



## SUMMARY REPORT

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**Agenda Date:** 7/16/2024

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**To:** Sonoma County Board of Supervisors; Board of Directors of the Sonoma County Agricultural Preservation and Open Space District

**Department or Agency Name(s):** County of Sonoma and Sonoma County Agricultural Preservation and Open Space District

**Staff Name and Phone Number:** Jacob Newell (707-565-7357); Lisa Pheatt (707-565-3733)

**Vote Requirement:** Majority

**Supervisory District(s):** 1<sup>st</sup> District

**Title:**

Amendments to the McCrea Conservation Easement and the Related 2005 Settlement Agreement between the Maria Hansen Trust, the County of Sonoma, Ag + Open Space and others

**Recommended Action:**

- A) On behalf of the Sonoma County Agricultural Preservation and Open Space District, approve and authorize the President to execute a Second Amendment to Deed and Agreement By and Between the Marian Hansen Trust and the Sonoma County Agricultural Preservation and Open Space District Amending, Restating, and Conveying a Conservation Easement and Assigning Development Rights; and
- B) Approve and authorize the Chair of the Board, on behalf of the County of Sonoma, and the President, on behalf of the Sonoma County Agricultural Preservation and Open Space District, to execute an Amendment to a Settlement Agreement Affecting Real Property Owned by the Marian Hansen Trust.

**Executive Summary:**

In 1997, the Sonoma County Agricultural Preservation and Open Space District ("Ag + Open Space") acquired the McCrea Conservation Easement, located on the east side of Sonoma Mountain adjacent to Jack London State Park ("1997 Easement"). In 2001, State Parks acquired a trail easement over the western portion of the conserved property from the original landowner ("McCrea"), but when McCrea sold the land to the Marie Hansen Trust ("MHT"), MHT challenged the trail easement and other limitations established by the 1997 Easement. Litigation by and between the Marie Hansen Trust ("MHT"), the County of Sonoma, Ag+ Open Space, and other interested parties settled in 2005 with stipulations regarding a potential subdivision of what is now a 222.74-acre parcel owned by MHT. In 2010, actions to implement the settlement agreement included the recordation of an amendment to the 1997 Easement. This conservation easement amendment relied for some of its meaning on a subdivision application filed by MHT in 2006, which was conditionally approved by the County in 2009. However, the subdivision application has since expired, rendering the effect of the 2010 amendment to the conservation easement unclear as to certain matters, such as the size and location of the building envelope and personal agricultural area. To correct these ambiguities, the parties have negotiated amendments to the settlement agreement and the conservation easement to give effect to the original intent of the parties. These amendments do not change the substance of prior agreements, but rather clarify their current effect notwithstanding the intervening lapse of the 2006 subdivision application.

**Discussion:**

In 1997, Ag + Open Space acquired the McCrea Conservation Easement, located on the east side of Sonoma Mountain adjacent to Jack London State Park, “to preserve the open space, natural, scenic and agricultural values of the Property, and each of them, and to prevent any uses of the Property that will significantly impair or interfere with those values” (“1997 Easement”). The 1997 Easement covered the entire 244.86 acres of what was then APN 054-100-004 and allowed residential use below the 1500-ft contour.

**Litigation History**

In 2001, State Parks acquired a trail easement over the western portion of then-APN 054-100-004 from the original landowner (“McCrea”), but when McCrea sold the land to the Marie Hansen Trust (“MHT”), MHT challenged the trail easement and other limitations established by the 1997 Easement. Litigation ensued with MHT, ultimately joining multiple parties, including the County of Sonoma, Ag + Open Space, the Bay Area Ridge Trail Council, and LandPaths. In 2005, the parties entered into a settlement agreement that resolved the lawsuit by stipulating to conditions that would allow the conserved property to be subdivided into three parcels, with one parcel to be released from the 1997 Easement (Parcel A), one parcel to remain encumbered by an amended conservation easement (Parcel B); and one parcel to be conveyed to Ag + Open Space for trail purposes (Parcel C) (“Settlement Agreement”).

The Amended Conservation Easement that was attached to the Settlement Agreement established new fencing allowances and new contour-line constraints for (1) non-commercial personal agricultural area(s) (below the 1200-ft contour); (2) a building envelope (below the 810-ft contour); and (3) access roads (below the 980-ft contour). The Settlement Agreement provided that the building envelope and personal agricultural area(s) to be allowed by the Amended Conservation Easement would be established in a future subdivision application to the County.

**2006 Subdivision Application**

In 2006, pursuant to the Settlement Agreement, MHT submitted a subdivision application to Permit Sonoma to subdivide the single parcel owned by MHT (then APN 054-100-004) into what the Settlement Agreement referred to as Parcel A and Parcel B. Although the Tentative Subdivision Map was approved by the Board of Supervisors on September 15, 2009, because of general economic conditions and the cost of certain conditions of approval, MHT was unable to complete the conditions and the Tentative Subdivision Map expired. As a result, the 222.74-acre parcel that was to become Parcel A and Parcel B has not been subdivided, and a new application must be filed if subdivision is sought by the owner, or its successors in interest.

**2010 Trail Parcel Transfer, Conservation Easement Amendment, and Quitclaim**

In 2010, pursuant to the Settlement Agreement and Public Resources Code section 5540.5, MHT conveyed fee-title to Parcel C (the 22.02-acre Trail Property) to Ag + Open Space, Ag + Open Space recorded the Amended Conservation Easement over the 211.23-acres Parcel B, and Ag + Open Space conveyed a Quitclaim Deed to MHT releasing the 11.51-acre Parcel A from the 1997 Easement. (See attached McCrea Exchange Map for reference.)

Consistent with the form specified by the Settlement Agreement, the 2010 Amended Conservation Easement references the “GRANTOR's 2006 subdivision application” extensively, relying on the outcome of that process to determine the size and location of the building envelope and personal agricultural area. Because the development allowances under the 2010 Amended Conservation Easement were conditioned on a now-

expired subdivision application, the effect of the easement is unclear.

### **Request for Review of Process for Potential Future Subdivision Application**

In 2023, the Trustee for MHT requested confirmation from the County and Ag + Open Space that the Trustee, or its successors in interest, may reapply for a subdivision of the 222.74-acre property to create the intended Parcels A and B.

In reviewing MHT's request, County Counsel advised that the expiration of the 2006 subdivision application creates ambiguities with respect to the effect of both the Settlement Agreement and the 2010 Amended Conservation Easement. To address these concerns, the parties have negotiated an amendment to the Settlement Agreement and the 2010 Amended Conservation Easement to incorporate directly into the easement the allowances born out of the subdivision process that were not effectively expressed through the 2010 Amendment. The proposed Second Amendment to the Conservation Easement ("Second Amendment") would not change any of the intended conservation protections agreed to in the Settlement Agreement or the 2010 Amended Conservation Easement.

### **Recommendation:**

County Counsel and Ag + Open Space Staff recommend approval of the attached Second Amendment to the Conservation Easement and a companion amendment to the Settlement Agreement to implement the intention of the parties in 2005 and 2010. The proposed Second Amendment specifies the precise size and location of the building envelope and the personal agricultural area approved via the Tentative Subdivision Map approved by the County in 2009, rather than simply referring to the now-expired 2006 subdivision application. By incorporating the relevant substance of the Tentative Subdivision Map, the effect of the conservation easement can now be discerned by the parties based exclusively on the terms of the easement itself. The proposed Second Amendment also eliminates the existing easement's reliance on the 2005 Settlement Agreement for various terms and conditions. This is helpful because many of the Settlement Agreement's provisions have either been satisfied or rendered moot, or do not affect the property encumbered by the conservation easement, rendering the conservation easement difficult for all parties to administer. For these reasons, the Ag + Open Space and Owner have negotiated a proposed Second Amendment to the Conservation Easement to correct these ambiguities for the benefit of the Ag + Open Space, the Owner, and their respective successors in interest.

Because the Second Amendment is specifically designed to establish its independence from the Settlement Agreement and any past or future subdivision application, the Settlement Agreement must also be amended to acknowledge the fact that the draft conservation easement amendment that was attached to the original Settlement Agreement is no longer relevant to the settlement nor enforceable by MHT. The attached amendment to the Settlement Agreement, which has been approved by all other parties to the original Settlement Agreement, accomplishes this goal.

### **Strategic Plan:**

N/A

### **Racial Equity:**

**Was this item identified as an opportunity to apply the Racial Equity Toolkit?**

No

**Prior Board Actions:**

1997 Board Resolution to Execute Agreement to Purchase McCrea Conservation Easement  
2005 Settlement Agreement with Staff Report  
2009 Board Authorization to sign Revised Settlement  
2010 BOD Authorize First Amendment to Conservation Easement with Staff Report

**FISCAL SUMMARY**

<b>Expenditures</b>	<b>FY24-25 Adopted</b>	<b>FY25-26 Projected</b>	<b>FY26-27 Projected</b>
Budgeted Expenses			
Additional Appropriation Requested			
<b>Total Expenditures</b>			
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
General Fund Contingencies			
<b>Total Sources</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Narrative Explanation of Fiscal Impacts:**

There are no fiscal impacts related to this item.

**Narrative Explanation of Staffing Impacts (If Required):**

N/A

**Attachments:**

1. McCrea Conservation Easement Site Map
2. Second Amendment to Conservation Easement
3. Amendment to Settlement Agreement
4. 1997 Board Resolution to Execute Agreement to Purchase McCrea Conservation Easement
5. 2005 Settlement Agreement with Staff Report
6. 2009 Board Authorization to sign Revised Settlement
7. 2010 BOD Authorize First Amendment to Conservation Easement with Staff Report

**Related Items "On File" with the Clerk of the Board:**

None.