Easement, and the applicable laws of the State of California shall be the bases for determination and resolution, and a judgment of the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, but not limited to, the fees and expenses of the arbitrators, but excluding attorneys' fees, which sum shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

13. Extinguishment and Condemnation.

13.1 Extinguishment. Subject to the requirements and limitations of California Public Resources Code section 5540, or successor statute then in effect, if circumstances arise in the future that render the Conservation Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which DISTRICT shall be entitled from any sale, exchange or involuntary conversion of all or any portion of the Property after such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 13.2. All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County.

13.2 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation; whether by public, corporate, or other authority, so as to terminate this Easement in whole or in part, either GRANTOR or DISTRICT (or both, on such conditions as they may agree)

may commence appropriate actions to recover the full value of the Property (or portion thereof) subject to the condemnation or in-lieu purchase and all direct or incidental damages resulting therefrom. Any expense incurred by GRANTOR or DISTRICT in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR and DISTRICT in proportion to their interests in the Property, as established by Section 13.3.

13.3 Property Interest and Fair Market Value. This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, the parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation on the following basis: GRANTOR 100% of the value of any improvements and DISTRICT 100% of the value of the land, or as otherwise agreed upon by them in writing at the time of condemnation.

PART FOUR: MISCELLANEOUS

14. Approvals. Whenever in this Easement the consent or approval of one party is required for an act of the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

15. Interpretation and Construction. To the extent that this Easement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that best promotes the Conservation Purpose of this Easement.

16. Easement to Bind Successors. The Easement herein granted shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind GRANTOR, GRANTOR's heirs, personal representatives, lessees, executors, successors, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Easement shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Easement creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," as that phrase is used in California Revenue & Taxation Code section 3712(d), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Easement.

17. Subsequent Deeds and Leases. GRANTOR agrees that a clear reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including, but not limited to, a leasehold interest) is conveyed and that GRANTOR will attach a copy of this Easement to any such instrument. GRANTOR further agrees to give written notice to DISTRICT of the conveyance of any interest in the Property at least ten (10) days prior to any such conveyance. These obligations of GRANTOR shall not be construed as a waiver or

relinquishment by DISTRICT of rights created in favor of DISTRICT by Section 16 of this Easement, and the failure of GRANTOR to perform any act required by this Section 17 shall not impair the validity of this Easement or limit its enforceability in any way.

18. Warranty of Ownership. GRANTOR warrants that it is the owner in fee simple of the Property, and that on the date it executed this Easement the Property is not subject to any liens or deeds of trust.

19. Notices.

19.1 Method of Delivery. Except as otherwise expressly provided herein, all notices, (including requests, demands, approvals or communications) under this Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, private courier or delivery service or telecopy addressed as follows:

To GRANTOR: Regional Parks Director
2300 County Center Drive, Suite 120A
Santa Rosa, CA 95403
(707) 565-2041 (phone)
(707) 59-8247 (fax)

To DISTRICT: General Manager
Sonoma County Agricultural Preservation and Open Space District
747 Mendocino Avenue, Suite 100
Santa Rosa, CA 95401
(707) 565-7360 (phone)
(707) 565-7359 (fax)

Or to such other address as such party from time to time may designate by written notice pursuant to this Section 19.

19.2 Effective Date of Notice. Notice shall be deemed given for all purposes as follows:

a) When mailed first class postage prepaid to the last address designated by the recipient pursuant to Section 19.1, notice is effective one business day following the date shown on the postmark of the envelope in which such notice is mailed or, in the event the postmark is not shown or available, then one business day following the date of mailing. A written declaration of mailing executed under penalty of perjury by the GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.

b) When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (ii) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by telex or fax

shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a non-business day.

c) In all other instances, notices shall be effective upon delivery.

19.3 Refused or Undeliverable Notices. Any correctly addressed notice that is refused or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused or considered undeliverable by the postal authorities, messenger, or delivery service.

20. Amendment. If circumstances arise under which an amendment or modification of this Easement would be appropriate, GRANTOR and DISTRICT shall be free to jointly amend this Easement, provided that any amendment shall be consistent with the Conservation Purpose of this Easement, shall ensure protection of the Conservation Values of the Property, shall not affect the Easement's perpetual duration and shall be consistent with Public Resources Code section 5540 and any successor statute then in effect. Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

21. No Forfeiture. Nothing contained in this Easement shall result in a forfeiture or reversion of GRANTOR's title in any respect.

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

23. Enforceable Restriction. This Easement and each and every term contained herein is intended for the benefit of the public and constitutes an enforceable restriction pursuant to the provisions of Article XIII, section 8 of the California Constitution, California Public Resources Code section 5540, and California Revenue and Taxation Code section 421 et seq., or any successor constitutional provisions or statutes then in effect.

24. Applicable Law and Forum. This Easement shall be construed and interpreted according to the substantive law of California, excluding the law of conflicts. Any action to enforce the provisions of this Easement or for the breach thereof shall be brought and tried in the County of Sonoma.

25. DISTRICT's General Manager. Wherever used herein, the term DISTRICT's General Manager, and any pronoun used in place thereof, shall mean and include the General Manager of DISTRICT and his duly authorized representatives.

26. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment prepared, executed and recorded in accordance with Section 20.

27. Severability. In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms and conditions shall remain valid and binding. If the application of any provision of this Easement is found to be invalid or unenforceable as to any particular person or circumstance, the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

28. Estoppel Certificates. DISTRICT shall, at any time during the existence of this Easement, upon not less than thirty (30) days' prior written notice from GRANTOR, execute and deliver to GRANTOR a statement in writing certifying that this Easement is unmodified and in full force and effect (or, if modified, stating the date of execution and date of recording of the respective amendment) and acknowledging that there is not, to DISTRICT's knowledge, any default by GRANTOR hereunder, or, if DISTRICT alleges a default by GRANTOR, specifying such default. DISTRICT's obligation to deliver the statement of certification is conditioned on GRANTOR's reimbursing DISTRICT for all costs and expenses reasonably and necessarily incurred in its preparation as determined by DISTRICT's General Manager.

29. No Liens, Encumbrances, or Conveyances. GRANTOR warrants that after it has executed this Easement, it will not record any lien, encumbrance, or otherwise convey any right, title, or interest in and to the Property until such time as this Easement has been accepted and recorded by DISTRICT.

30. Effective Date. This Easement shall be effective as of the date of its acceptance by DISTRICT pursuant to California Public Resources Code sections 5500 et seq.

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this _____ day of _____, 2017.

GRANTOR:

By: _____
Chair of the Board of Supervisors

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE
DISTRICT

By: _____
President of the Board of Directors

ATTEST:

Clerk of the Board of Directors

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL
SIGNATORIES.**

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
PROJECT STRUCTURE MAP

**EXHIBIT C
LIFE ESTATE
LEGAL DESCRIPTION**

NAT 62215911 LQH
RECORDING REQUESTED BY AND
RETURN TO:

Sonoma County Agricultural
Preservation and Open Space District
575 Administration Drive, Room 102A
Santa Rosa, CA 95403

Free recording per Gov't Code Sec 27383



NORTH AMERICAN TITLE CO. EEEVE T. LEWIS
08/22/2002 08:00 CEDEED
RECORDING FEE: 0.00

2002126087

OFFICIAL RECORDS OF
SONOMA COUNTY

22



DEED AND AGREEMENT
BY AND BETWEEN
JOHN McCULLOUGH AND MARTHA McCULLOUGH, AS TRUSTEES U/T/A
DATED JUNE 15, 2000, KNOWN AS
THE JOHN McCULLOUGH AND MARTHA McCULLOUGH TRUST
AND
THE SONOMA COUNTY AGRICULTURAL PRESERVATION
AND OPEN SPACE DISTRICT
CONVEYING A CONSERVATION EASEMENT

John McCullough and Martha McCullough, as trustees u/t/a dated June 15, 2000, known as the John McCullough and Martha McCullough Trust (hereinafter collectively referred to as GRANTOR), and the Sonoma County Agricultural Preservation and Open Space District, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 et seq. (hereinafter DISTRICT), agree as follows:

RECITALS

1. GRANTOR is the owner in fee simple of certain property (hereinafter "the Property") located in Sonoma County and more particularly described in Exhibit A, attached hereto and made a part of this Agreement by reference.

2. In 1990 the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax by the Sonoma County Open Space Authority ("the Authority"). The purpose for the creation of DISTRICT and the imposition of the tax by the Authority was to preserve agriculture and open space by acquiring interests in appropriate properties from willing sellers in order to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 et seq. and by the open space elements of their respective general plans. In order to accomplish that purpose, DISTRICT entered into a contract with the Sonoma County Open Space Authority whereby, in consideration of that entity financing DISTRICT'S acquisitions, DISTRICT agreed to and did adopt an acquisition program that was in conformance with

3. On May 16, 1997 DISTRICT'S General Manager and GRANTOR entered into negotiations for the purchase by DISTRICT of a conservation easement in the Property. Those negotiations culminated in an agreement which is memorialized by this writing.

4. On August 22, 2000, DISTRICT's Board of Directors, in its Resolution No. 00-1005, determined that the acquisition of a conservation easement in the Property, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, was consistent with the 1989 Sonoma County General Plan (specifically the Plan's Agricultural Resources and Open Space elements) because: the Property has many natural resources, including oak woodland, annual grasslands and 2 miles of riparian habitat along Mark West Creek. On April 4, 2002 the Authority determined, in its Resolution No. 2002-011 that the acquisition was consistent with its Expenditure Plan.

5. DISTRICT has the authority to acquire conservation easements by virtue of Public Resources Code section 5540 and possesses the ability and intent to enforce the terms of this Agreement.

THEREFORE, in consideration of the mutual covenants and agreements of the parties, and other valuable consideration receipt of which is acknowledged, the parties enter into this Agreement.

AGREEMENT

1. **Purpose.** It is the purpose of this Agreement to preserve the open space, natural, and scenic values of the Property, and each of them, and to prevent any uses of the Property that will significantly impair or interfere with those values. This Property helps provide habitat for important plant and animal species integral to preserving the natural character of Sonoma County. Accordingly, this Agreement will primarily preserve the Property's existing resource values including but not limited to oak woodlands, annual grasslands, two miles of riparian habitat along Mark West Creek and other open space values identified for the Mark West Creek Corridor in Section 3.2 of the Open Space Element of the 1989 Sonoma County General Plan.

2. **Grant and Acceptance of Conservation Easement.** Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts, for the purposes set forth in Recital No. 2, a conservation easement in the Property in perpetuity.

3. **Affirmative Rights of DISTRICT.** Subject to the conditions and rights expressly reserved in this Agreement, including but not limited to the provisions of paragraph 6(B), the affirmative rights conveyed to DISTRICT are the following:

A. To identify, to preserve, and to protect in perpetuity the open space values represented by the conservation purpose of this Agreement.

B. To enter upon the Property and to inspect, observe, and study the Property for the purposes of (i) identifying the current uses and practices thereon and the baseline condition thereof (in cooperation with GRANTOR), and (ii) monitoring the uses and practices regarding the Property to determine whether they are consistent with this Agreement. Such entry shall be permitted at least once a year at reasonable times, upon 24 hours' prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with the proper uses and practices regarding the Property. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this paragraph 3, but not necessarily limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT'S General Manager have a reasonable belief that GRANTOR is in breach of this Agreement, DISTRICT shall have the right, upon the giving of 24 hours' notice, at any time, to enter the Property for the purposes of determining if such breach has occurred. The rights of entry provided by this paragraph 3.B. shall extend to the employees, agents, and consultants of DISTRICT.

4. **GRANTOR'S Use of the Property.** This Agreement shall confine the uses of the Property to the uses which are described herein.

A. *Permitted and Prohibited Uses.* Examples of uses, practices and improvements which are consistent with the conservation purpose of this Agreement, and which are hereby expressly reserved by GRANTOR, are set forth in Exhibit "B," attached hereto and incorporated herein by this reference. Examples of uses, practices and improvements which are inconsistent with the conservation purpose of this Agreement, and which are hereby expressly forbidden, are set forth in Exhibit "C," attached hereto and incorporated herein by this reference. The uses and practices set forth in both Exhibits "B" and "C" are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities and to provide guidance in determining the consistency of other activities with the conservation purpose of this Agreement pursuant to the procedure set forth in paragraph 5 of this Agreement.

The allowed uses, practices and rights to improve the Property which are not retained by GRANTOR are hereby extinguished. In the event that such extinguishment is determined to be unlawful or otherwise unenforceable, then those uses, practices and rights to improve the Property are hereby assigned by GRANTOR to DISTRICT.

Neither GRANTOR nor DISTRICT shall use or receive the benefit from any increase in allowable uses, practices and rights to improve the Property resulting

from any change in applicable governmental land use regulations.

B. *Conveyance of Separate Parcels; Merger.* GRANTOR acknowledges that the Property currently consists of a single parcel shown on the current Sonoma County Assessment Roll. GRANTOR further acknowledges that one or more additional parcels may exist on the Property through the recognition of previously unrecognized parcels created by patent or deed conveyances, subdivisions, lot line adjustments, surveys, recorded or unrecorded maps or other documents and, that existing or future land use regulations might permit these parcels to be sold or otherwise conveyed separately from one another as separate legal parcels and it is the intent of the GRANTOR and the GRANTEE to prevent the separate conveyance of any of these parcels as follows:

(i) Except as provided in subparagraphs C(i) and (ii), the sale or conveyance of any or all of these parcels, whether currently recognized or not, as separate and distinct from the Property as a whole, is inconsistent with the conservation purpose of this Agreement and is hereby prohibited. GRANTOR shall not sell, alienate, finance or convey any parcel separately or apart from the Property.

(ii) GRANTOR shall, to the extent not already accomplished as a condition precedent to the acceptance by DISTRICT of the easement conveyed herein, apply for and pursue to completion an application to the County of Sonoma, or, such other governmental agency having jurisdiction, for the consolidation or merger of any existing parcels or claimed parcels of the Property into a single parcel. If the parcels cannot be merged because of their lack of contiguity or for any other reason, GRANTOR shall pursue and secure such other applicable legal restrictions so that no such existing parcels or claimed parcels may be separately sold or conveyed from the others.

(iii) Even if the parcels cannot be merged because of their lack of contiguity or for any other reason, GRANTOR will not sell, alienate, finance or convey any such parcels separately or apart from the entire Property.

C. *Subdivision of the Property.* GRANTOR shall not divide, subdivide or de facto subdivide the Property by subdivision, lot line adjustment or other means, including but not limited gaining recognition of previously unrecognized parcels created by patent or deed, conveyances, subdivisions or surveys; provided, however, that

(i) The voluntary conveyance to a government or non-profit entity exclusively for conservation or public access purposes is permitted pursuant to the procedure set forth in Paragraph 5 of this Agreement;

(ii) A lease of a portion of the Property solely for an agricultural use that is consistent with the conservation purpose of this Agreement may be permitted following the approval of GRANTOR'S application pursuant to paragraph 5 of this

Agreement; and

(iii) In the event that the GRANTOR, following the execution of this Agreement, divides the Property in violation of this Agreement, GRANTOR shall not sell, lease or finance the resulting parcels and shall immediately merge all resulting parcels in the manner set forth in Paragraph 4.B of this Agreement.

5. ***Approval Procedure and Criteria.*** GRANTOR agrees to notify DISTRICT in writing before exercising any right not expressly described in Exhibit "B" as a permitted use, the exercise of which may constitute a breach of this Agreement. Further, any act, enterprise, or activity proposed to be done or undertaken by GRANTOR which requires the prior approval of DISTRICT pursuant to the express provisions of Exhibits "B" or "C" hereof shall be commenced only after satisfaction of the notice and approval conditions of this Paragraph 5.

A. ***GRANTOR'S Written Notice.*** Prior to the commencement of any activity, use, or enterprise requiring DISTRICT'S approval, GRANTOR shall send DISTRICT written notice of GRANTOR'S intention to commence or undertake such activity, use or enterprise. Said notice shall inform DISTRICT of all relevant aspects of such proposed activity, use, or enterprise including, but not limited to, the nature, siting, size, capacity, and number of similar and dissimilar structures, improvements, facilities, uses or enterprises.

B. ***DISTRICT'S Response.*** DISTRICT shall have forty-five (45) days from the mailing of such notice, as indicated by the registered or certified return receipt, to review the proposed activity, use, or enterprise, and to notify GRANTOR of any objection thereto. Such objection, if any, shall be based upon DISTRICT'S opinion that the proposed activity is inconsistent with the conservation purpose of this Agreement or that the notice is incomplete or inaccurate. If, in DISTRICT'S judgment, the proposed activity, use or enterprise would not be consistent with the conservation purpose of this Agreement, said notice shall inform GRANTOR of the reasons for the DISTRICT'S objection. Except as provided in subparagraph C. of this Paragraph 5, only upon DISTRICT'S prior written approval, given by DISTRICT'S General Manager, may the proposed activity, use, or enterprise be commenced and/or conducted, and only in the manner explicitly represented by GRANTOR and approved or conditionally approved by DISTRICT.

C. ***DISTRICT'S Failure to Respond.*** Should DISTRICT fail to post its response to GRANTOR'S notice within forty-five (45) days of the mailing of said notice, GRANTOR shall send a second notice by registered or certified mail. Should DISTRICT fail to respond to said second notice within ten (10) days of the mailing thereof, GRANTOR may either appeal to District's Board of Directors or commence an action in a court of competent jurisdiction to compel DISTRICT to respond to GRANTOR'S notice.

Regardless of the outcome of the court action, GRANTOR'S costs of suit, including attorneys' fees, shall be borne by DISTRICT, provided that the court finds that DISTRICT'S General Manager actually received both the first and second notices and that the notices were timely.

6. Costs and Liabilities Related to the Property.

A. GRANTOR agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and hold DISTRICT harmless therefrom. Without limiting the foregoing, GRANTOR agrees to pay any and all real property taxes and assessments levied by competent authority on the Property. GRANTOR shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property. DISTRICT shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. GRANTOR hereby agrees to indemnify and hold DISTRICT harmless from and against any damage, liability, claim, or expense (including attorneys' fees) relating to such matters. Without limiting the foregoing, other than is provided in paragraph 5.C., DISTRICT shall not be liable to GRANTOR or any other person or entity in connection with consents given or withheld hereunder, or in connection with any entry upon the Property occurring pursuant to this Agreement, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against GRANTOR or any other person or entity, except as such claim, liability, damage, or expense is the result of DISTRICT'S negligence, gross negligence, or intentional misconduct.

B. Notwithstanding any other provision of this Agreement to the contrary, the parties do not intend and this Agreement shall not be construed such that (1) it creates in DISTRICT the obligations or liabilities of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq. and hereinafter "CERCLA") or (2) it creates in DISTRICT the obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or (3) DISTRICT has the right to investigate and remediate any hazardous materials, as defined below, associated with the Property or (4) DISTRICT has any control over GRANTOR'S ability to investigate and remediate any hazardous materials associated with the Property. GRANTOR represents, warrants and covenants to DISTRICT that GRANTOR'S use of the Property shall comply with all environmental laws as that phrase is defined below.

For the purposes of this Agreement:

- i. The term "hazardous materials" includes, without limitation, any

flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 United States Code sections 6901 et seq.), sections 25117 and 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.

ii. The term "environmental laws" includes, without limitation, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

7. Indemnities.

A. *GRANTOR'S Indemnity.* GRANTOR shall hold harmless, indemnify, and defend DISTRICT from and against damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with (i) injury to or the death of any person, or physical damage to property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, except as such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of DISTRICT (it being the intent of this provision to limit GRANTOR'S indemnity to the proportionate part of DISTRICT'S damage, liability, claim or expense for which GRANTOR is responsible); and (ii) the obligations specified in Paragraph 6. In the event of any claim, demand, or legal complaint against DISTRICT, the right to the indemnification provided by this subparagraph 7.A. shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to DISTRICT'S written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR has acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by GRANTOR, which approval shall not be unreasonably withheld.

B. *DISTRICT'S Indemnity.* DISTRICT shall hold harmless, indemnify, and defend GRANTOR from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with 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 and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR (it being the intent of this provision to limit DISTRICT'S indemnity to the

proportionate part of GRANTOR'S damage, liability, claim or expense for which DISTRICT is responsible). In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this subparagraph B. shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to GRANTOR'S written notice of such claim, demand, or legal complaint to DISTRICT, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by DISTRICT, which approval shall be in DISTRICT'S sole discretion. DISTRICT hereby also agrees to hold harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses, including attorneys' fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee or volunteer of DISTRICT, except to the extent that such injury is attributable to the negligence, intentional act or willful misconduct of GRANTOR.

8. **Public Access to the Property.** Other than is specifically provided in this Paragraph 8, nothing contained in this Agreement shall be construed as granting, permitting, or affording the public access to any portion of the Property. Nothing in this Agreement shall be construed to preclude GRANTOR'S right to grant access to third parties across the Property, provided that such access is allowed in a reasonable manner and is consistent with the conservation purpose of this Agreement. GRANTOR shall allow public access to the property six times per year for outdoor recreational and/or outdoor educational opportunities provided that such access does not impair the conservation purpose of this agreement, is organized and led by a qualified non-profit organization and is scheduled in a manner that does not unreasonably interfere with other allowed uses of the property and seasonal/natural constraints. Other than provided for in this Paragraph, nothing contained in this Agreement shall be construed as granting, permitting, or affording the public access to any portion of the Property.

9. **Interpretation and Construction.** To the extent that this Agreement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that meets the conservation purpose of this Agreement and the public policy goals referenced in recital no. 2. It is the intention of the parties that any interpretation or construction shall promote the conservation purpose of this Agreement. If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement and the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

10. **Baseline Documentation for Enforcement.** DISTRICT acknowledges by acquisition of the easement and other rights granted by this Agreement that the present uses of the Property are consistent with the conservation purpose of this Agreement. In

order to establish the present condition of the Property's protected values, DISTRICT will prepare Baseline Documentation prior to the recording of this Agreement, which will be maintained on file with DISTRICT and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement. The parties agree that the Baseline Documentation provides collectively an accurate representation of the Property at the time of the execution of this Agreement. DISTRICT shall provide GRANTOR, free of charge, one complete copy of all of the Baseline Documentation promptly after it is prepared. GRANTOR and DISTRICT recognize that changes in natural resource management practices, and in the situation of GRANTOR may dictate an evolution of natural resources management of the Property consistent with the conservation purpose of this Agreement.

11. Remedies for Breach.

A. *DISTRICT'S Remedies.* In the event of a violation or threatened violation of any term, condition, covenant, or restriction contained in this Agreement, DISTRICT may, following notice to GRANTOR, which notice shall contain a reasonable and specific cure period, institute a suit to enjoin and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. In the alternative, DISTRICT may, with the consent of GRANTOR, commence a proceeding in arbitration under paragraph 13 of this Agreement. The notice shall be a general written notification of the condition claimed by the DISTRICT to be a violation that is either mailed or delivered by DISTRICT to GRANTOR. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to any natural conditions of the Property protected by this Agreement, DISTRICT may pursue its remedies under this paragraph without waiting for the period provided for cure to expire. DISTRICT'S rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Agreement, and GRANTOR agrees that DISTRICT'S remedies at law for any violation of the terms of this Agreement are inadequate and that DISTRICT shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief, including damages, to which DISTRICT may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

B. *DISTRICT'S Discretion.* Enforcement of the terms of this Agreement shall be at the discretion of DISTRICT, and any forbearance by DISTRICT to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by GRANTOR shall not be deemed or construed to be a waiver by DISTRICT of such term or of any subsequent breach of the same or any other term of this Agreement. Any failure by DISTRICT to act shall not be deemed a waiver or forfeiture of DISTRICT'S right to enforce any term, condition, covenant, or purpose of this Agreement in the future.

C. *Liquidated Damages.* Inasmuch as the actual damages which would result from the loss of the values associated with the conservation purpose of this Agreement and caused by its breach by GRANTOR are uncertain and would be impractical or extremely difficult to measure, the parties agree that the damages allowed by Civil Code section 815.7(c) shall be measured as follows:

(i) for an improvement prohibited by this Agreement, an amount equal to the product of (A) the market value of the improvement, (B) the length of time that the improvement exists on the Property, and (C) the then current interest rate for post judgment interest; and

(ii) for a change in use prohibited by this Agreement, whether or not it involves an improvement, an amount equal to any economic gain realized by GRANTOR because of the change in use; and

(iii) for a change in use prohibited by this Agreement, whether or not it involves an improvement and where there is no measurable economic gain realized by GRANTOR, the product of (A) the cost of restoration, as set forth in a written estimate by a qualified person selected by DISTRICT, (B) the length of time that the prohibited use continues and (C) the then current interest rate for post judgment interest.

D. *GRANTOR'S Compliance.* If DISTRICT, in the notice to GRANTOR, demands that GRANTOR remove an improvement, discontinue a use or both and claims the damages allowed by Civil Code section 815.7(c), then GRANTOR may mitigate damages by fully complying with DISTRICT'S notice within the cure period provided therein. In the event of such full and timely compliance, DISTRICT shall not be entitled to damages for the breach specified in the notice. In the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, in which GRANTOR prevails, then GRANTOR shall be entitled to economic damages; provided that neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice.

E. *Remedies Nonexclusive.* The remedies set forth in this paragraph 11 are not intended to displace any other remedy available to either party as provided by this Agreement, Civil Code sections 815 et seq. or any other applicable law.

12. **Acts Beyond GRANTOR'S Control.** Nothing contained in this Agreement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or change in the Property resulting from causes beyond GRANTOR'S control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes so long as such action, to the extent that GRANTOR has control, is designed and carried out in such a way as to further

the conservation purpose of this Agreement.

13. **Arbitration.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the conservation purpose of this Agreement, or any other dispute arising under this Agreement, either party, with the prior written consent of the other, may refer the dispute to arbitration by a request made in writing upon the other. Provided that GRANTOR agrees not to proceed with the use or activity pending resolution of the dispute, and upon the agreement of the parties to proceed to arbitration, within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired Federal District Court or California Superior Court judge; provided, however, if either party fails to select an arbitrator, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance, a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with sections 1280, *et seq.* of the California Code of Civil Procedure or any successor statute then in effect. The arbitration shall be determined in accordance with said statute, with the conservation purpose of this Agreement, and all relevant provisions of this Agreement, and the applicable laws of the State of California, as the bases for determination and resolution, and a judgment of the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators but excluding attorneys' fees, which shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

14. **Condemnation.** In the event that the Property or some portion thereof is condemned for public use by an entity other than DISTRICT, the market value for purposes of just compensation shall be determined as though this Agreement did not exist and GRANTOR and DISTRICT shall share the compensation on the following basis: GRANTOR 41% and DISTRICT 59%. These percentages are derived from the ratio of the price paid for the conservation easement to the appraised value of the property before being encumbered by the conservation easement. In the apportionment of the proceeds from an eminent domain proceeding, an adjustment shall be made in GRANTOR's favor for any increase in value after the date of this Agreement that is attributable to improvements; provided such increase in value is earned through GRANTOR's efforts and is not the result of value added by this easement, the passage of time or other passive means; and provided, further, that such increase in value is not the result of activities constituting a breach of this Agreement.

15. **Agreement to Bind Successors.** The conservation easement herein granted

shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind GRANTOR, GRANTOR'S heirs, personal representatives, lessees, executors, successors, including but not limited to purchasers at tax sales, and assigns forever. The parties intend that this Agreement shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California, including, *inter alia*, Civil Code sections 815-816.

16. **Subsequent Deeds and Leases.** GRANTOR agrees that a clear reference to this Agreement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including, but not limited to, a leasehold interest) is conveyed, that GRANTOR will attach a copy of this Agreement to any such instrument, and that GRANTOR will notify DISTRICT in writing ten (10) days prior to any such conveyance. These obligations of GRANTOR shall not be construed as a waiver or relinquishment by DISTRICT of rights created in favor of DISTRICT by Paragraph 15 of this Agreement.

17. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To GRANTOR: John and Martha McCullough
P.O. Box 6737
Santa Rosa, CA 95406

To DISTRICT: General Manager
Sonoma County Agricultural Preservation
and Open Space District
747 Mendocino Avenue
Santa Rosa, CA 95401

or to such other address as either party from time to time shall designate by written notice to the other. Notice, if mailed, shall be deemed to have been given upon the day following the day shown on the postmark of the envelope in which such notice is mailed or, in the event there is no such date shown on the postmark, then the day following the date of mailing shown on DISTRICT'S written declaration of mailing, which writing shall have been executed by a DISTRICT officer or employee.

18. **Successors and Assigns.** The terms GRANTOR and DISTRICT wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named GRANTOR and his heirs, personal representatives, lessees, executors, successors, and assigns, including any person claiming under them, and the above-named

DISTRICT and its successors and assigns, respectively.

19. Integration. This Agreement is the final and complete expression of the Agreement between the parties and any and all prior or contemporaneous agreements written or oral are merged into this written instrument.

20. Estoppel Certificates. DISTRICT shall, at any time during the existence of the Agreement, upon not less than thirty (30) days' prior written notice from GRANTOR, execute and deliver to GRANTOR a statement in writing certifying that the Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification) and acknowledging that there is not, to DISTRICT'S knowledge, any default by GRANTOR hereunder, or, if DISTRICT alleges a default by GRANTOR, specifying such default.

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Agreement this 22nd day of April, 2002

GRANTOR:

By: John McCullough
John McCullough, Trustee

By: Martha McCullough
Martha McCullough, Trustee

GRANTEE:

SONOMA COUNTY AGRICULTURAL
PRESERVATION AND OPEN SPACE
DISTRICT

By: Mike Kerns
Mike Kerns
President of the Board of Directors

ATTEST:

Eeve T. Lewis
EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board of
Directors

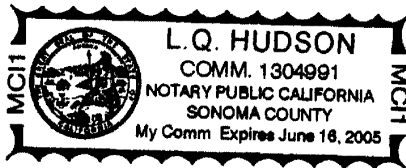
[acknowledgments]

STATE OF CALIFORNIA
COUNTY OF SONOMA

On April 22, 2002, before me, the undersigned, Notary Public

personally appeared John McCullough and Martha McCullough

() personally known to me - OR - (x) 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.



WITNESS my hand and official seal.

(This area for official notarial seal)

DESCRIPTION OF ATTACHED DOCUMENT

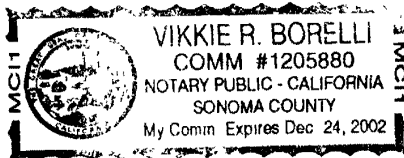
DESCRIPTION OF DOCUMENT (OPTIONAL)

STATE OF CALIFORNIA
COUNTY OF SONOMA

On April 24, 2002, before me, the undersigned, Notary Public, Vikkie Borelli

personally appeared Mike Kerns

(x) personally known to me - OR - () proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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



WITNESS my hand and official seal.

(This area for official notarial seal)

DESCRIPTION OF ATTACHED DOCUMENT

DESCRIPTION OF DOCUMENT (OPTIONAL)

EXHIBIT "A"

Description:

The land referred to herein is situated in the State of California, County of Sonoma, Unincorporated Area, and is described as follows:

BEING A PORTION OF THE LANDS OF JOHN MCCULLOUGH AND MARTHA MCCULLOUGH AS TRUSTEES U/T/A DATED JUNE 15, 2000 KNOWN AS THE JOHN MCCULLOUGH AND MARTHA MCCULLOUGH TRUST AS DESCRIBED IN THOSE DEEDS RECORDED AS DOCUMENT NOS. 2001 005740, 2001 005742 TO 2001 005745, 2001 005749 TO 2001 005751, ALL OF OFFICIAL RECORDS, SONOMA COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 2" IRON PIPE WITH BRONZE CAP STAMPED "12-7-13-18" MARKING THE COMMON CORNER TO SECTIONS 12 AND 13 OF TOWNSHIP 8 NORTH, RANGE 8 WEST AND SECTIONS 7 & 18 OF TOWNSHIP 8 NORTH, RANGE 7 WEST, M.D.M. AS SHOWN ON THAT RECORD OF SURVEY, FILED IN BOOK 568 OF MAPS, AT PAGES 20 AND 21, SONOMA COUNTY RECORDS; THENCE ALONG THE COMMON LINE BETWEEN SECTIONS 12 AND 7 ON SAID MAP NORTH 00° 22' 23" WEST, 602.67 FEET TO A 3/4" IRON PIPE TAGGED LS 2757 SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED LINE; THENCE LEAVING SAID SECTION LINE AND ALONG THE SOUTHWESTERLY LINE OF THE LANDS OF JOSEPH J. DE MARCO AND HELEN R. DE MARCO TRUSTEES AS DESCRIBED IN THAT DEED RECORDED AS DOCUMENT NO. 1991 0026169 SONOMA COUNTY RECORDS, SOUTH 82° 58' 12" EAST, 64.37 FEET TO A 3/4" IRON PIPE TAGGED LS 2757; THENCE SOUTH 67° 29' 42" EAST, 31.62 FEET TO A 3/4" IRON PIPE TAGGED LS 2757; THENCE SOUTH 39° 21' 22" EAST, 97.45 FEET TO A 3/4" IRON PIPE TAGGED LS 2757; THENCE SOUTH 41° 02' 42" EAST, 74.78 FEET TO A 3/4" IRON PIPE TAGGED LS 2757; THENCE SOUTH 26° 25' 12" EAST, 109.14 FEET TO A 3/4" IRON PIPE TAGGED LS 2757; THENCE SOUTH 33° 26' 42" EAST, 94.41 FEET TO A 3/4" IRON PIPE TAGGED LS 2757; THENCE SOUTH 29° 37' 12" EAST 155.94 FEET TO A 3/4" IRON PIPE TAGGED LS 2757; THENCE SOUTH 29° 37' 12" EAST, 78.98 FEET TO A 3/4" IRON PIPE TAGGED LS 2757; THENCE SOUTH 14° 20' 42" EAST, 87.04 FEET TO A 1/4" IRON PIPE TAGGED LS 2757 ON THE NORTH LINE OF SAID SECTION 18; THENCE SOUTH 77° 58' 23" EAST, 1557.14 FEET TO THE EAST LINE OF LOT 2 OF SAID SECTION 18 ABOVE DESCRIBED FROM WHICH A 3/4" IRON PIPE TAGGED LS 2757 BEARS SOUTH 77° 58' 23" EAST, 2.02 FEET; THENCE ALONG SAID EAST LINE SOUTH 00° 49' 19" WEST, 511.68 FEET TO A POINT FROM WHICH A SET 1/2" IRON PIPE TAGGED LS 3890 BEARS SOUTH 89° 10' 43" EAST, 1.04 FEET, SAID POINT BEING SHOWN ON THE AFOREMENTIONED RECORD OF SURVEY AS BEING THE COMMON EASTERLY CORNER OF LOTS "A" AND "B"; THENCE CONTINUING SOUTH 00° 49' 17" WEST, ALONG THE EASTERLY LINE OF SAID LOT B, 511.68 FEET TO A 1/2" IRON PIPE TAGGED LS 3890 MARKING THE COMMON EASTERLY CORNER OF LOTS 2 AND 5 OF SAID SECTION 18, ALSO BEING THE NORTHWESTERLY CORNER OF LOT "C" OF SAID RECORD OF SURVEY; THENCE ALONG THE NORTHERLY AND EASTERLY LINE OF SAID LOT "C" SOUTH 87° 58' 28" EAST, 1306.48 FEET TO THE EAST LINE OF SAID LOT C; THENCE ALONG SAID EAST LINE SOUTH 00° 51' 47" WEST, 1303.26 FEET TO THE CENTER OF SECTION 18 BEING THE NORTHEAST CORNER OF LOT 10, SECTION 18; THENCE ALONG THE EAST LINE OF SAID LOT 10 SOUTH 00° 51' 47" WEST, 198.83 FEET TO THE CENTER OF THE NORTHERLY BRANCH OF MARK WEST CREEK FROM WHICH A SET 1/2" IRON PIPE TAGGED LS 3890 BEARS SOUTH 29° 38' 23" WEST, 124.68 FEET, SAID POINT IN THE CENTER OF MARK WEST CREEK BEING THE COMMON EASTERLY CORNER OF LOTS "C" AND "B" OF AFOREMENTIONED RECORD OF SURVEY; THENCE CONTINUING SOUTH 00° 51' 47" WEST ALONG THE EASTERLY LINE OF SAID LOT "B", 1028.26 FEET TO THE SOUTHEAST CORNER OF LOT "B"; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT "B", NORTH 89° 24' 18" WEST, 1304.87 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 07° 23' 12" WEST, 3.57 FEET TO A 1/2" IRON PIPE FOUND; THENCE NORTH 16° 33' 37" WEST, 395.52 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 52° 06' 33" WEST, 436.21 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 57° 10' 46" WEST, 200.00 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 10° 09' 35" WEST, 244.01 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 50° 00'

-1-

00° WEST, 180.00 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 67° 08' 32" WEST, 520.38 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890 SHOWN AS THE SOUTHEAST CORNER OF LOT 4 OF THE RECORD OF SURVEY, FILED IN BOOK 470 OF MAPS, AT PAGE 48, SONOMA COUNTY RECORDS, ALSO SHOWN ON THE AFOREMENTIONED RECORD OF SURVEY, FILED IN BOOK 568 OF MAPS, AT PAGES 20 AND 21, SONOMA COUNTY RECORDS; THENCE NORTH 10° 17' 28" WEST, 266.37 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 23° 51' 44" WEST, 168.94 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 46° 37' 51" WEST, 360.54 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 04° 23' 58" WEST, 162.12 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 14° 43' 24" WEST, 503.39 FEET TO THE POINT ON A NORTHERLY LINE OF SAID LOT 4 FROM WHICH THE NORTHEAST CORNER OF SAID LOT 4 BEARS SOUTH 87° 57' 13" EAST, 536.35 FEET; THENCE CONTINUING NORTH 14° 43' 24" WEST, 17.65 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890 FROM WHICH THE SOUTHEASTERLY CORNER OF LOT 2 OF TRACT NO. 639 OF THE "GRANDE RANCH SUBDIVISION", FILED IN BOOK 345 OF MAPS, AT PAGES 43 AND 44, SONOMA COUNTY RECORDS BEARS SOUTH 70° 01' 03" WEST, 80.92 FEET, SAID BEARING BEING THE NORTHEASTERLY PROJECTION OF SAID LOT 2 (MAP BEARING, NORTH 71° 21' 05" EAST); THENCE NORTH 29° 43' 51" WEST, 299.00 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 45° 20' 02" WEST, 600.13 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890 ON THE COMMON LINE OF LOTS 1 AND 2 OF SAID "GRANDE RANCH SUBDIVISION" FROM WHICH THE COMMON EAST CORNER OF SAID LOTS BEARS SOUTH 84° 01' 32" EAST (MAP SOUTH 82° 41' 30" EAST), 489.41 FEET; THENCE CONTINUING NORTH 45° 20' 02" WEST, 185.19 FEET TO A 1/2" IRON PIPE TAGGED LS 3890; THENCE NORTH 67° 53' 35" WEST, 387.29 FEET TO A 1/2" IRON PIPE FOUND TAGGED LS 3890; THENCE NORTH 42° 47' 29" WEST, 416.20 FEET, MORE OR LESS, TO THE COMMON LINE BETWEEN THE AFOREMENTIONED SECTIONS 12 AND 13, FROM WHICH A 3/4" IRON PIPE BEARS SOUTH 88° 33' 52" EAST, 75.00 FEET; THENCE ALONG SAID COMMON LINE OF SECTIONS 12 AND 13 SOUTH 89° 16' 31" WEST, 1278.22 FEET, MORE OR LESS, TO A 2" IRON PIPE WITH BRONZE CAP STAMPED 12/13 MARKING THE COMMON QUARTER CORNER OF SAID SECTIONS; THENCE ALONG THE WESTERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 12 NORTH 00° 29' 22" WEST, 1309.22 FEET TO THE SOUTHWEST CORNER OF THE LANDS OF COWAN AS DESCRIBED IN THAT DEED RECORDED IN BOOK 2604 OF OFFICIAL RECORDS, AT PAGE 33, SONOMA COUNTY RECORDS; THENCE LEAVING SAID WESTERLY LINE AND ALONG THE SOUTHERLY LINE OF COWAN NORTH 89° 59' 26" EAST, 23.96 FEET TO A 3/4" IRON PIPE; THENCE CONTINUING NORTH 89° 59' 26" EAST, 706.22 FEET TO THE SOUTHEAST CORNER OF COWAN; THENCE NORTH 00° 00' 34" WEST, 17.80 FEET TO A 3/4" IRON PIPE MARKING THE SOUTHWEST CORNER OF PARCEL 4, AS SHOWN ON PARCEL MAP NO. 7824, FILED IN BOOK 347 OF MAPS, AT PAGE 45, SONOMA COUNTY RECORDS; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 4 AND PARCEL 3 OF SAID MAP NORTH 89° 16' 31" EAST, 1798.53 FEET, MORE OR LESS, TO A 3/4" IRON PIPE ON THE COMMON LINE BETWEEN THE AFOREMENTIONED SECTIONS 12 AND 7; THENCE ALONG SAID TOWNSHIP LINE SOUTH 00° 22' 33" EAST, 715.35 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

NATURAL RESOURCE CONSERVATION EASEMENT PERMITTED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are permitted under this Agreement, and they are not to be precluded, prevented, or limited by this Agreement. It is further provided that they are undertaken in accordance with the terms and provisions of this Agreement and that all applicable governmental approvals and permits are properly obtained:

1. **Consistent Use:** To use or lease the Property consistent with the conservation purpose of this Agreement.
2. **Residential Use:** Within the "Residential Area" as shown on Baseline Site Map, to reside on the Property consistent with the conservation purpose of this Agreement.
3. **Recreational Uses:** To use the Property for low-intensity recreational or educational purposes which include, but are not limited to, hiking, horseback riding, hunting and nature study. Any activities, uses or improvements provided for in this Paragraph which result in significant surface alteration or other development of the land require approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement.
4. **Construction and Maintenance of Structures and Other Improvements:** Except as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvement of the Property only as provided below:
 - a. **Construction of Primary Residences.** The total number of primary single-family residences on the Property shall not exceed one (1). The construction or placement of one primary single-family residence, and an associated access road necessary for and accessory to those residential uses. Said residence will not exceed 3,500 square feet in size, exclusive of garage, which will not exceed 1,000 square feet in size, total structures not to exceed 30 feet in height. Further, any such structures must be erected, constructed or placed in one of the two alternate "Residential Areas (not to exceed five (5) acres)" on the Baseline Site Map. If neither of the two alternate "Residential Areas" are buildable, GRANTOR may propose a third location (not to exceed five (5) acres). GRANTOR shall obtain the express written approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement for the location and construction of such primary residence and associated access Road. DISTRICT's approval shall be based upon its finding that the proposed construction or placement is consistent with the conservation purpose of this Agreement. Additions to the residence is permitted without the prior written approval of DISTRICT, provided that additions are limited to the above size restrictions.
 - b. **Construction of Accessory Residential Buildings or Structures.** To construct or place accessory residential buildings or structures, including but not limited to outbuildings (barn/paddocks), guest houses/second (granny) units, swimming pools or other improvement reasonably necessary for the enjoyment of the residential use of the property. Said structures must be placed within the same "Residential Area (not to exceed five (5) acres)" as the primary single-family residence allowed above, provided that

GRANTOR obtain the express prior written approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement. DISTRICT's approval shall be based upon its finding that the proposed construction or placement is consistent with the conservation purpose of this Agreement.

- c. **Pelm Homestead.** The Pelm Homestead may be replaced, renovated and maintained in its present location, size and footprint as shown on the Baseline Site Map. No additional structures or improvements are allowed in association with the Pelm Homestead. The Pelm Homestead may only be used for recreational and educational purposes and may not be leased or rented out for residential or commercial use.
 - d. **Replacement of Improvements.** In the event of destruction, deterioration or obsolescence of any residences or associated buildings conforming to the requirements of this Agreement, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, the replacement of such residences or associated buildings shall be permitted provided that GRANTOR obtain the express prior written approval of DISTRICT in accordance with the provisions set forth in paragraph 5 of this Agreement. In the event of destruction, deterioration or obsolescence of any fences, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, GRANTOR may replace same with ones of similar size, function, capacity and location, without prior notice to or approval by DISTRICT, provided, however, that such replacement is consistent with the conservation purpose of this Agreement and current standards for not impeding wildlife movement.
 - e. **Maintenance and Repair of Improvements.** To maintain and repair existing fences, roads, ponds, and other existing improvements on the Property. Such maintenance and repair may include the limited removal of brush and trees immediately adjacent to such improvements.
5. **Water Resources:** To maintain and modify existing water resources on the Property; to develop new springs and wells and to lay or construct pipes and conduits for the transportation of water all for the residential use of the property. Water resources may be developed on the property for grazing animals, provided DISTRICT receive prior written notice of such water resource development. Development of additional water storage facilities such as freshwater and wastewater tanks and reservoirs shall be permitted provided that GRANTOR obtain express written approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement. Such maintenance and modification of existing water resources shall be necessary or convenient for residential uses on the Property and shall be developed in a manner consistent with the conservation purpose of this Agreement.
6. **Signs:** To place a sign or signs on the Property associated with permitted recreation or educational purposes, the size of which shall individually not exceed two (2) square feet; one sign to identify the Property which shall not exceed twenty-four (24) square feet; a sign or signs to advertise its sale or lease; and a sign or signs advocating candidates or issues that will be presented to voters in a public election.
7. **Easements:** To the continue use of existing easements of record granted prior to the execution of this Agreement. Modifications to easements of record as of the date hereof and subsequent easement requests from GRANTOR or third parties requires the approval of

DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement. New easements may only be granted where they will remove or significantly lessen the impact of existing easements of record on the protected values set forth in the conservation purpose of this Agreement. It is the primary duty of the GRANTOR to enforce the limiting provisions of new easements and easements of record granted prior to this Agreement. It is further the duty of GRANTOR to prevent the use of the Property by third parties that might result in the creation of prescriptive rights that are inconsistent with the conservation purpose of this Agreement.

8. **Restoration and Enhancement:** To undertake conservation and restoration activities including, but not limited to, bank and soil stabilization, practices to reduce erosion, enhancement of plant and wildlife habitat; and activities which promote biodiversity in accordance with sound, generally accepted practices and all applicable laws, ordinances and regulations.
9. **Vegetation Management:** To undertake vegetation management activities for the purpose of fire control and/or natural resource management and promotion of biodiversity. Such methods may include prescriptive burning, limited grazing or limited brush removal on the Property. Grazing shall be consistent with historic practices, as documented in the Baseline, which have proven to be compatible with protection of natural resources. DISTRICT shall receive prior notification of such activities.
10. **Removal of Non-Native Plants and Animals:** To remove invasive, non-native plant species. To remove feral, non-native animal species that threaten the conservation purpose of this Agreement.

EXHIBIT "C"

NATURAL RESOURCES CONSERVATION EASEMENT PROHIBITED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Agreement and shall be prohibited upon or within the Property:

1. **Impairment of Conservation Purpose:** To impair the conservation purpose, except as otherwise expressly provided in this Agreement.
2. **Inconsistent Uses:** To establish any residential, agricultural, commercial or industrial activity or use except as provided for in Paragraph 4 of Exhibit "B".
3. **Signs:** To construct, place, or erect any sign or billboard on the Property, except as provided for in Paragraph 6 of Exhibit "B".
4. **Construction:** To construct, reconstruct, or replace any improvement except as provided for in Paragraph 4 Exhibit "B".
5. **Subdivision:** To divide, subdivide, or de facto subdivide the Property; provided, however, that the voluntary conveyance to a government or non-profit entity exclusively for conservation or public access purposes shall not be prohibited by this Paragraph so long as the conveyance is consistent with the conservation purpose of this agreement.
6. **Motorized Vehicles:** To use motorized vehicles, except by GRANTOR or others under GRANTOR'S control on established roads for permitted property management activities, for inspections by DISTRICT and for uses pursuant to deeded rights that pre-date the execution of this agreement this Agreement. To use motorized vehicles off roads except when necessary for emergency or fire control purposes.
7. **Roads:** To construct any new road, other than access roads allowed under paragraph 4 in exhibit "B". However, the DISTRICT shall consent to the reconstruction or relocation of any existing road that is planned to minimize or mitigate its impact on the open space and natural features of the Property. Any such reconstruction or relocation of roadways shall require prior approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement.
8. **Dumping:** To dump or accumulate trash, ashes, garbage, waste, inoperative vehicles or other unsightly or offensive material on the Property.
9. **Water and Soil Degradation:** To cause degradation or erosion of the soil, or pollution of any surface or subsurface waters.
10. **Storage:** To store materials, such as pipes, culverts, fencing, heavy equipment, and the like, except while work is in progress and in no case for a period exceeding sixty (60) days after work is completed.

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11. **Utilities and Easements:** To install new or enlarged above-ground utility systems within easements of record as of the date of this Agreement or new easements, including, without limitation, water, sewer, power, fuel, and communication lines and related activities and equipment except as necessary for the residential and recreational uses of the Property.
 12. **Surface Alteration:** To alter the contour of the Property in any manner whatsoever including, but not limited to, excavating or removing soil, sand, gravel, rock, peat or sod, except in connection with activities and uses as provided in this Agreement and subject to approval of DISTRICT in accordance with the provisions set forth in Paragraph 5 of this Agreement.
 13. **Mining:** To explore for, develop, or extract minerals or hydrocarbons by any mining method, surface or otherwise.
 14. **Native Vegetation Removal:** To remove or destroy any native trees, shrubs or other native plants, except as necessary for activities as provided for in Paragraphs 4 and 9 of Exhibit "B" or as necessary within the Residential Area to prevent personal injury and property damage or to allow construction or repair of residential or recreational facilities.
 15. **Non-native Plants:** To plant or establish non-native plants except within "Residential Area" as shown on Baseline Site Map.

**CERTIFICATE OF ACCEPTANCE
OF
REAL PROPERTY
BY THE
BOARD OF DIRECTORS OF THE
SONOMA COUNTY AGRICULTURAL PRESERVATION
AND OPEN SPACE DISTRICT**

This is to certify that the interests in real property conveyed by the Conservation Easement Agreement dated April 22 2002, from John McCullough and Martha McCullough, Trustees U/T/A dated June 15, 2000, known as the John McCullough and Martha McCullough Trust to the Sonoma County Agricultural Preservation and Open Space District, a governmental agency formed pursuant to the provisions of Public Resources Code Section 5506.5, is hereby accepted by the President of the Board of Directors on behalf of the District pursuant to the authority conferred by Resolution No. 02-0434 of the Board of Directors, dated April 23, 2002 and the District consents to the recordation thereof by its duly authorized officer.

The Board of Directors of the
Sonoma County Agricultural
Preservation and Open Space
District

Dated: 4/24/02

By: Mike Kerns

Mike Kerns, President

ATTEST:

Eve T. Lewis

Eve T. Lewis, County Clerk and
ex-officio clerk of the Board of
Directors

RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors
Sonoma County Agricultural
Preservation and Open Space District
575 Administration Drive, Room 102A
Santa Rosa, CA 95403

Free recording per Government Code Section 6103

Mark West Creek Regional Park and Open Space Preserve
RECREATION CONSERVATION COVENANT
(California Civil Code §§815 *et seq.*)

THIS AGREEMENT is entered into by and between the Sonoma County Agricultural Preservation and Open Space District (“the District”) and the County of Sonoma, a political subdivision of the State of California, its successors and assigns and those claiming under it (“Owner”).

Recitals

A. The District was formed for the purpose of preserving open space in the County of Sonoma and is funded by a voter approved sales tax, the expenditure of which is directed and limited by the Sonoma County Agricultural Preservation & Open Space 2006 Expenditure Plan (“the 2006 Expenditure Plan” or “the Plan”) adopted as part of the Sonoma County Open Space, Clean Water and Farmland Protection Measure (Sonoma County Ordinance No. 5677R).

B. Among the categories of open space identified for protection in the 2006 Expenditure Plan are “fee interests for outdoor public recreation where the public use would not be inconsistent with the open space designations” listed in the Plan.

C. Owner has acquired and now is the owner in fee simple of that certain real property

located in Sonoma County and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property").

D. In a companion transaction of even date, Owner has conveyed a conservation easement ("the Conservation Easement") to the District generally limiting the use of the Property to natural resource preservation and low-intensity public outdoor recreation consistent with identified open space values. This Covenant is intended to complement the Conservation Easement by assuring the continued and perpetual recreational use of the Property consistent with the Conservation Easement.

E. GRANTOR agrees that the Property will become Mark West Creek Regional Park and Open Space Preserve which will, at a minimum, consist of the Cresta I property (APN 079-090-008, 079-020-033) (the "Cresta I Property"), Cresta II property (APN 079-090-008) (the "Cresta II Property"), Cresta III property (APN 079-090-015) (the "Cresta III Property"), the McCullough I property (APNs 028-060-062, 028-060-063, 028-070-036, 028-060-047, 028-060-048, 028-060-053, 028-060-054) (the "McCullough I Property"), a portion of the Wendle property (APN 028-060-058) (the "Wendle Property"), and other such adjacent properties that may be acquired by the DISTRICT for the Mark West Creek Regional Park and Open Space Preserve.

Agreement

FOR VALUABLE CONSIDERATION, Owner hereby undertakes the following obligations for the benefit of the District:

1. *The Covenant.* Owner hereby conveys to the District a recreation conservation covenant ("Covenant") within the meaning of Restatement Third, Property (Servitudes) §1.6(1) and pursuant to the authority of Civil Code §§815 *et seq.* and the common law of California, to

assure that the Property will be continuously used, maintained and operated by Owner and its successors in interest as a public park and open space preserve in perpetuity, available to the public for low-intensity public outdoor recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein.

2. Obligation to Provide Low-Intensity Public Outdoor Recreation and Educational Uses.

A. Owner hereby agrees to use, operate and maintain the Property as a public park and open space preserve in perpetuity, available to the public for low-intensity outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. Such use, operation, and maintenance of the Property as a public park and open space preserve shall commence no later than three (3) years after the transfer of the Mark West Creek Regional Park and Open Space Preserve from the District to the County, and shall include, at a minimum, general availability of the Property for public hiking, picnicking and other low-intensity public outdoor recreation and educational activities, no less than six hours per day, seven days per week, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations).

B. Owner shall not engage in activities that impede public access to or public use of the Property for low-intensity outdoor public recreation and educational uses pursuant to this Covenant, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations).

C. If a management plan is prepared and approved pursuant to Sections 5.1.7 and 6.1 of the Conservation Easement, Owner's use, operation and maintenance of the Property as a public park and open space preserve shall be in accordance with such management plan.

3. Enforcement.

A. In the event of an uncured breach by Owner of any of its obligations under this Covenant, the District may: (1) institute a suit for appropriate equitable relief; (2) institute a suit to recover damages; (3) accept the offer of dedication set forth in Paragraph 7.A, (4) accept the offer of dedication set forth in Paragraph 7.B; or (4) pursue any combination of the foregoing.

B. Prior to taking any action under Paragraph 3.A, the District shall provide Owner with a notice to cure ("Notice"). The Notice shall be a written notification generally describing the condition or event claimed by the District to be a breach of Owner's obligations that is either mailed or otherwise delivered by the District to Owner. The Notice shall include a reasonable period in which the breach must be cured to the reasonable satisfaction of the District. The remedies provided by Paragraph 3.A shall be available to the District immediately upon expiration of the cure period.

C. Enforcement of the obligations created by this Covenant shall be at the sole discretion of the District. Any forbearance by the District to exercise its rights under this Covenant shall not be deemed or construed to be a waiver or forfeiture by the District.

D. The actual damages incurred by the District and allowed by Civil Code section 815.7(c) resulting from Owner's breach of the obligations imposed by this Covenant are uncertain and would be impractical or extremely difficult to measure. Accordingly, the parties agree that the District's damages shall be measured by the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant, multiplied by the length of time in years, including fractions thereof, during which the breach remains uncured after Notice has been given by the District pursuant to Paragraph 3.B, multiplied by the then current annual interest rate for post judgment interest. In no case, however, shall liquidated

damages exceed forty percent (40%) of the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant, for any single breach. Owner's liability for damages is discharged if Owner cures the breach within the time specified in the District's Notice.

E. The remedies set forth in this Paragraph 3 are in addition to and not intended to displace any other remedy available to either party as provided by this Covenant, the Conservation Easement, Civil Code Sections 815 *et seq.*, the common law or any other applicable local, state or federal law.

F. Nothing contained in this Paragraph 3 shall be construed to entitle the District to bring any action against Owner for any failure to perform resulting from causes beyond Owner's control, including, without limitation, wildfire, flood, storm, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate a failure to perform resulting from such causes so long as such action, to the extent that Owner has control, is designed and carried out in such a way as to further the purpose of this Covenant.

4. *Conveyances; Leasing; Approval of Grantees.* No conveyance of the fee interest in the Property nor any lease thereof nor any other transfer of the possessory interest in the Property may occur without the District's consent and determination that the prospective buyer, lessee or the transferee of any possessory interest is reasonably qualified to perform the obligations created by this Covenant and the Conservation Easement. Neither the District's determination nor its consent shall be unreasonably withheld. All leases or other transfers of a possessory interest in the property shall be in writing, shall acknowledge this Covenant and the Conservation Easement and shall terminate no later than the date the District accepts the offer made in Paragraph 7.A or the date the District accepts the offer made in Paragraph 7.B of this Covenant, whichever is earlier. A failure to comply with these requirements is a material breach of this Covenant and subject to remedies set forth in Paragraph 3.

5. *Third Party Beneficiaries.* The District and Owner do not intend and this Covenant shall not be construed to create any rights in third parties.

6. *Integration.* This Agreement is the final and complete expression of the agreement between the parties and any and all prior or contemporaneous agreements written or oral have been merged into this written instrument, other than the Conservation Easement which remains in full force and effect.

8. *Inspection.* The District may, within its sole discretion and from time to time, inspect the Property to determine if Owner is in compliance with this Covenant.

9. *Covenant to Bind Successors.* This Covenant shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind Owner and its successors in interest, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Covenant shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Covenant creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," and irrevocable offers of dedication encompassed within the meaning of the phrase "unaccepted, recorded, irrevocable offers of dedication," as those phrases are used in California Revenue & Taxation Code section 3712(d) and (e), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Covenant.

OWNER:

By: _____

Chair of the Board of Supervisors

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE
DISTRICT

By: _____

President of the Board of Directors

ATTEST:

Clerk of the Board of Directors

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL
SIGNATORIES.**

Exhibit A

Property Legal Description

**LAND TRANSFER AGREEMENT BETWEEN
THE SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE
DISTRICT AND THE COUNTY OF SONOMA**

Mark West Creek Regional Park and Open Space Preserve

This Agreement (“Agreement”) is made and entered into as of _____ (“Effective Date”) by and between the Sonoma County Agricultural Preservation and Open Space District, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 *et seq.* (“District”), and the County of Sonoma, a political subdivision of the State of California (“County”).

R E C I T A L S

- A. The County, acting by and through the Regional Parks Department, is willing to own, operate, and maintain parks, open space, recreation facilities and educational programs inside and adjacent to its boundaries; and
- B. The District and County share an interest in preserving that certain real property comprising approximately 900 acres in land in the Mark West Creek area northeast of Santa Rosa, as more specifically described below; and
- C. The District, under the authority of Public Resources Code Section 5540, and pursuant to Resolution Number 07-0895 of the District Board of Directors adopted on October 23, 2007, acquired fee title to a certain 340 acre parcel identified as Sonoma County Assessor Parcel Number 079- 090-008 and 079-090-016 (“Cresta I”); and
- D. The District, under the authority of Public Resources Code Section 5540, and pursuant to Resolution Number 09-0790 of the District Board of Directors adopted on August 18, 2009, acquired fee title to a certain 461 acre parcel identified as Sonoma County Assessor Parcel Numbers 028-060-047, 028-060-048, 028-060-053, 028-060-054, 028-060-056, 028-060-062, 028-060-063, and 028-070-036 (“McCullough I”); and
- E. The District, under the authority of Public Resources Code Section 5540, and pursuant to Resolution Number 14-0039 of the District Board of Directors adopted on January 29, 2014, acquired fee title to a certain 21.5 acre parcel identified as Sonoma County Assessor Parcel Numbers 079-090-013 and 079-090-014 (“Cresta II”); and
- F. On August 16, 2016 the County negotiated a purchase agreement (“Wendle Purchase Agreement”), pursuant to which it intends to acquire fee title to a certain 47.14 acre parcel identified as Sonoma County Assessor Parcel Number 028-060-058 (“Wendle Property”) for

a purchase price of \$2,500,000. The Wendle Property features a 2,448 square foot single family residence, horse barn, 1,500 square foot shop, well, septic system, driveway and landscaping totaling 8.56-acres (“Improved Portion”). The remaining 37.84 acres is unimproved land (“Unimproved Portion”). The Wendle Property was valued at \$2,500,000.00 as of March 9, 2016; and

- G. The District, under the authority of Public Resources Code Section 5540, and pursuant to Resolution Number 16-0456 of the District Board of Directors adopted on December 6, 2016, authorized the acquisition of fee title to the Wendle property; authorized the optional conveyance back into the private sector the Improved Portion of the property; authorized and directed the District’s General Manager to negotiate and execute a Reimbursement Agreement requiring the County to reimburse the District for the Improved Portion. The Reimbursement Agreement shall include a security instrument that imposes a mandatory duty on the General Manager to seek reimbursement within the required deadline or to record an Irrevocable Offer of Dedication from the County to ensure repayment of the District funds; and authorized the Board President to execute, on behalf of the Board of Directors, a Certificate of Acceptance for said Irrevocable Offer of Dedication, pursuant to Government Code Section 27281; and
- H. The District is party to a purchase agreement dated July 11, 2017 (“Cresta III Purchase Agreement”), pursuant to which it intends to acquire fee title to a certain 46.4-acre parcel identified as Sonoma County Assessor Parcel Number 079-090-015 (“Cresta III”); and
- I. Cresta I, Cresta II, and McCullough I are commonly referred to as the Mark West Properties (“Mark West Properties”); and
- J. The District desires to divest itself of fee ownership of the Mark West Properties, including associated management and financial responsibilities by transferring its fee interest in the Mark West Properties to the County for the establishment of the Mark West Creek Regional Park and Open Space Preserve (“Preserve”); and
- K. Pursuant to Public Resources Code Section 5540.6, the District may, with the approval by a four-fifths vote of its Board of Directors, convey the Mark West Properties to the County, provided the County undertakes in a recorded written agreement to continue to use the Mark West Properties for park or open-space purposes and not to convey such properties without the consent of a majority of the voters of the District; and
- L. The County desires to take title to the Mark West Properties and to devote them to use as a regional park and open space preserve with low-intensity public outdoor recreational uses,

subject to a conservation easement in the form attached hereto as Exhibit _____ (“Conservation Easement”) and a recreation covenant in the form attached hereto as Exhibit _____ (“Recreation Covenant”) to be held by the District; and

- M. In accordance with the terms and conditions of this Agreement, the District is willing to transfer and the County is willing to accept title to the Mark West Properties no later than March 7, 2018 (“Closing Date”);
- N. Prior to Purchasing the McCullough I Property in fee, the District acquired a conservation easement over a certain 285 acre parcel identified as Sonoma County Assessor Parcel Numbers 028-060-062 and 028-070-036 (“McCullough Easement”), pursuant to Resolution Number 02-0434 of the District Board of Directors adopted on April 23, 2002; and
- O. The District desires to rescind and replace the McCullough Easement with the Conservation Easement to (1) enhance natural resource protections; (2) clarify permitted natural resource management and recreation and educational uses; and (3) update procedural provisions of the easement;
- P. The rescinding and replacement of the McCullough Easement was determined to be consistent with the District’s Easement Amendment Policy by Resolution Number _____ of the District Board of Directors adopted on _____, 2017.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the District and County agree as follows:

A G R E E M E N T

- 1. *Incorporation of Recitals.* The above recitals are true and correct and are hereby incorporated into and made part of this Agreement.
- 2. *Transfer of Mark West Properties, Acquisition of Cresta III and Wendle, and Timelines*
 - a. Wendle Property. The County will acquire the Wendle Property by March 7, 2018. The date that the County actually acquires title is hereinafter referred to as the “Wendle Closing Date”. Pursuant to Resolution Number 16-0456 of the District Board of Directors the District agrees to provide \$2,500,000 to the County for the purchase of the Wendle Property, subject to the following terms and conditions:

District's Wendle Obligations During Interim Period. During the period between the Effective Date of this Agreement and the Wendle Closing Date, which period shall hereinafter be referred to as the "Wendle Interim Period," the District shall pay for the services of a licensed surveyor to create a draft Record of Survey, create legal descriptions of the Improved and Unimproved Portions of the Wendle Property, descriptions of access and utility easements, and delineate the boundaries of the Improved and Unimproved Portions on the ground. In addition, the District shall reimburse the County for all closing costs due to the Buyer, including escrow fees, and title insurance.

i. *County Wendle Obligations*

1. *Conservation Easement and Recreation Covenant.* No less than 10 days prior to the Wendle Closing, the County shall execute and deliver to into escrow the Conservation Easement and a Recreation Covenant over the Unimproved Portion of the Wendle Property.

2. *Reimburse the District.* Within two years of the Wendle Closing Date, the County shall reimburse the District the greater of (1) the fair market value at the time of the sale of the Improved Portion of Wendle Property ("Improved Property"), or (2) \$1,750,000.00, which represents the value of the Improved Portion of the Wendle Property as per the Appraisal dated March 9, 2016. In addition, the following provisions will apply to the sale of the Improved Property:

A. In order to effectuate the Reimbursement, the County may create a separate legal parcel for the Improved Property by whatever process is approved by the County, including the option of performing a lot line adjustment of the Wendle Property to add the Unimproved Portion of the Wendle Property (excluding the Improved Property) to the adjacent Mark West Properties. The Improved Property shall be in a configuration as shown in Exhibit " _____ ".

B. If the County chooses to create and sell the Improved Property as a separate legal parcel, then the Improved Property shall be offered for sale to the general public and listed through the local Multiple Listing Service. The Improved Property listing price shall be at least the value as determined by a full narrative appraisal approved by the District. The appraisal shall be dated no more than 90 days prior to listing the Improved Property for sale. The County has sole discretion to select a licensed Real Estate sales agent to

list the property. The Improved Property shall be listed for sale for a minimum of 3 months, or until such time as an offer has been accepted, whichever is less.

C. If after a total of two (2) years from the date of this agreement an offer has not been accepted by the County for the sale of the Improved Property and closed, then the Improved Property shall be taken off the market, and the County will reimburse the District as per the provisions of this Section 2.

D. If the County chooses to create a separate legal parcel for the Improved Property, then the County shall create an easement appurtenant to the Improved Property through County land for ingress, egress, and utilities to Cresta Road, as shown in Exhibit “_____”.

E. At the County’s discretion, the Improved Property may be encumbered by a deed restriction(s), recorded at the time of sale, for the purpose of assisting in park operations, management, public access, and other related purposes. County shall have the sole responsibility for enforcing said deed restrictions.

F. At the County’s discretion, the County may negotiate the relocation of the access easement through the Wendle property as currently described in document #_____ to be relocated as shown in Exhibit “_____”, in order to facilitate the sale of, and/or increase the value of, the Improved Property, and to be recorded at the time of sale.

3. *Security Agreement.* In order to ensure the District is reimbursed by the County within two years of the Wendle Closing Date, the County agrees to execute the following documents within _____ days of the Effective Date:

- a. Irrevocable Offer of Dedication (Exhibit __)
- b. Promissory Note (Exhibit ____)
- c. Deed of Trust (Exhibit ____)

ii. Cresta III: The Cresta III Property will be acquired by the County, subject to the following terms and conditions:

1. *District's Cresta III Obligations.* During the period between the Effective Date of this Agreement and the Cresta III Closing Date (as defined by the Cresta III Purchase Agreement), which period shall hereinafter be referred to as the "Cresta III Interim Period," the District shall perform the following tasks:
 - a. District will assign the Cresta III Purchase Agreement to the County immediately prior to the Cresta III Closing Date such that title will vest directly in the County;
 - b. District will deposit the purchase price of the Cresta III property (\$2,100,000) into the escrow account that has been opened in connection with that transaction;
 - c. District will contract for the services of consultants to perform environmental assessment, house inspections, pest inspections, water testing, and septic system inspections on the Cresta III Property as part of its due diligence prior to closing.
2. *County Cresta III Obligations*
 - a. County will accept the assignment of the Cresta III Purchase Agreement, subject to the terms and conditions of this Agreement, which terms include, among others, District's contribution of certain funds towards the acquisition, development, operation, and maintenance of the Cresta III Property.
 - b. County will assist in contracting for due diligence consultant services, and assist in coordinating due diligence inspections related to the Cresta III Property.
 - c. County shall review and approve all consultant reports, title exceptions, leases, governmental permits and approvals, and unrecorded documents provided by the sellers.
 - d. County shall approve of the condition of the Cresta III Property prior to closing.
 - e. County shall review and approve all documents related to the conveyance of legal title to the blue, 1,800 square foot modular house (Serial numbers CAL 331080 and CAL 331081) owned by Mark Cresta and located on the Cresta III Property, and including any required notices to the State of California.
 - f. County will reimburse the District \$55,000 for the value of the life estate at closing.

3. *Conservation Easement and Recreation Conservation Covenant.* The County will convey to the District the Conservation Easement and Recreation Covenant to encumber the Cresta III property at Closing.

4. *Life Estate.* District will contract for the services of a licensed surveyor to create a legal description to be used as an exhibit for the William J. Cresta Life Estate enclosed herein as Exhibit _____, and receive approval of the legal description from the County Surveyor.

5. *Relocation.*

- a. District will contract for the services of a relocation consultant to prepare relocation plans for two residential tenants and one commercial tenant currently residing on the Cresta III Property. The relocation plans will include: replacement housing valuation reports, relocation assistant services, and general relocation consulting.
- b. The District will pay the cost of relocation for two residential tenants and one commercial tenant after closing provided, however, that the District's obligation to pay the relocation costs shall only extend until the end of the first lease in effect after closing, if applicable, or for three years, whichever is longer.
- c. County shall pay any relocation costs after the period of time as described in 3.b.

b. Cresta I: The Cresta I Property will be transferred to the County, subject to the following terms and conditions:

- i. No later than March 7, 2018, the District shall transfer and the County shall accept fee title to the Cresta I Property, which transfer shall be made by grant deed in the form attached hereto as Exhibit _____ and in accordance with Public Resources Code Section 5540.6. The date of such transfer shall hereinafter be referred to as the "Transfer Date." District shall transfer and County agrees to accept the Property in its "AS IS" condition with all faults and without representation or warranty from District. Concurrently, the County shall convey to the District the Conservation Easement and Recreation Covenant.

- c. Cresta II: The Cresta II Property will be transferred to the County, subject to the following terms and conditions:
- i. On the Transfer Date (as defined above), the District shall transfer and the County shall accept fee title to the Cresta II Property, which transfer shall be made by grant deed in the form attached hereto as Exhibit _____ and in accordance with Public Resources Code Section 5540.6. District shall transfer and County agrees to accept the Property in its "AS IS" condition with all faults and without representation or warranty from District. Concurrently, the County shall convey to the District the Conservation Easement and Recreation Covenant.
- d. McCullough I: The McCullough I Property will be transferred to the County, subject to the following terms and conditions:
- i. On the Transfer Date (as defined above), the District shall transfer and the County shall accept fee title to the McCullough I Property, which transfer shall be made by grant deed in the form attached hereto as Exhibit _____ and in accordance with Public Resources Code Section 5540.6. District shall transfer and County agrees to accept the Property in its "AS IS" condition with all faults and without representation or warranty from District. Concurrently, the County shall convey to the District the Conservation Easement and Recreation Covenant.
 - ii. Contemporaneous with the transfer of the McCullough I, Cresta I, and Cresta II properties, the District will rescind and replace the McCullough Easement with the Conservation Easement.
 - iii. The District shall continue to administer and pay for the contract with Pacific Watershed Associates to evaluate the bank erosion on Mark West Creek just upstream of the second bridge, and design a bank repair. The District will provide Parks with funding to secure appropriate permits, perform environmental review, and implement the bank repair. The repair will be completed within a two year period of this agreement.
 - iv. The District shall continue to administer the funding from the Sonoma County Transportation Authority towards the Cresta Riparian Planting Project, per the funding agreement (don't have exact title...need to get this from Donna). This includes all payments for staff and contractor time to fulfill the District's obligations for this agreement. Per the

agreement, the SCTA mitigation planting zones will be included in the area designated on the project structure map as the Riparian Protection Area. The requirements of the funding agreement will be completed within a five year period of this agreement.

3. *General Obligations* At all times, unless a more finite period is otherwise specified, the Parties shall comply with the following terms and conditions.

- a. Cooperation. The parties agree to cooperate and to do all acts reasonably necessary and appropriate to satisfy the purposes of this Agreement.
- b. Disclosure. Each party will provide to the other party copies of all reports received in the course of that party's investigation of the Property within five (5) days of its receipt.
- c. Due Diligence Regarding Properties Already Owned by District. The County, at its own expense, will undertake whatever measures it deems necessary or appropriate to facilitate a timely transfer of the Mark West Properties, as contemplated herein, including completion of any due diligence investigations of the McCullough, Cresta I, and Cresta II properties. If the County discovers conditions or circumstances on the McCullough, Cresta I, and Cresta II properties that were not known, anticipated or foreseen at the time of execution of this Agreement that create an unreasonable risk of harm to persons or property, or create unreasonable liability for the County as owner of the Property (collectively "Unacceptable Conditions"), the County shall notify the District of such Unacceptable Conditions as soon as practicable, but not later than 60 days after the Effective Date of this Agreement, which 60-day period shall hereinafter be referred to as the "Due Diligence Period." The Parties shall thereafter attempt, in good faith, to address and resolve same. The County's obligation to accept fee title to the McCullough, Cresta I, and Cresta II properties shall be subject to either (1) no such conditions or circumstances having been discovered by the County, or (2) such conditions or circumstances having been addressed and resolved to the satisfaction of the County. Should the County fail to notify the District of any Unacceptable Conditions prior to the expiration of the Due Diligence Period, the County's obligation to accept fee title shall be subject to only such conditions as are explicitly provided in this Agreement.
- d. Workplan. The County shall submit to the DISTRICT for approval no later than 120 days after the Effective Date of this Agreement a Workplan describing the County's initial public operations and maintenance of the Mark West Properties (the "Workplan"). The Workplan includes (1) a general description of the work to be performed; (2) a timeline or schedule for work completion; and (3) a detailed

budget. The Workplan may be amended from time to time with District's written approval. Such approval shall not be unreasonably withheld.

- e. Opening the Property for Initial Public Use. On a date mutually agreed upon by the parties, which shall in no event be later than three (3) years after the Closing Date, the County shall open and keep open the Mark West Properties for low-intensity public outdoor recreational use consistent with the limitations and requirements in the Conservation Easement and Recreation Covenant.
- f. Management Plan. When the County prepares the Management Plan for the Mark West, Wendle and Cresta III Properties, but no later than five (5) years from the date of this Agreement, the provisions of such Management Plan must be consistent with provisions of the Conservation Easement and Recreation Covenant. The County shall manage the property consistent with any Management Plan for the Mark West Properties. Any amendments or revisions to the Management Plan shall not be effective without the prior written approval of the District's General Manager.
- g. Operation and Maintenance. The County shall operate and maintain the Property as a public park and open space preserve with low-intensity outdoor public recreation consistent with the Management Plan and Conservation Easement.
- h. Operation and Costs Reimbursement. The District shall reimburse the County for the reasonable and necessary costs incurred in developing initial public access, and operating and maintaining the Mark West, Wendle and Cresta III Properties in accordance with the Workplan for the period commencing with the Transfer Date and ending three years thereafter; provided, however, that the District's obligation to reimburse the County shall not exceed \$_____ total
- i. Reimbursement of Claims. The County shall complete and submit no more frequently than monthly and no less frequently than quarterly, reimbursement claims in the form attached hereto as Exhibit "____". The District will pay the claims of Parks within 30 days of receipt of such claims, provided that the District's General Manager is satisfied that the claims are complete, include adequate supporting documentation and are for eligible expenses reasonably incurred in connection with the County's operation and maintenance of the Property in accordance with the Workplan.
- j. CEQA & Mitigation Monitoring. The County shall be the lead agency for the performance of any obligations required by the California Environmental Quality Act ("CEQA").Survival. The County's obligations set forth in this Paragraph ____ shall survive beyond the Closing Date and shall be considered perpetual, unless specifically terminated in writing by the District's Board of Directors.

- k. Procurement Requirements. District has reviewed County's competitive procurement procedures, policies, laws and regulations and agrees they are sufficiently rigorous to satisfy District's fiduciary duties relating to the expenditure of funds hereunder. County or its agent, shall comply with County's competitive procurement procedures, policies, laws and regulations in procuring goods and services hereunder and County shall ensure that costs to be reimbursed by District do not exceed fair market value.
- l. Insurance Requirements. County shall maintain the Insurance specified in Exhibit ____ attached hereto and incorporated herein.
- m. Conditions on Payment. The District shall not be obligated to disburse any funds unless and until the following conditions have been met:
- i. The Conservation Easement has been executed and recorded and the County, or its successor, is in compliance with the terms of the Conservation Easement.
 - ii. A Workplan, pursuant to Paragraph ____ of this Agreement, has been approved by the District.
 - iii. The County has provided written evidence to the District that all permits and approvals necessary to complete the work under applicable local, state and federal laws and regulations have been obtained.
 - iv. The County has provided written evidence to the District that each contractor the County intends to retain in connection with the District's funding has agreed to comply with the procurement requirements described in Paragraph ____ of this Agreement.
 - v. The County has provided required insurance coverage as described in Paragraph l. of this Agreement.
 - vi. The County has provided proof of compliance with the California Environmental Quality Act (CEQA).
 - vii. The County is not in default with respect to its obligations under this Agreement.
- n. Quarterly Reports. The County shall submit quarterly reports documenting the County's implementation of the Workplan. Such quarterly reports shall be in a form acceptable to District and include:

- i. Summary of tasks accomplished including a summary of the costs associated with tasks, including volunteer patrol reports;
 - ii. A description of any challenges and/or opportunities encountered within the reporting period;
 - iii. Percentage of District's funds expended to date; and
 - iv. Photographic documentation corresponding to tasks accomplished.
- o. Final Report. The County shall submit a final report to District demonstrating that the Workplan goals were accomplished in accordance with this Agreement within forty-five (45) days of submission of its final reimbursement claim. The final report should include photographic documentation demonstrating completion of tasks.
- p. Prevailing Wages. County shall comply with all applicable wage and hour laws, including without limitation Labor Code Sections 1775, 1776, 1777.5 1813 and 1815 and California Code of Regulations, Title 8, Section 16000, *et seq.*
- q. Accessibility. The County shall ensure compliance with the Americans with Disabilities Act in the provision of public access to the Property.
- r. Nondiscrimination. The County shall comply with all applicable federal, state and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis including, without limitation, the District's Non-Discrimination Policy. All nondiscrimination rules and regulations required by law to be included in this Agreement are incorporated herein by this reference.
- s. Records Retention. All financial, procurement, licenses, insurance, and programmatic records related to the Property shall be maintained by the County for no less than five (5) years after the Closing Date.
- t. Records Access. District staff shall have access to financial, procurement, licenses, insurance, and programmatic records related to all funding received by the County from the District pursuant to this Agreement for no less than five (5) years after the Closing Date.
- u. Annual Audit. The County shall submit annual audited financial statements to the District by August 31st of each year from transfer of the Mark West Properties until the Workplan is complete.

- v. Accounting Requirements. The County shall maintain an accounting system in accordance with generally accepted accounting procedures and standards, and as such:
 - i. Accurately reflects responsible fiscal transactions, with the necessary controls and safeguards;
 - ii. Provides a solid audit trail, including original source documents such as purchase orders, receipts, progress payments, reimbursement claims, invoices, timecards, and evidence of payment; and
 - iii. Provides accounting data so the total costs of operations and maintenance each individual component can be readily determined.
- w. Statutory Compliance. All activities and uses in connection with the Property shall be subject to and undertaken in accordance with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

4. *Indemnification*. Each party hereby agrees to defend and indemnify the other party and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorneys' fees, resulting from any breach of this Agreement by such party. This paragraph shall survive beyond the closing, or, if title is not transferred pursuant to the Purchase Agreements, beyond any termination of this Agreement.

5. *Termination*. Notwithstanding any other provision of this Agreement, should the County fail to perform any of its obligations hereunder within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, the District may immediately terminate this Agreement by giving the County written notice of such termination, stating the reason for termination. Similarly, should the District fail to perform any of its obligations hereunder within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, the County may immediately terminate this Agreement by giving the District written notice of such termination, stating the reason for termination. In the event of a failure to perform any of the obligations hereunder, the other party shall give written notice of said failure and provide a reasonable time to cure said failure prior to terminating this Agreement.

6. *Method and Place of Giving Notice, Making Submissions and Payments*. Except as otherwise expressly provided herein, any notice, reimbursement claim, report, demand, request, approval, disapproval, or other communication that either party desires or is required to give under this Agreement shall be in writing and either served personally or sent by first class mail, private courier or delivery service, or fax addressed as follows:

TO DISTRICT:

General Manager
Sonoma County Agricultural Preservation
and Open Space District
747 Mendocino Avenue
Santa Rosa, CA 95401
Telephone: (707) 565-7360
Fax: (707) 565-7359

TO COUNTY:

Regional Parks Director
2300 County Center Drive, Suite 120A
Santa Rosa, CA 95403
(707) 565-2041 (phone)
(707) 59-8247 (fax)

7. *Assignment and Delegation.* The County shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the District, and no such transfer shall be of any force or effect whatsoever unless and until such consent is received.
8. *Amendment.* No changes in this Agreement shall be valid unless made in writing and signed by the parties to the Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties.
9. *Miscellaneous Provisions.*
 - a. No Waiver of Breach. The waiver by either party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
 - b. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. The County and the District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement; the language of the Agreement will not be construed against one party in favor of the

other. The County and the District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

- c. Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- d. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- e. Merger. This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- f. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of the last signature below (“Effective Date”).

APPROVED:

SONOMA COUNTY AGRICULTURAL
PRESERVATION AND OPEN SPACE
DISTRICT

APPROVED:

THE COUNTY OF SONOMA

President, Board of Directors

Chair, Board of Supervisors

Date: _____

Date: _____

ATTEST:

ATTEST:

Clerk of the Board of Directors

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

APPROVED AS TO FORM

County Counsel

County Counsel

(The following can be deleted prior to finalization of this document)

EXHIBITS

Conservation Easement (to cover the Mark West properties and Cresta III?; a remote possibility is that it covers the non-homesite portion of Wendle as well)

Recreation Covenant (to cover the Mark West properties and Cresta III?; a remote possibility is that it covers the non-homesite portion of Wendle as well)

Reimbursement Agreement (re: Wendle)

Irrevocable Offer of Dedication (re: Wendle)

Promissory Note (re: Wendle)

Deed of Trust (re: Wendle)

Grant Deed (re: Cresta I)

Grant Deed (re: Cresta II)

Grant Deed (re: McCullough I)

Work Plan

Reimbursement Claim Form