

Agenda Item Transmittal Report FILE COPY

Department: Sonoma County Agricultural Preservation and Open Space District

Submitted By: Maria J. Cipriani, Assistant General Manager

For Board Action On: 3/30/2010

As: ☒ Consent ☐ Regular

THIS ITEM REQUIRES: (Check appropriate boxes)

- | | |
|--|---|
| <input type="checkbox"/> Hearing _____
<div style="text-align: center; font-size: 0.8em;">Date Time</div> <input type="checkbox"/> Requests Gold Resolution
<input type="checkbox"/> Public Appearance Anticipated
<input checked="" type="checkbox"/> County Counsel Approval Date <u>3/18/10</u> | <input type="checkbox"/> 4/5 Vote
<input type="checkbox"/> Budgetary Adjustment Resolution
<input type="checkbox"/> Position Allocation List Change(s)
By: <u><i>[Signature]</i></u> |
|--|---|

AGENDA SHORT TITLE:

Exchange of Fee and Easement Interests in the Maria Hansen Trust Property Pursuant to Negotiated Settlement Agreement

REQUESTED BOARD ACTION:

Resolution of the Board of Directors of the Sonoma County Agricultural Preservation and Open Space District Approving an Exchange of Real Property; Accepting Fee Title to 22.02 acres; Authorizing and Directing the President to Execute First Amendment to Conservation Easement; Determining that the Exchange of Property is Consistent with the 2020 Sonoma County General Plan; Authorizing the Execution of Certificates of Acceptance; Directing the Preparation of Escrow Instructions; and Making Certain Determinations under the California Environmental Quality Act (Unanimous Vote Required)

[Signature: Maria J. Cipriani]
Signature of Department Head

Special Instructions to Clerk of the Board:

For Agenda Committee Use

County Administrator's Office Recommendation:

- | | |
|---|---|
| <input type="checkbox"/> Approval
<input type="checkbox"/> Not Recommended | <input type="checkbox"/> Submitted with Comment
<input type="checkbox"/> Policy Determination by Board |
|---|---|

Analyst Comment:

Signature of County Administrator

Agenda Committee Action:

- ☐ **Consent Calendar**
☐ **Regular Calendar**

Date Scheduled: / /
Time Scheduled: _____
 (If required)

copies to: Maria, Bill, Peggy +
 Janet per Leti 3-24-10 *[initials]*

County Of Sonoma

Agenda Item

Summary Report

Clerk of Board Use Only
Meeting Date Held Until
Agenda Item No. Agenda Item No.

Department: Sonoma County Agricultural Preservation and Open Space District

4/5 Vote Not Required

Contact:
Paul A. Rowan
Maria J. Cipriani

Phone:
(707) 565-7360

Board Date:
3/30/2010

Deadline for Board Action:
3/30/2010

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CURRENT FISCAL YEAR FINANCIAL IMPACT - None.

Explanation (if required): None.

Prior Board Action: In July 1997, by Resolution No. 97-0795, the Board approved purchase of a Conservation Easement over the property. In 2003, the Board authorized the filing of a lawsuit to resolve a dispute regarding the construction of a public trail on the property. In December 2005, the Board approved a Comprehensive Settlement of the litigation. On August 4, 2009, the Board approved execution of a Revised Settlement Agreement. On January 12, 2010, by Resolution No. 10-0045, the Board of Supervisors adopted the Mitigated Negative Declaration and approved a Tentative Map to subdivide the Property into three parcels.

Alternatives – Results of Non-Approval: Do not adopt resolution. The exchange of real property interests in the Maria Hansen Trust property will not occur.

Background:

NOTE: Grant Deed, First Amendment to Conservation Easement, Certificates of Acceptance, Settlement Agreement, Mitigated Negative Declaration and Notice of Determination are on file with the Clerk of the Board.

Maria Hansen Trust Property (District 1)

Acreage: 240 ± acres

Project Summary:

The District is proposing to enter into an exchange of property interest pursuant to a negotiated Settlement Agreement between the Bay Area Ridge Trail Council, County of Sonoma, LandPaths, Maria Hansen Trust, Thomas P. McCrea, III, Sonoma County Agricultural Preservation and Open Space District, and William Taylor. Under the exchange, the District will acquire a 22.02-acre portion of the Property in fee title interest for public recreation purposes, and will amend an existing Conservation Easement to revise certain of its provisions and to exclude approximately 11.5 acres from its scope ("the Exchange of Property").

Project History:

In July 1997, the District purchased a conservation easement over a 240± acre property located on Vigilante Road, Sonoma (APN 054-100-010), owned by Frances Burrows McCrea, et al. ("the Property"). The Conservation Easement permitted the construction of one single-family home below the 1500' contour line, but otherwise generally restricted the use of the land to natural resource preservation and low-intensity recreational and educational purposes.

Subsequently, a dispute arose concerning the construction of a public trail over the northernmost area of the Property. A lawsuit was filed in February 2003. In December of 2005, the District joined in a comprehensive settlement of the litigation providing for conveyance of approximately 22.02 acres to the District in fee to allow for continued development of the public trail. A Revised Settlement Agreement was executed in 2009 providing clarification regarding the proposed Exchange of Property. Parties to the settlement include the County of Sonoma, the Bay Area Ridge Trail Council, LandPaths, Maria Hansen Trust, Thomas P. McCrea, III, and William Taylor.

The settlement was conditioned upon the County's approval of a three part subdivision of the Property. That subdivision was approved by the County on January 12, 2010. The approved Tentative Map provides for the creation of Parcels "A", "B", and "C", to be conveyed and retained under the settlement agreement as follows: Parcel "C", the northernmost 22.02 acres of the Property, is to be conveyed to the District for development of a public trail, providing a recreational link with adjacent properties and important public benefits related to open space protection. Parcel "A", the southernmost 11.5 acres of the Property, is to be removed from the existing Conservation Easement with future uses to be consistent with local zoning regulations. The 211.2-acre middle portion of the Property, Parcel "B", will be encumbered by an amended Conservation Easement. No further subdivision of this middle portion of the property will be permitted under the Conservation Easement.

Consistency with Public Resources Code

The result of the transaction will be an exchange of property interests under Public Resources Code section 5540.5. The District will take fee title to the northernmost 22.02 acres in exchange for release of the southernmost 11.5 acres from the Conservation Easement. In addition, the Conservation Easement on the remainder of the Property will provide additional protections above the 1200' contour while expanding permitted uses below the 1200' contour, so as to allow for certain additional agricultural uses and accessory improvements.

The exchange will provide valuable opportunities for public recreation as well as significant additional protections for the natural resources and scenic values of the Property. An evaluation by natural resource

Experts has confirmed that the value of property interests to be acquired by the District through this exchange, is equal to or in excess of the value of the property interests to be conveyed by the District.

The Exchange of Property meets the requirements of Public Resources Code Section 5540.5. The exchange releases less than 40 acres from the conservation easement, the values of the property exchanged are of at least equal value and the property interests to be acquired are necessary for open space purposes.

Consistency with 2020 Sonoma County General Plan

The Exchange of Property is consistent with policies in the Open Space and Resource Conservation Element in that it preserves the scenic and rural character of Sonoma Mountain, protects and enhances the County's natural habitats and diverse plant and animal communities, and provides enhanced opportunities for public access and outdoor recreation.

Escrow/Closing

Pursuant to the terms of the Agreement, escrow is to close no later than April 12, 2010. The District is in the process of satisfying or waiving its conditions to closing and will complete this process on or before April 9, 2010.

District staff understands that the owner of the Property does not intend to record a final subdivision map at this time. Instead, Parcel "C" of the subdivision - the northernmost 22.02 acres of the Property - will be created and conveyed to the District by deed pursuant to Government Code section 66428(a)(2).

CEQA

In accordance with CEQA, the County adopted a Mitigated Negative Declaration in connection with its approval of the Tentative Map. The Mitigated Negative Declaration fully analyzes all potential environmental impacts of the Exchange of Property. No further environmental review is necessary, as there are no substantial changes to the approved project, there are no substantial changes in circumstance under which the project will be undertaken, and no new information has become available that was not known and could not have been known at the time the mitigated negative declaration was adopted.

Recommendation:

The General Manager recommends approval of the resolution of the Board of Directors of the Sonoma County Agricultural Preservation and Open Space District Approving an Exchange of Real Property; Accepting Fee Title to 22.02 acres; Authorizing and Directing the President to Execute First Amendment to Conservation Easement; Determining that the Exchange of Property is Consistent with the 2020 Sonoma County General Plan; Authorizing the Execution of Certificates of Acceptance; Directing the Preparation of Escrow Instructions; and Making Certain Determinations under the California Environmental Quality Act (Unanimous Vote Required)

Attachments:

Resolution

On File With Clerk:

1. Grant Deed
2. First Amendment to Conservation Easement
3. Certificates of Acceptance
4. Settlement Agreement
5. Mitigated Negative Declaration
6. Notice of Determination

CLERK OF THE BOARD USE ONLY

Board Action (If other than "Requested")

Vote:

THE WITHIN INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.

ATTEST: March 30, 2010

VERONICA A. FERGUSON, Clerk of the Board of Directors
of the Sonoma County Agricultural Preservation
and Open Space District

BY C. Woodson
DEPUTY CLERK

AP050

1

Resolution No. 10-0238

County of Sonoma
Santa Rosa, CA 95403

Date: 3/30/2010

Resolution of the Board of Directors of the Sonoma County Agricultural Preservation and Open Space District, State of California, Approving an Exchange of Real Property; Accepting Fee Title to 22.02 acres; Authorizing and Directing the President to Execute First Amendment to Conservation Easement; Determining that the Exchange of Property is Consistent with the 2020 Sonoma County General Plan; Authorizing the Execution of Certificates of Acceptance; Directing the Preparation of Escrow Instructions; and Making Certain Determinations under the California Environmental Quality Act (Unanimous Vote Required)

Whereas, on July 1997, the District acquired a conservation easement ("the Conservation Easement") over a 240± acre property on Vigilante Road, Sonoma (APN 054-100-010) ("the Property"); and

Whereas, subsequently, a dispute arose regarding the construction of a public trail on the Property, which dispute resulted in the filing of a lawsuit; and

Whereas, in December 2005, the District joined in a comprehensive settlement of the lawsuit, which settlement provided for amendment of the Conservation Easement and an exchange of interests in real property (collectively "the Exchange of Property"); and

Whereas, on August 4, 2009, this Board approved execution of a revised settlement agreement, providing clarification of the proposed Exchange of Property; and

Whereas, the revised settlement agreement contemplated a three-part subdivision of the Property so as to facilitate the proposed Exchange of Property; and

Whereas, on January 12, 2010, the County adopted a Mitigated Negative Declaration and approved the Tentative Map for Minor Subdivision MNS06-0015, thereby approving the subdivision of the Property as contemplated by the revised settlement agreement; and

Whereas, an appraisal has been conducted which confirms that the value of the interests to be acquired by the District through the Exchange of Property are equal to or exceed the value of the interests to be conveyed by the District through the Exchange of Property; and

Whereas, the Exchange of Property will provide important public benefits, including access to public trails, increased recreational opportunities and preservation of significant scenic and open space values; and

Whereas, the Exchange of Property is consistent with the policies of the Open Space and Conservation Element of the Sonoma County General Plan 2020; and

Whereas, the Exchange of Property has been recommended to this Board by the District's General Manager;

Now, Therefore, Be It Resolved, that this Board of Directors hereby finds, determines, declares and orders as follows.

1. *Truth of Recitals.* The foregoing recitals are true and correct.

2. *Accepting Fee Title.* The President of the Board of Directors is authorized and directed to execute, on behalf of the District, a certificate of acceptance as required by Government Code Section 27281, accepting fee title to the northernmost 22.02 acres of the Property.

3. *Execution of First Amendment to Conservation Easement.* The President of the Board of Directors is authorized and directed to execute, on behalf of the District, that certain agreement entitled "First Amendment to Conservation Easement" by and between The Maria Hansen Trust, and the Sonoma County Agricultural Preservation and Open Space District, together with the certificate of acceptance required by Government Code Section 27281.

4. *Exchange of Land.* The Exchange of Property meets the requirements of Public Resources Code Section 5540.5 in that:

A. the District has not made any exchanges in the current calendar year; and

B. the Exchange of Property releases less than 40 acres from the Conservation Easement; and

C. the value of the interests to be acquired by the District through the Exchange of Property are equal to or exceed the value of the interests to be conveyed by the District through the Exchange of Property; and

D. the exchange is necessary for open space purposes.

5. *Escrow Instructions; Necessary Documents.* The District's Counsel is directed to prepare and deliver appropriate escrow instructions and other necessary documents to Fidelity National Title Company to complete the transaction as described. The General Manager is authorized to sign all closing documents and to execute any other documents necessary to complete this transaction as described, including, without limitation, making any technical, non-substantive changes in closing documents with the prior approval of the District's Counsel.

6. *Payment of Costs of Escrow.* At the request of the General Manager, the County Auditor shall draw a warrant or warrants against available funds in the Open Space Authority's fund in amounts necessary to close escrow and for associated transactional costs payable to Fidelity National Title Company.

7. *California Environmental Quality Act.* A mitigated negative declaration ("MND") was previously prepared in full accordance with CEQA in connection with the proposed subdivision of the Property. That MND fully analyzes all potential environmental impacts of the Exchange of Property. This Board finds that no changes have been made to the project, there have been no changes in circumstances, and no new information has become available since adoption of the MND that might require further environmental review under CEQA. Exercising its independent judgment, this Board has considered the Mitigated Negative Declaration and finds that all environmental impacts of the transactions hereby approved have been mitigated to less than significant.

8. *Notice of Determination.* Immediately upon the adoption of this resolution, the General Manager is directed to post and to maintain the posting of a notice of determination pursuant to Public Resources Code Section 21152.

9. *Validation.* The agreement authorized by this resolution is a contract within the definition of Government Code Section 53511 and as such, any action challenging the validity of the contract including the source of funding for the consideration to be paid by this District must be commenced within sixty (60) days of the adoption of this resolution pursuant to Section 863 of the Code of Civil Procedure.

Directors:

Kerns: Zane: Kelley: Carrillo: Brown:

Ayes: 5 Noes: Absent: Abstain:

So Ordered.