

Recording Requested by:
Marin County Open Space District

WHEN RECORDED RETURN TO:
County of Marin
Department of Public Works
Real Estate Division
P.O. Box 4186, Civic Center Branch
San Rafael, CA 94913-4186
Attention: Christy M. McRoy

APN: 125-190-54

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONSERVATION EASEMENT

This Conservation Easement is granted this ____ day of _____, 2006 between COUNTY OF MARIN, a political subdivision of the State of California, (COUNTY) and MARIN COUNTY OPEN SPACE DISTRICT, a public district of the State of California, (DISTRICT).

RECITALS

A. COUNTY is the owner of certain real property situated in the County of Marin, State of California, commonly known as Assessor's Parcel Number 125-190-54 and a portion more particularly described on Exhibit "A" attached hereto and made a part hereof (hereinafter "Property") is to be granted as an easement.

B. COUNTY is required to preserve, by means of a conservation easement, the mitigation area as wetland and riparian wildlife habitat in perpetuity as a condition of compliance of the Nationwide Permit for levee reconstruction obtained by COUNTY.

C. Because the COUNTY acknowledges the environmental value of the Property in its undeveloped state and the importance of securing open space in the furtherance of the public interest, COUNTY agrees to convey this Easement over the Property, approximately .57 acres, to Grantee pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive.

NOW, THEREFORE COUNTY, pursuant to Resolution No. _____, attached hereto as Exhibit "B", hereby grants to the DISTRICT a permanent Conservation Easement over the Property, upon and subject to the following terms, conditions, and restrictions:

1. Use Restrictions. COUNTY'S use of the Property shall be compatible with the preservation of the property in its natural, scenic, and open space condition. Other than as provided in Paragraph 2 herein, COUNTY shall not construct any permanent buildings, structures, or other improvements on the Property. COUNTY shall not dump or accumulate any trash, garbage, or other offensive material within the Property. COUNTY shall not use the Property in any way that would materially impair or interfere with the natural, scenic open space and other environmental values of the Property.

2. Permitted Uses and Improvements. The restriction set forth in the Paragraph 1 above, and elsewhere in this Easement, shall not be understood to limit COUNTY'S right to use, enjoy or improve the Property in the following ways:

- a. Conduct habitat restoration and enhancement activities; and
- b. Practice sound fire hazard reduction measures.

3. No Public Access. This Easement and the acceptance thereof by the DISTRICT does not create and is not to be construed as creating or granting any rights of public access or otherwise authorizing members of the public to enter upon or to use the Easement Area in any manner whatsoever.

4. Access by the District. Representatives of the DISTRICT shall have the right, from time to time, during business hours on business days and after giving reasonable prior written notice to COUNTY, to enter the Property for determining compliance with the terms and conditions of this Easement.

5. Reservation of Use by Grantor. COUNTY reserves the right to use the Easement Area in any manner consistent with the stated purposes, terms and conditions of this Easement and consistent with the laws and restriction of the governing and regulatory bodies exercising jurisdiction over the Easement Area.

6. Condemnation. In the event the Easement Area or any portion thereof is sought to be condemned for public use, this Easement shall remain in effect for any portion of the Easement Area not affected by the condemnation action.

7. Non-liability. The DISTRICT shall have no responsibility or liability of any kind whatsoever in connection with the restoration or maintenance of the Easement Area.

8. Unenforceable Provisions. If any provision of this Easement or the covenants and restriction contained herein shall be held to be unenforceable by a court of

competent jurisdiction, this instrument shall be construed as if such provision had not been included herein. If any provision hereof is ambiguous or shall be subject to two or more interpretations, one or more of which render such provision invalid or inconsistent with the open space purposes of this Easement, then such provision shall be given the interpretation that would render it valid and would be consistent with the open space purposes of this Easement.

9. Enforceable Restriction. Grantor and the DISTRICT intend that COUNTY'S covenants as set forth in this Easement are covenants running with the land as contemplated by Section 1468 of the California Civil Code with respect to the Easement Area. Therefore, the covenants of COUNTY running in favor of the DISTRICT shall bind the successors and assigns of COUNTY; to the extent such successors or assigns come to hold any interest or fee title to the Easement Area. It is agreed that, to the extent COUNTY or any successor or assign thereof transfers its fee ownership of all or any portion of the Easement Area, such transferor, upon such transfer, shall be released from any thereafter accruing liability under this Easement. If it is ever determined by a court of competent jurisdiction after any available appeals are either waived or exhausted, that it is impossible to continue the conservation purpose for which this Easement is created, then COUNTY shall give to the DISTRICT any proceeds available to COUNTY from the judicial extinguishment of the grant evidenced by this Easement, and the DISTRICT shall use such proceeds only for conservation purposes.

10. Assignment by the District. The DISTRICT may assign or otherwise transfer all or any portion of its rights, title, or interest in this Easement to any other party without the prior written consent of COUNTY. Such assignment shall comply with the requirements of Section 5540 of the California Public Resources Code.

11. Notices. Any notice, demand or request which may be permitted, required or desired to be given in connection with this Easement shall be given in writing and directed to COUNTY or the DISTRICT as follows:

COUNTY: Gness Field Airport
351 Airport Road
Novato, California 94945
Attention: General Manager

DISTRICT: Marin County Open Space District
3501 Civic Center Drive, Room 415

San Rafael, California 94903
Attention: General Manager

Notices should be either (i) personally delivered (including by Federal Express or other reputable courier service) to the address set forth above in which case they shall be deemed delivered on the date of delivery to said addresses; or (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused by the addressee, in which event they shall be delivered two (2) business days following the date of deposit in the United State mail. The addresses and addressees set forth above may be changed by giving notice of such change in the manner provided in this Section 11.

12. Attorney's Fees. If either party to this Easement should bring any action or proceeding to enforce or interpret the terms hereof, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorney's fees, court costs and fees of expert witnesses reimbursed by the other party.

13. Amendment. This Easement may be amended only in writing by a document signed by COUNTY and the DISTRICT, or their successors and assigns, and any such amendment shall be effective only after the date that such document is filed for record at the Office of the Marin County Records in the Official Records of Marin County, California.

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IN WITNESS WHEREOF, COUNTY has executed this Easement as of the day and year first written above.

COUNTY OF MARIN

ATTEST:

Susan L. Adams, President
Board of Supervisors

Deputy Clerk

MARIN COUNTY OPEN SPACE DISTRICT

Susan L. Adams, President
Board of Directors

ATTEST:

Secretary

APPROVED BY:

Deputy County Counsel