



## Legislation Text

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**File #:** 2021-0391, **Version:** 1

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**To:** Board of Directors of the Sonoma County Agricultural Preservation and Open Space District

**Department or Agency Name(s):** Agricultural Preservation and Open Space District

**Staff Name and Phone Number:** Jake Newell, 565-7357

**Vote Requirement:** Unanimous

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

**Title:**

McCord Ranch North - County Slope Easement along Pine Flat Road

**Recommended Action:**

Adopt Resolution Making Certain Findings and Approving a Consent and Subordination Agreement Regarding the County of Sonoma's Acquisition of an Easement Necessary for the Pine Flat Road Repair Project (A.P.N. 141-100-005) (Unanimous Vote Required)(Fourth District)

**Executive Summary:**

The Agricultural Preservation and Open Space District ("Ag + Open Space") is requesting that the Board of Directors adopt a resolution making certain findings and approving a consent and subordination agreement needed by the County of Sonoma Department of Transportation and Public Works ("TPW") to acquire a permanent slope and drainage easement ("Slope Easement") over a 0.468-acre portion of the McCord Ranch North Conservation Easement. The project is part of TPW's program to repair roadways impacted by landslides due to flooding events in 2017 and 2019 throughout Sonoma County.

**Discussion:**

Ag + Open Space acquired the 1,418-acre McCord Ranch North Conservation Easement in 1994. Audubon Canyon Ranch, Inc. ("ACR") owns the property subject to the Conservation Easement and manages it for natural resource conservation, restoration, and enhancement ("Property"). The purpose of the Conservation Easement is "to preserve the open space, natural and scenic values of the Property and to prevent any uses of the Property that will significantly impair or interfere with those values." The Conservation Easement limits the conveyance of new easements and does not permit ACR to convey the Slope Easement to the County.

Pine Flat Road, a County road, runs through the Property from Jimtown up to the Geysers. During the storms of 2017, one particular site along Pine Flat Road running through the Property suffered erosion damage due to a landslip, threatening the integrity and safety of the road. The County of Sonoma received a grant from FEMA to repair this site, along with several other sites throughout the County. Given the wildfires that have ravaged the region in recent years, including in the Geysers area, and the prospect of future fires and other local emergencies, this is a vital access point for emergency services. The County cannot implement this important roadway improvement successfully without correcting slope conditions and repairing the underlying landslip that has not only impacted the roadway section, but also a portion of the Property below the road. Without the use of this portion of the Property to secure and maintain the roadway, the repair cannot function as intended and needed, thereby compromising public safety.

The work requires grading and stabilization outside of the County's existing right-of-way through the Property. Thus, the County requires ACR to convey a permanent slope and drainage easement ("Slope Easement") to allow the work to proceed and to allow the County to maintain the stability and drainage of the site in the future. The total easement area needed by the County is under half an acre. The proposed Slope Easement will grant TPW the right to install, maintain, inspect, and use above-ground and at-grade drainage collections and outfalls and underground drains, pipelines, and related appurtenances to maintain slope stability and drainage at the Project Site. TPW will develop and implement a mitigation plan, subject to Ag + Open Space review and approval, to best ensure that native grasses are replaced and to best prevent non-native vegetation from being introduced to disturbed areas.

The proposed Slope Easement is not absolutely consistent with the Conservation Easement held by Ag + Open Space. For example, the Slope Easement prohibits the establishment of large trees and shrubs, which would be allowed and protected by the Conservation Easement. As such, Ag + Open Space's consent and subordination to the Slope Easement is required in order for the County to exercise the rights it needs to conduct and maintain the project. In lieu of formal condemnation and initiation of eminent domain proceedings, County and Ag + Open Space staff have negotiated an agreement pursuant to which Ag + Open Space will consent and subordinate its conservation easement to the Slope Easement (i.e., recognizing that the slope easement is to control in the event of any conflict). The County will compensate Ag + Open Space \$5,000 for the impacts to the conversation easement and for Ag + Open Space costs in processing the transaction.

Because TPW has indicated its intent to use the power of eminent domain if needed to acquire the Slope Easement, Ag + Open Space may consent to the transaction in lieu of litigating the matter. The proposed consent is also in the public interest because it seeks to avoid the needless public expense that would otherwise be incurred in an eminent domain proceeding brought by the County against Ag + Open Space in which Ag + Open Space is unlikely to prevail. The proposed resolution sets forth findings in support of the conclusion that Ag + Open Space would be unlikely to prevail in litigation challenging the County's right to condemn the Slope Easement and describes the public interest factors that support the proposed consent and subordination agreement, which include the fact that the County's project will mitigate risks to natural resources protected by the Ag + Open Space Easement associated with the potential for future landslides and other erosive conditions.

On April 15, 2021, the Fiscal Oversight Commission, in approving Resolution 2021-003, determined that Ag + Open Space would receive fair market value for the consent and subordination requested by the County based on the proposed payment of \$5,000.

ACR has signed a Right-of-Way Contract with TPW, as well as the Slope Easement. Upon Board approval of the consent and subordination agreement, TPW will execute the Slope Easement and commence developing the mitigation plan and implementing the emergency road repair.

**Prior Board Actions:**

92-1805 December 1, 1992: Approving Acquisition of Conservation Easement

**FISCAL SUMMARY**

<b>Expenditures</b>	<b>FY 20-21 Adopted</b>	<b>FY 21-22 Projected</b>	<b>FY 22-23 Projected</b>
Budgeted Expenses	\$10,000		
Additional Appropriation Requested			
<b>Total Expenditures</b>	<b>\$10,000</b>		
<b>Funding Sources</b>			
General Fund/WA GF	\$5,000		
State/Federal			
Fees/Other	\$5,000		
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>	<b>\$10,000</b>		

**Narrative Explanation of Fiscal Impacts:**

TPW is compensating Ag + Open Space \$5,000, which will cover approximately half of Ag + Open Space's administrative and legal costs for negotiating the consent and subordination agreement, obtaining fair market value determination by the Fiscal Oversight Commission, and preparing this Board item.

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

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

1. Location Map
2. Project Site Photos
3. Slope Easement
4. Consent and Subordination Agreement
5. Resolution

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

1. Conservation Easement
2. Offer Letter
3. ROW Exhibit
4. Waiver Valuation