



## Legislation Text

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**File #:** 2022-0254, **Version:** 1

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**To:** Board of Supervisors

**Department or Agency Name(s):** Permit Sonoma

**Staff Name and Phone Number:** Hannah Spencer (707) 565-1928

**Vote Requirement:** Majority

**Supervisorial District(s):** Fifth

**Title:**

File No. AGP21-0006 Alton Preserve, LLC, Replacement Land Conservation Contract and Subordination Agreement, 2790 Alton Lane, Santa Rosa

**Recommended Action:**

Adopt a Resolution to mutually rescind and replace two Non-prime (Type II) Land Conservation Act contracts with a single Open Space Land Conservation contract for open space land on 41.12 acres, and subordinate two County Scenic Easements to a new 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; Permit Sonoma File No. AGP21-0006; Supervisorial District 5. (Fifth District)

**Executive Summary:**

This is a combined request to 1) replace two Non-prime (Type II) Land Conservation Act contracts with a single Open Space Land Conservation contract for open space land on 41.12 acres and, 2) subordinate two County Scenic Easements to a new California Department of Fish and Wildlife (CDFW) Conservation Easement for conservation banking purposes on the same 41.12-acre property located at 2790 Alton Lane, Santa Rosa; APN 034-042-081. The landowner and CDFW seek to form a conservation bank with a fully funded management endowment to support and maintain endangered species and wetland mitigation habitat existing on the property. The landowner is granting CDFW a new Conservation Easement over the entire property to allow for the formation of the conservation bank and requests the County's assistance and cooperation in replacing the existing non-prime Land Conservation Contracts with an Open Space Land Conservation Contract, and subordinating the existing County Scenic Easements to eliminate confusion and potential conflict between the language in these instruments and the new CDFW Conservation Easement. County staff have reviewed the new CDFW Conservation Easement and determined that the new easement meets the intent of the 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. Furthermore, the new CDFW Conservation Easement has no consistency issues with the Land Conservation Act; and there are no conflicts with use of the subject land as a conservation bank under the open space contract rules. Land Conservation Act contracts assist in the preservation of agricultural and open space lands throughout Sonoma County. In exchange for retaining land in agriculture and/or open space, the landowner receives reduced property taxes. An expansion or modification to the existing Agricultural Preserve area is not required. Staff recommends approval of the combined request to rescind and replace the two existing Non-prime (Type II) Land Conservation contracts with a new Open Space Land Conservation Contract and approve the Consent and Subordination Agreement.

**Discussion:**

Alton Preserve, LLC is coordinating with CDFW and the U.S. Fish and Wildlife Service (USFWS) to form a conservation bank for the California tiger salamander, and the preservation of seasonal wetland habitat and special-status plant species that occur on the subject 41.12-acre property. As part of forming a conservation bank, the landowner is granting CDFW a Conservation Easement over the property and seeks approval from the Board of Supervisors to eliminate confusion and potential conflict between the non-prime Land Conservation Contracts, Scenic Easements, and CDFW Conservation Easements that currently encumber the property. This item is a combined request to 1) approve a replacement Open Space Land Conservation Contract for the 41.12-acre parcel located within Agricultural Preserve Area Number 2-434, reflecting the current open space uses of the property; and, 2) approve a Consent and Subordination Agreement for two County Scenic Easements. If approved, this request will allow CDFW and USFWS to approve the establishment of a conservation bank on the subject 41.12-acre property and preserve the wetlands and habitat for special status species, including California tiger salamander, Burke's goldfields, and Sonoma sunshine.

**Site Characteristics:**

The property functions as a wetland mitigation site and consists of 41.12 acres located in the Santa Rosa Plain, approximately 0.3 miles west of Santa Rosa city limits. The property is primarily surrounded by rural residential uses, agricultural land, and shares its western boundary with Alton North Conservation Bank, a conservation bank owned by CDFW. To the south is another conservation bank, the Alton South Conservation Site, which is expected to soon be approved as a conservation bank. The Alton Lane Bank property consists of 13.89+/- acres of seasonal wetlands, including 9.33+/- acres of constructed vernal pools and other seasonal wetland habitat and 2.86+/- acres of "natural" wetlands, and 27.24+/- acres of upland habitat. The wetlands onsite are known to support special-status plant species and California tiger salamander (CTS) breeding and upland habitat. There is no residential use of the property. A livestock corral, pump house and solar panels, and water trough are the only structures onsite.

Zoning for the property is Land Intensive Agriculture (allowed density: 40 acres per dwelling) and combining zones for Accessory Unit Exclusion, Riparian Corridor with 25-foot and 100-foot setbacks, Scenic Resources, and Valley Oak Habitat.

**Background:**

The 41.12-acre property is subject to two Non-Prime (Type II) Land Conservation Contracts for agricultural land, recorded under Book 2394 Page 93 of Official Records (1969 Contract) and Book 2608 Page 525 of Official Records (1972 Contract). Historically, the property contained pasture, hay production, and vineyard. Since the early 1990's, the use of the property has been as a wetlands mitigation and preserve site.

There are a number of easements attached to the property. Sonoma County has two Scenic Easements recorded in 1989 and 1990 (O.R. #1989-70989 and 1990-18522) that were required as part of the approval process for a minor subdivision and a lot line adjustment (File No. MNS89-235 and LLA89-554). Additionally, CDFW has four existing conservation easements recorded over a majority of the property, between 1989 and 1999, as mitigation for nearby development projects.

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 a management endowment to fund management of the site. 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 must grant CDFW a new Conservation Easement over the entire property 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 subordinating the County's two existing Scenic Easements. This subordination is not legally required, but CDFW will not process the Conservation Easement without subordination. CDFW has agreed to subordination terms that will only come into play if there is a conflict with the Scenic Easements. As a result, the landowner has submitted this request filed under AGP21-0006 to 1) rescind and replace the two existing non-prime (Type II) Land Conservation Act contracts with a single Open Space Land Conservation Contract and, 2) subordinate the two existing County Scenic Easements to the new CDFW Conservation Easement that will encumber the entire 41.12-acre property in perpetuity. If the Board approves this request, the County's two existing scenic easements will still exist but will be subordinate to the new CDFW conservation easement to the extent that there is ever any conflict. There is no reason why a conflict would ever arise, and therefore Staff sees no issues with the legal formality of agreeing to the contingent subordination to facilitate the permitting of the conservation bank.

After the landowner meets the requirements for conservation bank closure, CDFW plans on acquiring fee title to the property which would allow CDFW to combine the property with the adjacent Alton North Conservation Bank, and future Alton South Conservation Site and facilitate management of all bank lands under one unit. However, if CDFW decides acquiring fee title to the land is not in the best interest of the State, all 41.12 acres of the subject property will remain encumbered by the new CDFW Conservation Easement and the County's Scenic Easements, in perpetuity. Regardless of future ownership, the property will remain subject to the replacement Open Space Land Conservation Contract until a non-renewal of the contract is filed and the contract completes phase out.

#### **Uniform Rules for Open Space Contract:**

Sonoma County's Land Conservation Act program has four contract-types: 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.

As part of the Board of Supervisors' December 2011 update of the *Sonoma County Uniform Rules for Agricultural Preserves and Farmland Security Zones* ("Uniform Rules") the Board eliminated the distinction between Prime (Type I) and Non-Prime (Type II) Agricultural Preserves. This allows the County to enter into either a Prime or Non-Prime contract in any established Preserve. The subject property is within Agricultural Preserve Area Number 2-434.

Also, as part of the update of the Uniform Rules, the County implemented a Land Conservation Plan which is incorporated into Land Conservation (Williamson) Act Contracts. Land Conservation Plans show locations for open space, agricultural, permitted, and compatible land uses on contracted land. Future changes to the Land Conservation Plan may be approved by the Director of Permit Sonoma and recorded on title of the subject parcel.

A landowner may file a request to rescind and replace their non-prime agricultural contract with a new open space contract for a minimum 10-year term provided that the parcel meets the minimum 40-acre parcel size requirement, at least 50 percent of the land is devoted to a qualifying open space use (such as wildlife habitat), and that all other uses of the land are determined to be compatible uses under the contract.

To guide management of the site, Ted P. Winfield, Ph.D., with Ted Winfield & Associates, prepared a *Long Term Monitoring and Management Plan* for the site (refer to Attachment 4). The purpose of the Management Plan is to maintain habitat values for seasonal wetland habitat, 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 Winfield who concluded that the property presents the open space qualities and wildlife resources consistent with an open space land conservation contract. The Land Conservation Plan (refer to Exhibit B of the Open Space Contract) requires the landowner to implement management practices that will enhance and maintain the wildlife habitat values identified in the Management Plan.

Staff finds that Alton Preserve, LLC has demonstrated the property qualifies for an open space contract. The qualifying criteria in this case are: The entire property is within Agricultural Preserve No. 2-434; the property exceeds the minimum 40-acre parcel size required for open space contracts; 99.9% of the property is devoted to qualifying wildlife habitat area (wetland preserve) which exceeds the minimum 50% open space use threshold; and, there are no uses of the property that are considered incompatible with an open space land conservation contract. Additionally, the existing wetland mitigation sites are enumerated as a compatible use under contract and can exceed the 15% area limitation imposed by the Uniform Rules when the Board finds that the use meets all criteria of Uniform Rule 8.2 B (refer to section 5 a. - h. of the attached Resolution).

**County Scenic Easements and Subordination Agreement:**

The County Scenic Easements preserve the public benefit of natural scenic beauty and existing openness, natural condition, and present state of the wetlands. The scenic easements run with the land in perpetuity; with the 1989 scenic easement encumbering 29 acres and, the 1990 scenic easement encumbering 5.71 acres of the 41.12-acre property. The easements 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.

Staff has reviewed the CDFW Conservation Easement (dated October 27, 2021) to be recorded against the property and determined that there is no conflict with the 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. Additionally, staff finds 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 is preserved and that the land remains in its natural state. Subordinating the Scenic Easements to the CDFW Conservation Easement is not legally required for the new CDFW Conservation Easement, but is a requirement that CDFW is imposing on this applicant. Completion of this process, including the recordation of the new CDFW Conservation Easement and the Subordination Agreement, means that if there ever were a theoretical conflict between the terms of the Conservation Easement and the Scenic Easements, the Conservation Easement would control. Staff notes that

this is a formality because no conflict will arise.

Furthermore, staff finds that the proposed CDFW Conservation Easement, dated October 27, 2021, has no consistency issues with the Land Conservation Act; that there are no conflicts between use of the subject land as a conservation bank under the open space land conservation contract rules; and views the future use of the land as a bank compatible under the new open space land conservation contract.

**California Environmental Quality Act:**

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) by virtue of Section 15317 Class 17 of Title 14 of the California Code of Regulations. In addition, the actions fall under the common-sense rule of Section 15061(b)(3) of Title 14 of the California Code of Regulations.

**Staff Recommendation:**

Staff recommends the Board approve the request to 1) rescind and replace two existing non-prime (Type II) contracts with a new Open Space contract because all of the state and local requirements for the replacement contract request on the 41.12-acre parcel within the existing Agricultural Preserve have been met and, 2) subordinate two existing County Scenic Easements to the proposed CDFW Conservation Easement dated October 21, 2021 because the conservation easement meets the intent of the Scenic Easements and no new development can occur on the 41.12-acre property that could potentially impact the values protected by the Scenic Easements.

**Strategic Plan:**

N/A

**Prior Board Actions:**

- a. On December 13, 2011, the Board approved the Sonoma County Uniform Rules for Agricultural Preserves and Farmland Security Zones (Resolution No. 11-0678).
- b. On February 14, 1990, the Board accepted a Grant Deed of Scenic Easement over a portion of the property as part of the approval process for Lot Line Adjustment File No. LLA89-554.
- c. On May 17, 1989, the Board accepted a Grant Deed of Scenic Easement over a portion of the property as part of the approval process for Minor Subdivision File No. MNS89-235.

**FISCAL SUMMARY**

N/A

**Narrative Explanation of Fiscal Impacts:**

Approval of the Land Conservation Act Contract means that the owner will pay reduced property taxes based upon the value of the agricultural uses rather than the land value under Proposition 13. This reduces the County's share of property tax revenue for the subject parcel. Because the property is currently under a Land Conservation Act contract and is therefore already subject to reduced property tax assessment, the County of Sonoma Assessor estimates there will be no change in property assessment value, and therefore no fiscal impact associated with the application.

**Narrative Explanation of Staffing Impacts (If Required):**

N/A

**Attachments:**

Att 1 AGP21-0006 Draft Board of Supervisors Resolution

Att 2 AGP21-0006 Proposal Statement prepared by Applicant

Att 3 AGP21-0006 Site Plan

Att 4 AGP21-0006 Long Term Monitoring and Management Plan, Ted P. Winfield, Ph.D., January 30, 2020

Att 5 AGP21-0006 CDFW Letter of Intent for Mitigation Bank, dated June 17, 2021

Att 6 AGP21-0006 CDFW Proposed Conservation Easement, dated October 27, 2021

Att 7 AGP21-0006 County Scenic Easement O.R. #1989-70989

Att 8 AGP21-0006 County Scenic Easement O.R. #1990-018522

**Related Items “On File” with the Clerk of the Board:**

Land Conservation Act Contract with attached Exhibit A (legal description) and Exhibit B (Land Conservation Plan with attached Site Plan).

Consent and Subordination Agreement