



## Legislation Details (With Text)

**File #:** 2021-0384

**Type:** Consent Calendar Item **Status:** Agenda Ready

**File created:** 4/7/2021 **In control:** Agricultural Preservation And Open Space District

**On agenda:** 7/13/2021 **Final action:**

**Title:** Amendments to Lang (Safari West) Conservation Easement and Lang (Guttman) Conservation Easement; and addition of 4.5 acres of land to Mark West Creek Regional Park & Open Space Preserve, subject to the terms of the existing Conservation Easement and Recreation Conservation Covenant applicable to the Preserve

**Sponsors:** Agricultural Preservation And Open Space District, Regional Parks

**Indexes:**

**Attachments:** 1. Summary Report, 2. Resolution of Agricultural Preservation And Open Space District Board of Directors, 3. Resolution of County of Sonoma Board of Supervisors, 4. First Amendment to Conservation Easement Mark West Creek Regional Park Open Space Preserve, 5. First Amendment to Recreation Conservation Covenant Mark West Creek Regional Park Open Space Preserve, 6. First Amendment to Offer to Dedicate

Date	Ver.	Action By	Action	Result
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**To:** Board of Directors of the Sonoma County Agricultural Preservation and Open Space District, County of Sonoma Board of Supervisors

**Department or Agency Name(s):** Sonoma County Agricultural Preservation and Open Space District and Sonoma County Regional Parks

**Staff Name and Phone Number:** Kathleen Marsh 565-7262; Steve Ehret, 565-1107

**Vote Requirement:** Unanimous

**Supervisory District(s):** Fourth District

### Title:

Amendments to Lang (Safari West) Conservation Easement and Lang (Guttman) Conservation Easement; and addition of 4.5 acres of land to Mark West Creek Regional Park & Open Space Preserve, subject to the terms of the existing Conservation Easement and Recreation Conservation Covenant applicable to the Preserve

### Recommended Action:

- A) Adopt a Resolution of the Sonoma County Agricultural Preservation and Open Space District Board of Directors:
  - i. Making specified findings and authorizing the President to execute a second amendment to the Lang (Safari West) Conservation Easement and a first amendment to the Lang (Guttman) Conservation Easement to:
    - a. Exclude a 3.1 acre "Commercial Exclusion Area" from Lang (Safari West);
    - b. Delineate a "Special Use Corridor" on Lang (Safari West) and Lang (Guttman);
    - c. Amend and replace the existing Lang (Safari West) Conservation Easement and the existing Lang (Guttman) Conservation Easement with one conservation easement that will encompass both easement properties; and
  - ii. Authorizing the President, to execute an amendment to the Mark West Creek Regional Park &

Open Space Preserve Conservation Easement and Recreation Conservation Covenant to add a 4.5 acre portion of land (APN 028-070-032) currently owned by Safari West Inc. ("Owners"), conditioned on the fee interest in such land being conveyed by Owners to Sonoma County Regional Parks, as an exchange authorized pursuant to Public Resources Code section 5540.5 for the above-described amendments to the existing Lang (Safari West) Conservation Easement and the existing Lang (Guttman) Conservation Easement; and

- iii. Authorizing the acceptance of the conservation easement amendments hereby contemplated; and
- iv. Dedicating the amended conservation easements to open space purposes pursuant to Public Resources Code Section 5540;
- v. Consenting to the recordation of an amended irrevocable offer of dedication in favor of Sonoma County Agricultural Preservation and Open Space District pursuant to Public Resources Code §5565.5; and
- vi. Delegating certain duties to the General Manager and directing the filing of a Notice of Exemption under the California Environmental Quality Act ("CEQA").

B) Adopt resolution of the Board of Supervisors of Sonoma County Regional Parks:

- i. Accepting the fee interest in a 4.5 acre portion of land (APN 028-070-032) from Owners for inclusion into the Mark West Creek Regional Park & Open Space Preserve, subject to completion of due diligence by staff and a required lot line adjustment between Owners and the County;
- ii. Authorizing and directing the Chair to execute the First Amendment to Mark West Creek Regional Park & Open Space Preserve Conservation Easement, the First Amendment to the Recreation Conservation Covenant, and Irrevocable Offer of Dedication, and Certificate of Acceptance of the deed from Owners to the County;
- iii. Delegating certain duties to the Director of Regional Parks and directing the filing of a notice of exemption in compliance with CEQA.

(Unanimous) (Fourth District)

### Executive Summary:

In 2004 and 2008, Sonoma County Agricultural Preservation and Open Space District ("Ag + Open Space") staff observed conditions on the Lang (Safari West) and the Lang (Guttman) Conservation Easements that were in violation of the conservation easements.

In December 2016, the owners of the Lang (Safari West) and Lang (Guttman) properties entered into a Compliance Agreement with Ag + Open Space that stipulated the actions that the Langs were required to take restore their compliance with the easement terms.

In order to implement the actions stipulated in the Compliance Agreement, Ag + Open Space staff determined that both the Lang (Safari West) and the Lang (Guttman) conservation easements require amendments. These proposed amendments will implement the actions required to resolve these easement violations by excluding a 3.1 acre commercial area from the Lang (Safari West) Conservation Easement, creating a road corridor on both easement properties that will allow safari tours, merging the two easements into one easement, and adding 4.5 acres to the Mark West Regional Park & Open Space Preserve in exchange for the 3.1 acres removed from the Lang (Safari West) easement.

### Discussion:

## Background

In 1995, the Board of Directors approved the acquisition of the Lang (Safari West) Conservation Easement. In 1996, the Board of Directors approved the acquisition of the Lang (Guttman) Conservation Easement. In 1998, the Board of Directors approved the First Amendment to the Lang (Safari West) Conservation Easement that permitted the construction of 30 tent cabins to support overnight guests visiting the Safari West tour operation.

## Existing Easements

The conservation purpose of both the existing Lang (Safari West) and the Lang (Guttman) conservation easements is to “...preserve the open space, natural, scenic and agricultural values of the Property...”, and to confine the uses on the Properties to “...(a) agricultural and (b) management and conservation of natural resources.” Additionally, the Lang (Safari West) Conservation Easement permits “...residential and other improvements associated therewith...”. As stated above, the 1998 First Amendment to the Lang (Safari West) Conservation Easement allowed for 30 tent cabins for overnight guests to the tour operation.

In 2004, Ag + Open Space staff observed and documented conditions on both properties that staff determined were in violation of the easement provisions. At the time, staff were directed to not pursue enforcement of these violations. In 2008, Ag + Open Space staff again observed and documented these same violations. These violations comprised the following:

- A gift shop located adjacent to the office was selling items that were not produced on the Lang (Safari West) property; as per the easement, all items sold in the gift shop were required to be produced on the property;
- The restaurant operating on the Lang (Safari West) property was providing daily lunch and dinner food service not only in association with the operation of the camp sites, but also to the public who may be visiting the property as day tourists and the general public. Food service to overnight guests is permitted by the easement, but serving food to the general public is not permitted; and
- Vehicle tours were extending into the Forever Wild portions of both properties; this activity was not permitted by the terms of the easements.

In December 2016, the owners of the Lang (Safari West) and Lang (Guttman) properties entered into a Compliance Agreement with Ag + Open Space that stipulated the actions that the Langs were required to take to restore their compliance with the easement terms.

In order to implement the actions stipulated in the Compliance Agreement Ag + Open Space staff determined that both the Lang (Safari West) and the Lang (Guttman) conservation easements require amendments. These proposed amendments will implement the actions required to resolve these easement violations by:

- Delineating a 3.1 acre “Commercial Exclusion Area” within the Lang (Safari West) easement that will encompass all the commercial buildings on the Property, including the gift shop and restaurant, as well as the 110 space parking area. This area will be excluded from the amended easement.
- Creating a “Special Use Corridor” (Corridor) that designates certain roads on both the Lang (Safari West) Property and the Lang (Guttman) property that will permit tours associated with the Safari West operation within the Forever Wild portions of the easement properties; tours will be limited to only this Corridor.
- Merging the Lang (Safari West) Conservation Easement and the Lang (Guttman) Conservation Easement into one conservation easement that will be held over both properties.
- Expanding the existing Mark West Creek Regional Park & Open Space Preserve Conservation Easement

with the addition of a 4.5 acre portion of land currently owned by the Langs in exchange for the removal of the 3.1 acre “Commercial Exclusion Area” and allowance for the Special Use Corridor.

Ag + Open Space is requesting Board approval of these modifications to the Lang (Safari West) and Lang (Guttman) Conservation Easements via the amendment to resolve the violations at issue. Ag + Open Space is permitted to approve these amendments as an exchange pursuant to Public Resources Code section 5540.5, which allows the Board, by a unanimous vote to exchange real property, or an interest in real property, dedicated and used for park or open-space purposes, or both, for real property, or an interest in real property, that the board of directors determines to be of equal or greater value and necessary to be acquired for park or open-space purposes, or both. The donation of 4.5 acres of land by the Langs to the Mark West Creek Regional Park & Open Space is proposed as the exchange for the proposed amendments to the Lang (Safari West) and Lang (Guttman) conservation easements.

The terms described above are pursuant to a Compliance Agreement reached between the parties on December 13, 2016.

### **Lot Line Adjustment**

As part of the Compliance Agreement, Ag + Open Space and the Langs agreed to perform a Lot Line Adjustment (LLA) that will remove 4.5 acres from a property owned by the Langs that is adjacent to Mark West Regional Park & Open Space Preserve (Park), over which Ag + Open Space holds a conservation easement and recreation conservation covenant. This 4.5 acre parcel is considered a fair exchange for the 3.1 acre “Commercial Exclusion Area” that is proposed to be removed from the Lang (Safari West) property as part of the amendment to the Lang (Safari West) and Lang (Guttman) conservation easements because it increases the acreage of protected land in the Mark West Creek watershed in exchange for a relinquishment of easement restrictions on developed land that have limited conservation value. Upon completion of due diligence and approval by Permit Sonoma, the Langs will execute a grant deed to the County for the 4.5 acre parcel.

The addition of the 4.5 acres to the Park will enhance the Park by protecting additional natural and scenic resources from additional development and does not exceed the 40 acre annual limit set forth in Cal. Pub. Res. Code Section 5540.5.

### **Effect of Amendments to Existing Conservation Easements**

The proposed amended conservation easement (“Amended Lang Conservation Easement”) that will replace the existing Lang (Safari West) and Lang (Guttman) easements (“Existing Easements”) will (1) allow commercial buildings and activities related to the safari operations to continue without further liability under the Existing Easements ; (2) ensure that safari tours will be limited to designated roads in compliance with the Amended Lang Conservation Easement terms; (3) clarify permitted natural resource, property management and educational uses of the land and (4) merge the Existing Easements into a single instrument, facilitating administration and compliance monitoring. Further, the proposed addition of 4.5 acres to the Mark West Regional Park & Open Space Preserve (the “Park”) is of equal or greater value than the released land offered in exchange because the 4.5 acres expand the Preserve and provide further protection of the natural resources in the Mark West watershed, while the released land is developed and maintains limited conservation value. The Amended Lang Conservation Easement will provide protections equal to or greater than those provided by the Existing Easements and would supersede the Existing Easements in conformance with the requirements of Public Resources Code Section 5540 and Ag + Open Space’s Easement Amendment Policy, as the attached

Board Resolution further documents.

### **Fiscal Oversight Commission**

The Fiscal Oversight Commission considered the terms of the proposed exchange in April 2017 pursuant to its responsibility pursuant to Board Resolution No. 10-0832.

### **Mark West Creek Regional Park & Open Space Preserve Expansion**

Regional Parks accepted the transfer of lands from Ag + Open Space and acquired additional lands to establish the Mark West Creek Regional Park & Open Space Preserve in 2018 (the “Park”). Ag + Open Space holds a Conservation Easement and Recreation Conservation Covenant over the Park. The addition of the 4.5 acres to the Park will enhance the Park by protecting additional natural and scenic resources from additional development. Concurrently with the County’s receipt of the 4.5-acre property from the Owners, it will execute an Amendment to the existing Conservation Easement for the Park and an Amendment to the existing Recreation Conservation Covenant for the Park to extend the terms of these instruments to the additional acreage.

### **2020 Sonoma County General Plan**

The transfer of 4.5 acres to the County is consistent with 2020 Sonoma County General Plan because the transaction supports the following General Plan goals:

1. Preserving important biotic resource areas and scenic features with consistent uses and intensities. (LU-10)
2. 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)
3. 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)
4. Establishing a countywide park and trail system that meets future recreational needs of the county’s residents while protecting agricultural uses, with an emphasis on trails near urban areas and on public lands. (OSRC-17)

### **California Environmental Quality Act**

The Board must make findings under the California Environmental Quality Act (CEQA). Parks’ acceptance of title to the 4.5 acres is categorically exempt from CEQA pursuant to 14 California Code of Regulations sections 15313(a) and (c) (acquisition of land for conservation purposes); 15316(b) (transfer of ownership of land in order to create parks); 15317 (easements and contracts to maintain open space character of the area); and 15325(a), (c), and (f) (acquisitions and transfers of interests in land to preserve natural conditions, to allow restoration of natural conditions, and to preserve lands for park purposes).

### **Prior Board Actions:**

October 18, 2018: Resolution No. 18-0408, approving multiple transactions to establish the Mark West Creek Regional Park & Open Space Preserve

May 22, 2018: Resolution No. 18-0189 approving the acquisition of fee title to the McCullough Phase 2 Property

December 13, 2016: Resolution No. 16-0463, approving the Lang (Safari West) and Lang (Guttman) Conservation Easement Compliance Agreement

December 6, 2016: Resolution No. 16-0456 approving the acquisition of fee title to the Wendle Property

January 28, 2014: Resolution No. 14-0039 approving the acquisition of fee title to the Cresta 2 and 3 Property

August 18, 2009: Resolution No. 09-0790 approving the acquisition of fee title to the McCullough 1 Property  
October 23, 2007: Resolution No. 07-0895 approving the acquisition of fee title to the Cresta 1 Property  
August 18, 1998: Resolution No. 98-1086, approving the First Amendment to the Lang (Safari West) conservation easement  
August 27, 1996: Resolution No. 96-1177, approving Easement Acquisition over Lang (Guttman)  
June 20, 1995: Resolution No. 95-0826, approving Easement Acquisition over Lang (Safari West)

#### FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY 21-22 Projected	FY 22-23 Projected
Budgeted Expenses			
Additional Appropriation Requested			
<b>Total Expenditures</b>			
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>			

#### Narrative Explanation of Fiscal Impacts:

N/A

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

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

#### Attachments:

1. Resolution of Agricultural Preservation and Open Space District Board of Directors
2. Resolution of County of Sonoma Board of Supervisors
3. First Amendment to Conservation Easement Mark West Creek Regional Park Open Space Preserve
4. First Amendment to Recreation Conservation Covenant Mark West Creek Regional Park Open Space Preserve
5. First Amendment to Offer to Dedicate

#### Related Items "On File" with the Clerk of the Board:

1. Grant Deed
2. Notice of Exemption - Regional Parks
3. Certificate of Acceptance - Fee Title
4. Certificate of Acceptance - Conservation Easement
5. Certificate of Acceptance - Offer to Dedicate
6. First Amendment to Conservation Easement - Lang