
Date: July 13, 2021

Item Number: _____

Resolution Number: _____

☐ 5/5 Vote Required

Resolution Of The Board Of Directors of the Agricultural Preservation and Open Space District, Making Certain Findings, Approving the Amendment, Replacement and Merger of the Lang (Safari West) Conservation Easement and the Lang (Guttman) Conservation Easement in Exchange for Land to be Added to and Conserved as Part of the Mark West Regional Park & Open Space Preserve; Authorizing the Execution and Acceptance of Associated Conservation Easement Grant Deeds; Consenting to the Recordation of an Amended Irrevocable Offer of Dedication from the County of Sonoma; Delegating Certain Duties to the General Manager and Directing the Filing of a Notice of Exemption under the California Environmental Quality Act.

Whereas, the Sonoma County Agricultural Preservation and Open Space District (“Ag + Open Space”) holds two conservation easements (“Existing Conservation Easements”) over properties identified as APN 079-020-048 (“Safari West”) and APN 079-020-049 (“Guttman”) (jointly the “Properties”); and;

Whereas, pursuant to Resolution Nos. 95-0826 and 96-1177, the Existing Conservation Easements were dedicated to open space purposes pursuant to Public Resources Code Section 5540; and;

Whereas, in 2004, Ag + Open Space staff observed and documented conditions on both Properties that staff determined were in violation of the Existing Conservation Easements; and

Whereas, in December 2016, Peter and Nancy Lang, on behalf of Safari West, Inc. (“Lang”), the owner of both Properties, entered into a Compliance Agreement with Ag + Open Space that stipulated the actions that were required to bring both Properties into compliance with the Existing Conservation Easements; and;

Whereas, on March 13, 2019, pursuant to this Board’s direction, Lang and Ag + Open

Space staff executed a Stipulation for Settlement as a fair resolution of the disputes among the parties, wherein Ag + Open Space agreed to (1) remove from the Safari West conservation easement a 3.1-acre area that encompasses the gift shop, restaurant, and other associated buildings and the adjacent 110-space parking area ("Commercial Exclusion Area"), and (2) create a special use corridor in the Forever Wild areas of the Existing Conservation Easements that would permit safari tours into the Forever Wild areas on certain designated roads ("Special Use Corridor") in exchange for Lang's agreement to transfer to the County of Sonoma the fee title interest in 4.5 acres of land ("Exchange Parcel") adjacent to the Mark West Creek Regional Park & Open Space Preserve, which is encumbered by an Ag + Open Space Conservation Easement ("Mark West Conservation Easement"); and;

Whereas, the 4.5 acre Exchange Parcel is intended to serve as an expansion to the Mark West Creek Regional Park & Open Space Preserve ("Preserve") and Mark West Conservation Easement; and;

Whereas, to resolve the disputes outlined in the Stipulation for Settlement, Ag + Open Space staff recommend amending the Existing Conservation Easements to create the Commercial Exclusion Area on the Safari West property and the Special Use Corridor on the Safari West and Guttman properties, in exchange for the proposed expansion of the Mark West Regional Park & Open Space Preserve and Mark West Conservation Easement, which will increase the overall protection of the natural resources and recreational opportunities on the Preserve ("Exchange"). Public Resources Code section 5540.5 allows this Board to exchange an interest in real property for an interest in real property that the Board determines, by a unanimous vote, to be of equal or greater value and necessary for park or open-space purposes. The proposed Exchange is permissible under Section 5540.5 because the interests to be acquired by Ag + Open Space are necessary for park and open-space purposes and the Exchange Parcel is of equal or greater conservation value to those interests being released under the Existing Conservation Easements; and;

Whereas, the proposed Exchange will be accomplished by (1) amending, replacing and merging the Existing Conservation Easements on the Lang and Guttman properties to form a single "Amended Lang Conservation Easement," which will grant Lang the Commercial

Exclusion Area and the Special Use Corridor, and (2) performing a Lot Line Adjustment that will remove the 4.5 acre Exchange Parcel from land owned by Lang and add it to the County of Sonoma's Preserve, and concurrently amending the Mark West Conservation Easement to include this 4.5 acre parcel ("Amended Mark West Conservation Easement"), thereby creating a single easement that will govern all 1,196 acres of the Preserve, as newly expanded; and;

Whereas, the Exchange is subject to Ag + Open Space's Easement Amendment Policy, which requires this Board to make the following findings prior to its approval of the proposed conservation easement amendments:

- A. The Exchange is clearly consistent with the conservation purpose of the Existing Conservation Easements on the Safari West and Guttman properties because the Amended Lang Conservation Easement maintains open space, natural, scenic and agricultural values as primary conservation purposes, and the addition of the Exchange Parcel to the Mark West Conservation Easement is consistent with its purposes to preserve scenic and open space resources, natural resources, habitat connectivity and recreational and educational resources by conserving additional adjacent undeveloped land for these same purposes;
- B. The Exchange enhances and otherwise does not impair the conservation values of the Safari West and Guttman properties because (1) the Amended Lang Conservation Easement updates the requirements for the construction and maintenance of roads and fences on the property, which updates benefit the conservation values by a) requiring adherence to Best Management Practices for road construction as recommended by California Department of Fish and Wildlife, thereby ensuring the minimization of erosion and sediment from said roads that could negatively impact the conservation values; b) prohibiting any paving of such roads with any impervious surface, unless required by law; c) requiring new fencing and gates to be the minimum necessary, not impede wildlife movement except when necessary, and comply with Ag + Open Space current guidelines for fences on conservation lands; and (2) any detriment to the conservation values that may result from the amendments to the Existing

Conservation Easements on the Safari West and Guttman properties is mitigated by the protection of an equivalent amount of undeveloped land with similar conservation values, such that the Exchange, as a whole, maintains protections equal to or greater than the Existing Conservation Easements;

- C. The Amended Lang Conservation Easement does not undermine the perpetual nature of the Existing Easements because the Amended Lang Conservation Easement will also be perpetual and shall be dedicated to open space pursuant to Public Resources Code section 5540;
- D. The amendments to the Mark West Regional Park & Open Space Preserve Easement and the Existing Conservation Easements are not precluded by the existing easement or by state or federal law;
- E. The Amended Lang Conservation Easement accomplishes the minimum change necessary to satisfy the purpose of the amendments to the Existing Conservation Easements, which is to allow a limited and conditional settlement of specific easement violations;
- F. The Exchange is consistent with the Ag + Open Space's Acquisition Plan and other applicable Ag + Open Space policies now in effect insofar as the Exchange Parcel expands a Sonoma County Regional Park in partnership with Regional Parks and protects land in the Mark West Creek watershed, which is a priority acquisition area. In addition, the addition of the Exchange Parcel to the Preserve will protect Sonoma County's unique natural habitats, scenic areas and other open space values of regional significance;
- G. The Amended Lang Conservation Easement is consistent with all applicable land use and zoning regulations;
- H. The Amended Lang Conservation Easement incorporates, to the maximum extent practical and legally permissible, the language used by Ag + Open Space in its current conservation easements;

- I. The amendments to the Mark West Regional Park & Open Space Preserve Easement and the Existing Conservation Easements have no negative effect on the appraised value of the interests retained by Ag + Open Space;

Whereas, for the foregoing reasons, the Exchange provides protections equal to or greater than those provided by the Existing Conservation Easements and the Mark West Conservation Easement, in conformance with the requirements of California Public Resources Code Sections 5540 and 5540.5.

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

1. **Truth in Recitals.** The foregoing recitations are true and correct.
2. **2020 Sonoma County General Plan Consistency.** The Exchange is consistent with 2020 Sonoma County General Plan because the transaction supports the following General Plan goals:
 - i. Preserving important biotic resource areas and scenic features with consistent uses and intensities. (LU-10)
 - ii. Preserving roadside landscapes that have a high visual quality as they contribute to the living environment of local residents and to the county's tourism economy. (OSRC-3)
 - iii. Protecting and enhancing the county's natural habitats and diverse plant and animal communities. (OSRC-7), and particularly the riparian corridors and functions along Porter Creek. (OSRC-8)
3. **Expenditure Plan Consistency.** The Exchange is consistent with the Sonoma County Agricultural Preservation and Open Space District's Expenditure Plan, as it states that sales tax monies may be spent to protect land within Sonoma County, including scenic and open space resources, natural resources, habitat connectivity and recreational and educational resources.

4. **Consistency with Ag + Open Space Policy and State Public Resources Code.** The Exchange complies with the requirements of Public Resources Code Sections 5540 and 5540.5 and the Ag + Open Space's Conservation Easement Amendment Policy.
5. **Conservation Easement and Certificate of Acceptance.** Upon the County acquiring the 4.5 acre Exchange Parcel via the Lot Line Adjustment, the President is authorized and directed to execute, on behalf of Ag + Open Space, the "First Amended and Restated Conservation Easement Deed and Agreement By and Between the County of Sonoma and the Sonoma County Agricultural Preservation and Open Space District" ("Amended Mark West Conservation Easement") in the form on file with the Clerk, together with the certificate of acceptance required by Government Code section 27281.
6. **Recreation Covenant and Certificate of Acceptance.** The President is authorized and directed to execute, on behalf of Ag + Open Space, the "Amended Recreation Conservation Covenant" ("Amended Recreation Covenant") in the form on file with the Clerk, together with the Certificate of Acceptance required by Government Code section 27281.
7. **Irrevocable Offer of Dedication.** Pursuant to Public Resources Code 5565.5, this Board consents to the recordation by the County of Sonoma of a certain Irrevocable Offer to Dedicate the fee interest in the Preserve to Ag + Open Space, as contemplated by the draft Amended Recreation Covenant on file with the Clerk.
8. **Conservation Easement and Certificate of Acceptance.** The President is authorized and directed to execute, on behalf of Ag + Open Space, the Amended Lang Conservation Easement Deed and Agreement By and Between the County of Sonoma and the Sonoma County Agricultural Preservation and Open Space District (Amended Lang Conservation Easement), together with the certificate of acceptance required by Government Code section 27281.

9. **Delegation to Finalize and Record Documents.** The General Manager is authorized to make technical, non-substantive changes to each of the following documents, provided County Counsel approves such changes: (1) the Amended Mark West Conservation Easement and Amended Recreation Covenant, and (2) the Amended Lang Conservation Easement. Following completion of the Lot Line Adjustment, the General Manager is further authorized and directed to record with the Sonoma County Recorder the Amended Mark West Conservation Easement and the Amended Recreation Covenant, and the Amended Lang Conservation Easement, and to deliver conformed copies of these documents, bearing evidence of recording, to the Clerk of the Board of Directors.
10. **Dedication.** The Amended Mark West Conservation Easement and the Amended Lang Conservation Easement are hereby dedicated to open space purposes pursuant to Public Resources Code Section 5540.
11. **California Environmental Quality Act.** Ag + Open Space's grant to the County, as well as the acquisition of the Amended Mark West Conservation Easement and Amended Recreation Covenant, and the acquisition of the Amended Lang Conservation Easement are actions statutorily exempt from CEQA pursuant to Public Resources Code Section 21080.28, because they constitute the transfer of interests in land to the County and to Ag + Open Space for the purpose of preserving natural conditions including plant and animal habitats; restoration of natural conditions, including plant and animal habitats; and the preservation of open space or lands for park purposes.
12. **Posting.** Immediately upon adoption of this resolution, the General Manager is directed to file with the County Clerk and the County Clerk is directed to post and to maintain the posting of a notice of exemption pursuant to Public Resources Code Section 21152.

Directors:

Gorin:

Rabbitt:

Coursey:

Gore:

Hopkins:

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Date:

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Ayes:

Noes:

Absent:

Abstain:

So Ordered.