

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5260
EMAIL: NORTHCENTRALCOAST@COASTAL.CA.GOV
WEB: WWW.COASTAL.CA.GOV



Th10c

Prepared November 13, 2024 for November 14, 2024 Hearing

To: Commissioners and Interested Persons
From: Peter Allen, Transportation Program Manager
Eric Stevens, Senior Transportation Analyst
Subject: STAFF REPORT ADDENDUM for Th10c
CDP Number 2-24-0867 (Wildlands Conservancy Access Improvements)

The Commission received many comments since the publication of the staff report on November 1, 2024, both supporting and opposing The Wildlands Conservancy's (TWC's) public access project at the Estero Americano Preserve. In particular, the Commission received nearly 400 letters of support for the project, and also approximately 30 letters in opposition (see posted correspondence package for this item). One of the opposition letters was a lengthy submittal from the attorney for the Bodega Harbour Homeowner's Association (HOA), where that letter and its direct attachments are in the correspondence package. However, the HOA also submitted thousands of pages of separate documents, that staff has also reviewed, which are not in the posted correspondence package for this item, but are included in the permit file and record for this project, and available for review at the Commission's North Central District Office in San Francisco.

The purpose of this addendum is to respond to comments opposing the staff recommendation, including primarily those from the HOA. The Commission also received multiple comments from individual members of the HOA, but staff believes the existing staff report and this addendum address those comments.

1. Bodega Harbour HOA Comments

This addendum adds the following new findings to the staff report as new section 4.D.8 on staff report page 28, following the CEQA finding:

8. Response to Bodega Harbour HOA

On November 8, 2024, the Commission received further comments opposing the proposed project from the attorney representing the Bodega Harbour HOA. Overall, the HOA contends again that it is illegal for the public to use an existing public pedestrian easement and trail on their property to access the Preserve trails. The Commission findings that address these concerns are found in the preceding Public Access section on pages 12-20 of this report. As discussed, future users of the trails on the Preserve will access those trails by using County public roads within the HOA, a County public

parking area within the HOA, and public parking on the County public roads within the HOA, from which they will use an existing public access easement that crosses HOA property, known as the Shorttail Gulch Trail. TWC would replace a portion of the existing fence it owns to install a gate on its property directly adjacent to that public easement, from which trail users could pass through the gate onto the preserve and its system of coastal shorefront trails, or instead continue on the existing trail. As also noted previously, the Shorttail Gulch Trail public access easement resulted from the 1977 Settlement Agreement between the HOA's predecessor and the California Coastal Zone Conservation Commission, the Coastal Commission's predecessor. The HOA continues to argue that because the easement at issue was defined as being access to the beach, it cannot now be "expanded" to include connections to the trails on the Preserve. Not only is that inaccurate framing inasmuch as the easement is for public pedestrian purposes, which is how it would be used to access the Preserve trails, but the Preserve trails also offer access to the shoreline and beach, which is consistent with use of the easement to provide access to the beach.

In short, the Commission continues to find that the Shorttail Gulch Trail is a "public pedestrian easement" and therefore allowing public pedestrians to use the trail is consistent with the easement, regardless of whether those users proceed on the trail directly to the beach, proceed from the trail onto the Preserve, or use both to make a loop. While covered above, this section will also offer additional findings below related to use of the Shorttail Gulch Trail easement. However, because the HOA comment letter delves into many specific legal issues, it is necessary to first review the background on the nature of the easements at issue, some of which is already included in the findings above, and as supplemented here.

A. Additional Background on Transfers of Land/Public Use Rights to the Public

Prior to the 1977 Settlement Agreement the HOA¹ had already transferred all road property to the County for general public use as public roads. There was also an existing 1973 public access easement running through Shorttail Gulch to the ocean. (This easement originally connected the HOA roads to the ocean, but once the 1977 agreement reduced the extent of the HOA development, it no longer connected to the roadway.) The 1977 Settlement Agreement resulted in a number of separate specific transfers to Sonoma County for public access. The first is a "public pedestrian shoreline easement" that transferred HOA property along the beach and adjacent shoreline to the County. This is known in the 1977 documents as "Tract A"² and was described as being part of the nearby Sonoma County Doran Park. The second was the transfer of land from the HOA to the County for a public parking area adjacent to Mockingbird Lane and at the top of the soon-to-be Pinnacle Gulch Trail. This is known in the 1977 documents as "Tract B". A third transfer was the grant of a "public pedestrian easement" for the Pinnacle Gulch Trail described as being from Tract B to Tract A. This easement was known in the 1977 documents as Easement C. A fourth transfer was the grant of the "public pedestrian easement" connecting the public roads to the existing 1973 Shorttail Gulch Trail easement. This easement was known in the 1977 documents as Easement

¹ These references are in fact to the HOA's predecessor TransCentury Properties. The HOA's purchase of the property appears to have been completed in 1981.

² See [Exhibit 5](#), page 3 for an overview map of these various granted public property right areas.

G and is the easement at issue here as public users would use that section known as Easement G to reach the gate and trails on the Preserve. Lastly, a fifth transfer was the grant to Sonoma County and the State of California of an open space and conservation easement across various areas of the property intended to be preserved for open space. This easement was known in the 1977 documents as “Tract D”. Tract D included among its enumerated granted uses:

...low density recreational uses such as equestrian and hiking trails and other open space uses such as the County and the Commission ... agree do not conflict with the aesthetic and environmental values...

The portion of Easement G in question also sits on top of lands designated as Tract D, and the Commission in these findings, including the reasons supporting same, agrees that its proposed pedestrian access use does not conflict with any aesthetic or environmental values, consistent with Tract D allowed uses.

As important additional background, in 2015 TWC granted to Sonoma County a “Recreation Conservation Covenant” (Grant 1) and a “Conservation Easement and Assignment of Development Rights” (Grant 2) over the Preserve.³ Grant 1 was a conveyance to the County that granted a covenant that the Preserve “be available to the public in perpetuity for low-intensity outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein.” Grant 1 also stated that: “The parties acknowledge that, initially, public access to the Property will be from the coast via the Shorttail Gulch public trail.” Grant 2 included allowances to protect and provide “recreational and educational values,” which specifically included “opportunities for low intensity public outdoor recreation, environmental education, and research uses, provided that such uses are compatible with the protection of the Property’s natural resources.” Grant 2 also identified that TWC may develop a “Management Plan for the Property to define and guide future use and development of the Property.” The proposed project is completely consistent with both grants, where Grant 1 even explicitly identifies the use of the Shorttail Gulch public trail to access the Preserve, evincing an acknowledgment by both parties, the County and TWC, that such use was appropriate.

B. HOA Easement G Scope and Purpose Contentions

The HOA contends that use of Easement G is impermissible because that easement was only intended to provide access from the roads within the Bodega Harbour subdivision to the beach – that is from the public roads and Tract B (the County owned public parking area) to Tract A (the County owned shoreline). The HOA contends pedestrian use of the trail to connect to trails on the Preserve is an impermissible expansion of the easement. As already noted earlier in this report, the Commission finds that the easement is defined as a “public pedestrian easement.” Although the easement is defined as being between two locations, as all easements must be, its essential purpose and scope is to serve for public pedestrian use, where that use is not

³ Both of these grants are included in the materials submitted by the HOA under “BHHA Supporting Documents” and under “6F Estero Ranch Acquisition Documents,” and are specifically labelled 6C and 6D (see [Exhibit 9](#)).

prescribed as only back and forth between such points. In other words, a recreational trail experience is not necessarily defined by traversing from one point to another, but the experience of being on the recreational trail itself, wherever one may be on that trail, including if that means not using all segments of it. The proposed use here would not change the location of Easement G, would not reroute the trail, expand the trail, or modify its start or end points. As previously noted, trail users will use the easement as they always have: as public pedestrians on a trail. Some users will continue to the shoreline as they always have, and some will divert from the trail onto another trail. Indeed, some will do both – currently one can reach the Estero from the County's shoreline (Tract A) by traversing the shoreline, but only under certain low tidal conditions (and with some risk because the journey needs to be back and forth during a narrow tidal window). The ability of recreational users to use the Estero trails will allow one to make the journey along the Shorttail Gulch Trail to the beach, and then along the shoreline to the Estero, and then return along the Preserve trails without fear of being captured by incoming tides. Indeed, the Preserve trails will also enable further connections to Doran Regional Park, a County owned park just north of the HOA property and the preserve, from which many users can park and hike along the shoreline to access the Preserve trails and perhaps the same loop just described.

It should also be noted that Easement G is connecting multiple public lands or interests, which supports the point that its fundamental purpose is to provide for public recreation generally not limited to traversing from one point to another only. The scope of Easement G on the Shorttail Gulch Trail is to provide public pedestrian access between public recreational areas, and it will continue to do the same. The HOA makes much of Easement G serving Tract A and Tract B and the public roads in the subdivision, but these are all publicly owned spaces owned in fee by Sonoma County. Easement G also provided access to connect these public lands to an existing public easement trail owned by Sonoma County, the 1973 easement. Now, Easement G will continue to provide public pedestrian connections between public lands but also connect to another public interest – the trails on the Estero in which Sonoma County has an interest for conservation and recreational use.⁴

The HOA cites various caselaw to support its proposition that the easement cannot be used to serve as a connection point for the Preserve trails, while the TWC's attorneys' letter ([Exhibit 6](#)) offers caselaw to support use of the trail for the connection. Caselaw does recognize that owners of an easement may make use of the easement as needed to fulfill their rights,⁵ and that some changes in the nature of use may occur,⁶ so long as

⁴ Also relevant is that TWC is an incorporated non-profit entity, dedicated to, among other things, recreational opportunities, and that TWC acquired the Estero Preserve through a grant from the California Coastal Conservancy, a state agency.

⁵ A grant of an easement gives the dominant estate "both those interests expressed in the grant and those necessarily incident thereto" (*City of Pasadena v. California-Michigan etc. Co.* (1941) 17 Cal.2d 576, 579). Here, the grant gives the public rights for pedestrian access to recreate on the easement and to connect to other lands in which the public has a right of access and an interest in recreation.

⁶ As explained by TWC's attorney, courts have recognized that that grant of an easement should be liberally construed in favor of the grantee, and lands granted for public use should be construed to include "all such public purposes, present or prospective, whether than known or not..." (*Norris v. State of*

those changes do not materially increase the burden on the servient tenement, unreasonably interfere with the rights of the underlying owner, and are not inconsistent with the uses granted. The Commission does not believe the proposed pedestrian use would change the character of the easement because it remains a public pedestrian easement trail connecting public lands and trails and will only be used for low intensity public recreational hiking. Additional connections to public trails are not inconsistent with the use originally granted, as long as the use remains low-intensity pedestrian recreational use.

The HOA asserts that at the time of the dedication of Easement G, the HOA did not envision access to the adjacent parcel, then privately owned. However, it was known that the easement was connecting public parcels with a public trail (the 1973 easement) and other public lands and that the Coastal Commission and the state generally had an interest and intent to expand coastal recreation in the area given the broad public access and recreation mandates of the 1976 Coastal Act.⁷ Here the proposed use of the dominant tenement is within the normal and reasonable development of the dominant estate, and the resulting change is by and large reasonable.⁸

Finally, it should be noted that Easement G occupies a portion of Tract D. Tract D granted usage rights to the County and the state that included among its enumerated granted uses: "low density recreational uses such as equestrian and hiking trails and other open space uses." The grant deed for Tract D specifically noted the right of the Coastal Commission to determine the appropriateness of other recreational uses on Tract D, giving the state and the Commission an interest here. That the land on which the Shorttail Gulch trail easement sits is undeveloped land with an attributed use for low density recreational uses including hiking, which is what is proposed here, supports the Commission's findings that broad public pedestrian use of the trail easement is appropriate.⁹ Indeed, the easement on Tract D would seem to allow for the trail use and connection by itself; but, rather than adding additional trails on Tract D, having hikers use the Shorttail Gulch Trail provides the intended use while maintaining the present natural open space environment.¹⁰

California ex rel. Dept. Pub. Wks., (1968) 261 Cal. App. 2d 41). The HOA asserts that Norris is inapposite here because it concerned a public roadway – but both involve public rights of access.

⁷ In fact, the 1977 agreement and easement grants recognized that the Commission had the duty to protect, preserve, and restore the coastal zone environment for the benefit of present and future residents, and that Sonoma County had an interest in Doran County Park, for which the grants here expanded and connected to that park.

⁸ See *Norris v. State of California ex rel. Dept. Pub. Wks.*, (1968) 261 Cal. App. 2d 41, p. 49, citing 3 American Law Reports, Third Series, page 1242, 1260. Moreover, as stated in *Norris*: "A grant is to be interpreted liberally in favor of the grantee. (Civ. Code, § 1069.) This applies to a grant of an easement. (Laux v. Freed, *supra*, 53 Cal. 2d 512, 522.)" (261 Cal. App. 2d 46-47).

⁹ And the fact that there is a pedestrian easement on top of a portion of a general conservation and recreational easement (i.e., Tract D includes multiple areas spread across the HOA property) shows that the two are to be harmonized, where low intensity public trail use as proposed is consistent with both.

¹⁰ Given that Tract D covers numerous separate areas of the HOA property, much of which is adjacent to the TWC property, and given that Tract D allows for public recreational trails, the HOA could, if it were to be so inclined, coordinate with TWC to develop an alternative access point to the Preserve as well.

C. HOA Easement G “Appurtenant” Contentions

The HOA contends that because Easement G is described in the grant deeds as appurtenant it cannot serve to support recreational access to the Preserve. The grant deed in the 1977 Settlement Agreement does state that Easement G “shall be appurtenant to Tracts A and B and the dedicated road right of ways appurtenant to such easement and shall be for the benefit of Tracts A and B and such road rights of ways....” As discussed above, Tracts A and B and the roads are all owned in fee by Sonoma County. Somehow, the HOA reads this to find that ‘Easement G benefits the Bodega Harbour development and access to the beach.’ The HOA also concludes that because Easement G is not described as appurtenant to the Preserve, it cannot serve to connect there. In other words, because it is appurtenant to Tracts A and B and the public roads, the easement can only serve to connect Tracts A and B and the public roads. The HOA reads appurtenant in this case to mean they must physically connect with one another.

However, the HOA overlooks the nature of the property rights in the tracts and in the easement. Easement G is described as a “public pedestrian easement.” An easement is “an incorporeal or intangible property right that does not relate to physical objects but is instead imposed on the servient land to benefit the dominant tenement land.”¹¹ An easement is appurtenant when it is legally attached to the land of the owner, which is the dominant tenement, and burdens the land of another, the servient tenement.¹² The easement in question here is defined as a “public pedestrian easement.” The properties it is appurtenant to are all public parcels owned by Sonoma County.¹³ Easement G serves at the benefit of these public tracts by providing public pedestrian recreation across the property onto public lands. It is also true that the Easement G served to connect to an existing public access trail (the 1973 easement) running through Shorttail Gulch. Thus, rather than serving the HOA, Easement G served the public and their use of public roads and the public parking lot to use the easement for public pedestrian access, and to connect to public rights on a public trail or on the public shoreline, just as it will continue to do so, now also connecting to public trails on the Preserve.

Rather than define appurtenant to imply a specific geographic extent, that Easement G is appurtenant means that it is for the benefit of the owners of relevant parcels. The definition of appurtenant is that it “belongs to,” that is, it is for the “benefit of.” This is clear in the language of the deed itself: “and shall be for the benefit of Tracts A and B

¹¹ *Kazi v. State Farm Fire & Casualty Co.* (2000) 103 Cal.Rptr.2d 1, 8.

¹² *Cushman v. Davis* (1978) 80 Cal. App. 3d 731, 735. This compares to an easement in gross which is a grant of right to a person.

¹³ The HOA cite to *Committee to Save Beverly Highlands Homes Assn. v. Beverly Highlands Homes Assn.* (2001) 92 Cal.App.4th 1247, 1269, which is a quote from *Witkin*: “An easement is an interest in the land of another, which entitles the owner of the easement to a limited use or enjoyment of the other’s land” (4 *Witkin, Summary of Cal. Law* (9th ed. 1987) *Real Property*, Section 434, p. 614, italics omitted). An easement appurtenant to the land is “attached to the land of the owner of the easement, and benefits him as the owner or possessor of that land” (*Id.*, Section 435, p. 615). The HOA is not the owner of the easement, thus Easement G is not for the benefit of the Bodega Harbor HOA; it is for the benefit of the County on behalf of the state, and the use here is for a public pedestrian trail.

...." *Easement G belongs to the owners of Tracts A and B and the public roads, that is Sonoma County and the public.*¹⁴

That the 1977 Settlement Agreement and deed intended a broader meaning of appurtenant rather than just physically touching is clear in the definition of Tract D. Tract D is also defined as being "appurtenant" to Tracts A and B, yet Tract D is scattered throughout the entire HOA property, much of which is not directly adjacent to Tracts A or B. And Tract D does not connect Tracts A and B. A consistent reading of the use of appurtenant across the document is that appurtenant means "to belong to" as in to serve, not to physically connect.

Thus, again, Easement G belongs to the owners of Tracts A and B and the public roads, that is to Sonoma County and the public. Here, Sonoma County acquired an open space and recreation easement in the Preserve. In that open space and recreation easement, the parties acknowledged access would be via the Shorttail Gulch trail, at least "initially." Use of Easement G is still to the benefit of Tracts A and B and the public County roads because it allows the public to connect from those spaces to other areas on which it has public rights. The HOA's reading of appurtenant would mean that the public could use Easement G to connect Tract A (the shoreline adjacent to the HOA) but then could not connect to other public areas, such as the shoreline north or south of Tract A, a conclusion that would suggest that the public is not allowed on public lands, which is simply a nonsensical conclusion.

Lastly, even if the term appurtenant requires a physical connection, in this case, such a connection would exist. Tract A, Tract B, the public roads would all physically connect through Easement G and the Shorttail Gulch trail to the Estero Preserve, and therefore Easement G is to the benefit of Sonoma County and the public to make a connection to public recreational trails on the Preserve, in which the state and Sonoma County have an interest.

D. HOA Easement G Overburdening Contentions

Throughout its comments, the HOA expresses concern that approval of the trail network on the Preserve and the connection via the Shorttail Gulch trail will dramatically increase visitors to Shorttail Gulch Trail with problems in parking demand, trash, crime, etc. Therefore, the HOA contends that such use of the Easement G will be excessive and overburdensome and will violate the HOA's rights as the servient tenement holder.

The Commission finds that because the easement is a "public pedestrian easement" it is intended to broadly serve the public for this purpose. The 1977 Settlement Agreement and easement grant deeds did not set any limit on the numbers of public visitors. It should be expected that public visitorship will fluctuate over time, and indeed one must anticipate that recreational use by the public will increase over time given population growth and other factors. A potential increase in the number of public users of a public pedestrian easement does not violate the terms of the easement because it is vested

¹⁴ An additional reading here is the use of the word "and" in the deed: "shall be appurtenant to Tracts A and B and the dedicated road right of ways appurtenant to such easement and shall be for the benefit of Tracts A and B and such road rights of ways...." (emphasis added). Thus, appurtenant can refer to both a physical connection and a "belonging to" connection.

into the public, which includes the public broadly, rather than some limited number of them.

The HOA comments conclude that “there is not [a] requirement that the easement specify a numerical limit in order to conclude that the easement contemplated a limited number of people using it” and complains that tens of thousands of additional people per year may use the proposed trails on the Preserve. However, the HOA dramatically overstates the likely increase in trail user numbers, and even if problems emerge over time with public use, there are numerous options to address those concerns.

The HOA claims that trail users here would jump from 6,900 people per year to 68,000 to 120,000 and bases those estimated of current use at the Tennessee Valley trail system in the Golden Gate National Recreational Area of some 204,000 visitors. This estimate is inappropriate as a baseline comparison, even if the HOA makes, without any detailed explanation as to how, an adjustment downwards. Tennessee Valley is a major trail system directly within heavily populated urban areas of Marin County and adjacent to a major metropolis (San Francisco), is part of an internationally known national park, serves multiple types of users (hikers, multiple cycling user types, horses, and other recreational users), has an extensive number of recreational facilities, including campgrounds, and sits directly north of the Golden Gate Bridge that attracts millions of tourists from all over the world, many of whom also enjoy adjacent recreational trails. Indeed, Tennessee Valley is at the center of the GGNRA, which ranked as the second most visited National Park in the country in 2023.¹⁵ The trails on the Preserve are in farther remote Sonoma County (roughly 1.5 hours from San Francisco), fairly inaccessible, and, although incredibly scenic and special for wildlife, not part of a nationally known park or other destination. The trails on the Preserve would also be a limited set of two trails limited to hikers. The HOA’s comparison is simply hyperbolic, in addition to being inapplicable and inappropriate.

The Commission also notes that the numbers cited by the HOA appear to be based on a “traffic count” taken by the National Park Study and available [online](#). That traffic study is based on an inductive traffic loop “[at the exit road](#) in Tennessee Valley.” Thus, the traffic count would appear to include all users travelling through Tennessee Valley, which would include many thousands travelling along multiple hiking, biking, camping, and other recreational trail heads, as well as to the popular Rodeo Beach and the Marine Mammal Center, as well as all of the vehicles that loop around the Marin Headlands from the Golden Gate Bridge, and all of those who recreate anywhere on the Marin Headlands in the GGNRA but exit via Tennessee Valley. All of this is vastly different from the much smaller visitor numbers along the Sonoma Coast, and especially so to this one trail head that would still serve a limited number of trails with limited amenities.

As described earlier, the Commission analyzed a traffic study prepared by W-Trans for TWC, which concluded that there was adequate parking on site and the increase in visitors would be relatively minor ([Exhibit 7](#)). The HOA calls this study “worthless.” However, the study appears appropriate and utilizes typical techniques and data

¹⁵ National Park Service Statistics, Annual Visitation Report by Years: 2013 to 2023

models. W-Trans also is a professional traffic engineering consultant firm, whereas the consultants the HOA relies on for traffic analysis are an ecologist and general consultant¹⁶ with no specific traffic engineering background. Rather than rely on the much larger Tennessee Valley trail system as a model, the W-Trans study more appropriately analyzed three Sonoma County parks more similar to the rural character of this site, all of which had a recreational trail across what was more generally preserved open space with otherwise limited recreation. For parking, the study utilized the Jenner Headlands Preserve and the Sonoma Mountain Regional Park, which are similar large rural parks primarily dedicated to conservation with limited trails and recreational facilities.

W-Trans concluded that the proposed project would increase parking demand by 14 spaces and that there would be up to 26 additional trips (i.e., a drive in and out of the residential subdivision) on peak weekday hours and 37 additional trips on peak weekend hours. The report also concluded there was adequate parking on hand to meet the new demand and that there would be no impacts for traffic, etc. Such more moderate increase in trail usage is consistent with the project's location in rural Sonoma County in an area described by the upcoming comprehensive LUP update as "lightly used." The trails would also be a single amenity, while the vast majority of the property is preserved for habitat restoration or cattle grazing with no public access. The Preserve trails would also not be part of a series of larger recreational amenities that might attract numerous visitors, but rather will remain lightly used recreational hiking trails. And use of the trails requires some hiking experience and stamina – from the trailhead to the Estero is about 1.5 miles hiking on varied terrain, with a 3-mile roundtrip and some significant climbing, while the blufftop trail would be a 3-mile loop with significant elevation gains. Moreover, the Preserve trails are one location in a series of separate parks, beaches, and hiking opportunities along this area of the Sonoma Coast, which reduces demand overall at this specific location.

The HOA describes parking as being already at capacity. Although there may be some weekend days of heavy use, the TWC traffic study showed that there was limited parking use, and that there was available parking to meet projected demand.¹⁷ As discussed below, there are also alternatives in the future should parking become a major issue, including the extensive parking at Doran Regional Park nearby, from which hikers can hike along the shoreline and connect to the Shorttail Gulch trail and/or Preserve trails.

The HOA also expresses concern over bathroom use, trash, and other such perceived issues with public visitorship. However, it should be noted again that Sonoma County is already responsible for managing the public restroom, the public parking area, and the existing easement trails, including such things as managing trash. If these issues escalate, then Sonoma County is already obligated to take management actions.

¹⁶ Incidentally, the consultant hired by the HOA to complete a traffic analysis states in her report that she lives in the HOA adjacent to the trailhead at issue, which raises some concerns related to impartiality.

¹⁷ Corroborating these findings, Commission staff have visited the Shorttail Gulch trailhead on multiple occasions and noted that there were typically one or less cars parked on the public street near the trailhead, and little parking use at all at the Pinnacle Gulch parking lot.

Moreover, TWC would provide bathroom facilities along the Preserve trails that will help address any potential bathroom issues.

Finally, as stated above, the Shorttail Gulch trail easement is an easement for public pedestrian access. Tract D, over which this easement lies, is also an easement held by the County for low density recreational uses such as equestrian and hiking trails and other open space uses. Public use may increase over time with any public access easement. That does not mean, however, that public use should be precluded or impeded. Rather, steps can be taken to address any problems that may arise. Here, the Commission notes again that Sonoma County is responsible for management of Easement G and Tracts A, B and D, and TWC can develop a management plan with the County under the Conservation Easement and Recreational Covenant described above that can also help address any potential issues should they arise.

In short, use and parking impacts are not expected, but they can be addressed if they arise. For instance, under the proposed updated LUP, Sonoma County policies prioritize the provision of transit, bicycle and pedestrian pathways to reduce vehicle use and parking demand, including the potential use of a coastal recreational bus shuttle service (see, for example, Programs C-PA-4-P1 and C-PA-4-P3). The County's encouragement of public transit to reach recreational areas could include this location in future transit if demand warrants, reducing parking concerns. Or, as part of County efforts to reduce GHGs and support transitions to multimodal uses, the County could provide bicycle racks for bike parking which would enable visitors from the Bodega area to ride there and avoid an increase in vehicle parking demand. The County can also increase trash management, improve the existing parking lot, and take similar actions to manage any potential use issues. In fact, Sonoma County could update the existing parking facility at the Pinnacle Gulch trailhead, and Sonoma County and the HOA could even pursue a parking plan CDP to adjust the number and location of parking spaces in the area and to better manage demand that way. Under the proposed updated Sonoma LUP, the County has a priority to identify and implement parking improvements and states that "Parking may be developed in phases as use levels increase."

All of this should also be considered in the context of the significant land area the HOA covers, where the trailhead at issue here only takes up a small location on the far southern edge of the development off Osprey Drive. All residents on Osprey Drive have significant private driveways and garages, and many homes are on separated cul-de-sacs with additional driveways/garages. Thus, the use of some of Osprey Drive's on-street public parking areas would not interfere with HOA owners' own parking.

Recreational trail use is also a very light and quiet use, and visitors will only be at the trailhead for a short time and only during the day. While users could access the Shorttail Gulch Trail at any time, the TWC Preserve will only be open during the day, and the gate is intended to be locked at night. No significant recreational facilities are proposed on or adjacent to the easement, such as picnic tables, fire pits, etc. Thus, the additional users would only be expected to create a temporary and quiet passing presence.

All of this supports the conclusion that although the connection to the Preserve trails may increase visitor numbers to the Shorttail Gulch trailhead to some extent, that increase should be relatively minor and will not result in an overburdening of the

easement or substantially interfere with the HOA's use and enjoyment of its own property.

E. HOA Special Condition 4 Contentions

The HOA claims that Special Condition 4 is "illusory and circular" and somehow violates Coastal Act Section 30601.3 based on an argument that it will substantially impair public participation. Special Condition 4, however, is merely an administrative step to ensure that applicants comply with all other legal requirements for a development. It does not allow for substantial changes to the project that is before the Commission at this time to happen at a later date. The public participation occurs before and at the hearing, which is a local hearing to the region and has a virtual option for participation and well ensures compliance with Section 30601.3. Indeed, Special Condition 4 as it has been written and imposed here, and in other Commission actions, ensures that if any future authorization requires project changes, the applicant returns to the Commission for an amendment and, therefore, returns to a public hearing, unless the Executive Director determines the change is so de minimis that no amendment is legally required.

The Commission finds that because the Shorttail Gulch Trail is a public trail, members of the public who use that trail segment to reach the Preserve trails do not need any specific authorization from Sonoma County. However, the findings and Special Condition 4 recognize that the County and TWC may want to cooperate to ensure trail use is best managed to protect the public and adjacent private lands and may determine an agreement is required. Therefore, Special Condition 4 allows for that and requires that any such agreement – should there be any – be submitted to the Executive Director to determine if the agreement results in changes to the development proposed here, and, therefore, whether an amendment (and a public hearing on the changes) is required.

F. HOA CDP Application Consolidation Contentions

The HOA claims that the CDP application for the proposed project is not properly before the Commission because under Coastal Act Section 30601.3 the Commission has not established jurisdiction and the San Francisco hearing is too far for adequate public participation. With respect to the Commission's CDP jurisdiction, the Commission's technical staff reviewed the proposed project and determined that multiple project elements are within the Commission's retained jurisdiction, including those directly adjacent to the Estero Americano that are at least partially on tidelands or former tidelands (including, at the least, the kayak pullout, the end of the trail onto the beach, and the bathrooms). In addition, a separate basis for finding a portion of the development to be in the Commission's CDP jurisdiction is that the project changes the intensity of access to water through the changes taking place in the Commission's retained jurisdiction.

With respect to public participation, such participation is not impaired here, including by virtue of the hearing's location in San Francisco. The Commission is a state agency that meets once a month across various locations statewide. The project is in the Commission's North Central Coast district, and staff worked diligently to schedule this item in the same district, and as close as feasible. The Commission is only able to meet

in the North Central Coast district typically twice per year, and that district covers four counties including San Mateo County, which is farther south from the project location than San Francisco. Additionally, the HOA comments here only go to their point of view, while coastal access is a matter of great importance to all Californians and, especially in this case, to those throughout the entire Bay Area who recreate along the Sonoma Coast. Having a hearing in the central point of the Commission's North Central Coast district is on balance a location that is reachable for a broad set of citizens interested in this project. In addition, the upcoming hearing is also a hybrid meeting which allows public participation in person and by virtual means, by both internet and telephone. And finally, it is clear that the public is already participating even before the hearing inasmuch as the Commission has received nearly 400 letters of support for the project in the time since this report was first published on November 1, 2024, in addition to the roughly 30 letters in opposition. Put another way, such substantial response to the published report is clear evidence that the public is already significantly participating in the CDP application review process. In short, CDP application consolidation has not impaired public participation in this matter.

G. HOA CDP Estoppel Contentions

The HOA asserts that various actions taken by Sonoma County in the 2000s indicated to the HOA that the County considered the trail to only serve to provide access to the beach south of the Bodega Harbor development, and therefore the County is estopped from now changing that interpretation.¹⁸

First of all, Sonoma County is neither the applicant nor the regulatory agency in this action. Moreover, whether estoppel could be applied against a government agency was discussed by the California Court of Appeal in Feduniak.¹⁹ The actions of Sonoma County (or the Commission) do not appear to meet any of the elements required for estoppel described in Feduniak. The cited actions by the County are only public statements in public planning documents describing the trail as being open to provide beach access and do not rise to some overt statements that could be considered as intended to mislead the HOA after the easements were already granted. There is no indication the statements of Sonoma County in various public staff reports were intended to cause the HOA to act in a way that led to its own harm; there is no indication Sonoma County knew of other facts contrary to its stated positions; and, most importantly, there is no indication the HOA relied on the actions of Sonoma County in the 2000s to its injury – the only possible argument would be its purchase of the property, which was completed in 1981, long before the actions of Sonoma County described by the HOA.

Moreover, while the HOA does reference Feduniak and its four part test, the HOA does not discuss Feduniak's holding that estoppel may only be applied against a government agency in extreme cases. In those cases, estoppel requires additional findings that: (1)

¹⁸ The Commission extensively discussed the concept of estoppel in CCC-16-CD-03/CCC-16-AP-01(Lent) (December 2016), which was upheld following extensive judicial review. Those [findings](#) are incorporated here, specifically at the very least pages 63 to 73 of that staff report.

¹⁹ See *Feduniak v. California Coastal Comm.* (2007) 56 Cal.Rptr.3d 591.

estopping the agency would not nullify a strong rule of policy adopted for the public's benefit and (2) if the estoppel were denied, the injustice to the party claiming the estoppel would outweigh and, therefore, justify "any effect upon public interest or policy that results from estopping enforcement of the Commission's orders." Moreover, in land use cases, the burden to show estoppel is higher still and will only be applied in the "the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow." A party attempting to show estoppel against a government agency in a land use context "faces daunting odds" (see Feduniak, at 611).

None of the four elements has been met here, and, in addition, the HOA cannot show that this is an extraordinary case justifying estoppel against a government agency (whether that is supposed to be Sonoma County or the Commission) acting in its land use regulation capacity. In short, the HOA's estoppel contentions are simply unfounded.

H. HOA ESHA Contentions

The HOA argues that the proposed trail use will impact ESHA and that this is impermissible because a public recreational trail is not an allowable use under Section 30240. The HOA states this position is correct regardless of the fact that the Commission has approved recreational trails in ESHA before, of which, 15 previous Commission actions are cited in footnote 12 on page 23 of this report.

The Commission simply disagrees with the HOA on this point and reiterates that this proposed recreational trail is a use allowable under Section 30240. Moreover, Commission staff, including one of its senior ecologists, have reviewed the trail and concluded that the trail has minimum impacts, is designed and sited to avoid impacts to the greatest extent feasible given its nature as a public recreation trail and that the appropriate compensatory mitigation is proposed. The HOA also claims that compensatory mitigation is not authorized under the Coastal Act, but that would run counter to decades of Commission actions utilizing compensatory mitigation, many of which were litigated. Recreational trails are, by their nature of providing an outdoor experience surrounded by nature and native plants and the native wildlife that thrive there, dependent on being in or adjacent to ESHA.

I. HOA CEQA Contentions

The HOA states that the Commission violates CEQA because it did not consider feasible alternatives or mitigation measures to lessen environmental impacts, but that is exactly what the Commission has done here. The HOA says that the Commission did not consider alternative access points, but the Commission did explore such alternatives. As discussed, access along Estero Lane is currently infeasible, Commission staff also explored with TWC if there were options to connect onto the property at other locations, but confirmed there are no other property borders that are adjacent to public lands that could serve for public trail entry, other than other areas of the HOA property, which appears infeasible at this time. The only public lands are the ocean, where access is impossible because of the steep coastal bluffs, and the Estero, which is only reachable by a long and difficult kayak or boat journey, which would rule out most trail use. The HOA claims the Commission never considered alternative time, place and manner alternatives for access, but the Commission did. Place is discussed

above, and the Commission considered different time options, ultimately agreed with TWC that 24-hour access was inappropriate given the context, and indeed, while agreeing that access should be daytime, requested and required in special conditions that TWC expand hours to one hour before sunrise to sunset. For the manner, pedestrian trail use is already in the lowest and lightest manner of use – light recreational hiking. Commission staff did explore cycling as another manner of access and to allow cycling use on the preserve trails, but in consultation with TWC determined that was not feasible at this time (besides the cycling to the Shorttail Gulch trailhead). Further, while the easement for Tract D allows for equestrian trails, TWC is not proposing such use on its trails.

The HOA states the Commission violated CEQA because it did not consider the project's effects, specifically on the amount of increased parking demand because of increased trail use. However, the Commission did evaluate that use, utilizing a traffic study prepared by the Applicant. As discussed above, that study appeared reasonable and justified in its conclusions.

J. HOA Miscellaneous Contentions

The HOA contends that other legal easement theories show that the change the existing Shorttail Gulch easement are not authorized, such as implied dedication or prescription. The HOA also states that there are no rights under the California Constitution or the public trust doctrine. The Commission has not reviewed all the evidence or completed all the legal research to make determinations on these theories at this time and is not arguing at this time that one of them gives rights to the public for use here, but does not preclude the state from making such arguments in the future based on evidence in the record here or that may otherwise become available. And, again, and more to the point, there is no change to the existing Shorttail Gulch Trail easement. It is a public pedestrian access easement today, and it will remain a public pedestrian access easement after the proposed project is implemented.

The HOA makes much of the various drafts for the LUP amendment that is before the Commission on the same day as this item and argues that elements of those drafts support their position that use of the Shorttail Gulch trail is not allowed. As discussed above, statements made by County staff in the various drafts of the LCP amendment do not support a finding that members of the public should be stopped from using the Shorttail Gulch trail for pedestrian trail use. Ultimately, the language certified by the Commission, which is scheduled for action before this item is heard, will be controlling. If that LUP amendment is adopted and becomes effective as recommended, the LCP would state: "Future trail access may connect Short-Tail Gulch Trail to Estero Ranch Preserve." The HOA attempts to argue this implies there is no present-day easement rights to use the Shorttail Gulch trail, but that is a misreading of the LUP language, which is simply acknowledging in practical terms, the Shorttail Gulch trail with the Preserve trails may connect (exactly what is before the Commission with this application), and if so, that would be consistent with the Sonoma LCP.

The HOA also argues that the proposed trails here would be inconsistent with the updated LUP if it is adopted beforehand because it does not include adequate parking or other facilities. In any case, neither the existing nor the updated LUP are the legal

standard of review in this consolidated permit application: the Coastal Act is. And further, the project as proposed can be found consistent with the LCP in terms of providing adequate parking, as discussed above, and the distance from the trail and nearby residences is as large as feasible.

The HOA also claims that the Commission is bound by the terms of the 1977 Settlement Agreement and therefore also required to limit the use of the Shorttail Gulch trail to only travel between the HOA public roads and the beach. Again, however, the easement is described as being for public pedestrian use, and no provisions in the 1977 Settlement Agreement state that future users of the trail could not divert from the trail onto other public trails or public lands. In addition, because use of the Shorttail Gulch trail to connect to Estero Preserve trails is consistent with the easements granted for Easements G and Tract D, it is also consistent with the settlement agreement on those grounds.

The HOA claims that use of the Shorttail Gulch Trail easement would amount to a taking because it is unlawful and excessive. But the Commission considers the public use of a public access easement to recreate on it and to connect to other public recreational trails or areas to be consistent with the terms of the Shorttail Gulch trail easement. Nor is approval of ongoing use of that pedestrian access easement somehow a condemnation proceeding. The HOA's taking argument has no merit.

2. Environmental Justice Findings

Both the HOA and certain neighbors along Estero Lane (see comment letter from Peter Prows in the posted correspondence package for this item) take issue with the findings related to Environmental Justice. Specifically, the findings that state that both parties "seek to deny and diminish coastal access based on socio-economic status and place of residence." As noted in that section, and this one, the HOA desires to limit public access here. The HOA also maintains a security guard station at the entrance to the subdivision along Highway 1, marked by multiple signs announcing private security is present, all of which does deter potential public access. Additionally, the Commission notes that the clients of Mr. Prows did file a lawsuit against TWC and Caltrans, and in that action took measures to limit public access.

Nonetheless, some reframing to such statements is appropriate, and therefore this addendum modifies the staff report on page 21 as follows (where text in underline format indicates text to be added, and text in ~~strikethrough~~ format indicates text to be deleted):

Here, the Bodega Harbour HOA and the private landowners along Estero Lane seek to raise barriers to coastal public access and deter visitors that are not residents of the ~~wealthy~~ HOA community or adjoining properties from accessing this area of the Sonoma Coast. In fact, certain Estero Land property owners did file a lawsuit against TWC and Caltrans, and in that action took measures to limit public access. And the HOA currently maintains a security guard station at the entrance to the subdivision along Highway 1, marked by multiple signs announcing private security is present, all of which does deter potential public access. Consistent with the Coastal Act's public access and recreation provisions, the Commission's EJ policy seeks to

address formal barriers, such as walls, gates, and preferential parking programs, or excessive surveillance, which can have direct impacts on specific populations, and informal barriers that might not be in place to intentionally prevent people from accessing the coast, but still may restrict access because of psychological impacts, such as instilling fear and anxiety for certain populations. It is through these types of actions that Instead, by virtue of their opposition they essentially seek to deny and diminish public coastal access for those not lucky enough to live in the HOA and/or near the Preserve, which is at its core exclusionary, and the opposite of equal 'access for all' in which the Coastal Act's public recreational access mandates are based. And the Commission here is tasked with maximizing public access and recreational opportunities for all, and takes that responsibility seriously; not just for the people lucky enough to live in the Bodega Bay area that will make use of these trails, but for all visitors to the Sonoma Coast, including those not as fortunate, including where based on socio-economic status and/or place of residence.

3. Tribal Consultation Findings

As noted in the findings on staff report page 25, Commission staff had a consultation meeting with the Federated Indians of the Graton Rancheria (FIGR) in September 2024, and the FIGR expressed an interest in future tribal activities on the site. Therefore, Special Condition 3 requires that: "TWC continue consultation with FIGR and, if feasible, develop a plan for Tribal use on the site, including provisions for some access, signage related to tribal history, and for possible use of the site for Tribal ceremonies."

On November 7, 2024, Commission staff met again with FIGR. FIGR expressed their support for Special Condition 3 of the project; however they had some recommended edits. Therefore, this addendum modifies Special Condition 3 (sections 3a and 3b) on staff report on page 7 as follows (where text in underline format indicates text to be added, and text in ~~strikethrough~~ format indicates text to be deleted):

a. Tribal Consultation and Use Plan. WITHIN ONE YEAR OF CDP ISSUANCE, the Permittee shall submit a Tribal Consultation and Use Plan to the Executive Director for review and written approval. The plan shall be prepared based on consultation meetings with the Federated Indians of the Graton Rancheria, the Tribe comprised of Southern Pomo and Coast Miwok people and is culturally affiliated to the project area, and/or the Kashia Band of Pomo Indians (and other Native American Tribes that express interest and demonstrate historical use of the site if they become evident and upon agreement of all the parties). Where feasible, the Plan shall provide for a program of Tribal access and use of the site, signage related to the Tribe's history and current use, and including use for traditional Tribal ceremonies. The plan shall also include provisions to ensure that public access and recreation avoid minimize impacts to cultural resources on the site to the greatest extent feasible. If neither tribe responds to consultation request, the Federated Indians of Graton Rancheria decline to engage in consultation, the Permittee may request a reduced plan submittal consistent with Special Condition 6 below, that only requires demonstrated consultation efforts.

b. Notification. At least one month 120 days (four months) prior to commencement of any ground-disturbing construction activities, the Permittee shall (1) provide

written notice notify to the Tribal Heritage Preservation Officer of the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list, including but not necessarily limited to the Federated Indians of the Graton Rancheria, and the Kashia Band of Pomo Indians; (2) invite all Tribal representatives on that list to be present and to monitor ground-disturbing activities; and (3) arrange for any invited Tribal representative that requests to monitor and/or with a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources.

4. Emergency Response

Multiple residents of the HOA claim that the increase in parking on the public streets near the Shorttail Gulch trailhead will impede the movement of emergency vehicles. The possibility that public parking on areas currently designated for public parking on a public road may in some future circumstances affect the movement of emergency vehicles is an important concern. However, it is not a reason to preclude public access at this important and significant recreational area where there is currently no public access. Rather, should Sonoma County and its Fire Department identify any such issues (and none have been demonstrated to date), then they will be able to pursue any necessary actions through normal protocols (e.g., proposing signage and/or red-curbings designed to ensure safe movement of emergency vehicles, if necessary).

5. Minor Staff Report changes

Staff has also identified some minor changes that are needed throughout the report, as follows (where applicable, text in underline format indicates text to be added, and text in ~~strikethrough~~ format indicates text to be deleted).

- a. Add new Exhibits 8 and 9 (attached to this addendum) to the staff report, and add the following to the Table of Contents on staff report page 3 and to the Exhibits cover page:

[Exhibit 8 – Special-status Wildlife Species Biological Mitigation Measures](#)
[Exhibit 9 – 6F Estero Ranch Acquisition Documents \(6C and 6D\)](#)

- b. Revise Special Condition 1b on staff report page 5 as follows:

Trail Detail. *The final siting and design of all the trails, the method of trail construction, a final trail signage plan with a language access component (i.e., providing for English as well as appropriate non-English languages), a robust trash and dog waste management program, and the final siting and design of picnic tables, restrooms, and other recreational amenities shall be clearly identified.*

- c. Add new subsection d to Special Condition 1 on staff report page 5 as follows:

Special-status Wildlife Species Biological Mitigation Measures. *All biological monitoring, avoidance, and minimization measures (AMMs) detailed in [Exhibit 8](#) shall be implemented.*

- d. Modify text on staff report pages 11 and 12 as follows:

TWC is already restoring large segments of the property, primarily as mitigation for the Caltrans' Estero Americano Bridge Replacement project (approved by the Commission pursuant to CDP 2-15-1354, as well as potentially other Caltrans projects). The restoration CDP application is being proposed as a CDP Waiver and will come before the Commission at a subsequent hearing (see CDP Application 2-24-0346).

e. Modify text on staff report page 16 as follows:

Special Condition 1 also requires the Applicant to provide the final location of all the proposed trails, the method of trail construction, a robust trash and dog waste management program, and plans/specifications for the final location of picnic tables, restrooms, and other recreational amenities.

f. Add the following text on staff report page 24 prior to the conclusion paragraph as follows:

The Applicant's biological resources report included a wildlife assessment to identify habitat elements required or associated with special-status wildlife and the report included review of the USFWS Critical Habitat Mapper (USFWS 2021b, the NMFS Essential Fish Habitat Mapper (NMFS 2021), maps from the California Essential Connectivity Project (CalTrans 2010), the CDFW Biogeographic Information and Observation System (BIOS) (CDFW 2021a), aerial imagery (Google 2021). The report identified the following special-status wildlife with the potential to occur on the site: Pallid bat, Hoary bat, American Badger, Grasshopper sparrow, Burrowing owl, Northern harrier, White-tailed kite, Bryant's savannah sparrow, Brewster's Yellow warbler, California red-legged frog, Western pond turtle, and Myrtle's silverspot butterfly. The report included mitigation measures and found that implementation of the mitigation measures would reduce potential impacts to the identified species to a level that is less than significant ([Exhibit 8](#) includes the identified mitigation measures). Special Condition 1 adopts the identified biological mitigation measures and incorporates them as enforceable terms of this CDP.

g. Modify text on staff report page 28 as follows:

As described earlier, there have been allegations of Coastal Act and LCP violations exist on the subject property, though these allegations pertain entirely to the private aquaculture operation that leases space on the property and is not an Applicant for the proposed project. The allegations include including, but are not necessarily limited to: (1) alleged inconsistencies consistency between the aquaculture development on the site and the current use of the aquaculture operations, on the one hand, and with the terms of the prior aquaculture 1981 CDP approved approval by the County authorizing an aquaculture operation here. In addition, the only authorization for the operation is from the County, yet the The aquaculture site includes not only the building facility itself, but also piping running down to the Estero, pump facilities on the beach, and various fencing structures, some of which appear to be in the Commission's retained jurisdiction. Enforcement and permit staff are continuing to coordinate on this. Again, the The aquaculture facility itself is a leased operation, which predates TWC's purchase of the property. The potential

violations at the site also predate TWC's purchase of the property, and TWC has agreed to work with Commission staff to evaluate the consistency of the operation with the 1981 County-issued CDP and to take measures to address any potential violations.

Although development ~~may have~~ has taken place without CDP authorization and/or in violation of an existing CDP prior to submission of this CDP application, the Commission's consideration of this CDP application has been based solely upon measuring consistency of the proposed project against the applicable Coastal Act/LCP provisions.

Special-status Wildlife Species Biological Mitigation Measures

7.0 ANALYTICAL METHODOLOGY AND SIGNIFICANCE THRESHOLD CRITERIA

Pursuant to Appendix G, Section IV of the State CEQA Guidelines, a project would have a significant impact on biological resources if it would:

1. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
2. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
3. Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means
4. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
5. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; and/or,
6. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

These thresholds were utilized in completing the analysis of potential project impacts for CEQA purposes. For the purposes of this analysis, a “substantial adverse effect” is generally interpreted to mean that a potential impact could directly or indirectly affect the resiliency or presence of a local biological community or species population. Potential impacts to natural processes that support biological communities and special-status species populations that can produce similar effects are also considered potentially significant. Impacts to individuals of a species or small areas of existing biological communities may be considered less than significant if those impacts are speculative, beneficial, de minimis, and/or would not affect the resiliency of a local population.

8.0 IMPACTS AND MITIGATION EVALUATION

Using the CEQA analysis methodology outlined in Section 7.0 above, the following section describes potential significant impacts to sensitive biological resources within the Project Area as well as suggested mitigation measures which are expected to reduce impacts to less than significant.

8.1 Special-status Species

This section analyzes the Project’s potential impacts and mitigation for special-status species in reference to the significance threshold outlined in CEQA Appendix G, Part IV (a):

Does the project have the potential to have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Potential impacts and mitigation for potentially significant impacts are discussed below.

Rare Plants

During the 2021 special-status plant surveys, approximately 15 coast rock cress, 369 Johnny-nip, 136 coastal bluff morning-glory, 389 hayfield tarplant, 1,849 short-leaved evax, and 12 Scouler's catchfly individuals were observed within the Study Area. Activities within the Project Area avoid all the aforementioned special-status plant species during the trail mowing activities and equipment movement.

Potential Impact BIO-1: Project activities (trail alignment) avoid directly impacting coast rock cress, Johnny-nip, coastal bluff morning-glory, hayfield tarplant, short-leaved evax, and Scouler's catchfly. Given the proximity of the special status plants to the trail alignment, some potential exists to impacts them during mowing of the alignment.

To reduce impacts to mapped populations of rare plants to a **less-than-significant level**, the following measures shall be implemented:

Mitigation Measure BIO-1a: Prior to project activities, existing coast rock cress, Johnny-nip, coastal bluff morning-glory, hayfield tarplant, short-leaved evax, and Scouler's catchfly populations will be flagged and avoided to the extent feasible. A biologist will determine whether access routes should be re-routed, where possible, to avoid impacts to mapped special-status plant populations.

Mitigation Measure BIO-1c: All vehicles and equipment used on the site shall be clean and free of mud or vegetation that could introduce plant pathogens or propagules of non-native plants. This includes equipment hauled into the site. All erosion control materials shall use certified weed-free straw or other biodegradable, weed-free materials.

American badger

American badger may be present in grassland habitat within the Study Area. Vegetation disturbing activities (e.g. vegetation mowing) will occur within suitable grassland habitat. If dens are present, project activities may result in impacts to American badger dens and mortality of individuals. Impacts to American badger is considered a **potentially significant impact** pursuant to CEQA.

Potential Impact BIO-3: Mowing activities for trail alignment may result in injury or mortality of American badger within the Project Area.

To reduce potential impacts to American badger to a **less-than-significant level**, the following measures shall be implemented:

Mitigation Measure BIO-3a: No more than 21 days before the start of ground disturbance activities, a biologist will conduct a pre-construction survey in annual grassland within 50 feet of the Study Area to determine if active American badger dens are present. A biologist will determine whether access routes should be re-routed, where possible, to avoid impacts to American badger. Impacts to active American badger dens shall be avoided by establishing exclusion zones around all active badger dens, within which construction related activities shall be prohibited until denning activities are complete or the den is abandoned. A qualified biologist shall monitor each den once per week in order to track the status of the den and to determine when a den area has been cleared for construction.

Mitigation Measure BIO-3b: A qualified biologist will hold a training session for staff responsible for performing ground disturbing activities (e.g. operation of heavy equipment, vegetation removal, grading) in suitable habitat. Staff will be trained to recognize special-status species and their habitat.

Implementation of these mitigation measures will reduce impacts to American badger to a level that is less than significant.

Burrowing owl

Burrows in grassland habitat within the Project Area may be suitable for use as refugia for burrowing owl during migration or potentially overwintering. If owls are present during Project activities, such as mowing, individuals may be injured or killed by vehicles or equipment, or they may be flushed from protective burrows by vehicle traffic or ground disturbance. This may result in injury or mortality to burrowing owl individuals. Therefore, impacts to burrowing owl is considered a **potentially significant impact** pursuant to CEQA. Impacts to potential habitat are considered less than significant.

Potential Impact BIO-4: Project activities may directly impact burrowing owl through mowing and vehicle traffic.

To reduce potential impacts to burrowing owl to a less-than-significant level, in addition to **Mitigation Measure BIO-3b (staff environmental training)** the following measure shall be implemented:

Mitigation Measure BIO-4: Prior to the onset of Project activities, a pre-construction survey will be conducted no more than 14 days prior to initial ground disturbance in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012). The pre-construction survey will include suitable habitat up to 656 feet (200 meters) from proposed project activities and be conducted prior to the start of staging and Project activities, regardless of the time of year.

If burrowing owl is detected within the Project footprint during the non-nesting season, the burrow will be avoided until a qualified biologist verifies that the burrow is no longer occupied. If burrowing owl is detected outside the Project footprint but within the Project Area during the non-nesting season, vehicle traffic and construction

noise and visual disturbance will be minimized to the extent feasible to reduce the potential for flushing overwintering owls from protective burrows.

Occupied burrows will not be disturbed during the nesting season (February 1 through August 31) unless, after consultation with the CDFW, a qualified biologist verifies that either: (1) the birds have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and capable of independent survival.

Implementation of this mitigation measure will reduce potential impacts to burrowing owl to a level that is less than significant.

Nesting Birds

The Project has the potential to impact white-tailed kite, grasshopper sparrow, northern harrier, Bryant's savannah sparrow, and yellow warbler as well as common nesting birds protected under the CFGC. Project activities, such as vegetation removal and ground disturbance, have the potential to impact these species by causing direct mortality of eggs or young, or by causing auditory, vibratory, and/or visual disturbance of a sufficient level to cause abandonment of an active nest. If Project activities occur during the nesting season, which generally extends from February 1 through August 31, nests of both special-status and common native birds could be impacted by Project activities and other ground-disturbing activities. Disturbance to nesting birds would be considered a **potentially significant impact** under CEQA.

Potential Impact BIO-5: Project construction activities have the potential to result in direct impacts or indirect disturbance to special-status nesting birds and other native nesting birds protected by the CFGC. Project activities could directly destroy active nests or cause disturbance that results in nest abandonment.

To reduce potential impacts to nesting birds to a less-than-significant level, the following measure shall be implemented:

Mitigation Measure BIO-5: Initiation of Project activities during the avian nesting season (February 1 through August 31) will be avoided to the extent feasible. If Project activities during the nesting season cannot be avoided, pre-construction nesting bird surveys will be conducted within 7 days of vegetation removal to determine if active nests are present in the immediate project vicinity. Surveys can be used to detect the nests of special-status as well as non-special-status birds. Surveys shall encompass the entire construction area and the surrounding 50 feet. If active nests are identified, an exclusion zone will be established to avoid disturbance to active nests, eggs, and/or young of nesting birds. No project activities will be allowed within the exclusion zone until a qualified biologist has determined that all young have fledged and are independent of the nest. Suggested exclusion zone distances differ depending on species, location, and placement of nest, and will be at the discretion of the qualified biologist. These surveys would remain valid as long as project activity is consistently occurring in a given area and will be conducted again if there is a lapse in project activities of more than 7 consecutive days during the breeding bird season.

Implementation of this mitigation measure will reduce potential impacts to nesting birds to a level that is less than significant.

California red-legged frog

California red-legged frog (CRLF) are known to occur in the Study Area in some of the aquatic habitats, or may seek refuge in upland habitats. No direct impacts to CRLF aquatic habitats are anticipated by the Project. Impacts to upland migration habitats will be temporary in nature, however, this species may be harassed, harmed, or killed during Project activities, including mowing of trails. Impacts to CRLF would be considered a significant impact pursuant to CEQA.

Potential Impact BIO-6: Project activities including vegetation mowing in upland migration habitats may have the potential to result in impacts to CRLF including harassing, harming, or killing individuals.

To reduce potential impacts to CRLF to a less-than-significant level, in addition to **Mitigation Measures BIO-3b (staff environmental training)** the following measures shall be implemented:

Mitigation Measure BIO-6a: Within 48 hours prior to any project activities, a qualified biologist will conduct surveys for CRLF in and adjacent to the Project Area. A qualified biologist will be on-site during ground-disturbing activities, including the operation of mowing equipment. The qualified biologist will be given authority to stop any work that may result in take of listed species. If a CRLF is observed within the Project Area and relocation is necessary, the animal shall be transported to a suitable relocation site outside of the Project Area, and released.

Mitigation Measure BIO-6b: Mono-filament netting or similar material will not be used for erosion control.

Mitigation Measure BIO-6c: All vehicle traffic will be restricted to established or temporary access roads and restoration areas. A site-wide 15 mile-per-hour speed limit will be observed.

Implementation of these mitigation measures will reduce impacts to CRLF to a level that is less than significant.

Myrtle's silverspot butterfly

Myrtle's silverspot has potential to occur in the Project Area in association with its host plant, western dog violet. While project impacts are temporary in nature, destruction of host plants that may support larvae and/or pupa, and the potential injury and mortality of adults during the flight season would be considered a potentially significant impact pursuant to CEQA.

Potential Impact BIO-8 Project activities including vegetation mowing have the potential to result in direct impacts to Myrtle's silverspot butterfly including harming, or killing individuals.

To reduce potential impacts to Myrtle's silverspot to a less-than-significant level, in addition to **Mitigation Measure BIO-3b (staff environmental training)** and **Mitigation Measure BIO-6c**, the following measure will be implemented:

Mitigation Measure BIO-8a: Prior to construction, populations of western dog violet within the Project Area will be flagged. Host plants will be avoided to the extent feasible. If western dog violet is found within the Project Area and cannot be avoided by Project activities, the plants will be surveyed for presence Myrtle's silverspot eggs, larvae or pupa. If Myrtle's silverspot are not present, work may proceed as planned. If eggs, larvae or pupa are present, no work will occur within that mapped host plant population until butterfly's life cycle is complete. The Adult butterflies emerge from the pupa from mid-June to mid-July.

Implementation of these mitigation measures will reduce impacts to Myrtle's silverspot to a level that is less than significant.

8.2 Sensitive Natural Communities and Land Cover Types

This section addresses the question:

b) Does the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;

Sensitive natural communities within the Project Area include: purple needlegrass grassland, sitka willow thicket, and coastal terrace prairie. Project Activities could temporarily impact approximately 0.40 acres of purple needlegrass grassland and 0.48 acres of coastal terrace prairie habitat subject to CDFW jurisdiction. The project will not impact riparian habitat, Sitka willow thickets.

Temporary impacts to sensitive natural communities within the Project Area may occur through vegetation mowing. Project Activities may result in temporary disturbance to these communities. Mowing of purple needlegrass grassland and coastal terrace prairie will be avoided, to the maximum extent possible, during Project Activities.

Potential Impact BIO-10: Project activities may result in a temporary disturbance to purple needlegrass grassland and coastal terrace prairie.

To reduce potential impacts to purple needlegrass grassland and coastal terrace prairie to a **less-than-significant level**, the following measure shall be implemented:

Mitigation Measure BIO-10: The proposed Project has been designed to avoid and minimize impacts to sensitive plant communities. Additionally, Project Activities represent a temporary disturbance and all areas will be re-vegetated upon completion. In addition to design measures and those measures described to avoid special-status species, the following measures will be implemented to avoid sensitive plant communities.

- Sensitive plant communities will be avoided during project activities to the maximum extent possible.
- Prior to construction, a biologist will determine whether access routes should be re-routed, where possible.

Implementation of these mitigation measures will reduce impacts to sensitive natural communities to a level that is less than significant.

8.3 Aquatic Resources

This section analyzes the Project's potential impacts and mitigation for wetlands and other areas presumed or determined to be within the jurisdiction of the Corps or CCC in reference to the significance threshold outlined in CEQA Appendix G, Part IV (c):

- c) Does the Project have the potential to have a substantial adverse effect on state or federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;*

Project activities will not result in impacts seasonal wetlands intermittent streams subject to Corps jurisdiction. Mowing of wetlands subject to CCC jurisdiction are proposed.

Potential Impact BIO-11: Project activities will temporarily impact (mowing) CCC jurisdictional wetlands on the dam face.

To reduce potential impacts to aquatic features to a **less-than-significant level**, the following measure shall be implemented:

Mitigation Measure BIO-11: The proposed Project has been designed to avoid impacts to Waters of the United States subject to Corps/RWQCB jurisdiction, and features subject to CCC jurisdiction. In addition to design measures and those measures described to avoid impacts to special-status species, the following measures will be implemented to reduce impacts to wetlands and intermittent streams to the extent possible.

- Prior to mowing, delineated wetland boundaries will be clearly demarcated in the field by a qualified biologist, using flags and/or stakes to ensure areas are clearly identifiable to the construction personnel.
- Mowing personnel will be informed of the avoidance areas and shown the precise boundary locations to ensure they are completely avoided.

Implementation of these mitigation measures will reduce temporary impacts to aquatic resources to a level that is less than significant.

8.4 Wildlife Corridors and Native Wildlife Nursery Sites

This section analyzes the Project's potential impacts and mitigation for habitat corridors and linkages in reference to the significance threshold outlined in CEQA Appendix G, Part IV (d):

d) Does the Project have the potential to interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;

The Study Area is within a designated wildlife corridor. Project activities are temporary and will not affect movement of species throughout the Project Area in the long-term. Preservation of the Project Area will ensure that wildlife habitat continues to exist in this area in perpetuity.

8.5 Local Policies and Ordinances

This section analyzes the Project's potential impacts and mitigation based on conflicts with local policies and ordinances in reference to the significance threshold outlined in CEQA Appendix G, Part IV (e):

e) Does the Project have the potential to conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance;

Coastal terrace prairie, wetlands, and riparian habitat are protected as ESHAs under the Sonoma County LCP. See sections 8.2 and 8.3 above for mitigation measures to address impacts to resources protected under the Sonoma County LCP. Monterey Cypress stands is a non-ESHA and are not protected under the Sonoma County tree ordinance, therefore planned tree removal activities of Monterey cypress does not conflict with local policies or ordinances.

8.6 Habitat Conservation Plans

This section analyzes the Project's potential impacts and mitigation based on conflicts with any adopted local, regional, and state habitat conservation plans in reference to the significance threshold outlined in CEQA Appendix G, Part IV (f):

f) Does the Project have the potential to conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

The Project Area is not located within the plan area of any adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan and therefore **no impact** will occur from conflict with any such plans.

6F Estero Ranch Acquisition Documents (6C and 6D)

24

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



2015109499

Official Records Of Sonoma County
 William F. Rousseau
 12/24/2015 02:06 PM
 FIDELITY NAT'L TITLE CO.

CEDEED 35 Pgs

Fee: \$0.00

2



*Exempt from Recording Fees -
 Govt Code Section
 27383*

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

The Wildlands Conservancy, a California non-profit public benefit corporation ("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 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").

B. GRANTOR and DISTRICT acknowledge that GRANTOR purchased the Property subject to an existing long-term lease ("the Lease") over a 12.81-acre portion of the Property as shown on Exhibit B (or "Project Structure Map"), designated for purposes of this Easement as the "Southern Building Envelope." The Lease, entered on July 1, 1980 by George Bottarini and Scotty Bottarini, as Lessor, and H. Roy Gordon and Gail Gordon, as Lessee, as amended and restated, may be extended by the Lessee through June 30, 2093, and generally permits the use of the Southern Building Envelope for a commercial fish farm with associated outbuildings during the term of the Lease.

C. 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.

E. On November 17, 2015, DISTRICT's Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. 15-0465, that preservation of the Property through the acquisition of a conservation easement in the Property was consistent with the Sonoma County General Plan (specifically the Plan's Agricultural Resources and Open Space and Resource Conservation Elements) because the Property is identified for agricultural production, and has characteristics suitable for continued agricultural use; is within a Scenic Landscape Unit and is highly visible from a public waterway and beach; and has special status species, sensitive status species habitat, marshes and wetlands, and riparian corridors, and borders the Estero Americano, a critical habitat area. By that same resolution, the DISTRICT's Board of Directors determined that its funding of the acquisition of the conservation easement is consistent with the voter-approved Expenditure Plan.

F. This Easement will further the goals, objectives and policies of the following adopted local, state and federal plans: Connecting Communities and the Land, A Long-Range Acquisition Plan (*Sonoma County Agricultural Preservation and Open Space District, June, 2006*); Sonoma County General Plan 2020; Sonoma County Local Coastal Plan, 2001; California State Coastal Conservancy Strategic Plan, 2013-2018; Completing the California Coastal Trail (*California State Coastal Conservancy, 2003*); The Estero Americano Watershed Management Plan (*Gold Ridge Resource Conservation District, 2007*); and The Natural Resources of Estero Americano and De San Antonio (*State Department of Fish and Game, 1977*).

F. 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.

G. GRANTOR acquired the Property in part with funds provided by the State Coastal Conservancy (the "Conservancy"), an agency of the State of California, for the purposes of preserving the natural resource, open space, agricultural, and public access, values of the Property in perpetuity. The Conservancy funding for the acquisition was provided through the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Public Resources Code §§ 75001 *et seq.*), pursuant to an unrecorded grant agreement ("Grant Agreement"). As a condition of Conservancy funding, an irrevocable offer to dedicate title in fee and declaration of restrictive covenants (the "Offer to Dedicate") will be recorded against the Property in favor of the Conservancy after recordation of this Easement.

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 through 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 Easement"). GRANTOR hereby irrevocably assigns to DISTRICT all development rights associated with the Property, except those rights which are specifically reserved by GRANTOR through this Easement.

2. Conservation Values. The Property is approximately 547.85 acres of rolling grasslands and coastal bluffs bordered to the south by the Estero de Americano and .75 miles of the Pacific Ocean coastline to the west. Critical resources on the Property (collectively "the Conservation Values"), include natural resources, habitat connectivity, open space and scenic values, agricultural resources, and recreation and educational values. These include, but are not limited to the following:

2.1 Natural Resources. The Property is located on the Pacific Coast at the mouth of the Estero Americano, a unique, fjord-like coastal estuary that is one of the most biologically important areas on the North Coast and is characterized by a diverse assemblage of wetland communities and estuarine habitats. The estuary is in the heart of the Pacific Flyway and provides important habitat for migratory waterfowl, shorebirds and resident long-legged wading birds, as well as many special-status species including the Northwestern pond turtle, California red-legged frog, and the tidewater goby. The eelgrass beds at the mouth of the estuary are particularly important habitat for many bird and fish species. Wetland habitats on and adjacent to the Property include freshwater, brackish water and salt marsh wetlands, and intertidal mudflats. Upland habitats include coastal prairie (designated by the California Coastal Commission as an "Environmentally Sensitive Habitat Area"), coastal scrub, annual grasslands, freshwater ponds and seeps, riparian ravines and several groves of planted cypress and Eucalyptus trees for windbreaks. Water from the Property runs into the Pacific Ocean and the Estero Americano via Shorttail Gulch and several unnamed drainages. The Property is flanked by one mile of the Estero Americano estuary on the south, and a three quarter mile stretch of the Pacific Coastline on the west. Over 70 species of birds have been observed in the Estero Americano area. Historic fish surveys in the area have identified 31 marine and freshwater species, with the greatest species abundance and diversity located at the mouth of the Estero. Common mammals on the Property include white tail deer, coyote, and otter. American Badger dens have been identified on the Property.

2.2 Habitat Connectivity. The Property is surrounded by state and federally protected lands and marine areas managed for conservation. The property creates a connection between

these conservation areas which strengthens landscape-level conservation for the region, expands protected habitat for plants and wildlife, and provides room for adaptation to climate change. More specifically, the Property is adjacent to or in close proximity to Sonoma Land Trust's Estero Americano Preserve, Shorttail Gulch and Doran Beach Regional Park, Bodega Head (Sonoma Coast State Park), University of California Bodega Marine Laboratory and Marine Reserve, the Gulf of the Farallones National Marine Sanctuary, Estero Americano State Marine Recreational Management Area, and other protected lands. The Property is also identified as essential to the goals of the Conservation Lands Network as a part of two key regional wildlife corridor linkages, the "Bodega Bay Connection" and the "Coast Range to Marin Coast" Bay Area Critical Linkage which runs north to south from Sonoma to Marin County.

2.3 Open Space and Scenic Views. The Property is within a designated scenic landscape unit. The open and natural rolling hills of the Property make up the scenic backdrop to the adjacent neighborhoods and are highly visible to recreational users on the Estero Americano, Doran Beach Regional Park, and Bodega Head, part of Sonoma Coast State Park.

2.4 Agricultural Resources. The Estero Americano Watershed has historically been a productive agricultural area of Sonoma and Marin Counties, and the majority of the lands within the watershed are being used for rangeland and pasture for dairies, and sheep and cattle ranching. The Property is currently being used to raise cattle and possesses physical and biotic features, including its soils, water and grasslands, that make portions of the Property well-suited for limited livestock grazing for production of food and fiber, and fire and vegetation management.

2.5 Recreation and Education. Areas of the Property provide 360 degree views of striking natural features including the Estero Americano to the south and east; Tomales Bay, Point Reyes National Seashore and the Farallon Islands to the south; the Pacific Ocean to the west; and the Sonoma County Coastline, including Bodega Head and Sonoma Coast State Park to the northwest. The Property provides opportunities for low intensity public outdoor recreation, environmental education, and research uses, provided that such uses are compatible with the protection of the Property's natural resources.

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: first, preservation and protection of scenic and natural resources; second, preservation and protection of agricultural uses; and third, preservation and protection of recreational and educational uses.

PART TWO: RESERVED AND RESTRICTED RIGHTS

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, and to the Conservancy which has a similar and additional right of entry under the Offer to Dedicate.

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 5.1.6.

4.4 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.

4.5 DISTRICT Signage. DISTRICT shall have the right to erect and maintain a sign or other appropriate marker in a location on the Property visible to visitors and acceptable to GRANTOR, 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 following activities and uses are expressly reserved, restricted or prohibited as set forth 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 does not materially impair or interfere with 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 Notice and Approval Procedures. Whenever this Section 5 requires prior notice to or approval by DISTRICT, such notice shall be given or approval shall be obtained in accordance with Section 6 of this Easement.

5.1.6 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 residential, agricultural, and/or recreational and educational, on the Property.

5.1.7 Management Plan. At its discretion, GRANTOR may develop and implement a Management Plan for the Property to define and guide future use and development of the Property and to streamline DISTRICT approvals under this Easement. The Management Plan and future updates and amendments will be subject to review and approval by DISTRICT in accordance with Section 6.1 of the Easement. The

Management Plan shall not be implemented on the Property until it has been approved by DISTRICT. DISTRICT's review and approval of the Management Plan shall be based on the Management Plan's consistency with the terms, conditions and Conservation Purpose of this Easement.

Once the Management Plan is approved by DISTRICT, uses and improvements described in that approved Management 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.

The Management Plan may be amended, revised or updated from time to time provided that such amendment, revision or update shall be subject to DISTRICT's approval in accordance with Section 6.1 of this Easement. DISTRICT's review and approval of amendments, revisions and updates to the Management Plan shall be based on the amendment, revision or update's consistency with the terms, conditions and Conservation Purpose of this Easement.

5.1.8 Designation of Building Envelopes. Two building envelopes ("the designated Building Envelopes") are identified and designated on the Project Structure Map, attached hereto as Exhibit B and incorporated herein by this reference ("the Project Structure Map"). The designated Building Envelopes include a Northern Building Envelope, located in the northwest interior of the Property and a Southern Building Envelope, located in the southwest edge of the Property. GRANTOR and DISTRICT acknowledge and agree that the Southern Building Envelope is coterminous with the area subject to the Lease described in Recital B, but that its designation survives termination of the Lease.

5.2 Subdivision and Parcels. GRANTOR and DISTRICT acknowledge and agree that the Property is and shall always remain one legal parcel 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.

5.2.1 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 natural resource conservation or public access purposes.

b) **Leases.** In accordance with law, GRANTOR reserves the right to honor its existing obligations under the Lease, as described in Recital B. In addition, GRANTOR reserves the right to lease a portion(s) of the Property for the permitted uses described in Section 5.3.

5.2.2 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.

5.3 Land Uses. Use of the Property is restricted to natural resource protection, restoration and enhancement; preservation of cultural resources; residential use; agricultural use; education and research; and recreational uses as defined in this Section 5.3. Commercial or industrial use of or activity on the Property is prohibited except for those commercial uses reserved in Section 5.3.4.

5.3.1 Natural and Cultural Resource Protection, Preservation, Restoration and Enhancement. GRANTOR reserves the right to protect, preserve, restore and enhance the natural and cultural resources of the Property in accordance with sound, generally-accepted conservation practices and the provisions of Section 5.5.

5.3.1.1 Mitigation. Mitigation projects and mitigation funding may be used to restore and enhance Conservation Values as follows: a) to mitigate for impacts due to on-site permitted uses; b) within the Southern Building Envelope to mitigate for environmental impacts of projects located off site; and c) as otherwise permitted by administrative policies adopted by DISTRICT.

5.3.2 Residential Use. GRANTOR reserves the right to maintain one single-family residence on the Property for use by land manager, caretaker, worker or ranger in accordance with Section 5.4.2.

5.3.3 Recreational and Educational Use. GRANTOR reserves the right to use the Property for low-intensity public outdoor recreation and education, including hiking, nature study, picnicking, and other such uses similar in nature and intensity. All public outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with natural resource protection.

GRANTOR and DISTRICT acknowledge that stray golf balls from the adjacent The Bodega Harbour golf course occasionally land on the Property. GRANTOR reserves the right to allow third parties to retrieve such golf balls as GRANTOR deems appropriate.

5.3.4 Agricultural Use. GRANTOR reserves the right to engage in limited agricultural uses of the Property as defined below in accordance with sound, generally-

accepted agricultural and soil conservation practices, provided however that no agricultural use shall be undertaken in a manner that significantly impairs the long-term agricultural productive capacity or open space character of the Property. In connection with permitted agricultural uses, GRANTOR reserves the right to use government approved agrichemicals, including but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes and consistent with government regulations and guidelines.

5.3.4.1 Livestock for the Production of Food and Fiber. GRANTOR reserves the right to breed, raise, pasture, and graze livestock of every nature and description for the production of food and fiber. Within two (2) years of recordation of this Easement, GRANTOR shall develop and submit to the DISTRICT for review and approval a long-term comprehensive Rangeland Management Plan (“the RMP”). The RMP shall set forth required rangeland best management practices to assure that all grazing practices are conducted in a manner that is beneficial to the conservation values of the Property, and shall include analysis and standards for appropriate levels of grazing in consideration of sensitive wildlife habitat and associated species. The specific provision required to be set forth by the RMP may be incorporated into the Management Plan as defined in Section 5.1.7 and approved accordingly. Until such time that the RMP is approved, GRANTOR may continue grazing of the Property at the same level as at the time of recordation of this Easement.

5.3.4.2 Bees, Fish Poultry, and Fowl. GRANTOR reserves the right to breed and raise bees, fish, shellfish, poultry, and fowl within the Southern Building Envelope as shown on the Project Structure Map.

5.3.5 Commercial. GRANTOR reserves the right to use the Property for the following commercial uses and activities : i) within the Southern Building Envelope, the uses permitted in the Lease during the term of the Lease only; ii) agricultural use as defined in Section 5.3.4; iii) leases or rentals of all or a portion of the Property for agricultural uses as defined in Section 5.3.4; iii) home occupation(s) within permitted residential buildings; and iv) subject to DISTRICT approval, other minor ancillary commercial use found to be consistent with Conservation Values of this Easement.

5.4 Structures and Improvements. GRANTOR may repair, replace, construct, place and maintain structures and improvements on the Property only as provided below. All structures or other improvements allowed by Sections 5.4.2 through 5.4.5, whether existing at the time of this Easement or placed subsequent to this Easement shall be located within a designated Building Envelope as shown on the Project Structure Map. Furthermore, no structure or improvement shall exceed 24 feet in height except as otherwise provided herein.

5.4.1 Maintenance, Repair or Replacement of Structures and Improvements. GRANTOR may maintain, repair 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 5.4.7.

5.4.2 Primary Residences. At the time of recordation of this Easement, there is one primary residence located on the Property. Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope one new primary residence for a land manager, caretaker, worker or ranger, provided that such residence shall not exceed 24 feet in height nor be greater than 2,500 square feet in size, exclusive of garage, which garage shall not exceed 1,000 square feet in size and 24 feet in height. At such time a new primary residence is constructed, the existing primary residence shall be vacated. At GRANTOR's discretion, such structure may be removed or re-designated as a structure accessory to the residential or agricultural use in accordance with Section 5.4.3 or 5.4.4, as applicable. At no time shall there be more than one primary residence located on the Property.

5.4.3 Structures Accessory to the Residential Use. Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope additional accessory structures and improvements reasonably related to the permitted residential use of the Property including, without limitation, guest house, garage, shed, and other similar improvements. The total cumulative square footage of the structures accessory to residential use shall not exceed 3,000 square feet. No single structure shall exceed 1,000 square feet. All such structures must be placed or constructed within the Building Envelope.

5.4.4 Residential Agricultural Structures. Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope agricultural residences including farm worker housing, and farm family housing, provided that no such residence shall exceed 24 feet in height nor be greater than 2,000 square feet in size, exclusive of garage, which garage shall not exceed 750 square feet in size.

5.4.5 Accessory to Natural Resource Protection Use. Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope accessory structures and improvements reasonably necessary for natural resource protection on the Property, including, but not limited to, sheds and greenhouses. Subject to prior written approval of DISTRICT, GRANTOR may place or construct temporary accessory structures and improvements outside of a designated Building Envelope if such location is essential for natural resource protection, restoration and enhancement activities.

5.4.6 Structures Accessory to the Agricultural Use. Subject to prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope accessory structures and improvements reasonably necessary for the permitted agricultural use of the Property, including, without limitation, barns and corrals. Agricultural structures may not exceed 40 feet in height. Subject to prior written District approval, GRANTOR may place or construct such structures outside the Building Envelope only if such location is essential to the agricultural operation.

5.4.7 Recreational and Educational Improvements. All improvements associated with permitted low-intensity public recreational and educational uses shall be designed, placed and constructed in a manner that protects sensitive natural resources. Recreational and educational improvements shall not exceed 24 feet in height. GRANTOR may use improvements existing as of the date of this easement for permitted recreational and education uses. GRANTOR may construct or place new improvements associated with permitted low-intensity outdoor recreational and educational uses, only as follows:

- a) Within the designated Building Envelopes, GRANTOR may place or construct:
 - i. Permeable trails and pathways, benches, picnic tables, refuse and recycling containers and other similar minor improvements without prior written notice to or approval of DISTRICT.
 - ii. Restrooms, storage sheds and similar improvements with prior written notice to DISTRICT.
 - iii. One indoor classroom or visitor's information center not to exceed 1,000 square feet with prior written approval of DISTRICT.
- b) Outside the designated Building Envelopes, GRANTOR may place or construct:
 - i. Benches, individual picnic tables, refuse and recycling containers, and other similar minor, non-permanent improvements without prior written notice to or approval of DISTRICT.
 - ii. Permeable trails and pathways and similar improvements with prior written approval of DISTRICT.
 - iii. One restroom designed and sited to minimize visual impacts with prior written approval of DISTRICT.

5.4.8 **Roads and Parking Areas.** Subject to prior written approval of DISTRICT, GRANTOR may construct new roads and parking area(s) and reconstruct or expand existing roads and parking area(s) provided that such roads and parking area(s) (i) are reasonably necessary for uses and activities allowed herein; and (ii) are the minimum necessary for such uses and activities. Roads and parking area(s) shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for roads as recommended by California Department of Fish and Wildlife or other similar or successor entity. Roads and parking area(s) constructed subsequent to this Easement may not be paved with asphalt, concrete or other impervious surface unless such paving is required by any federal, state or local law, code, ordinance or regulation. Roads and parking area(s) that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized and ensured of proper drainage.

5.4.9 **Fences and Gates.** GRANTOR may construct, place and erect fencing and gates only as necessary for permitted uses of the Property and to buffer the Southern Building Envelope from the remainder of the Property during the term of the Lease. 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 recreational and educational, agricultural, natural and cultural resources management, restoration or enhancement, and residential uses 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 5.4.9. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.9, GRANTOR shall remove such fencing or gate from the Property.

5.4.10 **Utilities and Energy Resources.** Grantor may use the existing utility systems on the Property for permitted on-site uses. 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 provided that such utilities are directly required for permitted uses on the Property and are reasonably scaled to serve only those uses. Subject to prior written notice to DISTRICT, GRANTOR may place temporary, above-ground water delivery systems for natural resource protection, restoration and enhancement activities on the Property. Commercial power generation facilities, including, but not limited to commercial hydroelectric, solar and wind power generation, are prohibited as inconsistent with the Conservation Purpose of this Easement and all such commercial rights are transferred to the DISTRICT. These restrictions are not intended to prohibit the noncommercial generation of wind, solar or other power as provided in this section 5.4.10, nor prohibit the incidental sale of excess energy generated from utilities developed or constructed in accordance with this section 5.4.10. The parties agree that the provisions of this section restricting installation of commercial solar energy systems

on the Easement Area are “reasonable restrictions” within the meaning of California Civil Code Section 714.

5.4.11 Signs. GRANTOR reserves the right to construct or place signs as set forth in this Section 5.4.11. No sign shall be artificially illuminated.

a) Without prior written notice to or approval of DISTRICT, GRANTOR reserves the right to construct or place two (2) signs not to exceed 45 square feet in size to identify the Property from public or private roadways.

a) Without prior written notice to or approval of DISTRICT, GRANTOR reserves the right to construct or place four (4) signs not to exceed 32 square feet in size as trailhead or interpretive signs and/or to acknowledge participation of funding agencies for permitted uses on the Property.

b) Without prior written notice to or approval of DISTRICT, GRANTOR reserves the right to construct or place signs less than six (6) square feet in size to (i) mark the boundary of the Property; (ii) provide directional, interpretive and educational information; and (iii) set forth rules or regulations applicable to use of the Property, provided that the size and number of such signs shall be limited to that which is reasonably necessary to accomplish the permitted uses herein, and further provided that such signs are sited and constructed in a manner that does not create a significant visual impact.

c) Without prior written notice to or approval of DISTRICT, GRANTOR reserves the right to construct or place signs advocating candidates or issues that will be presented to voters in a public election, provided that such signs do not exceed then existing state and local regulations for political signs, and that such signs are removed within ten (10) days after the date of election.

d) Subject to prior written approval of DISTRICT, GRANTOR may construct or place additional signs necessary or appropriate for allowed uses, provided that any such additional signs are sited and constructed in a manner that does not create a significant visual impact.

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 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 permitted uses on the Property. In connection with allowed uses, movement of over 50 cubic yards of material in any calendar year is subject to prior DISTRICT approval.

5.5.2 Water Resources. Draining, filling, dredging, diking, damming or other alteration, development or manipulation of watercourses, 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 5.4.10, and (ii) the preservation, restoration and enhancement of natural resources allowed under Section 5.5.5.

5.5.3 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.

5.5.4 Management for Fire Safety. GRANTOR reserves the right to undertake vegetation management activities for the purpose of reducing wildfire risk and controlling wildfires, provided the techniques are the minimum necessary to achieve fire safety. Fire management methods are limited to:

5.5.4.1 Brush removal, mowing and grazing of the Property, and other methods of similar nature and intensity within 100 feet of structures, without need for notice to or approval from DISTRICT; and

5.5.4.2 Grazing of the Property, consistent with the approved RMP pursuant to Section 5.3.4.1, more than 100 feet from structures, without need for notice to or approval of DISTRICT; and

5.5.4.3 Brush removal and mowing of the Property, consistent with the approved RMP pursuant to Section 5.3.4.1, and other methods of similar nature and intensity more than 100 feet from structures, with notice to DISTRICT; and

5.5.4.4 Prescriptive burning undertaken in a manner consistent with the standards and requirements of the local fire protection agency having jurisdiction, subject to prior written notice to DISTRICT.

The requirement for notice under this Section 5.5.4 may be satisfied by the submission of a fire management plan.

5.5.5 Natural Resource Preservation, Restoration and Enhancement. GRANTOR reserves the right to undertake natural resource preservation, restoration and enhancement activities, including, but not limited to, bank and soil stabilization, practices to reduce erosion, enhancement of water quality, and plant and wildlife habitat, and activities that promote biodiversity. GRANTOR may remove or control invasive, non-native plant and animal species in accordance with Section 5.5.9.

5.5.6 Native Tree Removal. Harvesting, cutting, removal or destruction of any native trees is prohibited, except as reasonably necessary (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 5.5.4; (iv) for natural resource preservation, restoration and enhancement as set forth in Section 5.5.5 of this Easement; and (v) with prior written approval of DISTRICT, within the footprint of permitted trails and pathways. Native trees removed pursuant to this Section 5.5.6 may be used for personal firewood.

5.5.7 Native Non-tree Vegetation Removal. Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) for permitted agricultural uses; (iii) within footprint of permitted structures and improvements; (iii) to control insects and disease; (iv) to prevent personal injury and property damage; (v) for the purpose of fire management, in accordance with Section 5.5.4; and (vi) for natural resource preservation, restoration and enhancement, as set forth in Section 5.5.5 of this Easement.

5.5.8 Native Animal Removal. Killing, hunting, trapping, injuring or removing native animals is prohibited except (i) associated with agricultural use within the Southern Building Envelope; (ii) under imminent threat to human life or safety; and (iii) as reasonably necessary to promote or sustain biodiversity in accordance with preservation, restoration and enhancement activities in connection with Section 5.5.5. In addition, if a humane non-lethal option is available by law, GRANTOR may use such option to manage predatory or problem native animals on the Property as reasonable necessary for agricultural use outside the Southern Building Envelope. All activities pursuant to this paragraph must use 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 reserves the right to remove or control non-native plant and animal species provided that techniques used minimize harm to native wildlife and plants and are in accordance with sound, generally-accepted conservation practices and all applicable laws.

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 except that agricultural products and by-products generated on the Property may be disposed on site, consistent with sound generally-accepted agricultural practices.

5.5.12 Outdoor Storage. Outdoor storage shall be prohibited except as provided in this section.

(a) **Materials Required For Permitted Uses.** GRANTOR may store materials and supplies required for permitted uses outdoors, provided such storage shall be located so as to minimize visual impacts.

(b) **Storage of Construction Materials.** GRANTOR may store construction and other work materials outdoors needed during construction of permitted structures and improvements on the Property while work is in progress and for a period not to exceed thirty (30) days after completion or abandonment of construction. Construction shall be deemed abandoned if work ceases for a period of 180 days.

5.6. Public Access Limitations. GRANTOR and DISTRICT understand and agree that the Property will be available for public access in perpetuity pursuant to the Recreational Conservation Covenant recorded simultaneously herewith. GRANTOR, however, reserves the right to 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. GRANTOR may, as it deems appropriate, grant a temporary or permanent easement to provide the Bodega Harbour Homeowners Association access to the area of the Property adjacent to the Bodega Harbour golf course to address stray golf balls landing on the Property. The granting of other 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. The DISTRICT reserves the right to request such additional or supplemental information as it deems necessary to evaluate any notice or request for approval. Forms for notices and requests for approval shall be available at DISTRICT's offices.

6.1 Approval, Amendments, Revisions and Updates of Management Plan. GRANTOR and DISTRICT acknowledge that GRANTOR intends to prepare a Management 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 Management 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 proposed use of the Property (including residential, agricultural, 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. Pursuant to Section 5.1.7 of this Easement, such Management Plan and Revisions require DISTRICT’s approval prior to their implementation. DISTRICT’s approval shall be based solely upon its reasonable determination as to whether the Management Plan or Revisions are consistent with the terms, conditions and Conservation Purpose of this Easement. GRANTOR shall use the following procedure to obtain DISTRICT’s approval for the Management Plan and Revisions:

6.1.1 GRANTOR may, at its discretion, at any time, submit a Management Plan or Revisions to DISTRICT for its review and approval. DISTRICT shall have sixty (60) days from the receipt of the Management Plan or Revisions, plus twenty-one (21) days from any subsequent or follow up submittal, to review the Management Plan or Revisions and either approve the Management Plan or Revisions or notify GRANTOR of any objection thereto. DISTRICT’s response, whether approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. Disapproval or objection, if any, shall be based on DISTRICT’s determination that the proposed Management Plan or Revisions is inconsistent with the terms, conditions or Conservation Purpose of this Easement or is incomplete or contains material inaccuracies. If, in DISTRICT’s judgment, the Management Plan or Revisions is not consistent with the terms, conditions or Conservation Purpose of this Easement or is incomplete or contains material inaccuracies, DISTRICT’s notice to GRANTOR shall state such objections in sufficient detail to enable GRANTOR to modify the Management Plan or Revisions so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

6.1.2 In the event that Grantor’s intended uses of the Property require environmental review under the California Environmental Quality Act (“CEQA”) 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 of a Management Plan, 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 Management Plan shall be subject to DISTRICT approval.

6.1.4 DISTRICT and GRANTOR acknowledge and agree that the Conservancy will also require approval of the Management Plan under the Grant Agreement.

6.2 Uses/Activities Requiring Notice or Approval to DISTRICT. For uses and activities not described in a Management Plan or Revisions 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.

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. DISTRICT's response, whether approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. Disapproval or objection, if any, shall be based on DISTRICT's 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 reserved 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 reserved 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 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 (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 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 and the Conservancy shall be provided a complete copy of the Report and shall be given ninety (90) days in which to inform DISTRICT of any errors in the Report. If any errors in the Baseline Documentation Report are identified by GRANTOR or the Conservancy and verified by DISTRICT, appropriate corrections shall be made. 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 District may also provide notice to the Conservancy. 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), 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), 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, wildfire, 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. 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. The Conservancy shall have a right to intervene in any arbitration proceeding to preserve its rights under the Grant Agreement and OTD.

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 13.3. 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, and the Conservancy 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, DISTRICT, and the Conservancy shall share the compensation on the following basis: GRANTOR 25%, DISTRICT 51 %, and Conservancy 24% (which percentages are derived from the ratio of the price paid for the Easement to the appraised value of the Property before being encumbered by the Easement), or as otherwise agreed upon by them in writing at the time of condemnation. In the apportionment of the proceeds from any eminent domain proceeding, an adjustment shall be made in GRANTOR's favor for any increase in value attributable to improvements made on the Property after the date of this Easement, provided that such improvements were not made or funded by DISTRICT or Conservancy and further provided that such improvements do not constitute a breach of this Easement.

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 thirty (30) 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: Executive Director
 The Wildlands Conservancy
 39611 Oak Glen Rd., #12
 Oak Glen, CA 92399

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

To Conservancy: Executive Director
California State Coastal Conservancy
1330 Broadway, Suite 1300
Oakland, CA 94612
Fax: (510) 286-0470

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 designated by the recipient pursuant to Section 19.1, 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, notice shall be deemed given at the time of actual 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
16 day of December, 2015

GRANTOR:

THE WILDLANDS CONSERVANCY

By: David Myers
David Myers
Executive Director

By: Jennifer Malone
Name: Jennifer Malone
Title: Secretary

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE
DISTRICT

By: Susan Gorin
Susan Gorin
President of the Board of Directors

12/17/15

ATTEST: Veronica A. Ferguson
by Roxanne Epstein
Clerk of the Board of Directors

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

Exhibit A: Legal Description
Exhibit B: Project Structure Map

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 100-160-002-000

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

All that certain piece or parcel of land situated in the County of Sonoma, State of California and being a portion of the tract of land known as the "Bodega Rancho" more particularly bounded and described as follows, to-wit:

Commencing at a stake bearing South 39-1/4° East 20 links from a pair of posts in fence marked W. G. in a mound of rocks standing at the base of a gravelly hill on the summit of a sharp ridge dividing waters emptying into the Estero Americano from waters emptying into Bodega Harbor at a point at the head of a deep gulch emptying about 1/2 mile Southeasterly into Estero Americano on the West side of the ridge road leading from the Bodega Corners to Bodega Port, from which a high prominent rock bears South 34-3/4° East (Mag) and signal post U.S.C.S. bears South 17° East Mag; thence South 27° West, 5.90 chains; thence North 70-1/2° West, 5.82 chains; thence South 87° West, 4.35 chains; thence South 59° West, 5.30 chains; thence South 80-1/4° West, 7.37 chains; thence South 77-1/4° West, 4.84 chains; thence South 61-1/2° West, 14.50 chains; thence South 86-1/2° West, 7.82 chains; thence South 26-3/4° East, 20.25 chains; thence South 41-1/2° East, 3.60 chains; thence South 67-3/4° East, 18.66 chains; thence South 16° West, 5.54 chains; thence South 2° East, 4.40 chains; thence South 32° West, 8.21 chains; thence South 31° East, 10.10 chains; thence South 86-1/2° West, 1.29 chains; thence South 41° West, 4.00 chains; thence South 48-1/2° East, 4.40 chains; thence South 64° East, 7.50 chains; thence South 54-1/2° East, 7.03 chains; thence South 71-1/2° East, 2.06 chains; thence South 57-3/4° East, 13.82 chains; thence South 65-1/2° East, 6.06 chains; thence South 54-1/2° East, 4.50 chains; thence North 84-1/4° East, 1.27 chains; thence North 89-1/2° East, 12.70 chains; thence North 28° East, 6.55 chains; thence North 24-1/2° East, 2.80 chains; thence North 54-3/4° East, 6.10 chains; thence North 37° East, 3.58 chains; thence North 1° East 1.97 chains; thence North 53-1/2° East 10.50 chains; thence North 82° East 2.57 chains; thence North 75° East, 8.57 chains; thence North 18° East, 3.00 chains; thence North 22-1/2° West, 20.33 chains; thence North 46-3/4° West, 6.00 chains; thence North 19° East, 4.00 chains; thence South 64° West, 7.30 chains; thence North 39-3/4° West, 57.89 chains to beginning.

Being the same land as is described in that certain Deed dated the 28th day of February, 1863, Tyler Curtis, et al, to Lorenzo Gale and thereafter recorded in the Office of the County Recorder of Sonoma County in Liber 13 of Deeds, Page 632.

Excepting therefrom all that portion lying Northerly and Westerly of that certain line as described in the "Agreement Determining Boundary Lines" executed by Amos Marlon Simpson, et ux and George Bottarini, et ux, recorded May 28, 1970 Instrument No. L 64675.

Also excepting therefrom all that portion lying Northerly of that certain line as described in the "Agreement Determining Boundary Lines" executed by Transcentury Properties, Inc., a corporation and George Bottarini, et ux, recorded October 30, 1973 Instrument No. N 66872.

Also excepting therefrom any portion of herein described property lying below the mean high tide line of the Pacific Ocean and the mean high tide line of the Estero Americano.

Parcel Two:

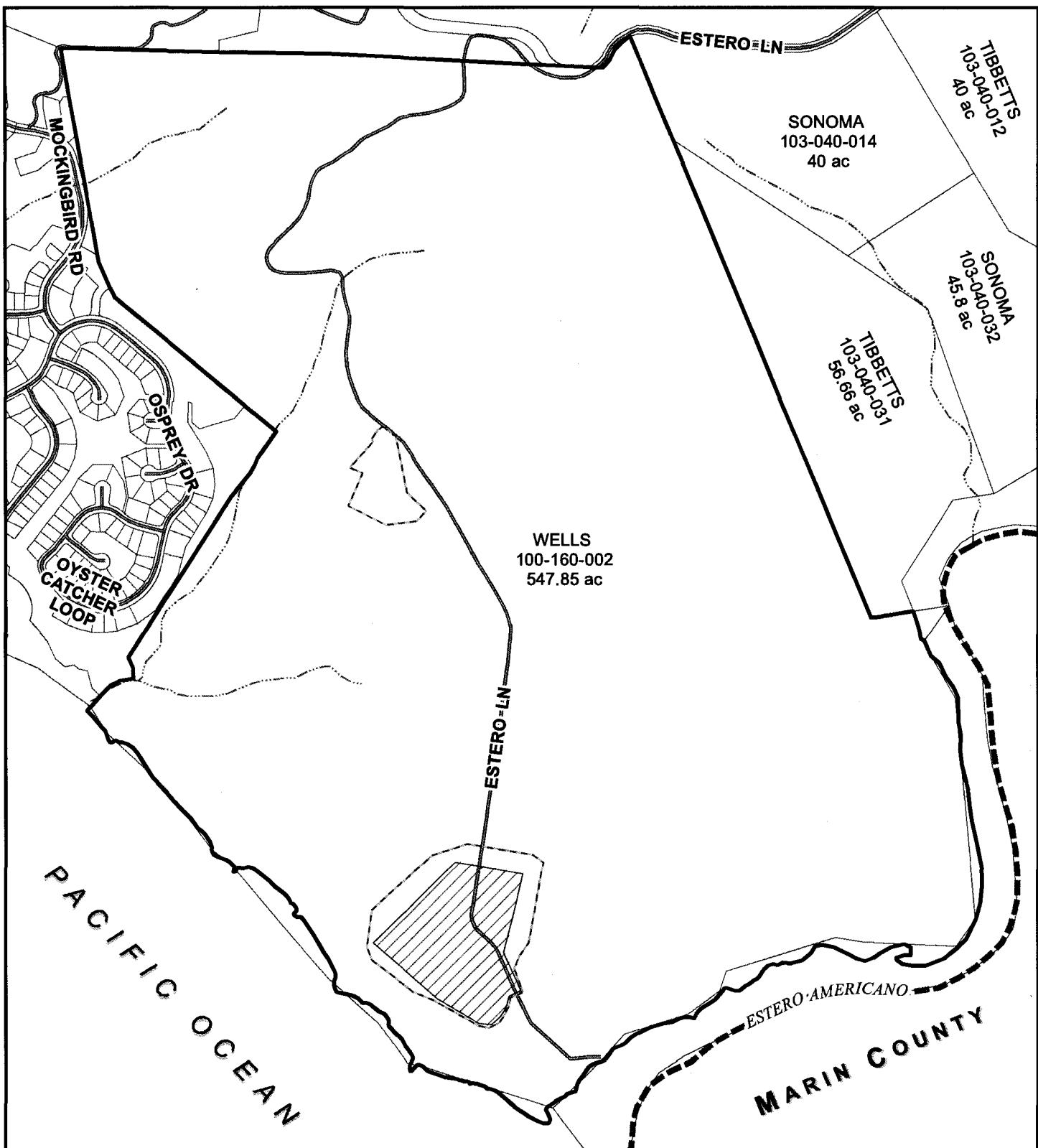
All that portion of the property acquired by Amos Marion Simpson by Deed recorded August 4, 1948 Instrument No. C 72868 lying Southerly and Easterly of that certain line as described in the "Agreement Determining Boundary Lines" executed by Amos Marlon Simpson, et ux and George Bottarini, et ux recorded May 28, 1970 Instrument No. L 64675.

Title No.: FSNX-3101400563-RV
Amendment: D

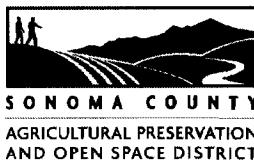
EXHIBIT "A"
Legal Description
(continued)

Parcel Three:

All that portion of the property acquired by Transcentury Properties, Inc., a corporation by Deed recorded May 18, 1970 Instrument No. L 63502 lying Southerly of that certain line as described in the "Agreement Determining Boundary Lines" executed by Transcentury Properties, Inc., a corporation and George Bottarini, et ux, recorded October 30, 1973 Instrument No. N 66872.



**Estero Ranch
Project Structure
Exhibit "B"**



— Perennial Waterway - - - Intermittent Stream □ Building Envelope □ Ester Ranch *
 □ Lease Area □ Assessor Parcel

* Property boundary extends to ordinary high water mark.

0 500 1,000
Feet



Map Date: 12/16/2015
 Sources: SCWA (streams); County GIS (parcels, roads); NOAA (coastal boundary)
 This map is for illustrative purposes only and is not intended to be a definitive
 property description. The Building Envelopes shown on this map are generated
 from digital vector data on file with the District, the digital vector data itself
 designates the Building Envelopes.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sonoma)

On December 21, 2015 before me, S. Faus, Notary Public,

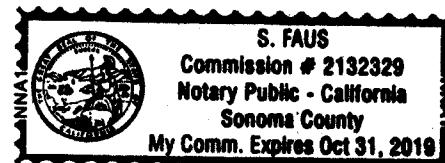
personally appeared Susan Gorin,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s)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

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

WITNESS my hand and official seal.

S. Faus

Signature of Notary Public



Deed & Agreement between Wildlands Conservancy
conveying easement and development rights for Estero
Ranch property (APOS, 11/17/2015, Item #28)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

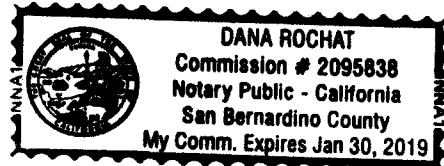
State of California
County of San Bernardino)

On December 16, 2016 before me, Dana Rochat, Notary
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature Dana Rochat (Seal)

CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)
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 12/17/15, 2015 from The Wildlands Conservancy, 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. 15-0465 of the Board of Directors, dated November 17, 2015 and the District consents to the recording thereof by its duly authorized officer.

Sonoma County Agricultural Preservation and
Open Space District

Dated: 12/17/15

By: Susan Gorin
Susan Gorin, President
Board of Directors

ATTEST: Veronica A. Ferguson

by Roxanne Epstein
Clerk of the Board of Directors



2015109501

Official Records Of Sonoma County
 William F. Rousseau
 12/24/2015 02:06 PM
 FIDELITY NAT'L TITLE CO.

DCLRE 12 Pgs
 Fee: \$0.00



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 Gov't Code Sec 6103

**ESTERO RANCH
 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 Wildlands Conservancy, a California non-profit public benefit corporation ("Owner").

Recitals

A. The District was formed for the purpose of preserving agriculture and 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, specified agricultural uses, and low-intensity public outdoor recreation and education consistent with the conservation values identified in the Conservation Easement. This Covenant is intended to complement the Conservation Easement by assuring the continued and perpetual availability of the Property for public recreational use consistent with the Conservation Easement.

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 available to the public in perpetuity for low-intensity public outdoor recreational use in a manner consistent with the Conservation Easement and the provisions herein.

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

A. Owner hereby agrees to maintain the Property as an open space preserve and to make it available to the public in perpetuity for low-intensity outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. The availability of the Property for low-intensity outdoor public recreation and educational uses shall commence no later than thirty-six (36) months from the date of

recordation of this Covenant and shall include, at a minimum, general availability of the Property for public hiking, picnicking, and nature study from dawn to dusk daily, subject to the following:

1. The Parties acknowledge that, at the time of recordation of this Covenant, the Property is encumbered by a long term lease over 12.8 acres ("Lease Area") in the southwest portion of the Property, as shown in Exhibit B (Project Structure Map), attached hereto and incorporated herein by this reference. The Owner reserves the right to exclude the public from the Lease Area and a surrounding buffer area as shown in Exhibit B.
2. Owner reserves the right to exclude the public from the Property on a temporary basis in accordance with Section 5.6 of the Conservation Easement (Public Access Limitations).
3. Owner reserves the right to post or provide reasonable rules and regulations for public use of the Property, including establishing opening and closing times for access to the Property consistent with this Section 2A, and use restrictions including but not limited to limitations or prohibition on fires, pets, smoking, hunting, collecting or other activities as may be in conflict with the Conservation Easement or Owner's ability to safely provide access as required by this Covenant.

B. The parties acknowledge that, initially, public access to the Property will be from the coast via the Shorttail Gulch public trail.

C. 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 2A.

D. 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 for outdoor public recreation shall be in accordance with such management plan.

3. Enforcement.

A. In the event of an uncured and material breach by Owner of any of its obligations under this Covenant, the District may seek any and all remedies available at law and in equity, including but not limited to the right to: (1) institute a suit for specific performance or other appropriate equitable relief; (2) institute a suit to recover damages; or (3) any combination of the above.

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, at [address], or such other address as Owner may designate by written notice to District. The Notice shall include a reasonable period, in no case less than 60 days, 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 if the breach described in the Notice has not been cured.

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 twenty-five percent (25%) 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 to respond to emergency conditions 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; Approval of Grantees.* No conveyance of the fee interest in the Property may occur without the District's consent and determination that the prospective buyer 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 transfers of the property shall be in writing and shall acknowledge this Covenant and the Conservation Easement. A failure to comply with these requirements is a material breach of this Covenant and subject to the remedies set forth in Paragraph 3.

5. *Third Party Beneficiaries.* This Covenant, and/or any statements made herein, 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 with respect to the subject matter contained herein 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.

7. *Inspection.* The District may, within its sole discretion and from time to time, upon one week's prior notice to Owner, inspect the Property to determine if Owner is in compliance with this Covenant. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Section 7, 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 Owner is in breach of this Covenant, District shall have the right at any time, upon twenty-four hours' prior notice to Owner, to enter upon the Property for the purpose of determining whether such breach has occurred.

8. *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, 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," as that phrase is used in the California Revenue and Tax Code section 3712(d) and any successor statute, such that a purchaser at a tax sale will take title to the Property subject to this Covenant.

OWNER:

THE WILDLANDS CONSERVANCY

By: David Myers

David Myers

Executive Director

By: Jennifer Malone

Name: Jennifer Malone

Title: Secretary

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

By: Susan Gorin 12/17/15

Susan Gorin

President of the Board of Directors

ATTEST: Veronica A. Ferguson

by Roxanne Epstein

Clerk of the Board of Directors

NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 100-160-002-000

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

All that certain piece or parcel of land situated in the County of Sonoma, State of California and being a portion of the tract of land known as the "Bodega Rancho" more particularly bounded and described as follows, to-wit:

Commencing at a stake bearing South 39-1/4° East 20 links from a pair of posts in fence marked W. G. in a mound of rocks standing at the base of a gravelly hill on the summit of a sharp ridge dividing waters emptying into the Estero Americano from waters emptying into Bodega Harbor at a point at the head of a deep gulch emptying about 1/2 mile Southeasterly into Estero Americano on the West side of the ridge road leading from the Bodega Corners to Bodega Port, from which a high prominent rock bears South 34-3/4° East (Mag) and signal post U.S.C.S. bears South 17° East Mag; thence South 27° West, 5.90 chains; thence North 70-1/2° West, 5.82 chains; thence South 87° West, 4.35 chains; thence South 59° West, 5.30 chains; thence South 80-1/4° West, 7.37 chains; thence South 77-1/4° West, 4.84 chains; thence South 61-1/2° West, 14.50 chains; thence South 86-1/2° West, 7.82 chains; thence South 26-3/4° East, 20.25 chains; thence South 41-1/2° East, 3.60 chains; thence South 67-3/4° East, 18.66 chains; thence South 16° West, 5.54 chains; thence South 2° East, 4.40 chains; thence South 32° West, 8.21 chains; thence South 31° East, 10.10 chains; thence South 86-1/2° West, 1.29 chains; thence South 41° West, 4.00 chains; thence South 48-1/2° East, 4.40 chains; thence South 64° East, 7.50 chains; thence South 54-1/2° East, 7.03 chains; thence South 71-1/2° East, 2.06 chains; thence South 57-3/4° East, 13.82 chains; thence South 65-1/2° East, 6.06 chains; thence South 54-1/2° East, 4.50 chains; thence North 84-1/4° East, 1.27 chains; thence North 89-1/2° East, 12.70 chains; thence North 28° East, 6.55 chains; thence North 24-1/2° East, 2.80 chains; thence North 54-3/4° East, 6.10 chains; thence North 37° East, 3.58 chains; thence North 1° East 1.97 chains; thence North 53-1/2° East 10.50 chains; thence North 82° East 2.57 chains; thence North 75° East, 8.57 chains; thence North 18° East, 3.00 chains; thence North 22-1/2° West, 20.33 chains; thence North 46-3/4° West, 6.00 chains; thence North 19° East, 4.00 chains; thence South 64° West, 7.30 chains; thence North 39-3/4° West, 57.89 chains to beginning.

Being the same land as is described in that certain Deed dated the 28th day of February, 1863, Tyler Curtis, et al, to Lorenzo Gale and thereafter recorded in the Office of the County Recorder of Sonoma County in Liber 13 of Deeds, Page 632.

Excepting therefrom all that portion lying Northerly and Westerly of that certain line as described in the "Agreement Determining Boundary Lines" executed by Amos Marlon Simpson, et ux and George Bottarini, et ux, recorded May 28, 1970 Instrument No. L 64675.

Also excepting therefrom all that portion lying Northerly of that certain line as described in the "Agreement Determining Boundary Lines" executed by Transcentury Properties, Inc., a corporation and George Bottarini, et ux, recorded October 30, 1973 Instrument No. N 66872.

Also excepting therefrom any portion of herein described property lying below the mean high tide line of the Pacific Ocean and the mean high tide line of the Estero Americano.

Parcel Two:

All that portion of the property acquired by Amos Marion Simpson by Deed recorded August 4, 1948 Instrument No. C 72868 lying Southerly and Easterly of that certain line as described in the "Agreement Determining Boundary Lines" executed by Amos Marlon Simpson, et ux and George Bottarini, et ux recorded May 28, 1970 Instrument No. L 64675.

Title No.: FSNX-3101400563-RV
Amendment: D

EXHIBIT "A"

Legal Description
(continued)

Parcel Three:

All that portion of the property acquired by Transcentury Properties, Inc., a corporation by Deed recorded May 18, 1970 Instrument No. L 63502 lying Southerly of that certain line as described in the "Agreement Determining Boundary Lines" executed by Transcentury Properties, Inc., a corporation and George Bottarini, et ux, recorded October 30, 1973 Instrument No. N 66872.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sonoma)

On December 21, 2015 before me, S. Faus, Notary Public,

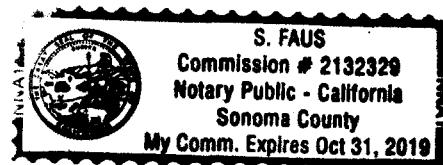
personally appeared Susan Gorin,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in
~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~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

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

WITNESS my hand and official seal.

S. Faus

Signature of Notary Public



Estero Ranch Recreation Conservation Covenant with
Wildlands Conservancy (APOS'D, 11/17/2015, Item #28)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

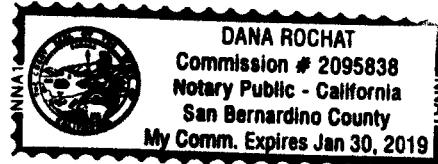
State of California
County of San Bernardino)

On December 16, 2016 before me, Dana Rochat, Notary
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature Dana Rochat (Seal)

CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)
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 Recreation Covenant dated 12/17, 2015 from The Wildlands Conservancy, 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. 15-0465 of the Board of Directors, dated November 17, 2015 and the District consents to the recording thereof by its duly authorized officer.

Sonoma County Agricultural Preservation and
Open Space District

Dated: 12/17/15

By: Susan Gorin
Susan Gorin, President
Board of Directors

ATTEST: Veronica A. Ferguson

by Roxanne Epstein

Clerk of the Board of Directors