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Date: August 6, 2019

Item Number: \_\_\_\_\_  
 Resolution Number: \_\_\_\_\_

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☐ 4/5 Vote Required

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**Resolution of the Board of Directors of the Sonoma County Agricultural Preservation and Open Space District, Making Certain Findings In Support Of, and Authorizing the President to Execute, an Amendment to the Howlett Forest Conservation Easement to Conform the Easement to Internal Revenue Service Rules for Charitable Tax Deductions and Delegating Authority to the General Manager to Approve Amendments to Other Conservation Easement Agreements Under Similar Circumstances**

**Whereas**, in April 2017, the Howlett Family Partnership (the “Howlett Family”) and the Sonoma County Agricultural Preservation and Open Space District (“District”) entered into a “Deed and Agreement By and Between the Howlett Family Partnership and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement and Assigning Development Rights” (“Easement”) to conserve that certain property northwest of Lake Sonoma commonly known as Howlett Forest (“Property”); and

**Whereas**, the Howlett Family desires to amend Sections 13.2 and 13.3 of the Easement to conform to certain Internal Revenue Service Regulations that prescribe how proceeds from the extinguishment of a conservation easement must be divided in the event of condemnation in order for the donation of that easement to qualify for a charitable tax deduction (26 C.F.R. § 1.170A14(g)(6)(ii)); and

**Whereas**, pursuant to the District’s Easement Amendment Policy, this Board finds:

- A. The proposed amendment is clearly consistent with the conservation purpose of the Easement because the proceeds formulas established by Sections 13.2 and 13.3 of the Easement do not affect any of the substantive protections of the Easement;
- B. The proposed amendment does not impair the conservation values of the land subject to the Conservation Easement because the proceeds formulas established by Sections 13.2 and 13.3 of the Easement does not impact the

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Property or its protections under the Easement;

- C. The proposed amendment does not undermine the perpetual nature of the Conservation Easement because the Easement, as amended, will remain perpetual and dedicated to open space pursuant to Public Resources Code section 5540;
- D. The proposed amendment is not precluded by the Easement or by state or federal law;
- E. The proposed amendment does not reconvey any interest in land that has been expressly extinguished by the Easement. The proposed amendment merely ensures that the District's interest in just compensation for any taking of the Easement is not detrimentally affected by any discount that would be made under the original Easement language for the value of improvements made by the landowner and/or any costs incurred by the landowner in responding to the condemnation action;
- F. The proposed amendment is the minimum change necessary to satisfy the purpose of the amendment;
- G. The proposed amendment is consistent with the District's Acquisition Plan and other applicable District policies now in effect;
- H. The proposed amendment is consistent with all applicable land use and zoning regulations;
- I. The proposed amendment incorporates, to the maximum extent practical and legally permissible, the language used by the District in its current conservation easements;
- J. The proposed amendment increases or has no effect on the appraised value of the interests retained by the District because the proposed changes have no impact on the market value of the Easement; and

**Whereas,** for the foregoing reasons, the Easement, as modified by the proposed amendment, provides protections equal to or greater than those provided by the existing Easement in conformance with the requirements of California Public Resources Code Section 5540; and

**Whereas,** the General Manager anticipates the potential that similar amendments may be requested by landowners who have donated conservation easements to the District and a delegation of authority to the General Manager to process such amendments would promote more timely and cost-effective resolution of these

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concerns for the benefit of Sonoma County taxpayers and donors alike;

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

1. *Truth of Recitals.* That the foregoing recitals are true and correct.
2. *Approval of Easement Amendment.* The proposed amendment is consistent with the District's Easement Amendment Policy, adopted by the Board of Directors on July 19, 2005 and updated on July 12, 2016, and the proposed amendment is hereby approved.
3. *Authority to Sign Contracts.* That the President is authorized and directed to execute the proposed amendment on file with the Clerk and entitled "First Amendment to Deed and Agreement by and between the Howlett Family Partnership and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement and Assigning Development Rights," together with the certificate of acceptance required by Government Code Section 27281. The President is further authorized to take all other actions reasonably necessary to cause the amendment to be executed and recorded.
4. *Dedication.* That the Easement, as amended by the transaction contemplated by this Resolution, remains dedicated to open space purposes pursuant to Public Resource Code section 5540.
5. *Delegation to General Manager.* That the General Manager, with prior review and approval from County Counsel, may execute similar, minor amendments to District-held conservation easements if requested by a landowner in order to support compliance with Section 170 of the Internal Revenue Code of 1986, as amended, and applicable regulations. Before approving any such amendment, the General Manager shall confirm that the proposed amendment is consistent with current District policies, including the District's Easement Amendment Policy.

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**Supervisors:**

Gorin:

Rabbitt:

Gore:

Hopkins:

Zane:

Ayes:

Noes:

Absent:

Abstain:

**So Ordered.**