

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

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Free recording per Government Code Section 6103

DEED AND AGREEMENT  
BY AND BETWEEN  
LAFRANCHI LAND AND CATTLE COMPANY, LLC  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT  
AND  
ASSIGNING DEVELOPMENT RIGHTS

Lafranchi Land and Cattle Company, LLC, a California limited liability company, (“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 approximately 262.94 acres 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 has offered this Easement over a 187-acre portion of the Property, more particularly described in Exhibit B, attached hereto and incorporated herein by this reference (“the Easement Area”). The Easement Area possesses natural resource, scenic, and biotic values of importance to the people of Sonoma County.

B. In 1990, the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax. 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 consistent with a voter-approved Expenditure Plan. 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 2006, the voters of Sonoma County approved an extension of the transaction and use tax and an update of the Expenditure Plan.

C. DISTRICT is organized pursuant to Public Resources Code sections 5500 *et seq.* and is duly authorized to acquire and hold conservation easement interests pursuant to Civil Code section 815.3 and Public Resources Code section 5540.

D. On [Date], DISTRICT's Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. [Number], that the acquisition of a conservation easement in the Property's Easement Area was consistent with the Sonoma County General Plan (specifically the Plan's Open Space and Resource Conservation Elements) because it will provide protection of the highest priority riparian corridors and headwater streams; preserve the highest priority aquatic habitats and associated upland areas that support rare, unique, or special-status aquatic plants and animals; preserve connected aquatic habitats and the lands that support this connectivity; preserve unique and scenic landscapes; preserve lands that provide visual relief from urbanized areas and highly traveled roads, including the most visible ridgelines and mountaintops and valleys; and ensure that all Ag + Open Space actions support resiliency to climate change and extreme events and the avoidance or reduction of greenhouse gas emissions. By that same resolution, DISTRICT's Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan.

E. This Conservation Easement, as further defined below, will further the goals, objectives and policies of the following adopted local plans: *Restoration Vision for the Laguna de Santa Rosa* (SFEI, 2020), *Restoration and Management Plan: Enhancing and Caring for the Laguna* (Laguna Foundation, 2006), and DISTRICT's *Vital Lands Initiative* (Ag + Open Space, 2021).

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. This conservation easement is intended to support wetland, riparian and aquatic habitat restoration and protection associated with the Laguna de Santa Rosa and creeks tributary to the Laguna de Santa Rosa that flow across the Property.

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 Easement Area of 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 Easement Area of the Property, except as specifically provided by this Easement.

**2. Conservation Values.** The Easement Area is a 187-acre portion of an approximately 263-acre ranch, located at the western end of Piner Road, three miles west of Santa Rosa, Sonoma County, California. The larger ranch has vineyards and was once an active dairy; much of the Easement Area has been croplands in recent years. The Laguna de Santa Rosa and Mark West, Olivet, and Hartman creeks run through the Easement Area of the Property. There are riparian and wetland natural resources associated with these waterways. In addition, the majority of the Easement Area is visible from Guerneville Road. Critical resources on the Property (collectively “the Conservation Values”) include Natural Resources and Scenic Resources.

**2.1 Natural Resource Values.** Critical natural resources found in the Easement Area include a mosaic of habitat types, including 1.5 miles of streams, valley oak woodlands, wetlands, and riparian deciduous forest. Mark West Creek runs through a portion of the Easement Area and is a coho salmon and steelhead stream. The Laguna de Santa Rosa forms the western boundary of the Easement Area; this wetland complex, which is recognized as a Ramsar Wetland of International Importance, also hosts high priority wetlands, riparian vegetation, and coho salmon and steelhead. The entire Easement Area is within the 100-year floodplain of the Laguna de Santa Rosa.

In addition to their inherent value, the natural resources of the Easement Area provide important ecosystem services such as floodwater attenuation, water filtration, groundwater recharge, air quality improvement, wildlife habitat and movement, and carbon sequestration. Surface water and groundwater are very important natural resources on the Easement area of this Property.

**2.2 Scenic Values.** Approximately 97% of the Easement Area is visible from public roads. The Easement Area offers expansive, open, natural lands highly visible from Guerneville Road, including the Laguna de Santa Rosa, Mark West Creek, Olivet Creek, and associated uplands.

**3. Conservation Purpose.** It is the purpose of this Easement to preserve and protect forever the Conservation Values of the Easement Area 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 constrain development and confine the use of the Easement Area to uses and activities that are consistent with the Conservation Purpose of this Easement and will prohibit and prevent any uses and activities of the Easement Area that will materially impair or interfere with the Conservation Values of the Easement Area. GRANTOR and DISTRICT intend that all Conservation Values of the Easement Area 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: (i) first priority shall be given to preservation and protection of natural resources; and (ii) next, preservation and protection of scenic resources.

## **PART TWO: RIGHTS OF DISTRICT**

**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 Easement Area.

**4.2 Property Inspections.** DISTRICT shall have the right to enter upon the Easement Area of the Property and to inspect, observe, and study the Easement Area 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 Easement Area of the Property for the purpose of determining whether such breach has occurred. The rights of entry provided by this Section 4.2 shall extend to the officers, agents, consultants, and volunteers of DISTRICT.

**4.3 Enforcement.** DISTRICT shall have the right to enforce the rights herein granted and to prevent or stop, by any legal means, any activity or use on the Easement Area 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 Approval of Certain Uses.** DISTRICT shall have the right to review and approve proposed uses and activities on the Easement Area of 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 acceptable to GRANTOR, visible from a public road, bearing information indicating that the Easement Area of 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.

## **PART THREE: RESTRICTIONS ON DEVELOPMENT, USE AND ACTIVITIES**

**5. GRANTOR's Restricted Rights.** GRANTOR shall confine the use of the Easement Area 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. 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 duties with respect to the preservation of the Easement Area's Conservation Values; (ii) establishes allowed activities and uses; (iii) establishes restricted or prohibited activities and uses; and (iv) 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 Easement Area 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 Easement Area 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 Easement Area shall be undertaken in a manner that protects and preserves the Conservation Values.

5.1.4 Protection of Soil and Water. No activity or use on the Easement Area 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 Duty to Prevent Waste, Nuisance, and Trespass. Without limiting the generality of the foregoing, GRANTOR shall maintain the Easement Area in a condition consistent with the Conservation Purpose of this Easement, which obligation shall include the undertaking of reasonable and necessary steps to prevent harm to the Conservation Values of the Easement Area due to foreseeable acts or omissions of third parties.

5.1.6 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.

5.1.7 Management Plan. Within 5 years of the recordation of this Easement or prior to resource management activities under Sections 5.5.1 through 5.5.6, GRANTOR, its agents, designees, or assigns shall develop and GRANTOR shall submit to DISTRICT for review and approval pursuant to Section 6 of this Easement, a Management Plan (the "Management Plan") for the Easement Area, which shall be consistent with the terms and conditions of this Easement. The Management Plan must, at minimum, describe (a) its objectives, (b) location and description of treatments/work, (c) timelines, (d) the "before" condition, (e) and any required maintenance or planned land uses. Regarding the description of the treatments/work, design basis, 60% design plans, and associated CEQA documents, as consistent with Section 6.1.2, shall satisfy the requirements of this Section

5.1.7. The Management Plan may or may not include a Vegetation Management Plan pursuant to Section 5.5.6.2. The Management Plan and future updates and amendments will be subject to review and approval by DISTRICT in accordance with Section 6 of this Easement. Prior to approval of the Management Plan by the DISTRICT, restoration and enhancement activities may be submitted to DISTRICT for prior approval on a project-by-project basis.

The Management Plan will focus on best management practices to assure that management activities are conducted in a manner that is beneficial to the Conservation Values of the Easement Area.

5.1.8 Project Structure Map. The Project Structure Map, attached hereto as Exhibit B and incorporated herein by this reference (the “Project Structure Map”), identifies the Easement Area protected by this Conservation Easement. This area is also depicted on the Baseline Documentation Report Site Map (the “Baseline Site Map”), as identified in Section 9. In the event that a conflict is found between the Project Structure Map and the Baseline Site Map, the Project Structure Map shall prevail.

**5.2 Subdivision and Parcels.** At the time of recordation of this Easement, the Easement Area may consist of more than one legal parcel. Notwithstanding the potential existence of multiple underlying parcels, the Easement Area, in its entirety, shall remain under common ownership, and GRANTOR shall not place or convey any portion of the Easement Area into ownership separate from the whole of the Property except as expressly provided in subsection 5.2.1. GRANTOR shall not further divide the Easement Area, or any of its constituent parcels 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 Easement Area by prior patent or deed conveyances, subdivisions, or surveys.

5.2.1 Exceptions. This prohibition against division of the Easement Area 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 Easement Area to a government or non-profit entity exclusively for conservation or public access purposes.

b) Leases. GRANTOR may lease a portion(s) of the Easement Area for the permitted restoration, natural resource management, agricultural, and grazing uses described in Section 5.3.

5.2.2 Historic Parcels. GRANTOR acknowledges that one or more additional historic parcels may exist on the Easement Area, 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.** GRANTOR shall restrict use of the Easement Area as defined in this Section 5.3. All other uses are prohibited.

**5.3.1 Natural Resource Protection, Preservation, Restoration, and Enhancement.** GRANTOR may protect, preserve, restore, and enhance the natural resources of the Easement Area in accordance with sound, generally accepted conservation practices and the provisions of Section 5.5.

a) **Mitigation.** Subject to prior written approval of DISTRICT, the Easement Area may be used for mitigation of on- or off-site projects if DISTRICT determines, in its sole discretion, that the following criteria are met: (1) the proposed mitigation enhances the Conservation Values; (2) the proposed mitigation is consistent with DISTRICT's enabling legislation; (3) the proposed mitigation is aligned with DISTRICT's objectives and goals; and (4) the proposed mitigation does not present a risk to DISTRICT's long-term fiscal stability. Furthermore, (1) any additional protections required by regulatory agencies in association with a mitigation project must be consistent with this Easement; and (2) the sale of mitigation credits are considered a commercial use and subject to the provisions of Section 5.3.4.

b) **Restoration and Enhancement.** Subject to prior approval of DISTRICT, GRANTOR, its agents, designees, assigns, or lessees may undertake conservation and restoration activities in accordance with Section 5.5.1.

**5.3.2 Agricultural Uses.** GRANTOR may conduct agricultural uses on the Easement Area subject to the limitations in this section. Permanent crops such as orchards and vineyards are prohibited in the Easement Area. Subject to prior written approval of DISTRICT, GRANTOR may plant annual crops in the areas intended for restoration, until such restoration implementation is complete. Limited grazing for natural resource or fuel management is permitted in the Easement Area, in accordance with a Management Plan approved by DISTRICT, in accordance with Sections 5.1.7 and 6.

**5.3.3 Recreational and Educational Use.** GRANTOR may use the Easement Area for low-intensity outdoor recreation and education, including hiking, nature study and other such uses similar in nature and intensity. All outdoor recreational and educational uses and activities on the Easement Area shall be designed and undertaken in a manner compatible with natural resource protection. GRANTOR may engage in personal, non-commercial hunting and fishing of animals in the Easement Area.

**5.3.4 Commercial.** GRANTOR may use the Easement Area for the following commercial uses and activities: (i) agricultural uses as defined in Section 5.3.2; (ii) leases or rentals for permitted restoration, natural resource management, agricultural, and grazing uses as defined in Section 5.2.1(b); and (iii) subject to prior written approval of DISTRICT, other minor ancillary commercial uses found to be consistent with Conservation Values of this Easement.

**5.4 Structures and Improvements.** No structure or improvement shall be maintained, repaired, replaced, constructed, or placed on the Easement Area, except as provided in this Section 5.4.

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 5.4.6.

5.4.2 Accessory Structures and Improvements.

a) Accessory to Natural Resource Protection Use. Subject to prior written approval of DISTRICT, GRANTOR may place or construct accessory structures and improvements reasonably necessary for natural resource protection on the Easement Area, including sheds and greenhouses.

b) Accessory to Recreational and Educational Uses. Subject to prior written approval of DISTRICT, GRANTOR may construct or place minor improvements associated with permitted low-intensity outdoor recreational and educational uses, such as a single-track unpaved trail and viewing areas. All improvements associated with the low-intensity recreational and educational uses shall be designed, placed and constructed to avoid impacts to sensitive natural resources and consistent with Section 5.5.1 of this Easement.

5.4.3 Roads and Trails. Subject to prior written approval of DISTRICT, GRANTOR may construct new roads and trails and reconstruct or expand existing roads and trails provided that such roads and trails (i) are directly required for uses and activities allowed herein and (ii) are the minimum necessary for such uses and activities. Roads and trails shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for roads and trails as recommended by CAL FIRE or other similar or successor entity. Roads and trails 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 trails that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized, and ensured of proper drainage. Native oak or other trees shall not be removed for purposes of road construction or maintenance except as provided in Section 5.5.7.



5.4.4 Fences and Gates. Subject to prior written approval of DISTRICT, GRANTOR may construct and erect new fencing and gates only as necessary for permitted uses of the Easement Area or as necessary in connection with GRANTOR'S duties to prevent foreseeable trespass pursuant to Section 5.1. Notwithstanding the foregoing, no approval is required for placement of temporary fencing. All fencing and gates must (i) preserve the scenic values of the Easement Area; (ii) be the minimum necessary in design and extent; (iii) not impede wildlife movement except in cases where necessary to protect the allowed natural resource management, restoration and enhancement, and agricultural uses described in this Easement; and (iv) comply with DISTRICT's then-current guidelines for fences on conservation lands. Notwithstanding the provisions of Section 5.4.1, 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 5.4.4. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.4, GRANTOR shall remove such fencing or gate from the Easement Area.

5.4.5 Utilities and Energy Resources. Subject to prior written approval of DISTRICT, GRANTOR may expand existing or develop or construct new utilities, including 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. Electric power and communication utilities may serve off-site use if associated improvements are located on a permitted structure and do not cause such structure to exceed size and height limitations.

5.4.6 Signs. GRANTOR may construct or place signs as set forth in this Section 5.4.6. No sign shall be artificially illuminated.

a) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place two (2) signs not to exceed 32 square feet in size to identify the Property from public roadways and/or to acknowledge participation of funding agencies for permitted uses on the Easement Area.

b) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place signs no more than six (6) square feet in size to (i) mark the boundary of the Property; and (ii) provide directional, interpretive and educational information, 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 may construct or place signs advocating candidates or issues that will be presented to voters in a public election are allowed, 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 must be designed and implemented in accordance with sound, generally accepted conservation practices.

**5.5.1 Natural Resource Preservation, Restoration, and Enhancement Activities.** All restoration and enhancement work must be completed pursuant to a Management Plan prepared by GRANTOR or GRANTOR's designee and approved by DISTRICT, in accordance with Sections 5.1.7 and 6. Subject to prior approval of DISTRICT, GRANTOR, its agents, designees, assigns, or lessees may undertake conservation and restoration activities of riparian areas, seasonal wetlands, wet meadow, and instream and upland habitats for fish and wildlife, including but not limited to practices to enhance water quality, planting of native riparian, wetland, and/or upland vegetation, temporary irrigation, pumping, ditching, clearing, grading, bank and soil stabilization, and flooding, in accordance with Section 5.3.1. Prior to approval of the Management Plan by the DISTRICT, restoration and enhancement activities may be submitted to DISTRICT for prior approval on a project-by-project basis.

Once GRANTOR, its agents, designees, assigns, or lessees have completed restoration and the Easement Area has been restored by GRANTOR, its agents, designees, assigns, or lessees, all land uses within the restored area inconsistent with preservation of the Easement Area in its then-restored condition shall be prohibited by this Easement. Until the contemplated restoration project(s) occurs, consistent with this Easement, the Easement Area may be used for agricultural purposes, in accordance with Section 5.3.2.

**5.5.2 Grazing.** GRANTOR may engage in livestock grazing for natural resource or fuel management in accordance with Management Plan approved pursuant to Sections 5.1.7 and 6 and sound, generally accepted agricultural and soil conservation practices. Grazing shall maintain soil productivity; protect water quality, creeks, and riparian zones; maintain or improve the overall quality of the grassland health; conserve scenic quality; protect unique or fragile natural areas; and conserve native plant and animal species.

**5.5.3 Surface Alteration.** Alteration of the contour of the Easement Area in any manner whatsoever is prohibited, including excavation, removal or importation of soil, sand, gravel, rock, peat or sod, except as reasonably necessary in connection with the uses, structures and/or improvements allowed under Section 5 of this Easement. In connection with allowed uses, structures and/or improvements, movement of over 50 cubic yards of material in any calendar year is subject to prior DISTRICT approval.

**5.5.4 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 5.4.5; (ii) reconstruction, expansion and new construction of roads or trails allowed under Sections 5.4.3; and (iii) the preservation, restoration and enhancement of natural resources allowed under Sections 5.3.1 and 5.5.1.

5.5.5 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.

5.5.6 Vegetation and Fuel Management. GRANTOR may undertake vegetation and fuel management activities to reduce wildfire risk as provided in this section. All vegetation and fuel management activities shall be designed and implemented to minimize harm to native wildlife and plants. If vegetation and fuel management activities are to take place during nesting season, GRANTOR shall ensure that nesting surveys are conducted in coordination with a qualified biologist and shall modify activities based on survey results to prevent harm to identified nests.

5.5.6.1 Within 100 feet of structures and without need for notice to or approval from DISTRICT, GRANTOR may undertake brush removal, mowing, grazing, tree trimming, targeted tree removal, and other vegetation management methods of similar nature and intensity.

5.5.6.2 Farther than 100 feet from structures, GRANTOR may undertake vegetation management pursuant to a Vegetation Management Plan (defined below) approved in advance by DISTRICT. A “Vegetation Management Plan” is a document designed to guide GRANTOR’s conduct of vegetation management pursuant to this section and may describe either an individual vegetation management project or a more comprehensive plan covering multiple projects. Any Vegetation Management Plan must incorporate the best available science and must identify the following: a) the purpose of proposed work, b) the location of the treatment area(s), c) a timeline for completion, d) the “before” condition of the treatment area(s), e) management objectives, f) treatment methods, g) post-treatment maintenance, and h) best management practices, such as soil protection, infrastructure needs, appropriate tree spacing, special-status species protection, invasive species management, and snag retention. Any Vegetation Management Plan must be consistent with any then-current DISTRICT wildfire management policy, the Management Plan, and the terms of this Easement. Any Vegetation Management Plan may include the following treatment methods:

5.5.6.2.1 Limited brush removal and mowing, or other methods of similar nature and intensity;

5.5.6.2.2 Limited grazing undertaken in accordance with sound, generally accepted conservation practices;

5.5.6.2.3 Limited tree trimming and limited tree removal within a fuel break area or calming zone (as designated in the approved Vegetation Management Plan), and, if recommended by a fire protection agency having jurisdiction, vegetation removal within a fire break (as designated in the approved Vegetation Management Plan); and

5.5.6.2.4 Prescriptive or cultural burning consistent with the standards and requirements of the local fire protection agency having jurisdiction.

5.5.6.3 Following any such vegetation management, GRANTOR shall promptly provide to DISTRICT a record of the “after” condition of the treatment areas, such as photographs and descriptions of the results of treatment.

5.5.7 Native Tree Removal. Harvesting, cutting, trimming, transplanting, 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 vegetation and fuel management, in accordance with Section 5.5.6; and (iv) for natural resource management as set forth in Section 5.5.1 of this Easement. Native trees removed pursuant to this Section 5.5.7 may be used for personal firewood.

5.5.8 Native Vegetation Removal. Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) within footprint of permitted structures and improvements; (ii) to control insects and disease; (iii) to prevent personal injury and property damage; (iv) for the purpose of fire management, in accordance with Section 5.5.6; and (v) for natural resource management, as set forth in Section 5.5 of this Easement.

5.5.9 Native Animal Removal. Killing, hunting, trapping, injuring or removing native animals is prohibited except (i) under imminent threat to human life or safety; (ii) as reasonably necessary in accordance with Section 5.5.1, using selective control techniques consistent with the policies of the Sonoma County Agricultural Commissioner and other governmental entities having jurisdiction; and (iii) for landowners’ non-commercial, personal use.

5.5.10 Non-Native Plants and Animals.

a) Removal. GRANTOR may 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.

b) Introduction. GRANTOR shall not establish or plant non-native plant and animal species.

5.5.11 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.

5.5.12 Dumping. Dumping, releasing, burning, or other disposal of wastes, refuse, debris, non-operative motorized vehicles, or hazardous substances is prohibited. GRANTOR shall use reasonable means to discourage and prevent third parties from dumping such materials on the Easement Area of the Property, and shall remove or cause to be removed such materials where such efforts are unsuccessful.

5.5.13 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 Easement Area 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.** Nothing contained in this Easement shall be construed as granting, permitting or affording the public access to any portion of the Easement Area of the Property or as limiting or precluding GRANTOR's right to exclude the public from the Easement Area of the Property. Nothing in this Easement shall be construed to preclude GRANTOR's right to grant access to third parties across the Easement Area, provided that such access is allowed in a reasonable manner and is consistent with the Conservation Purpose of this Easement and so long as such access is undertaken subject to the terms and conditions of this Easement.

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

#### **PART FOUR: 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 Easement Area. 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 GRANTOR's request with the terms, conditions and Conservation Purpose of this Easement. DISTRICT may 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.**

Pursuant to Sections 5.1.7 and 5.5.1 of this Easement, GRANTOR shall secure DISTRICT's approval of any Management Plan and any amendments, revisions or updates (collectively "Revisions") 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, and does not constitute issuance of entitlements that may be required by any other governmental entity. DISTRICT acknowledges that time is of the essence and DISTRICT's approval may not be unreasonably withheld or delayed. GRANTOR shall use the following procedure to obtain DISTRICT's approval for the Management Plan and Revisions.

6.1.1 GRANTOR shall within five years of recordation of this Easement, submit a proposed Management Plan to DISTRICT for its review, and at any time thereafter may, at its discretion, submit Revisions to DISTRICT for its review. 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. If DISTRICT has any objections to the Management Plan or Revisions, it shall state such objections in sufficient detail to enable GRANTOR to modify the proposed Management Plan or Revisions so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement. The Management Plan and Revisions will be deemed approved only upon DISTRICT's express written approval, given by DISTRICT's General Manager.

6.1.2 In connection with any environmental review of the Management Plan or Revisions 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 Once the Management Plan is approved by DISTRICT, all uses and activities shall be conducted in a manner consistent with the Management Plan. Upon DISTRICT's approval, 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 Easement Area of 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 Revisions to the Management Plan are subject to District approval.

6.1.4 DISTRICT may require GRANTOR to revise or update the Management Plan to address changed conditions on the Easement Area. In the event of such a request by DISTRICT, GRANTOR shall submit proposed revisions to the Management Plan to DISTRICT within 120 days of DISTRICT's request. Such revisions will be subject to the review and approval procedures set forth in Section 6.1.1.

**6.2 Uses/Activities Requiring Notice or Approval to DISTRICT.** In the absence of a Management Plan approved by DISTRICT, or for uses and activities not described in a Management Plan 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 Easement Area. 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 notice to DISTRICT, GRANTOR shall deliver such notice to DISTRICT in writing 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 approval from DISTRICT, GRANTOR shall file a request for such approval ("GRANTOR's request") in writing 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 for approval to review the request and to approve, conditionally approve, disapprove or notify GRANTOR of any objection thereto. In order to consider GRANTOR's request complete, DISTRICT may require that GRANTOR submit additional information and/or a plan for such proposed activity or use. 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/Activities Not Expressly Addressed: DISTRICT's Approval. In the event GRANTOR desires to commence an activity or use on the Easement Area that is neither expressly permitted nor expressly prohibited in Section 5, GRANTOR shall seek DISTRICT's prior written approval of such activity or use in accordance with the procedure set forth in this Section 6.2. The exercise of any activity or use not expressly permitted in Section 5 may constitute a breach of this Easement and may be subject to the provisions of Section 10.

## **7. Costs and Liabilities Related to the Property.**

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



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 Easement Area, DISTRICT has prepared a Baseline Documentation Report which will be maintained on file with DISTRICT and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. The Baseline Documentation Report includes a Baseline Site Map. A copy of the Baseline Documentation Report has been reviewed and approved by GRANTOR. The parties agree that the Baseline Documentation Report provides an accurate representation of the Easement Area of the Property at the time of the execution 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 Easement Area to the condition that existed prior to such violation. 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 Easement Area is to be restored to the condition that existed prior to the violation. The notice shall be provided in accordance with Section 19. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (a) may pursue any and all remedies available under law without waiting for the cure period to expire, (b) shall have the right, upon the giving of 24 hours' notice, to enter the Easement Area 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, and (c) shall have the right to record a notice of violation in the Office of the Sonoma County Recorder. 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 Easement Area 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 Easement Area (in terms of years or portion thereof); 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).

**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.** Except as otherwise provided in Section 5.1.5 and this Section 11, 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 Easement Area resulting from causes beyond GRANTOR's control, including 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 Easement Area 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. Notwithstanding the foregoing, GRANTOR shall be liable to DISTRICT for modifications or damage to the Easement Area that impair or damage the Conservation Values of the Easement Area when those modifications or damages result from the acts or omissions of third parties whose use of or presence on the Easement Area is authorized or requested by GRANTOR. In the event that the Conservation Values of the Easement Area are damaged or impaired as a result of the acts or omissions of third parties, GRANTOR shall diligently pursue all available legal remedies against such parties to ensure restoration of the Easement Area. Nothing contained herein limits or precludes GRANTOR's or DISTRICT's rights to pursue any third party for damages to the Easement Area's Conservation Values.

**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 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 the fees and expenses of the arbitrators, but excluding attorneys' fees, which sum shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

**13. Extinguishment and Condemnation.**

**13.1. Extinguishment.** Subject to the requirements and limitations of California Public Resources Code section 5540, or any 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 Easement Area after such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 13.2. All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County.

**13.2 Condemnation.** If all or any part of the Easement Area 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 Easement Area (or portion thereof) subject to the condemnation or in-lieu purchase and all direct or incidental damages resulting therefrom. Any expense incurred by GRANTOR or DISTRICT in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR and DISTRICT in proportion to their interests in the Easement Area, 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 14, the parties stipulate that, in the event of condemnation of the Easement Area or any portion thereof, the fair market value of the Easement Area for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation on the following basis: GRANTOR 71.8% and DISTRICT 28.2% (which percentages are derived from the ratio of the price paid for the Easement to the appraised value of the Easement Area 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 Easement Area after the date of this Easement, provided that such improvements were not made or funded by DISTRICT and further provided that such improvements do not constitute a breach of this Easement.

## **PART FIVE: MISCELLANEOUS**

**14. Approvals.** Whenever in this Easement the consent or approval of one party is required as to an act of the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless another standard has been expressly provided herein.

**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. In the

event of a conflict between the Project Structure Map and the Baseline Site Map, the Baseline Site Map will control.

**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 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 a leasehold interest) is conveyed and that GRANTOR will provide a copy of this Easement to any party acquiring an interest in the Property from GRANTOR. 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 other than the liens or deeds of trust identified in Exhibit C, attached hereto and incorporated herein by this reference, whose beneficiaries have therein consented to this Easement, agreed to subordinate their respective interests in the Property to this Easement, and covenanted that any sale made under the provisions of the respective liens or deeds of trust shall be subject to this Easement.

**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:           Lafranchi Land and Cattle Company, LLC  
                              c/o Ken Lafranchi  
                              Lafranchi Architecture & Development  
                              100 E Street, Ste 204  
                              Santa Rosa, CA 95404

To DISTRICT:           General Manager  
                              Sonoma County Agricultural Preservation and Open Space District  
                              747 Mendocino Avenue, Suite 100  
                              Santa Rosa, CA 95401

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 GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.

b) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (ii) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by 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 overnight 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 Easement Area 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 is subject to prior written DISTRICT approval and shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

**21. No Forfeiture.** GRANTOR represents and warrants that nothing contained in this Easement shall result in a forfeiture or reversion of GRANTOR's title in any respect. If a forfeiture or reversion does occur, GRANTOR shall return, with interest, all consideration paid by DISTRICT for the acquisition of this Easement. If a forfeiture or reversion does occur,

GRANTOR shall return, with interest calculated in accordance with the rate established pursuant to the next sentence, all consideration paid by DISTRICT for the acquisition of this Easement. The interest rate applicable to the amount owed to DISTRICT pursuant to this paragraph shall be the greater of (a) 5% or (b) the percentage change in the Consumer Price Index for All Urban Consumers (base year 1982-1984 = 100) for San Francisco Oakland and San Jose published by the United States Department of Labor, Bureau of Labor Statistics from the date the Easement is recorded to the date of DISTRICT's demand for reimbursement pursuant to this paragraph.

**22. Assignment of Rights and Obligations.** GRANTOR's rights and obligations under this Easement will be assigned to GRANTOR's successor-in-interest upon transfer of GRANTOR's interest in the Property to such successor, except that GRANTOR's liability for acts or omissions occurring prior to the transfer shall survive the 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 or her duly authorized representatives.

**26. Fees and Charges.** DISTRICT shall have the right to establish and impose on GRANTOR reasonable fees and charges, including attorneys' fees, for inspections, approvals, and other services performed by or for DISTRICT pursuant to this Easement. Such fees and charges shall not exceed the reasonable costs of providing such services.

**27. 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.

**28. 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.

**29. Counterparts.** This Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.



**30. 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 recordation 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.

**32. 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.

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

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:

By: \_\_\_\_\_  
Ken Lafranchi, Lafranchi Land and Cattle Company, LLC

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE  
DISTRICT

By: \_\_\_\_\_  
Chris Coursey, President of the Board of Directors

ATTEST:

\_\_\_\_\_  
Noelle Francis, Deputy Clerk of the Board of Directors

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

Exhibit A: Legal Description of Property  
Exhibit B: Legal Description of Conservation Easement Area (the “Easement Area”)  
Exhibit C: Project Structure Map  
Exhibit D: Subordinate Liens

Exhibit "A"  
Conservation Easement

Lying within the State of California, unincorporated area of the County of Sonoma, and being portions of the lands of Lafranchi Land and Cattle Company, LLC., a California limited liability company as described by the grant deed recorded under Document Number 2017-019975, Official Records of Sonoma County, said portion being more particularly described as follows:

Being all that portion lying westerly of the following described line:

COMMENCING at a 1 inch iron pipe with splayed top tagged PLS 4206 as shown on the Record of Survey filed in Book 689 of Maps, Page 33, Sonoma County Records; thence South 4°36'05" East 2434.78 feet to a found t-bar & tag stamped "Brunner – PLS 4206" as shown on said Record of Survey; thence South 30°33'47" West 2006.49 feet to a point on the northerly right-of-way of Guerneville Road from which a 3/4 inch iron pipe with no tag bears, South 87°14'10" East 832.45 feet, said point being the POINT OF BEGINNING; thence leaving said northerly right-of-way, North 2°48'12" East 506.06 feet; thence North 47°48'12" East 38.51 feet; thence North 77°55'55" East 109.93 feet; thence North 32°55'55" East 38.90 feet; thence North 3°11'57" East 204.41 feet; thence North 54°36'50" East 34.18 feet; thence North 2°38'33" East 254.05 feet; thence North 23°39'00" East 282.54 feet; thence North 36°33'11" East 195.63 feet; thence North 17°32'49" East 159.39 feet; thence North 25°10'46" East 127.25 feet; thence North 42°28'01" West 47.65 feet; thence North 0°44'57" West 393.24 feet; thence North 47°42'28" East 69.29 feet; thence North 0°00'29" East 221.01 feet; thence North 89°59'31" West 26.37 feet; thence North 45°35'56" West 63.56 feet; thence North 0°31'50" West 139.70 feet; thence South 89°51'19" West 171.13 feet; thence North 39°39'29" West 71.01 feet; thence North 0°19'55" West 352.52 feet to a point from which said 1 inch iron pipe with splayed top tagged PLS 4206 as shown on the Record of Survey filed in Book 689 of Maps, Page 33, Sonoma County Records bears North 25°38'21" East 1242.38 feet; thence South 89°47'26" West 319.51 feet; thence North 49°45'05" West 141.44 feet; thence North 34°00'54 West 143.36 feet; thence North 83°08'38" West 275.72 feet; thence North 46°09'24" West 154.25 feet; thence North 59°28'01" West 198.22 feet; thence North 25°01'20" West 242.01 feet; thence North 48°05'02" East 231.40 feet; thence North 3°05'02" East 47.10 feet; thence North 20°08'25" West 732.49 feet; thence North 0°11'21" East 112.17 feet; thence North 89°11'01" East 248.48 feet; thence South 0°59'26" West 68.97 feet; thence South 44°00'34" East 36.97 feet; thence North 82°35'48" East 380.08 feet; thence North 46°32'45" East 126.71 feet; thence North 9°57'33" East 63.13 feet; thence North 62°23'37" East 142.59 feet; thence North 86°51'36" East 241.35 feet; thence North 44°28'21" East 199.56 feet; thence North 45°31'39" West 13.09 feet; thence North 44°16'45" East 232.26 feet to a point on northerly line on said lands of Lafranchi Land and Cattle Company, LLC., said point being North 19°14'18" West 1116.03 feet from said 1 inch iron pipe with splayed top tagged PLS 4206 as shown on the Record of Survey filed in Book 689 of Maps, Page 33, Sonoma County Records, said point on northerly line being the POINT OF TERMINUS of the line herein described.

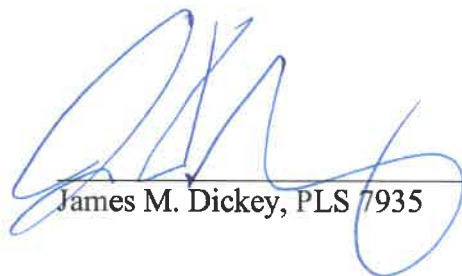
Containing 183.7 acres, more or less.

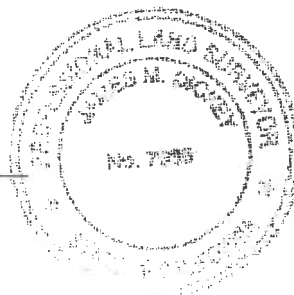
Being a portion of APN 057-080-029

**Basis of Bearings:**

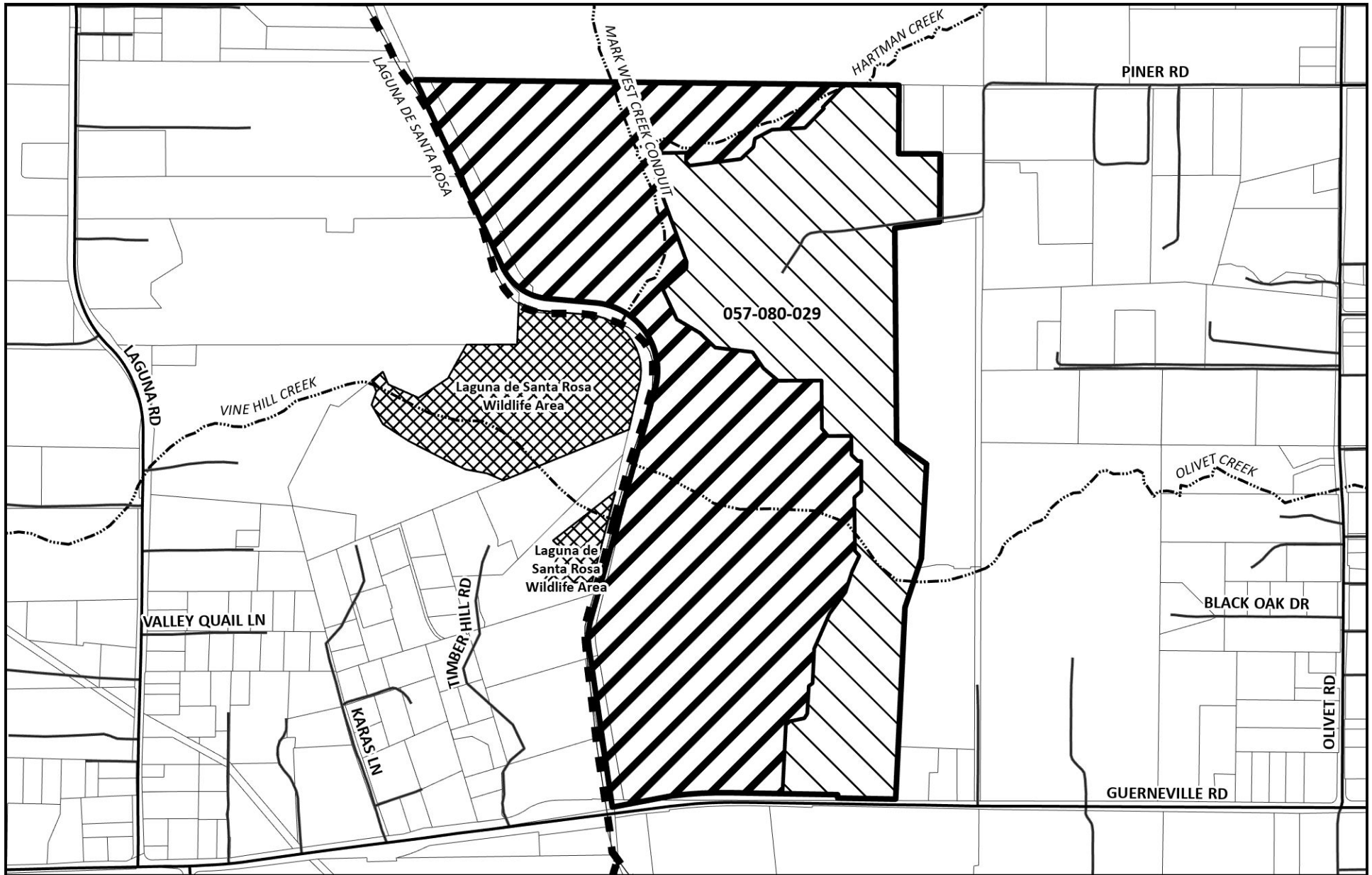
The California Coordinate System, Zone II, NAD83 (Epoch 2017.5) as determined locally by a line between Continous Global Positioning Systems (CGPS) Station P197 and P201 being North 33°34'14" East 57,069.202 feet as derived from geodetic values published by the California Spatial Reference Center (CSRC).

Prepared by Cinquini & Passarino, Inc.

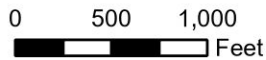
  
James M. Dickey, PLS 7935



9/6/2023  
Date



### Lafranchi (Laguna) Exhibit B Project Structure Map



- Streets
- Perennial Stream
- Intermittent Stream

- Easement Boundary
- Lafranchi Property Boundary
- Area Not Encumbered by Easement

- Assessor's Parcels
- Conservation Easement

Map Date: 11/20/2023  
 Sources: SCWA (streams); Sonoma County GIS (parcels, roads) Ag + Open Space (easement boundary); This map displays GIS data for illustrative purposes only and is not intended to depict definitive property boundaries or feature locations.



Exhibit "C"  
Conservation Easement

Lying within the State of California, unincorporated area of the County of Sonoma, and being portions of the lands of Lafranchi Land and Cattle Company, LLC., a California limited liability company as described by the grant deed recorded under Document Number 2017-019975, Official Records of Sonoma County, said portion being more particularly described as follows:

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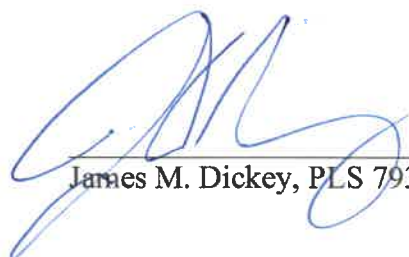
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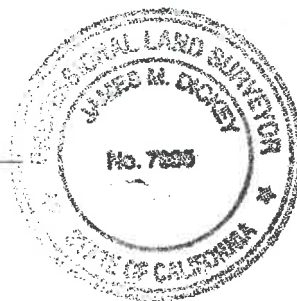
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