#43 August 4, 2009

COUNTY OF SONOMA AND SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT Open Space	Clerk of the Board Use Only Meeting Date Held Until __/__/__ __/__/__ Agenda Item No: Agenda Item No:
Department: County Counsel	☐ 4/5 Vote Required

Contact:	Phone:	Board Date:	Deadline for Board Action:
Jeffrey M. Brax	707.565.2421	8/4/2009	8/4/2009

AGENDA SHORT TITLE:
Proposed revisions to the December 2005 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.

REQUESTED BOARD ACTION:
Authorize the Chair of the Board of Supervisors and Board of Directors to sign the Revised Settlement Agreement on behalf of the County and Open Space District.

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):
Approval of the Settlement Agreement

Alternatives - Results of Non-Approval:
The settlement agreement would not be revised to account for changed conditions or to clarify terminology.

Background:

In December 2005, the County entered a comprehensive settlement of its litigation against the Maria Hansen Trust and Thomas P. McCrea, III regarding the conveyance of a public trail at the top of their 240-acre property on Vigilante Road in the First District (APN 054-100-010).

The settlement contemplates a three-part subdivision of the property. The northernmost 22.02 acres would be conveyed to the Sonoma County Agricultural Preservation and Open Space District (District) and developed as a public trail, providing a connection between two existing trails and important public benefits related to recreation and open space. The southernmost parcel, which could be up to 26 acres in size, could be removed from the existing conservation easement on the property and used consistent with the existing Diverse Agriculture (DA) zoning. The middle portion, most of which is in the Resources and Rural Development (RRD) zoning district, could be developed below the 1200' contour line for one primary residential structure, associated residential accessory uses, and agricultural uses.

Discussion:

The parties have negotiated minor revisions to the settlement and conservation easement to address changed conditions and minor issues that have arisen since 2005. These revisions are not intended to alter the deal points or fundamentally alter the settlement. They instead address minor issues that require revision, including but not limited to the following:

1. The list of party contacts in Section 23 is out of date, and requires updating.

2. The legal history discussed in the recitals and Section 18 is similarly out of date. Among other items, since entry of the settlement agreement, the California Court of Appeal has ruled, creating two pending lawsuits in the Sonoma County Superior Court. The Revised Settlement Agreement proposes to consolidate those two actions.

3. The size of the northernmost trail parcel is incorrectly identified as 21.4 acres, instead of 22.02 acres.

Attachments:

On File with Clerk: Revised Settlement Agreement

CLERK OF THE BOARD USE ONLY

Board Action (If other than "Requested")

Vote

	MOTION	AYE	NO
BROWN		✓	
KERNS		✓	
ZANE	absent		
CARRILLO		✓	
KELLEY		✓	

Background: (Continued)

4. Section 7(b)(vi) incorrectly states that the State of California must approve the boundary between the middle and southernmost parcels.

5. The agreement does not allow for future lot line adjustments consistent with the agreement and with the approval of the District. A future adjustment between the middle parcel and the public trail property to the north, for example, could benefit the public.

6. The agreement mentions the possibility of "commercial horse stables" on the middle parcel and "Commercial Agricultural Acreage" in both the middle and southern parcels. These terms are not used in the County's zoning ordinance, and have generated questions and concerns among some community members. The Revised Settlement Agreement could remove these terms, and instead note that in the DA portion of the property, agricultural uses would be limited to permitted uses and uses permitted with a use permit in the DA zone. In the RRD portion, only personal, non-commercial agricultural uses would be allowed, notwithstanding the zoning. The Revised Settlement Agreement could also clarify that commercial horse boarding is not an agricultural use.

7. The agreement requires the owner to identify and the Board to set "development envelopes" as part of the subdivision process. This term is not used in the County Code, and conflicts with the "building envelopes" that must be established as part of the required subdivision. The agreement could be revised to require the owner to instead identify a DA agricultural area within the existing DA zoning of the property, and a personal agricultural area within the existing RRD zoning, and below the 1200' contour line. These areas would set the limits of future agricultural uses on the property.

8. PRMD staff requested a "walkthrough" paragraph summarizing which uses are allowed at which elevations and areas in the middle parcel. A new section 7(b)(xii) would explain that uses are extremely limited above the 1200' contour line, and restricted to one single family residence, associated accessory uses, and agricultural uses below it. It would also explain that agricultural uses may be only personal and non-commercial within the existing RRD zoning, and as authorized by the relevant zoning in the existing DA zoning.

The parties may also seek to modify Section 9, which states that the agreement is contingent upon the finalization of a trail alignment on the adjacent Arbit property to the owner's satisfaction. If the parties can reach agreement on that alignment now, the contingency can be removed from the Revised Settlement Agreement.

As noted above, these revisions are not intended to alter the substance of the settlement, but to clarify terminology and address issues that have arisen since its adoption. Although no public item is required to revise a settlement agreement, staff recommends that the Board hear testimony and authorize the Chair to sign the Revised Settlement Agreement. A hearing on the subdivision agreement would follow shortly.