



County of Sonoma

State of California

Date: April 5, 2022

Item Number: _____

Resolution Number: _____

4/5 Vote Required

Resolution of the Board of Supervisors of the County of Sonoma, State of California, Approving the Request by Alton Preserve, LLC to 1) Rescind Two Existing Non-Prime (Type II) Land Conservation Act Contracts and Replace them with a Single Open Space Land Conservation Act Contract and Authorize the Chair of the Board to Execute the New Open Space Land Conservation Act Contract and Land Conservation Plan for Open Space Land on 41.12 Acres; and 2) Subordinate Two County Scenic Easements to a California Department of Fish and Wildlife Conservation Easement for Conservation Banking Purposes on the Same 41.12-Acre Property Located at 2790 Alton Lane, Santa Rosa; APN 034-042-081.

Whereas, a request has been made by Alton Preserve, LLC to authorize the Chair of the Board to 1) rescind two existing Non-prime (Type II) Land Conservation Act Contracts and replace them with a single new Open Space Land Conservation Act contract for open space uses on a 41.12-acre property and, 2) subordinate two County Scenic Easements to a California Department of Fish and Wildlife (CDFW) Conservation Easement for conservation banking purposes on the same 41.12 acres for property located at 2790 Alton Lane, Santa Rosa; APN 034-042-081; Supervisorial District No. 5; and,

Whereas, in 1969 and 1972, the subject property was entered into two separate Non-prime (Type II) Land Conservation Act contracts for hay production and grazing land (1969 Contract recorded under Book 2394 and Page 93 of Official Records; 1972 Contract recorded under Book 2608 and Page 525 of Official Records); and,

Whereas, in 1989 and 1990, as part of the approval process for a minor subdivision request in 1989 (File No. MNS89-235) and a Lot Line Adjustment request in 1989 (File No. LLA89-554), which created parcels smaller than the 40-acre minimum parcel size requirement for non-prime Land Conservation contracts; the Board of Supervisors accepted two Grant Deeds for Scenic Easements over portions of the subject property to preserve the public benefit of natural scenic beauty and existing openness, natural condition, and present state of the wetlands; and,

Whereas, the 1989 Grant Deed of Scenic Easement encumbers 29 acres of the subject

property and is recorded under Instrument No. 1989-70989. The 1990 Grant Deed of Scenic Easement encumbers 5.7 acres of the subject property and is recorded under Instrument No. 1990-18522 of Official Records. These "County Scenic Easements" run with the land in perpetuity and prohibit 1) erecting any structures intended for human occupancy, commercial purposes, or agricultural purposes; and 2) any act which will materially change the general topography or present natural form of the Wetland Preserve; and,

Whereas, 35.42 acres of the subject 41.12-acre property are encumbered by four existing conservation easements held by CDFW that were recorded over portions of the property between 1989 and 1999 as mitigation for offsite development projects; and,

Whereas, since the County Scenic Easements and CDFW conservation easements were recorded in the early 1990's, the property has been functioning as a wetland mitigation site; however, the site was established without properly funding an endowment to help maintain it. Therefore, the landowner and CDFW seek to form a conservation bank on the property with a fully funded management endowment to support and maintain endangered species and wetland mitigation habitat existing on the property in perpetuity. As part of forming the conservation bank, the landowner and CDFW are agreeing to a new Conservation Easement over the land to consolidate and replace the conservation easements previously granted to CDFW in 1989, 1990, 1994 and 1999. Prior to recording the new CDFW Conservation Easement, CDFW and the landowner are requesting the County's assistance and cooperation in replacing the existing non-prime (Type II) Land Conservation Contracts with an Open Space Land Conservation Contract, and in agreeing to a limited subordination of the County's Scenic Easements to the new CDFW Conservation Easement; and,

Whereas, on December 13, 2011, the Board of Supervisors adopted the updated *Sonoma County Uniform Rules for Agricultural Preserves and Farmland Security Zones (Uniform Rules)* (Resolution No. 11-0678), which requires that Land Conservation Plans are incorporated into Land Conservation Contracts; and,

Whereas, consistent with the *Uniform Rules*, County Counsel has revised the Land Conservation Act Contract form, which now incorporates a Land Conservation Plan identifying the various uses of the contracted land. Future changes to identified land uses require amendment of the Land Conservation Plan. The Board, pursuant to Resolution No. 11-0678, has authorized the Director of PRMD to approve amendments to executed Land Conservation Plans; and,

Whereas, Sonoma County's Land Conservation Act program has four contract-types available: a) Prime contracts for crop agriculture with a 10 acre minimum parcel size requirement; b) Non-Prime contracts for grazing with a 40 acre minimum; c) Open Space contracts with a 40- acre minimum, and d) Hybrid contracts with a mix of agricultural and open space also with a 40-acre minimum; and,

Now, Therefore, Be It Resolved, that the Board of Supervisors finds that the project described in this Resolution is exempt from the requirements of the California Environmental Quality Act by virtue of Section 15317 Class 17 of Title 14 of the California Code of Regulations (CEQA Guidelines) which provides that executing new open space contracts or accepting easements or fee interests in order to maintain the open space character of the area is exempt from the California Environmental Quality Act. No exceptions listed under Section 15300.2 apply. There is no reasonable possibility that the replacement Open Space Contract and the Consent and Subordination Agreement would have a significant effect on the environment.

Be It Further Resolved, that the Board of Supervisors hereby grants the request by Alton Preserve, LLC to mutually rescind and replace two Non-prime (Type II) Land Conservation Act contracts with a single open space Land Conservation Act contract for open space land on 41.12 acres within an existing Agricultural Preserve (2-434), and authorizes the Chair of the Board to sign the new open space Land Conservation Act Contract for APN 034-042-081. The Board makes the following specific findings concerning the requirements for a hybrid Land Conservation Act Contract (“Contract”) in granting the request:

1. Land is within an Agricultural Preserve: The 41.12-acre parcel is located within established Agricultural Preserve Area Number 2-434.
2. Single Legal Parcel Requirement: The land proposed for the contract is comprised of a single legal parcel with the following Assessor’s Parcel Number: 034-042-081.
3. Minimum Parcel Size: The land must be at least 40 acres in size for an Open Space Land Conservation Act Contract. The 41.12-acre parcel exceeds the 40-acre minimum parcel size for a new Open Space Land Conservation (Williamson) Act Contract.
4. Open Space Use Requirement: Parcels under Open Space Land Conservation (Williamson) Act Contracts must devote at least 50 percent of the land to open space land uses. Open Space Land means the land is used or maintained in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide habitat for wildlife, or for the solar evaporation of seawater in the course of salt production, if the land is within any of the following: a scenic highway corridor; a wildlife habitat area, a saltpond, a managed wetland area; a submerged area; or an area enrolled in the USDA Conservation Reserve Program of Conservation Reserve Enhancement Program.

The parcel is 41.12 acres, with 41.117 (99.9%) acres devoted to qualifying open space uses (wildlife habitat area) which exceeds the 50% threshold. A wildlife habitat area is defined at Uniform Rule 2.0 as “land or water area designated by the Board of Supervisors, after consulting with and considering the recommendation of the California Department of Fish and Game, as an area of

importance for the protection or enhancement of the wildlife resources of the state. Wildlife habitat includes any land area designated in the General Plan as a biotic habitat area or riparian corridor.”

To assist in managing the site, Ted P. Winfield, Ph.D., with Ted Winfield & Associates, prepared a *Long-Term Monitoring and Management Plan*, dated *January 30, 2020*, for the site. The purpose of the Management Plan is to maintain habitat values for seasonal wetland habitat, California tiger salamander (CTS), and special-status plant species that occur on the property. The Management Plan finds that the property supports suitable CTS upland habitat, and natural and constructed seasonal wetland habitat, consisting of vernal pools, seasonal wetlands and swales. Colonies of Burke’s goldfields and Sonoma sunshine occur in some of the wetlands, and CTS are known to breed in a number of the deeper vernal pools. On May 11, 2021, staff consulted with CDFW and Ted P. Winfield, Ph.D., who concluded that the property presents the open space qualities and wildlife resources consistent with an open space land conservation contract. CDFW concurs with the property management recommendations listed in the Management Plan.

The attached Land Conservation Plan requires the landowner to implement management practices that will enhance and maintain the wildlife habitat values identified by Ted P. Winfield, Ph.D.

5. Compatible Uses for Open Space Land (Uniform Rule 8.0): Compatible uses of the land must be listed in the Uniform Rules as compatible uses and collectively, cannot occupy more than 15 percent or 5 acres of the total parcel size, whichever is less, excluding public roads, private access roads, and driveways. For this parcel, the 15% threshold would apply. The property contains a livestock corral, pump house, and water trough that collectively occupy less than 0.1% of the property (.003 acres). This infrastructure is associated with the periodic grazing activities recommended by the Long-Term Monitoring and Management Plan for the property. The remainder of the property, 41.117 acres (99.9%), is devoted to wildlife habitat, a qualifying open space use. However the land is also used as mitigation sites for preservation of habitat for rare, threatened and endangered species.

Mitigation sites are listed as a compatible use by the Uniform Rules. The existing wetland mitigation sites occupy 99.9% of the property. Under Uniform Rule 8.5.E.5, and consistent with the principles of compatibility stated in the California Land Conservation Act, at Government Code Section 51238.1, findings of compatibility are required to allow the existing wetland mitigation sites to exceed the 15 percent area limitation for compatible uses.

Be It Further Resolved, the Board of Supervisors finds that the property’s wetland mitigation sites satisfy the Principals of Compatibility under Government Code Section 51238.1.

The Board makes the following specific findings concerning the principles of compatibility:

- a. "Mitigation sites for preservation of habitat for rare, threatened, or endangered species" is a use enumerated as a compatible use by Uniform Rule 8.5(E)2.
- b. The contracted land will continue to be devoted to agricultural or open space uses. The contracted land will be devoted to open space uses in perpetuity, as required by the existing County Scenic Easements, the existing CDFW conservation easements, and CDFW's proposed conservation easement.
- c. The use complies with the requirements of Government Code sections 52101(e) and (o), 51205, and 51238.1. The use of the property for mitigation sites for preservation of habitat for rare, threatened, or endangered species is consistent with the principles of compatibility.
- d. The use will not result in a significant increase in the density of the temporary or permanent human population that could hinder or impair agricultural operations on the contracted land. The use of the property as a wetland mitigation site will not result in any change to the assigned zoning density nor in any new structures.
- e. The use of the property for wetland mitigation sites does not require and will not encourage the extension of urban services such as public sewer or water, or the upgrade of public roads to urban standards that could encourage premature conversion of agricultural land to non-agricultural uses.
- f. The use will not include a residential subdivision on the subject parcel.
- g. The use is consistent with the General Plan and Zoning Code. The parcel is designated Land Intensive Agriculture by the Sonoma County General Plan, and is Zoned LIA (Land Intensive Agriculture) which allows for resource management as a permitted use. Specifically, Sec. 26-18-170 of the Zoning Code defines land and resource management as "Lands management activities dedicated to the protection and conservation of natural resources, such as aquatic environments, wetland and riparian habitat, watersheds, and fish and wildlife habitat." Therefore, managing the property as mitigation sites for preservation of habitat for rare, threatened, or endangered species is consistent with the General Plan and Zoning Code.
- h. The use will preserve the open space uses of the land and will not significantly change the character, appearance, or operation of the agricultural or open space uses of the contracted land.

Be It Further Resolved, the Board of Supervisors finds the proposed CDFW Conservation Easement dated October 27, 2021, has no consistency issues with the Land Conservation Act; and that there are no conflicts due to the use of the subject land as a conservation bank under the open space contract rules, and views the future use of the land as a bank compatible under the new open space land conservation contract.

Be It Further Resolved, the Board of Supervisors finds that the proposed CDFW Conservation Easement dated October 27, 2021 and to be recorded against the property is consistent with the County Scenic Easements because no new development can occur on the 41.12-acre property that could potentially impact the values protected by the Scenic Easements; and that the CDFW Conservation Easement is more restrictive than the County's existing Scenic Easements and will require preservation of certain natural resources as its primary purpose, which will also ensure that the scenic quality of the property and that the land remains in its natural state. Furthermore, the Board of Supervisors finds that the intent of the Consent and Subordination Agreement is to ensure that the proposed CDFW Conservation Easement is, solely to the extent of any theoretical conflict, senior to the County Scenic Easements and that the County Scenic Easements are subject and subordinate to the CDFW Conservation Easement. Therefore, the Board of Supervisors hereby grants the request by Alton Preserve, LLC and CDFW to subordinate the County Scenic Easements to the proposed CDFW Conservation Easement.

Be It Further Resolved that the Board of Supervisors authorizes the Chair of the Board of Supervisors to execute 1) the Open Space Land Conservation Act Contract and attached Land Conservation Plan, and 2) the Consent and Subordination Agreement.

Be It Further Resolved, that the Clerk of the Board of Supervisors is hereby instructed to deliver to Permit Sonoma, Attn: Hannah Spencer, Supervising Planner the following signed documents: the "Open Space Land Conservation Act Contract" and attached Land Conservation Plan, and the "Consent and Subordination Agreement".

Be It Further Resolved that County Counsel is hereby authorized to review the Conservation Easement and Subordination Agreement approved by the Board of Supervisors and CDFW, to determine whether they substantially conform to the forms of easement and subordination agreement approved by the Board or that any changes to the easement or agreement are minor in nature and do not substantially alter the easement terms and conditions, and deliver these documents to the "Title Company" to complete the transaction as described. The Open Space Land Conservation Contract will be delivered to and held by escrow until all documents have been delivered into escrow and the Conservation Easement and Subordination Agreement have recorded. The Open Space Land Conservation Contract shall record after the Conservation Easement and Subordination Agreement have been recorded, and no later than December 31, 2022.

Be It Further Resolved, that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based, including the original executed Contract and Land Conservation Plan. These documents may be found at the office of the Clerk of the Board, 575 Administration Drive, Room 100-A, Santa Rosa, California 95403.

Supervisors:

Gorin: Rabbitt: Coursey: Hopkins: Gore:

Ayes: Noes: Absent: Abstain:

So Ordered.