

Open Space

COUNTY OF SONOMA
AGENDA ITEM SUMMARY REPORT

#15 March 7, 2006

Clerk of the Board Use Only
 Meeting Date Held Until
 ___/___/___ ___/___/___
 Agenda Item No: Agenda Item No:

Department: County Counsel

4/5 Vote Required

Contact:
 Steven Woodside

Phone:
 (707) 565-2421

Board Date:
 3/7/2006

Deadline for Board Action:
 3/7/2006

AGENDA SHORT TITLE:

Approve Settlement Agreement for *County of Sonoma v. Thomas McCrea*

REQUESTED BOARD ACTION:

Approve Settlement Agreement

CURRENT FISCAL YEAR FINANCIAL IMPACT

EXPENDITURES

ADD'L FUNDS REQUIRING BOARD APPROVAL

Estimated Cost \$

Contingencies \$
 (Fund Name:)

Amount Budgeted \$

Unanticipated Revenue \$
 (Source:)

Other Avail Approp \$
 (Explain below)

Other Transfer(s) \$
 (Source:)

Additional Requested: \$ _____

Add'l Funds Requested: \$ _____

Explanation (if required):

Prior Board Action(s): The settlement was previously approved in closed session on December 13, 2005.

Alternatives - Results of Non-Approval: Continue with the litigation.

Background: The Board of Supervisors and Board of Directors of the Sonoma County Agricultural and Open Space Preservation District approved the settlement in a December 13, 2005 closed session. This agreement memorializes the approved settlement.

Attachments:

On File with Clerk: Settlement Agreement

CLERK OF THE BOARD USE ONLY

Board Action (If other than "Requested")

Vote:

	<i>Absent</i> MOTION	AYE	NO
BROWN	✓		
KERNS		✓	
SMITH		✓	
REILLY	✓		
KELLEY		✓	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), dated as of December 27, 2005 (“Effective Date”), is made by, between, and among the Bay Area Ridge Trail Council (“BARTC”); County of Sonoma (“County”); LandPaths; Maria Hansen Trust (“Owner”); Thomas P. McCrea, III (“McCrea”); Sonoma County Agricultural Preservation and Open Space District (“District”); and William Taylor, the Trustee of the Maria Hansen Trust (“Trustee”). For purposes of this Settlement Agreement, BARTC, County, LandPaths, Owner, McCrea, District, and Trustee shall be collectively referred to as “Parties,” and singularly as “Party.” This Agreement is made in consideration of and with respect to each of the following recitals:

RECITALS

WHEREAS, the Maria Hansen Trust represents that it is the sole and exclusive owner of the real property consisting of 240 acres more or less that is located on Vigilante Road in the unincorporated area of Sonoma County and which is formally known as Sonoma County Assessor’s Parcel Number 054-100-010 (hereinafter “Original Property”);

WHEREAS, on May 8, 1997, the McCrea Family, acting through its agent, Thomas P. McCrea, executed a Deed and Agreement by and Between Frances Barrows McCrea, John McCrea IV, Thomas Pleasants McCrea III, James Menges McCrea, Alice Barrows McCrea Sharp, Marcia Tait McCrea Clinton, Anne Barrows McCrea Orndahl, Stanley Burgess McCrea, Christina Louise Hannan, William Murray Hannan, and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement and Assigning Development Rights” (hereinafter “Conservation Easement”);

WHEREAS, the California Department of Parks and Recreation (“State Parks”) performed all necessary environmental review for the construction of a public trail on the Original Property when it issued a Notice of Exemption on August 30, 1999 and determined that a trail is categorically exempt from California’s Environmental Quality Act (Pub. Res. Code, §§21000, *et seq.*);

WHEREAS, the BARTC, the County, LandPaths, and the District filed a lawsuit against McCrea and the Owner on February 21, 2003 (“First Suit”). This is Sonoma County Superior Court Case No. 232097. The Sonoma County Superior Court dismissed the First Suit without prejudice on May 27, 2004. BARTC, the County, LandPaths and the District appealed the dismissal. On October 26, 2007, the California Court of Appeal, First District, reversed the superior court, vacated the dismissal, and remanded the matter to the superior court for reconsideration;

WHEREAS, BARTC, the County, LandPaths, and the District filed another lawsuit against McCrea and the Owner on October 18, 2004. This lawsuit is Sonoma County Superior Court Case No. 235404 (“Second Suit”);

WHEREAS, the Parties stipulated to staying the Second Suit pending the outcome of the First Suit in the Court of Appeal;

WHEREAS, the Parties now wish to consolidate the First and Second Suits;

WHEREAS, attached as **Exhibit 1** and incorporated as if fully set forth herein by this reference, is a map depicting the Original Property (“Map”) that was the subject of the 1997 Conservation Easement. The Map also depicts how the Original Property will be subdivided as result of the Owner’s subdivision application and approval and the Conservation Easement as modified by the First Amendment to Conservation Easement (“Amendment”). Specifically, the Original Property shall be subdivided into three (3) parcels, the Property, the Trail Property, and the Unencumbered Property. The Owner may implement certain land uses below the 1200' contour line. The Owner may develop residential and noncommercial agricultural uses within personal agricultural area(s) as will be designated in the Owner’s subdivision application during the subdivision process; all personal agricultural areas must be completely below the 1200' contour line. As set forth in Paragraph 7(b)(vii) of this Agreement, Owner may conduct agricultural uses that are permitted or permitted with a use permit in the Diverse Agriculture (DA) zoning district only within the existing DA zoning of the Original Property and within DA zoning agricultural areas that will be designated through the subdivision process. All uses and practices of any kind above the 1200' contour are prohibited on the Property, except that the Owner retains the rights to all permitted uses, as are set forth in Exhibit B to the Amendment. The Owner shall convey the second property, the Trail Property, consisting of 22.02 acres, to the District as is set forth in this Agreement. The third property is the Unencumbered Property, which consists of no more than 20 acres. In exchange for additional restrictions above the 1200' contour and the fee simple conveyance of the Trail Property, the District shall remove the Unencumbered Property from all conservation easements;

WHEREAS, the value of a fee simple interest in the 22.02 acre Trail Property and the additional prohibition of all uses and practices above the 1200' foot contour lines, as is set forth in this Agreement, is greater than or equal to in value than the 20 unencumbered acres on the south portion of the Property and this exchange is necessary for open space, park, and public access purposes;

WHEREAS, Sonoma County Code § 25-9(c) exempts the Trail Property from the Parcel Map requirements set forth in Sonoma County Code § 25-8 because the Trail Property is being conveyed to public agency as defined in Government Code § 66428(a)(2).

AGREEMENT

WHEREFORE, the Parties wish to resolve all their differences by entering into the following Settlement Agreement:

1. Recitals. The Recitals set forth above are true and correct.
2. Incorporation of Exhibits. All Exhibits hereto are incorporated as if fully set forth herein by this reference.
3. No Admissions of Guilt or Liability. Nothing in this Agreement shall constitute an admission of guilt or wrongdoing.
4. Subject to Directors' Ratification. This Agreement is subject to and contingent upon ratification and approval by the Boards of Directors of BARTC, the District, LandPaths, and the Sonoma County Board of Supervisors.
5. Joint Statements to Media. The Parties shall issue a joint statement to the media regarding the resolution of this matter and the opening of the trail at issue. Other than these two statements, no Party shall make any statement to the media regarding this matter, but LandPaths, BARTC, the County, and the District may independently communicate with their members, donors, and constituents regarding the settlement of this matter and future trail opening. In the event that an individual or entity who is not a Party to this Agreement, comments to the media regarding this Agreement or the opening of the trail at issue, the Owner may make responsive comments to the entity or individual or the media.
6. Contingent Upon Subdivision Approval. This Agreement is contingent upon the County's approval of the Owner's subdivision application, Owner's satisfaction with the Conditions of Approval and other provisions in the subdivision approval, and the passage of all appeal time applicable to the subdivision approval.
7. Subdivision Application. The Owner shall submit a complete application to subdivide the Original Property into three parcels no later than April 28, 2006. For purposes of this Agreement, a complete subdivision application shall include depictions of all building envelopes and unencumbered land. The Parties agree to the following for this subdivision and the newly created parcels:
 - (a) Parcel A: The Unencumbered Property.
 - (i) There are a total of twenty-six (26) acres on the Original Property that are zoned Diverse Agriculture (DA). Up to twenty (20) of the 26 DA-zoned acres may be removed from the Conservation Easement and the remaining six (6) acres

may be used for permitted agricultural uses and agricultural uses permitted with a use permit in the DA zoning district as set forth in this Paragraph. If fewer than twenty DA-zoned acres are removed from the Conservation Easement, the amount of acreage that may be used for permitted agricultural uses and agricultural uses permitted with a use permit shall increase by the amount of acreage that is not removed from the Conservation Easement. For example:

Acreage Removed from Conservation Easement	Agricultural Acreage	Total Acreage
20	6	26
19	7	26
18	8	26
11.5	14.5	26

(ii) The subdivision shall create a parcel for the Unencumbered Property of no more than 20 acres, which shall be removed from all conservation easements.

(iii) Any acreage removed from a conservation easement shall be located solely in the DA zoning portion of the Original Property, as is depicted on the Zoning Map attached hereto as **Exhibit 2**.

(iv) This is a one-time only subdivision of the Unencumbered Property; the approval of the creation of the parcel for the Unencumbered Property shall contain a recorded restriction prohibiting any further subdivision of it, except as specified in the Amendment.

(v) In order to comply with Public Resources Code § 5540.5, the District may phase the removal of up to 20 unencumbered acres over a period of years. Except as is set forth in this subparagraph, the District shall remove seven and half (7.5) acres from the conservation easement in the first calendar year that the Owner's subdivision map for the Trail Property is recorded; up to seven and half (7.5) acres the following calendar year, and, if necessary, five (5) acres the next calendar year. If the Owner's subdivision map is recorded after September 30 of any calendar year, then the District may perform the acreage exchange required by this paragraph, within the first ninety (90) days of the following calendar year. The District may remove more than 7.5 acres during the first two calendar years, in the District's sole discretion. In no event shall the removal extend for more than three calendar years.

(vi) This Agreement and any subdivision approval are contingent upon State Parks' approval of the boundary line between the Trail Property and the

Property as is depicted in Exhibit 1 hereto. District or County shall send a copy of any written confirmation of State Parks' acceptance to Owner.

(b) Parcel B: The Property. The subdivision shall create a parcel that will be subject to the Amendment, attached hereto as **Exhibit 3**. For purposes of this Agreement, this parcel is called "the Property" or "Property." The Property shall be subject to the following:

(i) The Property shall be subject to the Amendment attached hereto as **Exhibit 3**.

(ii) Personal agricultural area(s) and DA zoning agricultural area(s) will be established on the Property as part of the Owner's subdivision application and the subdivision process. All such personal agricultural area(s) and DA zoning agricultural area(s) shall be below the 1200' contour line. Within the established personal agricultural area(s) and DA zoning agricultural area(s), the Owner may conduct personal/non-commercial agricultural uses; may conduct other agricultural uses as set forth in Paragraph 7(b)(vii); may develop septic systems and springs, wells, and related conveyances associated with the agricultural and residential uses identified in this Paragraph; may develop new access roads below the 980' contour line that are associated with the agricultural and residential uses identified in this Paragraph and identified through the Owner's subdivision application; and, as set forth in Paragraph 7(b)(iii), may develop one primary residential structure and residential-related structures, such as a guest house, second unit, garage, workshop, barn, and similar incidental and subordinate uses, provided that all such uses are permitted by the Sonoma County Code and all other applicable regulations, such as the Taylor Mountain Guidelines.

(iii) A building envelope will be established on the Property as part of the Owner's subdivision application and the subdivision process. The building envelope shall be below the 810' contour line. Within the building envelope, the Owner may develop the one primary residential structure identified above and the associated residential accessory uses (such as a guest house, second unit, garage, workshop, barn, and similar incidental and subordinate uses) identified above, provided that all such uses are permitted by the Sonoma County Code and all other applicable regulations, such as the Taylor Mountain Guidelines.

(iv) The District waives any jurisdiction that it has over any future development applications for development within the personal agricultural area(s) and/or DA zoning agricultural area(s) on the Property; any uses that are approved as part of the development applications; and any uses provided in Subparagraphs (ii), (iii) and (vii), and any applications associated with those uses.

(v) All land uses within the personal agricultural area(s) and DA zoning agricultural area(s) must conform to applicable zoning and land use regulations, including but not limited to, the Taylor Mountain Guidelines.

(vi) The Owner may erect deer fencing around the personal agricultural area(s) and DA zoning agricultural area(s).

(vii) Any agricultural and/or associated agricultural uses allowed in the DA zoning district shall be allowed on the Property if located completely within DA zoning agricultural area(s) and within the DA zoning of the Original Property. The Owner may conduct these agricultural uses only as permitted by applicable zoning and land use regulations, including but not limited to, the Taylor Mountain Guidelines.

(viii) The Owner may erect a perimeter fence without the District's consent and subject to all of the following:

(a) Allow visibility;

(b) Permit the use of barbed wire;

(c) Restrict the lengths of impassable fencing so that it will not exceed more than a quarter of a mile without an opening for the passage of deer and other wildlife;

(d) Where feasible and at the sole discretion of the Owner, locate the passage for wildlife in riparian and other waterway corridors or wooded ravines. If necessary, the quarter mile of impassable fencing can extend an additional 500 feet if the passage can be placed in the preferred riparian or other waterway corridors or wooded ravines. In no event will the fencing be located within 15 feet of either side of the center of a riparian waterway;

(e) The bottom of the fence shall have an opening or an underpass that is six (6) inches in height and ten (10) inches wide, every four hundred feet;

(f) Other than the specific fencing requirements provided in subparagraphs (a) through (e) of this Paragraph, the District shall have no authority whatsoever over the type, style, material, appearance or size of the fence, other than it must allow for visibility, and to enforce the terms of the Amendment.

(ix) This is a one-time only subdivision to create the Property; the approval of the creation of the Property shall contain a recorded restriction prohibiting any further subdivision of it, except as allowed by the Amendment.

(x) The approval of the creation of the Property shall contain a recorded restriction against all commercial agriculture uses on the Property, except for as specified in Paragraph 7(b)(vii).

(xi) The Owner may use the Property below the 1200' contour line and within the established personal agricultural area(s) and/or DA zoning agricultural area(s) for all personal uses allowed by all relevant land use, zoning, and other applicable regulations, including but not limited to agricultural cultivation for personal consumption, and the feeding, maintaining, and breeding of animals for personal use or consumption. As provided in Paragraph 7(b)(vii), agricultural and/or associated agricultural uses permitted and permitted with a use permit in the DA zoning district may be permitted or permitted with a use permit if located completely within the existing DA zoning of the Original Property and an established DA zoning agricultural area. Except as specified in Paragraph 7(b)(vii), other agricultural uses are prohibited, even where permitted by relevant land use and zoning regulations.

(xii) The foregoing provisions are intended to allow for varying degrees of potential future land use on the Property, such that:

(a) Above the 1200' contour line, all uses and practices are prohibited except as set forth in Exhibit B of the Amendment to Conservation Easement;

(b) Below the 1200' contour line and outside designated personal agricultural area(s) and DA zoning agricultural area(s), all uses and practices are prohibited except as set forth in Exhibit B of the Amendment;

(c) Within the existing Resources and Rural Development zoning, below the 1200' contour line, and inside designated personal agricultural area(s), uses are limited to personal, non-commercial agricultural uses; associated springs, wells, and related conveyances, septic systems, and access roads; and, below the 810' contour line and inside an approved building envelope, one primary residential structure and associated residential accessory uses, such as a guest house, second unit, garage, workshop, barn, and similar incidental and subordinate uses, if all such uses are allowed by all relevant land use, zoning, and other applicable regulations. Personal, non-commercial agricultural uses may include but are not limited to agricultural cultivation for personal consumption, and the feeding, maintaining, and breeding of animals for personal use or consumption.

(d) Within the existing DA zoning and inside designated DA zoning agricultural area(s), uses are limited to the one primary residential structure, associated residential accessory uses, similar incidental and insubordinate uses, and associated springs, wells, and related conveyances, septic systems, and access roads

identified above, and agricultural and associated agricultural uses allowed by all relevant land use, zoning, and other applicable regulations. The DA zoning district defines the commercial boarding of horses as a nonagricultural use.

(c) Parcel C: The Trail Property. The Owner shall convey 22.02 acres, as are depicted in the map attached hereto as **Exhibit 2** in fee simple to the District on the close of escrow, as is provided in this Agreement. The name of the public trail on the Trail Property shall be “The Marcia Barrows McCrea Trail.”

8. Subdivision Approval. The County shall consider the Owner’s subdivision application to divide the Original Property into the Unencumbered Property, the Property, and the Trail Property. County shall consider the subdivision application on its merits in accordance with Sonoma County ordinances and state law. Nothing in this Agreement shall be construed to constitute a guarantee of approval or prejudgment of the subdivision application and County retains its full and sole discretion to deny, approve, or conditionally approve the subdivision application in accordance with law. In the event that County approves or conditionally approves the subdivision application the subdivision may be phased as follows:

- (a) Trail Property. A tentative map creating the Trail Property, with the remainder of the Original Property as a designated remainder, shall be recorded no earlier than one-hundred (100) days after approval and no later than the date of the final map for the Property and Unencumbered Property with a condition that the final map for the Trail Property may not be recorded until Owner’s conditions to closing, as are set forth in Paragraph 15(l) of this Agreement, are satisfied.
- (b) Property and Unencumbered Property. A final map creating the Property and the Unencumbered Property may be recorded at Owner’s discretion at any time within the time limits of Sonoma County Code § 25-23 and Government Code § 66463.5, including all applicable extensions.
- (c) Owner’s Access. At Owner’s sole expense, Owner and Owner’s noncommercial and nonpaying guests may enter the Trail Property in order to access and use the Trail in a manner consistent with State Park regulations or with the rules and regulations of any other entity that is operating the trail on the Trail Property, provided that the trail operator’s regulations will allow at least three (3) reasonably accessible connecting paths between the Property and the Trail Property.

9. Beneficiaries. This Agreement is contingent upon the finalization of the trail alignment on the adjacent Arbit Property, to the Owner's satisfaction. Nothing in this Agreement shall be construed as, nor do the Parties intend for, the Arbites to be third party beneficiaries to this Agreement.

10. Board of Supervisors to Assume Original Jurisdiction. The Sonoma County Board of Supervisors shall assume original jurisdiction over the Owner's subdivision application.

11. First Amendment to Conservation Easement. Subject to approval by the District's Board of Directors and compliance with California's Environmental Quality Act ("CEQA"), the District and Owner shall enter into the First Amendment to Conservation Easement ("Amendment") attached hereto as "**Exhibit 3.**"

12. No Liens. Owner represents that there are no liens against the Trail Property and/or the Property.

13. Escrow Account. The Parties shall open an escrow account after the Owner submits its subdivision application. The County and District shall pay 50% of all escrow fees and the Owner shall pay the other 50% of all escrow fees. The Parties shall diligently pursue, with the utmost effort, all acts necessary to complete the conveyances required by this Agreement and close the escrow no later than December 31, 2009. This close-of-escrow deadline may be extended with written consent from all Parties. In the event that any person files an administrative appeal or claim in court challenging the Settlement Agreement or County's decision on the Owner's subdivision application, the Parties shall extend the close of escrow until at least ninety (90) days after a final judicial determination of the challenge.

14. Title to the Trail Property and First Amendment to the Conservation Easement for the Property. At the Closing, Owner shall convey to District marketable and insurable fee simple title to the Trail Property by duly executed and acknowledged grant deed in a form acceptable to the District and the Amendment, attached hereto as **Exhibit 3** for the Property and the Appurtenances and the Improvements. Evidence of delivery of marketable and insurable fee simple titles shall be the issuance by a title company of the District's choice of a CLTA Owner's Policy of Title Insurance, in the full amount of the appraised value, insuring fee simple title to the Trail Property and the Appurtenances in District, subject only to such exceptions as District shall approve pursuant to Paragraphs 15 and 16 below. Said policies shall provide full coverage against mechanics' or materialmen's liens arising out of the construction of any improvements and shall contain such special endorsements as District may reasonably require.

15. Conditions to Closing. District shall have until November 30, 2009 to satisfy or waive all conditions except conditions (g), (h), and (k), as determined in

District's sole discretion. District shall have until 100 days after approval of the Owner's subdivision application to satisfy or waive conditions (h) and (k), as determined solely by District. District shall until the day of Closing to satisfy or waive condition (g), as determined solely by District. The following conditions are precedent to the closing of escrow:

(a) District's review and approval of a real property appraisal(s) or other reports or documents supporting the District's exchange of real property interests in the Property and Trail Property for the Unencumbered Property. Such appraisal(s) or other documents shall be conducted by an appraiser or other qualified person selected solely by District at District's sole cost.

(b) District's review and approval of titles to the Property and Trail Property, as evidenced by a current extended coverage preliminary title report, accompanied by copies of all documents referred to in the report. Owner shall deliver to District copies of all existing and proposed easements, covenants, restrictions, leases, agreements or other documents that affect the Property and Trail Property, and are not disclosed by the preliminary title report, or, if no such documents exist, a certification of Owner to that effect within five (5) days of executing this Agreement. District shall advise Owner, at least fifteen (15) days after reviewing all title reports and documents required by this Paragraph, what exceptions to title, if any, will be accepted by District. Owner shall have five (5) days after receipt of District's objections to give District notice: (i) that Owner will remove any objectionable exceptions from title and provide District with evidence satisfactory to District of such removal, or provide District with evidence satisfactory to District that said exceptions will be removed on or before the Closing; or (ii) that Owner elects not to cause such exceptions to be removed. If Owner shall give notice pursuant to clause (i) and shall fail to remove any such objectionable exceptions from title prior to the Closing Date, and District is unwilling to take title subject thereto, Owner shall be in default hereunder.

(c) District's review and approval of an "as-built" survey of the Trail Property by a licensed surveyor or civil engineer. Said survey shall be acceptable to, and certified to, District and in sufficient detail to provide the basis for a CLTA Owner's Policy of Title Insurance without boundary, encroachment or survey exceptions, and shall show the location of all easements and any improvements (including underground improvements) and any and all other pertinent information with respect to the Trail Property. The survey shall also indicate any encroachments of any improvements onto easements or onto adjacent properties or certify to their absence and shall indicate the presence of improvements and easements on property adjoining the Trail Property if located within five (5) feet of the boundaries of the Trail Property. The costs of the surveys shall be paid as follows: (i) the District shall pay for the survey of the Trail Property; (ii) the Owner shall pay for the survey of the Unencumbered Property; and (iii) the District may survey the Property at its expense, before the close of escrow.

(d) District's review and approval of all governmental permits and approvals obtained or held by Owner and related to the use, construction, operation or occupancy of any part of the Property or Trail Property and dated prior to the District's execution of this Agreement.

(e) District may conduct a geological/seismic investigation of the Property and Trail Property and shall be satisfied that the Property is free from geologic or seismic conditions that would render the Property or Trail Property unsuitable for District's proposed use and that any such water impoundments are constructed in an adequate manner and with all necessary permits.

(f) Owner represents that it has no knowledge of potential or actual toxic contamination on the Property and/or Trail Property.

(g) The physical condition of the Property and Trail Property shall be substantially the same on the day of Closing as on the date of the execution of this Agreement, reasonable wear and tear, loss by casualty, permitted activities, and activities required in order to submit the Owner's subdivision application, excepted. Excluding the lawsuits specified in the "Recitals" section of this Agreement, as of the day of Closing, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened, which after Closing, would, in District's sole discretion, materially adversely affect the value of the Property and/or Trail Property or the ability of District to operate the Property and/or Trail Property in the manner it is currently being operated. Excluding the subdivision application, as is set forth in this Agreement, no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, the Property or Trail Property, or any portion thereof, or any property adjacent to the Property or Trail Property.

(h) Compliance by District with the California Environmental Quality Act of 1970, as determined to be necessary by District.

(i) All of Owner's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date, and shall survive the Closing Date.

(j) A legal description of the Trail Property shall be approved by the County Surveyor.

(k) A legal description of the Property and Unencumbered Property shall be approved by the County Surveyor.

The foregoing conditions contained in items (a) through (k) are intended solely for the benefit of District. If any of the foregoing conditions are not satisfied, District shall have the right to waive the condition in question. The Closing Date may be extended, at District's option, a reasonable period of time if required to allow said conditions to be satisfied.

(l) Owner's conditions to closing. Owner shall have until sixty (60) days after approval of its subdivision application, to satisfy or waive the following conditions as determined in Owner's sole discretion. The following conditions are precedent to the closing of escrow:

(i) The Owner is satisfied with the size, location, and permitted uses of the personal agricultural areas and DA zoning agricultural areas.

(ii) All District's representations and warranties made herein or pursuant to this Agreement shall be true and correct as of the close of escrow.

(iii) This paragraph is intended solely for the benefit of the Owner. If any of the conditions of this subparagraph are not satisfied, the Owner shall have the right to waive the condition at issue. The Closing Date may be extended a reasonable amount of time to allow the condition(s) at issue to be satisfied.

16. Closing and Escrow.

(a) Upon the opening of an escrow account as is set forth in Paragraph 13, the parties hereto shall deposit an executed counterpart of this Agreement with Title Company and this instrument shall serve as the instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Owner and District agree to execute such additional and supplementary escrow instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

(b) The Closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the Title Company, no later than December 30, 2009, but in no event earlier than one-hundred (100) days after the County's decision on Owner's subdivision application. Except as otherwise expressly provided in this Agreement, such date may not be extended without the prior written approval of both Owner and District.

(c) At or before the Closing, Owner shall deliver to District the following:

(i) A duly executed and acknowledged grant deed conveying to the District the Trail Property and the Appurtenances, and all rights, privileges and easements appurtenant thereto and a duly executed and acknowledged Amendment for the Property, as are required by this Agreement;

(ii) An affidavit pursuant to Section 1445(b)(2) of the Federal Code and substantially in the form attached hereto as **Exhibit 4** and on which District is entitled to rely, that Owner is not a “foreign person” within the meaning of Section 1445(f)(3) of the Federal Code;

(iii) An affidavit pursuant to Section 18662 of the California Revenue and Taxation Code regarding the withholding requirements for Owners of real property in California;

(iv) Closing statement in form and content satisfactory to District and Owner.

District may waive compliance on Owner’s part under any of the foregoing items by an instrument in writing.

(d) Owner and District shall each deposit such other instruments as are reasonably required by the escrow holder or otherwise required to close the escrow and consummate the conveyance of interests in the Property and Trail Property in accordance with the terms hereof, including, without limitation, an agreement (the “Designation Agreement”) designating Title Company as the “Reporting Person” for the transaction pursuant to Section 6045(e) of the Federal Code and the regulations promulgated thereunder, and executed by Owner, District and Title Company. The Designation Agreement shall be substantially in the form attached hereto as **Exhibit 5** and, in any event, shall comply with the requirements of Section 6045(e) of the Federal Code and the regulations promulgated thereunder.

(e) Owner represents that there are no rents charged, payable, or otherwise related to the Trail Property or the Property.

(f) Owner represents that there are no outstanding assessments or bonds related to the Trail Property or the Property.

(g) Owner represents that it does not have any knowledge of any condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would detrimentally affect the use and

operation of the Property or Trail Property for its existing purpose, or the value of the Property or Trail Property, nor has Owner received notice of any special assessment proceedings affecting the Property or Trail Property.

(h) Excluding the lawsuits specified in the "Recitals" section of this Agreement, there is now and at the time of closing no litigation pending or, after due and diligent inquiry, to the best of Owner's knowledge threatened, against Owner or any basis therefor that arises out of the ownership of the Property or Trail Property or that might detrimentally affect the use or operation of the Property or Trail Property or the value of the Property or Trail Property or adversely affect the ability of Owner to perform its obligations under this Agreement, including without limitation any proceeding or inquiry underway or threatened by any individual, entity or government authority with respect to: (i) the presence of any hazardous material (as defined in Paragraph 15(k) below) on the Property or Trail Property or the migration thereof from or to adjacent property; or (ii) any property boundary disputes.

usr (i) Owner is a duly organized and validly existing Real estate holding Trust and is in good standing under the laws of the State of California; this Agreement and all documents executed by Owner which are to be delivered to District at the Closing are or at the time of Closing will be duly authorized, executed, and delivered by Owner, are or at the time of Closing will be legal, valid, and binding obligations of Owner, are and at the time of Closing will be sufficient to convey title (if they purport to do so), and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Owner is a party or to which Owner or the Property is subject.

(j) Owner is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

(k) To the best of Owner's knowledge, neither the Property, the Trail Property nor any real estate in the vicinity of the Property or Trail Property is in violation of any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Material ("Environmental Laws"). Neither Owner, nor to the best of Owner's knowledge any third party, has used, manufactured, generated, treated, stored, disposed of, or released any Hazardous Material on, under or about the Property and/or Trail Property or real estate in the vicinity of the Property or transported any Hazardous Material over the Property. Neither Owner, nor to the best of Owner's knowledge any third party has installed, used or removed any storage tank on, from or in connection with the Property and/or Trail Property, and to the best of Owner's knowledge there are no storage tanks or wells (whether existing or abandoned) located on, under or about the Property and/or Trail Property. To the best of Owner's knowledge, the Property or Trail Property do not consist of any building materials that contain Hazardous Material. For the purposes

hereof, "Hazardous Material" shall mean any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency ordinance or law or any material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant, present or potential hazard to human health or safety or to the environment if released into the environment, or any regulation, order, rule or requirement adopted thereunder, as well as any formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 et seq.

17. Additional Representations and Warranties of District. District hereby represents and warrants to Owner as follows: District is a public agency; this Agreement and all documents executed by District which are to be delivered to Owner at the Closing are or at the time of Closing will be duly authorized, executed, and delivered by District, and are or at the Closing will be legal, valid, and binding obligations of District, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which District is a party or to which it is subject.

18. Lawsuits.

a. Stipulation Staying Second Suit. In light of the First District Court of Appeal vacating the previous dismissal without prejudice of the First Suit, the Parties hereby stipulate to consolidating the First Suit with and under the case number of the Second Suit. After consolidation, the Parties hereby stipulate to staying the consolidated Second Suit to allow all Parties time to perform their obligations under this Agreement.

b. Dismissal. Plaintiffs shall dismiss the First Suit and the Second Suit with prejudice within ten (10) court days after the close of escrow.

19. Waiver of Litigation Delay and Failure to Prosecute Claims. In order to allow the Parties ample time to perform their obligations under this Agreement prior to dismissal of the First Suit and/or Second Suit, all Parties hereto waive any and all claims related to or arising from a failure to prosecute the First Suit or the Second Suit within five (5) years or any claim arising from or related to the Trial Delay Reduction Act.

20. No Guaranteed Permit Application Approvals. Nothing in this Agreement shall obligate the County to issue, deny, suspend or revoke any permit, license, certificate, approval, order or other similar authorization.

21. Mediator's Continued Jurisdiction. The Parties agree to attempt to mediate any dispute related to or resulting from this Agreement with John Bates prior to taking

any action in court to enforce the terms or conditions of this Agreement. Participating in a four (4) hour mediation session shall be deemed full compliance with this Paragraph.

22. Release. Except as otherwise expressly set forth in this Agreement, the Parties, on behalf of themselves and their respective agents, members, assignors, and assignees, and each of them, hereby release and discharge each other and their predecessors, successors, affiliated and related entities, assignors and assignees, and each of them, from any and all claims, demands, causes of action, obligations, damages, costs, attorneys' fees and liabilities whatsoever, known or unknown, past or present, arising from or attributable to any event occurring prior to the date of this Agreement that relates to or arises out of, directly or indirectly, an easement for the Trail on the Original Property or uses of the Original Property, provided that nothing in this Release shall be construed to prevent any Party from enforcing the terms of this Agreement.

The Parties intend this Agreement to be a full and general release as to subject matters released above, and they hereby waive all claims or benefits which they now have, or in the future may have, under the provisions of section 1542 of the California Civil Code, which reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

Each Party acknowledges that its attorney has explained to it the meaning and effect of this statute.

23. Notices. Any notice required by this Agreement shall be sent via facsimile and first class mail as follows:

Notices to McCrea and/or Owner:

Les Perry

Perry, Johnson, Anderson, Miller & Moskowitz LLP

703 - 2nd Street, 4th Floor

Santa Rosa, California 95402

Fax: (707) 545-8242

Notices to BARTC:

Dee Swanhuysen

Bay Area Ridge Trail Council

1007 General Kennedy Avenue

San Francisco, CA 94129

Fax: (415) 561-2599

Notices to LandPaths:

Craig Anderson
Executive Director LandPaths
618 - 4th Street, Room 205
Santa Rosa, CA 95403
Fax: (707) 544-7242

Notices to County and/or District:

William L. Adams
Office of the County Counsel
575 Administration Drive, Room 105A
Santa Rosa, CA 95403
Fax: (707) 565-2624

24. No Assignment of Claims. The Parties warrant and represent that each is authorized to enter into this Agreement and that neither has made nor caused to be made any assignment of any claim or cause of action that any Party has or may have in the future against the Parties herein released.

25. Merger. This Agreement contains the entire understanding and agreement between the Parties with respect to the matters referred to herein. No other representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the Parties hereto.

26. Binding Agreement. All Parties hereto acknowledge that it or they are represented by an attorney; that it or they have had an opportunity to discuss this Agreement with their attorney; and it or they are fully aware of the contents of this Agreement and acknowledge that it is a legal and binding agreement.

27. Modifications. Any modification, amendment or waiver of this Agreement must be in writing and signed by all Parties hereto.

28. Agreement Binds Successors in Interest. This Agreement and the covenants and conditions contained herein shall apply to, be binding upon and inure to the legatees, devisees, administrators, executors, legal representatives, assignees, successors, and agents of the Parties hereto, and may not be altered, amended, modified or otherwise changed in any manner except by a writing executed by the Parties.

29. Further Acts. The Parties shall execute and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

30. Consent. Wherever in this Agreement the consent or approval of one Party is required to an act of the other Party, such consent or approval shall not be unreasonably withheld or delayed.

31. California Law. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

32. Construction. This Agreement shall be construed as if all Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party. Each of the Parties acknowledges that this Agreement has been negotiated at arm's length among persons knowledgeable in the matters herein. Accordingly, any rule of law — including without limitation California Civil Code § 1654, or any other statutes, legal decisions, or common law principles of similar effect — that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it, is of no application and hereby is expressly waived. This Agreement and its provisions shall be interpreted in a reasonable manner to effect the Parties' intentions.

33. No Waiver. The waiver of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

34. Venue and Continued Jurisdiction. The Sonoma County Superior Court shall retain jurisdiction over this matter pursuant to Code of Civil Procedure § 664.6 or any other relevant law. Any action to enforce the terms of this Agreement or for disputes arising out of or the breach thereof shall be brought and tried in the Sonoma County Superior Court in the County of Sonoma.

35. Severability. Except as is set forth in this paragraph, should any part, term, portion or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California or the United States or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions shall be deemed severable and shall not be affected thereby, providing such remaining portions or provisions can be construed in substance to constitute the Agreement that the Parties intended to enter into in the first instance. In the event that Owner's subdivision application is not approved or that Owner is dissatisfied with the approval or the conditions of approval, Owner shall not be required to convey the Trial Property to the District and the District shall not be obligated to exchange or remove any acreage from the 1997 Conservation Easement or enter into the Amendment.

36. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

37. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

38. Counterparts. This Agreement may be executed in counterparts or by facsimile.

IN WITNESS WHEREOF, the Parties executed this Agreement as of the Effective Date of this Agreement.

MARIA HANSEN TRUST

By: William D. Taylor

William Taylor
Trustee for the Maria Hansen Trust

WILLIAM TAYLOR, TRUSTEE OF THE MARIA HANSEN TRUST

By: William D. Taylor

William Taylor
Trustee for the Maria Hansen Trust

THOMAS P. McCREA, III

By: Thomas P. McCrea, III

Thomas P. McCrea, III

BAY AREA RIDGE TRAIL COUNCIL

By: _____

Janet McBride

36. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

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MARIA HANSEN TRUST

By: _____

William Taylor
Trustee for the Maria Hansen Trust

WILLIAM TAYLOR, TRUSTEE OF THE MARIA
HANSEN TRUST

By: _____

William Taylor
Trustee for the Maria Hansen Trust

THOMAS P. McCREA, III

By: _____

Thomas P. McCrea, III

BAY AREA RIDGE TRAIL COUNCIL

By: Janet McBride

Janet McBride

COUNTY OF SONOMA

By: Paul Kelley

Paul Kelley, Chairperson
Sonoma County Board of Supervisors

LANDPATHS

By: _____

Craig Anderson, Executive Director

SONOMA COUNTY AGRICULTURAL
PRESERVATION AND OPEN SPACE DISTRICT

By: Paul Kelley

Paul Kelley, President
Board of Directors

COUNTY OF SONOMA

By: _____

Paul Kelley, Chairperson
Sonoma County Board of Supervisors

LANDPATHS

By:  _____

Craig Anderson, Executive Director

SONOMA COUNTY AGRICULTURAL
PRESERVATION AND OPEN SPACE DISTRICT

By: _____

Paul Kelley, President
Board of Directors

APPROVED AS TO FORM:

SQUIRE, SANDERS & DEMPSEY

By: *Diane L. Gibson*

Diane L. Gibson
Counsel for the Bay Area Ridge Trail Council
and LandPaths

PERRY, JOHNSON, ANDERSON, MILLER &
MOSKOWITZ

By: _____

Leslie R. Perry
Counsel for Thomas Pleasants McCrea III, The
Maria Hansen Trust and William D. Taylor,
Trustee of the Maria Hansen Trust

STEVEN M. WOODSIDE, COUNTY COUNSEL

By: _____

Steven Woodside, County Counsel
Counsel for the County of Sonoma, Sonoma
County Agricultural Preservation and Open
Space District, the Bay Area Ridge Trail Council
and LandPaths

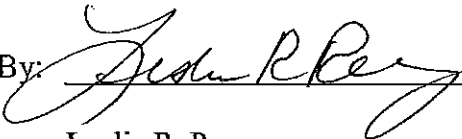
APPROVED AS TO FORM:

SQUIRE, SANDERS & DEMPSEY

By: _____

Diane L. Gibson
Counsel for the Bay Area Ridge Trail Council
and LandPaths

PERRY, JOHNSON, ANDERSON, MILLER &
MOSKOWITZ

By:  _____

Leslie R. Perry
Counsel for Thomas Pleasants McCrea III, The
Maria Hansen Trust and William D. Taylor,
Trustee of the Maria Hansen Trust

STEVEN M. WOODSIDE, COUNTY COUNSEL

By: _____

Steven Woodside, County Counsel
Counsel for the County of Sonoma, Sonoma
County Agricultural Preservation and Open
Space District, the Bay Area Ridge Trail Council
and LandPaths

APPROVED AS TO FORM:

SQUIRE, SANDERS & DEMPSEY

By: _____

Diane L. Gibson
Counsel for the Bay Area Ridge Trail Council
and LandPaths

PERRY, JOHNSON, ANDERSON, MILLER &
MOSKOWITZ

By: _____

Leslie R. Perry
Counsel for Thomas Pleasants McCrea III, The
Maria Hansen Trust and William D. Taylor,
Trustee of the Maria Hansen Trust

STEVEN M. WOODSIDE, COUNTY COUNSEL

By: Steven Woodside

Steven Woodside, County Counsel
Counsel for the County of Sonoma, Sonoma
County Agricultural Preservation and Open
Space District, the Bay Area Ridge Trail Council
and LandPaths

SETTLEMENT AGREEMENT
LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Map Depicting Original Property ("Map")
2	Zoning Map
3	First Amendment to Conservation Easement
4	Tax Affidavit
5	Designation Agreement

EXHIBIT 1

McCrea

Settlement Map

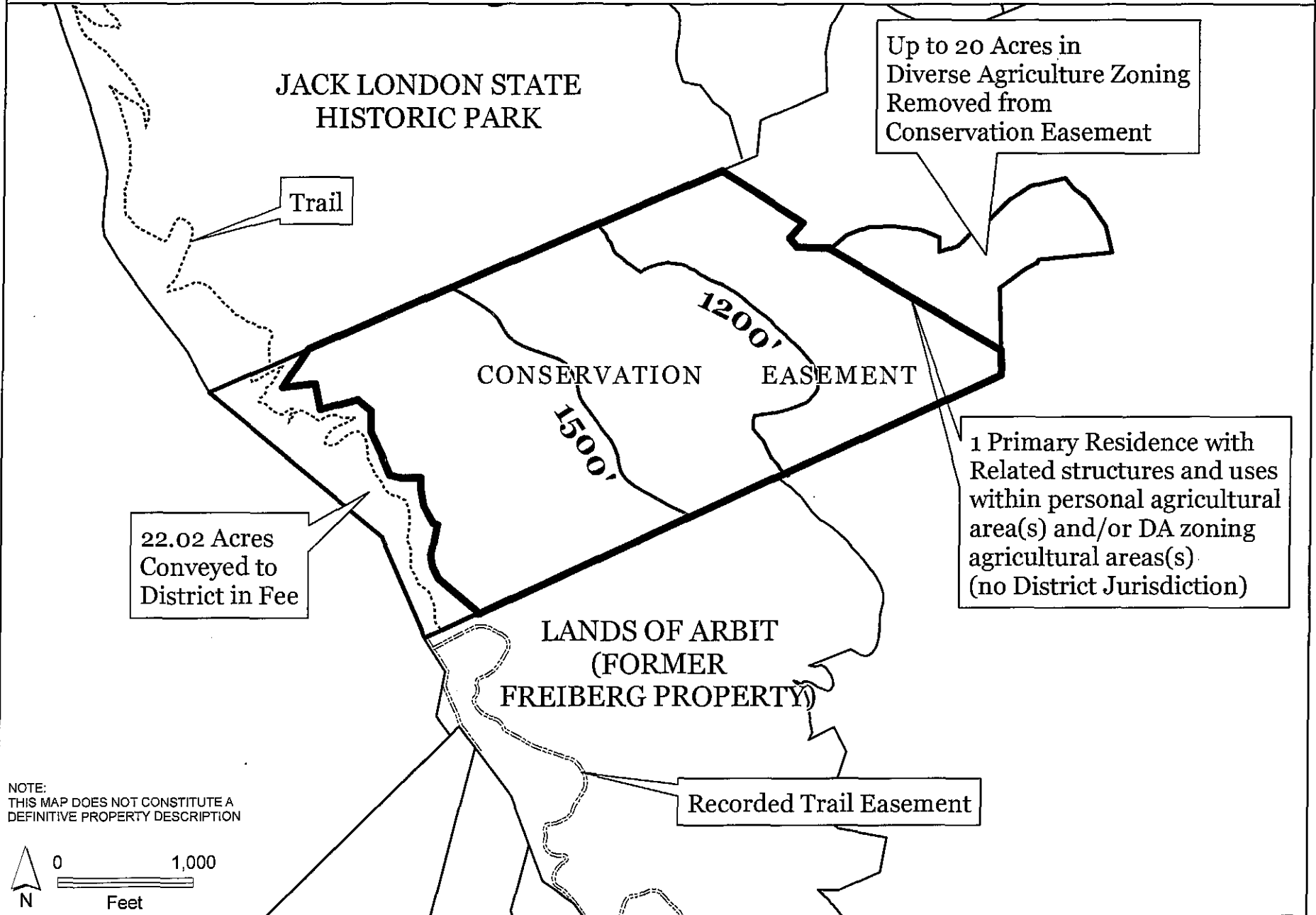


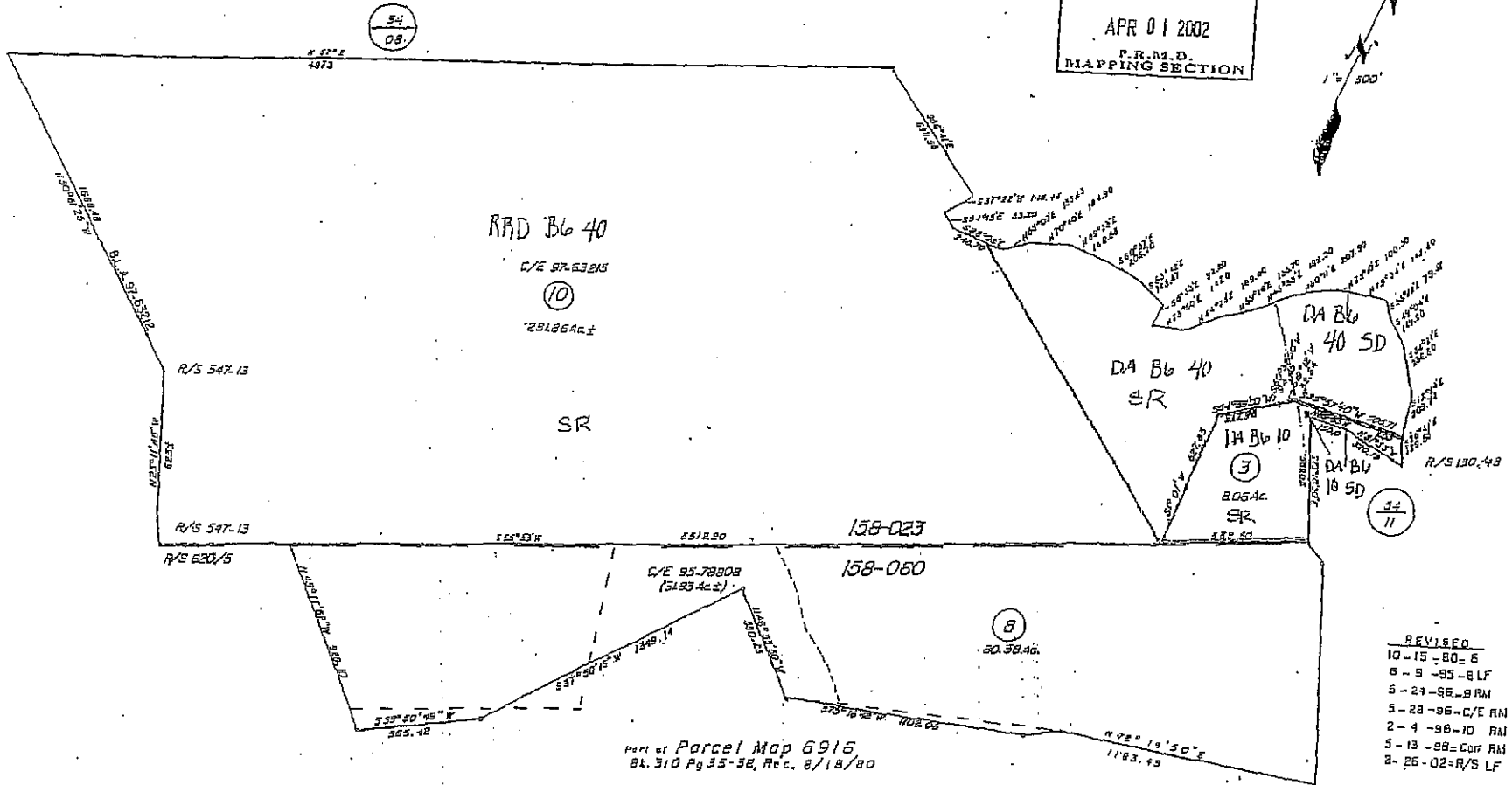
EXHIBIT 2

COUNTY ASSESSOR'S PARCEL MAP

TAX RATE AREA
158-023
158-060

54-10

RECEIVED
APR 01 2002
P.R.M.D.
MAPPING SECTION



Part of Parcel Map 6916
Blk. 310 Pg 35-38, Rec. 8/18/80

- REVISED
- 10-15-80=6
 - 6-9-85=8 LF
 - 5-24-86=8 RM
 - 5-28-86=C/E RM
 - 2-4-86=10 RM
 - 5-13-88=Corr RM
 - 2-26-02=R/S LF

NOTE: THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSES ONLY. NO
LIABILITY IS ASSUMED FOR THE
ACCURACY OF THE DATA DELINEATED
HEREON.

Assessor's Map Blk 54 Pg. 10
Sonoma County, Calif.

SETTLEMENT AGREEMENT

136
45

64
26

133
01

54
08

34
11

EXHIBIT 3

FIRST AMENDMENT TO CONSERVATION EASEMENT
(McCrea)

The Maria Hansen Trust ("GRANTOR") and the Sonoma County Agricultural Preservation and Open Space Preservation District ("DISTRICT") agree as follows:

RECITALS

WHEREAS, GRANTOR'S predecessor in interest and the DISTRICT entered into an agreement dated May 8, 1997 and recorded on July 23, 1997 by the Sonoma County Recorder as instrument number 1997 00623215 1 ("Agreement"). The Agreement conveyed a conservation easement over GRANTOR'S LANDS, the provisions of which are fully binding on GRANTOR;

WHEREAS, at the time of GRANTOR'S acquisition of the property at issue, there was uncertainty as to the size and location of the residential development referenced in the Agreement;

WHEREAS, attached as **Exhibit E** and incorporated as if fully set forth herein by this reference, is a map depicting the Original Property ("Map") that was the subject of the 1997 Conservation Easement. The Map also depicts how the Original Property will be subdivided as result of the GRANTOR'S subdivision application and approval and the Conservation Easement as modified by the First Amendment to Conservation Easement ("Amendment"). Specifically, the Original Property shall be subdivided into three (3) parcels, the Property, the Trail Property, and the Unencumbered Property. The Property consists of approximately 200 acres. The GRANTOR shall retain the right to use on the Property below the 1200' contour line. GRANTOR may conduct agricultural uses as is set forth in Paragraph 7 of the Settlement Agreement attached hereto as **Exhibit D**. The GRANTOR may develop one primary residential structure; residential-related structures, such as a guest house, second unit, garage, workshop, barn, and similar incidental and subordinate uses; associated septic systems, roads, springs, wells, and related conveyances; and personal/non-commercial agricultural uses within the personal agricultural area(s) and/or DA zoning agricultural area(s) as will be designated in the

GRANTOR's subdivision application during the subdivision process; all personal agricultural area(s) and/or DA zoning agricultural area(s) must be completely below the 1200' contour line. All development of any kind above the 1200' contour is prohibited on the Property, except that the GRANTOR retains the rights to all permitted uses, as are set forth in Exhibit B to the Amendment. The Trust shall convey the second property, the Trail Property, consisting of 22.02 acres, to the District as is set forth in the Settlement Agreement. The third property is the Unencumbered Property, which consists of no more than 20 acres. In exchange for additional development restrictions above the 1200' contour and the fee simple conveyance of the Trail Property, the District shall remove the Unencumbered Property from all conservation easements;

WHEREAS, DISTRICT and GRANTOR now desire to amend the Agreement to resolve all current lawsuits between the GRANTOR and the DISTRICT.

AGREEMENT

That certain Agreement between GRANTOR'S predecessor in interest and the DISTRICT dated May 8, 1997 and recorded on July 23, 1997 by the Sonoma County Recorder as instrument number 1997 00623215.1 is hereby amended as follows:

1. New Description. Exhibit A of the Agreement is hereby amended to read:

[COMMENT: INSERT NEW LEGAL DESCRIPTION THAT OMTS THE TRAIL PROPERTY AND THE UNENCUMBERED PROPERTY IF AND AFTER SUBDIVISION IS APPROVED.]

2. Paragraph 1: is amended to read: ***Purpose.*** It is the purpose of this Agreement to preserve the open space, natural, and scenic values of the Property, and each of them, and to prevent any uses of the Property that will significantly impair or interfere with those values. This purpose, as further defined by the provisions of this Agreement, is generally referred to collectively herein as "the conservation purpose of this Agreement." GRANTOR intends that this Agreement will confine the uses of the Property to the following, which are consistent with the conservation purpose of this Agreement: (a) residential, residential-related, and agricultural uses within personal agricultural area(s) and/or DA zoning agricultural area(s), provided such uses are permitted by the Sonoma County Code and all other applicable regulations, such as the Taylor Mountain Guidelines and (b) management and conservation of natural resources, all as allowed and limited by Exhibits "B" and "C" hereto. All personal agricultural area(s) and/or DA zoning agricultural area(s) shall be located completely below the 1200' contour line and must be the result of the GRANTOR's 2006 subdivision application, as is set forth in the attached Settlement Agreement. The Settlement Agreement is attached hereto as Exhibit "D" hereto as is incorporated as if fully set forth herein. As is set forth

in the Settlement Agreement and notwithstanding any provision of Exhibits B or C, the District waives any jurisdiction that it may have over future development applications and uses within the personal agricultural area(s) and/or DA zoning agricultural area(s) and perimeter fencing. In the event of a conflict between the Agreement, this Amendment and any exhibit hereto and the Settlement Agreement, the Settlement Agreement shall prevail.

3. Exhibit B to the Agreement. Exhibit "B" of the Agreement, entitled "Permitted Uses and Practices" is amended to read as set forth in **Exhibit B** hereto and incorporated herein by this reference.

4. Exhibit C to the Agreement. Exhibit "C" of the Agreement, entitled "Permitted Uses and Practices" is amended to read as set forth in **Exhibit C** hereto and incorporated herein by this reference.

5. The Effective Date of this Amendment is _____, 20__.

IN WITNESS WHEREOF, GRANTOR AND DISTRICT have executed this Amendment on _____, 20__.

GRANTOR

William Taylor,
Trustee of the Maria Hansen Trust

DISTRICT

Paul Kelley, President of the Board of Directors

ATTEST:

_____, County Clerk and
ex-officio Clerk of the Board of Directors

EXHIBIT "B"

PERMITTED USES AND PRACTICES

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

1. To use or lease the Property consistent with the conservation purpose of this Agreement and the purposes of the Settlement Agreement attached to the Amendment as Exhibit D.

2. GRANTOR shall have the right to construct, erect, develop, place or use: (a) one primary residential structure; and (b) associated residential-related uses and structures, such as a guest house, second unit, garage, workshop, barn, and similar incidental and subordinate uses; provided such uses are below the 810' contour line, are completely within established personal agricultural area(s) and/or DA zoning agricultural area(s) and an approved building envelope, and are permitted by the Sonoma County Code and all other applicable regulations, such as the Taylor Mountain Guidelines. GRANTOR also retains the right to develop new septic systems and springs, wells, and related conveyances associated with the agricultural and residential uses identified in Paragraphs 2 and 3, and new access roads that are below the 980' contour line, associated with the agricultural and residential uses identified in Paragraphs 2 and 3, and identified through GRANTOR's 2006 subdivision application, provided that all such uses are completely within established personal agricultural area(s) and/or DA zoning agricultural area(s) and are permitted by the Sonoma County Code and all other applicable regulations, such as the Taylor Mountain Guidelines.

3. GRANTOR shall have the right to conduct personal/non-commercial agricultural uses, provided such uses are below the 1200' contour line, permitted by the Sonoma County Code and all other applicable regulations, such as the Taylor Mountain Guidelines, and are completely within personal agricultural area(s) or DA zoning agricultural area(s) approved by the Sonoma County Board of Supervisors as the result of the GRANTOR's 2006 application for a subdivision. GRANTOR may conduct agricultural uses and/or associated agricultural uses permitted or permitted with a use permit in the DA zoning district provided such uses are located completely within the existing DA zoning and inside DA zoning agricultural area(s) approved by the Sonoma County Board of Supervisors as the result of the GRANTOR's 2006 application for a subdivision, and are permitted by the Sonoma County Code and all other applicable regulations, such as the Taylor Mountain Guidelines.

4. GRANTOR may erect deer fencing around the personal agricultural area(s) and DA zoning agricultural area(s).

5. GRANTOR may erect a perimeter fence without the District's consent and subject to all of the following:

(i) Allow visibility;

(ii) Permit the use of barbed wire;

(iii) Restrict the lengths of impassable fencing so that it will not exceed more than a quarter of a mile without an opening for the passage of deer and other wildlife;

(iv) Where feasible and at the sole discretion of the GRANTOR, locate the passage for wildlife in riparian and other waterway corridors or wooded ravines. If necessary, the quarter mile of impassable fencing can extend an additional 500 feet if the passage can be placed in the preferred riparian or other waterway corridors or wooded ravines. In no event will the fencing be located within 15 feet of either side of the center of a riparian waterway;

(v) The bottom of the fence shall have an opening or an underpass that is six (6) inches in height and ten (10) inches wide, every four hundred feet;

(vi) Other than the specific fencing requirements provided in subparagraphs (i) through (v), the District shall have no authority whatsoever over the type, style, material, appearance or size of the fence, other than it must allow for visibility, except to enforce the terms of this Agreement.

6. To develop new springs and wells; with the approval of DISTRICT, to develop sewage disposal leaching systems and additional water storage facilities, provided however, that such facilities are located so as to minimize visual impacts. Such uses further shall be necessary for irrigation or residential uses on the Property and shall be developed in a manner consistent with the conservation purpose of this Agreement.

7. To maintain, repair, replace and improve housing, structures, fences, corrals, protection and access roads, ditches, water sources, sewage disposal leaching systems, pumps and other improvements on the Property whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement. Such maintenance and repair may include the limited removal of brush and trees immediately

adjacent to such improvements. Except for the development set forth in Paragraph 2 of this Exhibit, in the event of destruction, deterioration, or obsolescence of any housing or other structures, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, GRANTOR shall deliver to DISTRICT written request for approval to replace such housing or structures in accordance with the provisions set forth in this Agreement. In the event of destruction, deterioration, or obsolescence of any fences, corrals, ditches, water sources, sewage disposal leaching systems, pumps or other improvements, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, GRANTOR may replace same with ones of similar size, function, capacity and location, without prior notice to or approval by DISTRICT, provided, however, that such replacement is consistent with the conservation purpose of this Agreement. In the event of destruction, deterioration, or obsolescence of any roads, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, GRANTOR may replace same with ones of similar size, function, capacity and location, without prior notice to or approval by DISTRICT.

8. To utilize the Property for low-intensity recreational or educational purposes, including, but not limited to hiking, horseback riding, bicycling, nature study, picnicking, and establishment of public recreational trails. Any activities or uses as provided for in this Paragraph which result in significant surface alteration or other development of the land require approval of DISTRICT.

9. To undertake conservation and restoration activities, including, but not limited to, bank and soil stabilization, practices to reduce erosion, and activities which promote biodiversity in accordance with sound, generally accepted practices.

10. To undertake wildfire management plans in order to control and maintain vegetation to lower the risk of wildfire. Such methods may include prescriptive burning, limited brush removal or grazing, of the Property. Plans shall be reviewed by DISTRICT and shall be acceptable to the California Department of Forestry and Fire Protection and appropriate local fire protection agencies.

11. To place signage on the Property for identification of the Property, control trespassing or which is associated with permitted recreational or educational purposes. Signs which individually exceed six (6) square feet require approval of DISTRICT.

12. To continue use in accordance with easements of record granted prior to the Agreement. Modifications to pre-existing easements and granting of new easements require the approval of DISTRICT and use subject to the stipulations in Paragraph 10 of Exhibit "C".

13. To remove invasive, non-native plant species that threaten or impede the growth of native plant species. To remove feral, non-native animal species that threaten the protected values of the Property.

14. To cut, collect and store firewood on the Property for personal use.

15. With the approval of DISTRICT, to adjust the lot lines on the Property consistent with the language and intent of the Settlement Agreement. DISTRICT's approval shall not be unreasonably withheld.

EXHIBIT "C"

PROHIBITED USES AND PRACTICES

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

1. This list of prohibited uses and practices applies except to those uses approved by the Sonoma County Board of Supervisors as part of GRANTOR's 2006 subdivision application and the Settlement Agreement attached hereto as Exhibit D.
2. To impair the conservation purpose, except as otherwise expressly provided in this Agreement.
3. To establish any residential, agricultural, commercial or industrial activity or use, except as otherwise expressly provided in this Agreement.
4. To construct, place, or erect any sign or billboard on the Property, except as provided in Paragraph 11 of Exhibit "B."
5. To construct, reconstruct, or replace any improvement except as provided in this Agreement.
6. Except as set forth in Exhibit B, Paragraph 15 and in the GRANTOR's 2006 subdivision application as is set forth in the Settlement Agreement attached hereto as Exhibit D, to divide, subdivide, or de facto subdivide the Property, provided, however, that the voluntary conveyance to a government or non-profit entity exclusively for conservation or public access purposes, shall not be prohibited by this Paragraph.
7. To use motorized vehicles, except by GRANTOR or others under GRANTOR's control, for permitted property management activities, for inspections by DISTRICT, for emergency and fire control purposes, for residential use provided for in this Agreement, and for uses pursuant to deeded rights that pre-date this Agreement. Any use of motorized vehicles off roadways is prohibited except when necessary for permitted property management activities, for emergency and fire control purposes, and for uses pursuant to deeded rights that pre-date this Agreement.
8. To construct any new roadway, except as provided in Paragraph 2 of Exhibit B, or to relocate any roadway above the 1200' contour line without the prior approval of DISTRICT. DISTRICT shall consent to the relocation of any existing roadway above the 1200' contour line that is planned to minimize or mitigate its impact

on the open space and natural features of the Property.

9. To dump or accumulate trash, ashes, garbage, waste, junk or inoperative vehicles or other unsightly or offensive material on the Property.

10. To install new or enlarged above-ground utility systems within pre-existing (e.g., recorded prior to the 1997 Agreement) or new easements (e. g., recorded after the 1997 Agreement), including, without limitation, water, sewer, power, fuel, and communication lines and related facilities and equipment, except to serve the uses set forth in Paragraph 2 of Exhibit B to the Agreement, management activities or uses as provided in this Agreement. New easements may only be granted where they will remove and significantly lessen the impact of pre-existing easements on the conservation purpose of this Agreement.

11. To explore for, or to develop or extract, minerals or hydrocarbons by any mining method, surface or otherwise.

12. To hunt, trap or otherwise willfully kill wildlife for food or sport except as provided in Paragraph 12 of Exhibit "B," or except by GRANTOR or GRANTOR's designee, for personal, non-commercial recreational use.

13. To remove or destroy any native trees, shrubs or other native plant materials, except as necessary, in accordance with generally accepted forestry conservation practices, to control or prevent hazard, disease, wildfire or non-native invasive plant species, or except as provided for in Paragraph 13 of Exhibit "B."

14. To cause degradation of or erosion of the soil, or pollution of any surface or subsurface waters.

15. To store materials, such as pipes, culverts, fencing, heavy equipment, and the like in areas that may be visible from public roadways, except while work is in progress and in no case for a period exceeding thirty (30) days after work is completed.

16. To alter the contour of the Property in any manner whatsoever; including, but not limited to, excavating or removing soil, sand, gravel, rock, peat or sod, except in connection with activities and uses as provided in this Agreement and subject to approval by DISTRICT.

17. To cut, collect or store firewood on the Property for commercial purposes.

18. As specified in Paragraph 7(b)(vii) of the Settlement Agreement, which is attached hereto as Exhibit D, agricultural and/or associated uses permitted or permitted

with a use permit in the DA zoning district shall be allowed only if located completely within the DA zoning of the Original Property and DA zoning agricultural area(s), and if permitted by applicable zoning and land use regulations, including but not limited to the Taylor Mountain Guidelines. Except as specified in Paragraph 7(b)(vii), agricultural uses are limited to personal use, including agricultural cultivation for personal consumption and the feeding, maintaining, and breeding of animals for personal use or consumption.

EXHIBIT 4

EXHIBIT 4
CERTIFICATE OF NON-FOREIGN STATUS
(FIRPTA AFFIDAVIT)

Section 1445 of the Internal Revenue Code provides that a transferee of U.S. real property interest must withhold tax if _____, ("Owner") is a foreign person. To inform the Sonoma County Agricultural Preservation and Open Space District ("District") that withholding of tax is not required upon the disposition of the Trail Property, the undersigned hereby certifies the following:

1. I am not a resident alien for purposes of U.S. income taxation; and
2. The U.S. taxpayer identification number (Social Security number) for Owner is _____; and
3. My home address is _____
_____ ; and
4. I agree to inform District promptly if I become a nonresident alien at any time during the three years immediately following the date of this notice.

I understand that this certification may be disclosed to the Internal Revenue Service by the District and that any false statement made herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 5

EXHIBIT 5

DESIGNATION AGREEMENT

(Escrow No. _____)

This DESIGNATION AGREEMENT (the "Agreement") is entered into by and between The Maria Hansen Trust ("Owner") and the Sonoma County Agricultural Preservation and Open Space District ("District"), and _____ ("Title Company") as of _____, 20__, (the "Effective Date").

I. RECITALS

A. Pursuant to that certain Settlement Agreement entered into by and between Owner and District, the effective date of which is March 14, 2005 (the "Settlement Agreement"), Owner has agreed to convey to District, and District has agreed to receive from Owner, 22.3 acres, more or less, that are currently part of a 240 acre, more or less, property on Vigilante Road in the unincorporated area of Sonoma County and described more fully on attached Exhibit A (the "Trail Property") (The conveyance of the Trail Property pursuant to the Settlement Agreement is sometimes referred to below as the "Transaction").

B. Section 6045(e) of the United States Internal Revenue Code and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction.

C. Pursuant to the Settlement Agreement, an escrow has been opened with Title Company through which the Transaction will be or is being closed. Title Company is either (i) the person responsible for closing the Transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the Transaction (as described in the Reporting Requirements).

D. Owner, District, and Title Company desire to designate Title Company as the "Reporting Person" (as defined in the Reporting Requirements) with respect to the Transaction as permitted by Treas. Reg. §1.6045-4(e)(5).

II. AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner, District, and Title Company agree

as follows:

1. Title Company is hereby designated as the Reporting Person for the Transaction. Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

2. Title Company hereby requests Owner to furnish to Title Company Owner's correct taxpayer identification number. Pursuant to such request, Owner hereby certifies to Title Company, under penalties of perjury, that Owner's correct taxpayer identification number is _____. Owner acknowledges that any failure by Owner to provide Title Company with Owner's correct taxpayer identification number may subject Owner to civil or criminal penalties imposed by law.

3. The names and addresses of the parties hereto are as follows:

Owner: _____

District: _____

TITLE COMPANY: _____

4. Each of the parties hereto shall retain this Agreement for a period of four years following the calendar year during which the date of closing of the Transaction occurs.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Owner: By: _____

Name: _____

Title: _____

District: By: _____

Name: _____

Title: _____

Title Company: By: _____

Name: _____

Title: _____