



Sonoma County Board of Supervisors STAFF REPORT

Sonoma County Permit and Resource Management Department
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FILE: PLP08-0079
DATE: June 16, 2009
TIME: 2:10 p.m.
STAFF: Traci Tesconi

SUMMARY

Applicant/Owner: Dry Creek Rancheria Band of Pomo Indians/Alexander Valley Ventures, LLC

Location: 2970 Highway 128, Healdsburg. ("Rescission Parcel")
4551 Highway 101, Petaluma. (Ptn. of "Easement Land")
4555 Old Redwood Hwy, Petaluma. (Ptn. of "Easement Land")

APN: 140-260-003, 019-330-010, and 019-330-011

Supervisory District: No. 4 - ("Rescission Parcel")
No. 2 - ("Easement Land")

File deemed complete: September 8, 2008

Subject: Williamson Act- Agricultural conservation easement exchange

Proposal: Request to rescind an existing Type I Williamson Act contract (1-304-72; 2607/821) on 17.8 acres (APN 140-260-003) ("Rescission Parcel") located in the Alexander Valley, in exchange for placement of a permanent agricultural conservation easement over a 90 acre portion of two parcels (ptn of APN 019-330-010 and 019-330-011) ("Easement Land") located in Petaluma.

Environmental Determination: Negative Declaration

General Plan Land Use: Land Intensive Agriculture, 20 acres per dwelling unit - ("Rescission Parcel")
Land Extensive Agriculture, 60 acres per dwelling unit, and
Land Extensive Agriculture, 160 acres per dwelling unit
("Easement Land")

Specific/Area Plan: "Rescission Parcel" - none
"Easement Land" - Petaluma Dairy Belt - LEA 60 acre density and LEA 160 acre density

Applicable Codes: Government Code § 51256 and § 51282 (Williamson Act), and Public Resource § 10200, et.seq.

Zoning: "Rescission Parcel" - LIA (Land Intensive Agriculture) B6 20 acre density, Z (Second Unit Exclusion), SR (Scenic Resource), VOH (Valley Oak Habitat)

"Easement Land" - LEA (Land Extensive Agriculture) B6 60 acre density, F2 (Secondary Floodplain), SR (Scenic Resource), VOH (Valley Oak Habitat); and LEA (Land Extensive Agriculture) B6 160 acre density, F2 (Secondary Floodplain), SR (Scenic Resource), VOH (Valley Oak Habitat)

RECOMMENDATION: Adopt the Negative Declaration, tentatively approving the request, and direct staff to forward the approval and petition onto the Department of Conservation for final review and approval.

ANALYSIS

Project Description:

Request to rescind an existing Type I Williamson Act contract (1-304-72; 2607/821) on 17.8 acres (APN 140-260-003) ("Rescission Parcel") located in the Alexander Valley, in exchange for placement of a permanent agricultural conservation easement over a 90 acre portion of two parcels (ptn of APN 019-330-010 and 019-330-011) ("Easement Land") located in Petaluma.

Site Characteristics:

The Rescission parcel is 17.8 acres, located along Highway 128 in Alexander Valley. The parcel contains a single family residence, barn, and private well. The site terrain consists of a steep slope beginning at the road frontage extending to the northerly property line. The parcel contains scattered clusters of oak trees and native grassland. There has not been any type of agricultural use on the parcel for several years.

The Petaluma Easement land is 90 acres and a portion of the area is located on a southwesterly portion of a larger parcel (APN: 019-330-010, and -011), totaling 161.13 acres. The property site is accessed via US Highway 101. The southwestern portion of the second parcel containing the easement (APN 019-330-011) is approximately 99.76 acres, fronts US Highway 101, and approximately one half of this parcel is designated a Scenic Resource Combining District. The other portion of this parcel is nestled between the Northwestern Railroad and the Petaluma River. The entire easement site has varied topography with relatively flat areas and rolling hills. Historically, site drainage has been impacted by flooding from the Petaluma River. A dike exists at the eastern edge of the property to prevent flooding of a significant portion of the property. The land is currently utilized for hay production.

Surrounding Land Use and Zoning:

Rescission Parcel (Dugan - Alexander Valley parcel):

The surrounding land of the Rescission Parcel (Dugan parcel) consists of large parcels of vineyard land, wineries, and residences with the exception of tribal uses on the Dry Creek Rancheria located north of the Rescission Parcel, that includes the existing River Rock Casino. The zoning of surrounding parcels is as follows:

North: Land held in trust by the federal government for the Dry Creek Rancheria Band of Pomo Indians (no zoning designation)

South: LIA (Land Intensive Agriculture) B6 20, Z (Second Unit Exclusion), SR (Scenic Resource), F2 (Secondary Flood plain), VOH (Valley Oak Habitat)

East: RRDWA (Resource and Rural Development- Agricultural Preserve) B6 120, SR (Scenic Resource) (ptn. of)

West: LIA (Land Intensive Agriculture) B6 20, Z (Second Unit Exclusion), SR (Scenic Resource), VOH (Valley Oak Habitat)

Easement Land (Petaluma parcel):

The surrounding land is mostly open grazing land with a few dairies and residences, vineyards, and

some commercial development.

North: LC (Limited Commercial), SD (Scenic District)/LEA (Land Extensive Agriculture) B6 60, Z (Second Unit Exclusion), SR (Scenic Resource), F2 (Secondary Flood plain), BR (Biotic Resource), VOH (Valley Oak Habitat)/LEA (Land Extensive Agriculture) B6 160, F2 (Secondary Flood plain), BR (Biotic Resource)

South: LEA (Land Extensive Agriculture) B6 60, Z (Second Unit Exclusion), SR (Scenic Resource), F2 (Secondary Flood plain), BR (Biotic Resource), VOH (Valley Oak Habitat) /LEA (Land Extensive Agriculture) B6 160, F2 (Secondary Flood plain), BR (Biotic Resource)

East: LEA (Land Extensive Agriculture) B6 160, F2 (Secondary Flood plain), BR (Biotic Resource)

West: U.S. Highway 101/LEA (Land Extensive Agriculture) B6 60, SR (Scenic Resource), VOH (Valley Oak Habitat)

Background:

In approximately 2005, the Dry Creek Rancheria Band of Pomo Indians (Tribe) applied to the federal government to transfer the Rescission Parcel into federal trust for the benefit of the Tribe. The Tribe's fee-to-trust application required federal approval per 25 Code of Federal Regulations Part 151.

The United States Bureau of Indian Affairs (BIA) prepared and circulated an Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA), 42 United States Code 4321 et seq. The EA disclosed and analyzed the adverse environmental impacts of the proposed trust decision, as well as the Tribe's potential future development of the parcel. The EA also proposed mitigation measures to address potential impacts on land, water, air quality, and other environmental resources. In August 2005, the BIA published a Final EA and Finding of No Significant Impact (FONSI) concluding that, as mitigated, the proposed action would not result in a significant adverse impact to the environment.

The County and State of California Department of California Department of Conservation (DOC) appealed the BIA's decision to the Department of the Interior Board of Indian Appeals. Among other things, the County argued that proposed action would conflict with the existing Williamson Act contract on the Rescission Parcel.

Effective March 18, 2008, the County and Tribe resolved their dispute through entry into a Memorandum of Agreement (MOA). Among other provisions, the MOA also required the Tribe to submit a request for non-renewal of the Williamson Act contract. The MOA also required the Tribe to submit the instant petition requesting that the County and DOC approve rescission of the Williamson Act contract in favor of an easement exchange and other public benefits pursuant to Government Code § 51256. The MOA further required the Tribe to construct a new access road connecting its Rancheria to Highway 128, either through the Rescission Parcel, or an alternative road site to be used for emergency access to the Dry Creek Rancheria. Pursuant to the MOA, the Tribe agreed to implement the mitigation measures discussed on the Final EA as set forth specifically in Exhibit A of the MOA, subject to the processes and dispute resolution outlined in the MOA and its Mitigation Measures and Monitoring Program. Accordingly, the Tribe has committed to building this access road and implementing the mitigation measures set forth in the MOA and such mitigation measures are considered part of the access road project. The Final EA concluded that with the implementation of such mitigation measures, the access road project would have no significant adverse impact. In addition, pursuant to the MOA, the Tribe is required to submit the design plans for the new secondary access road to the County for review and comment.

The Tribe desires that the Williamson Act contract restricting the Rescission Parcel be rescinded to

allow it to pursue construction of the secondary access road, which would be a non-agricultural alternative use of the land. As part of their petition, the Tribe has separately agreed to submit planting and exterior lighting plans for the secondary access road to the County for review and comment. Such planting plan shall include native trees (minimum of 15 gallons) and shrubs (minimum of 5 gallons) that will achieve a height and density designed to screen the secondary access road to a reasonable extent. The exterior lighting plan shall be designed to minimize, to a reasonable extent, any visual or lighting impacts due to the installation of the secondary access road. The submittal of the planting plan and the exterior lighting plan will be treated like the landscape and lighting plans in Sections A.3.a and A.3.c of Exhibit A of the MOA and will have the meet and confer and dispute resolution obligations afforded under Sections A.3.a and A.3.c.

On June 5, 2008, the Tribe also filed a notice of non-renewal of the Williamson Act contract (AGP08-0014) on the Rescission Parcel. On January 1, 2009, the Rescission Parcel began the nine-year non-renewal process (aka the phase-out period) of the Williamson Act contract (OR#2008-077938).

On June 16, 2008, the Tribe submitted the instant petition to rescind the Williamson Act contract on the Rescission Parcel and simultaneously execute an agricultural conservation easement, in perpetuity, over the Easement Land.

On May 15, 2009 the Negative Declaration prepared by staff was circulated through the State Clearinghouse and public hearing notices were mailed to surrounding property owners and posted in the areas of both the Rescission parcel in Alexander Valley and Easement land in Petaluma.

The Tribe has also submitted to the County grading and building permit applications to construct the proposed emergency access road from Highway 128 through the Rescission Parcel to the Dry Creek Rancheria. The County has not issued final approvals of those permits, pending a decision on the proposed rescission and easement exchange. The County will not issue such final permits if the Rescission Parcel goes into trust since trust land is no longer within the land-use jurisdiction of the County.

DISCUSSION OF ISSUES

Issue #1: General Plan and Zoning Consistency

The request does not include an amendment or zone change to either the Rescission parcel or the Easement land. Therefore, the 90 acres to be placed under the agricultural conservation easement will remain as Land Extensive Agriculture land use and zoning designation. The purpose and definition of the Land Extensive Agriculture designation states:

“This category shall enhance and protect lands capable of and generally used for animal husbandry and the production of food, fiber, and plant materials. Soil and climate conditions typically result in relatively low production per acre of land. The objective in land extensive agricultural areas shall be to establish and maintain densities and parcel sizes that are conducive to continued agricultural production.”

Under the Zoning Ordinance, the LEA zoning states the purpose:

“To enhance and protect lands best suited for permanent agricultural use and capable of relatively low production per acre of land; and to implement the provisions of the land extensive agriculture land use category (Section 2.7.2) of the general plan and the policies of the agricultural resources element. (Ord. No. 4643, 1993.)”

Placing a permanent agricultural conservation easement on the Easement land (Petaluma land) appears consistent with the purposes of the LEA category specified in the General Plan 2020 and the Zoning Ordinance.

Issue #2: The Williamson Act Easement Exchange Program (WAEEP)

The Williamson Act Easement Exchange Program (WAEEP) became effective January 1, 1998 and provides a voluntary rescission process for a landowner and local government to cancel a Williamson Act contract and simultaneously dedicate a permanent *agricultural conservation easement* on other land in the County. The Williamson Act Easement Exchange Program (WAEEP) combines the Williamson Act's cancellation procedures with elements of the California Farmland Conservancy Program (CFCP) easement program. The WAEEP is a joint agreement that is voluntarily entered into between the property owner and the local government, and subject to approval by the Director of the Department of Conservation. This program is authorized pursuant to Government Code Section 51256, which establishes a number of safeguards to assure the exchange will result in the protection and enhancement of agriculture. Under the program, rescission of the Williamson Act contract is exchanged for the owners' creation of a permanent agricultural conservation easement over other land located in Sonoma County, not already under contract, in lieu of actual payment of the cancellation fee. The easement must have a value equal to or more than the amount of the cancellation fee. In addition, the easement land must be the same size or larger than the land under the Williamson Act contract and substantially meet the requirements of Public Resources Code §10251 and § 10252.

The easement exchange process offers local benefits and advantages beyond the normal cancellation process, because it results in permanent preservation of local agricultural land(s), instead of the payment of a cancellation fee to the State Controller. The Board of Supervisors must make specific findings to cancel a Williamson Act contract (or rescind in-lieu of cancellation) and the appraised value of the *easement land* must be equal to or greater than the cancellation fee that would otherwise be required to cancel the Williamson Act contract. In addition, the easement land must be of equal size or larger than the contracted land. The process is strictly voluntary.

The landowner must first submit a petition for a easement exchange proposal to the local County. If the local government can make the findings required under Government Code § 51256 for approval of the petition, then the local government prepares a (tentative) approval and transmittal form and submits the materials to the DOC for review. If the DOC can make the findings, the petition is finally approved, and the Director of the DOC sends an approval letter to the applicant, local government, and the easement holder. If the DOC cannot make the findings, the petition is denied by the DOC, who informs the applicant and local government, along with an invitation to contact the DOC if the applicant then wishes to modify the petition.

An *agricultural conservation easement* is a less than fee simple interest in land and includes the right to prevent forever the development or improvement of the land for any purpose other than agricultural production. The easement is granted by the landowner to the local government, or in this particular case, the Sonoma County Agricultural Preservation and Open Space District. The land restricted by the *agricultural conservation easement* remains in private ownership.

On June 16, 2008, the landowners' petition was filed with PRMD under the Williamson Act Easement Exchange Program (WAEEP). The petition proposes to rescind the Williamson Act contract on a parcel (Rescission parcel) 17.8 acres in size located in Alexander Valley and simultaneously execute an agricultural conservation easement, in perpetuity, over other land 90 acres in size located in Petaluma (Easement land). Also on June 16, 2008, the property owners filed a non-renewal of the Type I Williamson Act contract on the "Rescission parcel." Non-renewal is a prerequisite for cancellation (or rescission in lieu of cancellation). On January 1, 2009 the Rescission parcel began the nine year non-renewal process (aka phase out period) of the Williamson Act contract.

PRMD sent the petition packet to the Department of Conservation (DOC) for their initial review. On August 14, 2008, via an electronic message, Kyle Nast, Staff Counsel for the DOC, stated that DOC

considers the application complete at this time and to please send the DOC a copy of the full cancellation petition, cancellation valuation by the Assessors, and easement exchange documents required under State law.

On September 9, 2008, PRMD deemed the application complete for processing.

The petition requests that the County and the landowner mutually agree to rescind the Williamson Act - Type I contract (1-304-72; 2607/821) on 17.8 acres, referred to as the "Dugan Property" (APN 140-260-003) ("Rescission Parcel") located in the Alexander Valley, in exchange for the landowner placing a permanent agricultural conservation easement on a 90 acre portion of land in Petaluma ("Easement"), of which a minimum of 20 acres would be dedicated to perpetual agricultural use. The Rescission Parcel is under a Type I contract, whereas the Easement land is not under a Williamson Act contract, but historically has been used for hay production/grazing land which is considered non-prime. The agricultural conservation easement would be held by the Sonoma County Agricultural Preservation and Open Space District.

If approved by the County and the DOC, the exchange will cancel the contract immediately, notwithstanding the prior service of Notice of Non Renewal for the rescission parcel. If the Board of Supervisors approves the easement exchange and executes the proposed agreement with the landowner, and issues a certificate of tentative cancellation (if necessary), then a copy of the entire record before the Board shall be transmitted to the State Department of Conservation (DOC), with the executed agreement, and certificate of tentative cancellation (if necessary), for the DOC 's review and approval. The DOC also reviews and verifies that the value of the easement is at least equal to 12.5% of the cancellation value, and will verify the adequacy of the appraisal that documented the value of the agricultural conservation easement. The cancellation value is the unrestricted fair market value of the land proposed to be removed from the contract.

The two properties involved in the petition for the rescission and the easement exchange are described below:

A). Dugan parcel ("Rescission parcel"): This parcel is approximately 17.8 acres in size and located on Highway 128 in Alexander Valley. The parcel abuts on the north-westerly property line boundary the Dry Creek Rancheria, upon which the "River Rock Casino" is located. The Dugan parcel contains a residence, a barn, wells, driveways, and utilities. Although the parcel has been under a Type I Williamson Act contract for several years, currently there is no agricultural use on the site; and according to the applicants the land has not been farmed for a decade. In the early 1970's some cattle grazing was on the parcel. According to the applicants, the Rescission parcel only contains approximately 4 acres that are suitable for agricultural use (i.e. cultivation). The parcel is zoned LIA (Land Intensive Agriculture) B6 20 acre density, Z (Second Unit Exclusion), SR (Scenic Resource), VOH (Valley Oak Habitat).

In August 2006, the United States Bureau of Indian Affairs (BIA) made a decision to accept the Dugan parcel into trust for the Dry Creek Rancheria Tribe. The County of Sonoma appealed the decision to the Department of Interior Board of Indian Appeals. Pursuant to the Memorandum of Agreement (MOA), dated March 18, 2008, between the County and the Dry Creek Rancheria Tribe, the County agreed to withdraw its appeal upon the Dry Creek Rancheria Tribe filing a complete petition for a rescission of the Type I Williamson Act Contract on the Dugan parcel and an exchange for a Conservation Easement on another property within Sonoma County, which is the land in Petaluma (Exchange land). The Dry Creek Rancheria Tribe filed a complete petition requesting the described easement exchange. Therefore, the County withdrew its appeal of the BIA's decision.

Pursuant to the MOA, the Dry Creek Rancheria Tribe has agreed to construct a secondary, emergency access road through the Dugan parcel, connecting the Dry Creek Rancheria to State Highway 128. The secondary, emergency access road should conform to State Fire Code requirements. Pursuant to the MOA, the Dry Creek Rancheria Tribe is to commence the construction of the access road after the Dugan parcel is taken into trust. It is anticipated by the applicants that the Dugan parcel will become trust land and the construction of the proposed access road will be subject to federal and tribal laws

and regulations.

Pursuant to the MOA, the Tribe agreed to implement the mitigation measures discussed in the Final EA as set forth specifically in Exhibit A of the MOA, subject to the processes and dispute resolution outlined in the MOA and its Mitigation Measures and Monitoring Program. Accordingly, the Tribe has committed to construct the access road and implementing the mitigation measures set forth in the MOA. Such mitigation measures are incorporated into the access road project design. The Final EA concluded that with the implementation of such mitigation measures, the access road project would have no significant adverse impact.

B). Petaluma parcel (“Easement land”):

On December 2, 2004, Alexander Valley Ventures LLC acquired the Petaluma property. The purchase price of the subject property was not public information. In April 2006, the Dry Creek Rancheria Tribe filed a fee-to-trust application that sought to have the Petaluma property placed into federal trust. The trust application was filed under federal provisions for acquiring the lands for Tribal governmental gaming purposes. Pursuant to Section 13 of the MOA, the Dry Creek Rancheria Tribe has agreed to suspend the Gaming purposes of the application (pending) to serve other uses; such as non-Gaming commercial uses and the development of a mitigation bank. If certain conditions specified in the MOA are satisfied, the Dry Creek Rancheria Tribe has agreed to permanently forego Gaming on the Petaluma property.

The two parcels on which the conservation easement area will be placed are identified as APN’s 019-330-010 and 019-330-011. Together the two total parcels total 161.13 acres, however, the proposed easement area is only a portion of the two referenced parcels, totaling 90 acres, located at the SW corner of the property. The subject property is located south of the current Petaluma city limits, approximately four miles south of the City of Petaluma central business district. The easement area would be at the southern edge of the property with US Highway 101 frontage estimated at approximately 500 lineal feet. The easement extends east the entire length of the parcel to the southeastern property line. The easement area then extends north to the approximate northern boundary of APN 019-330-010. From that point the easement area angles SW to the North Western Pacific Railroad right of way and then west to Highway 101 (see Exhibit C). It does not appear that existing fences on the property site are required to be relocated.

The property is zoned Land Extensive Agriculture, but is not currently subject to a Williamson Act contract. There are no other parcels within the property boundaries approved by the Administrative Certificate of Compliance process and the owner is not aware of any potential for recognition of such parcels. Current use of the subject property site is for agricultural purposes, namely hay production; however, the property appears to be suitable for multiple agriculturally related purposes. According to the Appraisal report prepared by George Dutton, in his discussions with the property owner approximately 60 acres of the site have been utilized for hay production. The gross yield per acre is approximately six tons based on one hay crop per year. Wholesale value of the hay produced is \$120/ton with production costs, including land preparation, planting and harvesting of the crop estimated at \$60/ton. The net per acre from the hay crop is thus projected at \$360/acre, or for the hay production portion of the site, \$21,600 on an annual basis. This net per acre figure does not include any expense for property tax, insurance or other non-farm expense items. The income and expense figures were confirmed with growers in the subject property market area and are seen as realistic in the current local agricultural market.

The 90 acre easement area is irregular in shape. The site terrain is varied from rolling terrain with both up and down grades to generally level land areas. This easement area would be reserved for agricultural and open space use. The easement would also include assignment of development rights on the easement portion of the subject property to the Sonoma County Agricultural and Open Space District in perpetuity. The easement access may be controlled and restricted by the recorded deed and agreement that creates the easement. This easement restricts public access to the property easement area only and not the remaining approximate 70 acres of the site.

Issue #3: Applicable Code Sections, Required Findings, and Staff Analysis

In this section, staff will identify the required findings and after each provide an analysis of the evidence supporting the respective finding(s). The Williamson Act's easement exchange provision, Gov. Code 51256 requires that three sets of findings be made:

- The first set of findings are 'cancellation findings' that concern the removal of the Williamson Act contract from the Rescission Parcel.
- The second set of findings, under the Public Resources Code, concern the viability of the proposed conservation easement.
- The third set of findings concern the relationship of the easement to the contracted land and the relationship of the value of the easement to the cancellation fee that would be required for a straight cancellation of the contract. These three sets of findings are the findings required before the Board may approve the proposed easement exchange.

These specific findings are set forth in State law, as explained below:

a. Cancellation Findings. (Gov. Code 51282)

(1) That the proposed cancellation (i.e. rescission) is consistent with the purposes of the Williamson Act ¹, or that cancellation is in the public interest ².

¹ Gov. Code § 51282 (b): Under the Williamson Act, "cancellation of a contract shall be consistent with the purposes of this chapter only if the board makes all of the following findings:

- (1) That the cancellation is for land on which a notice of nonrenewal has been served pursuant to Section 51245.
- (2) That cancellation is not likely to result in the removal of adjacent lands from agricultural use.
- (3) That cancellation is for an alternative use which is consistent with the applicable provisions of the city or county general plan.
- (4) That cancellation will not result in discontinuous patterns of urban development.
- (5) That there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontinuous parcels."

² Gov. Code § 51282 (c): Under the Williamson Act, "cancellation of a contract shall be in the public interest only if the council or board makes the following findings:

- (1) that other public concerns substantially outweigh the objectives of this chapter; and
- (2) that there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontinuous parcels."

Staff Analysis: Staff believes this finding can be made because cancellation of the Williamson Act contract on the Rescission parcel is in the public interest because it would facilitate the development of a secondary access road to the Dry Creek Rancheria, which has long been a critical safety concern of the County Sheriff and County Fire Chief (thereby, consistent with the second finding listed under § 51282). In reviewing the applicants' petition, PRMD has determined the petition is consistent with § 51282 as explained below:

1. The cancellation of the Williamson Act contract on the Rescission property would facilitate the development of a secondary access road to the Dry Creek Rancheria, which has long been a critical concern of the County Sheriff and County Fire Chief.
2. The Conservation Easement perpetually protects five times the land that was previously contracted, including a minimum of 20 acres of land to be perpetually used for agricultural purposes (more than the approximately 4 acres that could potentially be used for agriculture on the Rescission property). The dedication of a conservation easement in perpetuity is a stronger protection than a Williamson Act contract and will be placed on local land.
3. The cancellation (or rescission in lieu of cancellation) is for land on which a notice of non-renewal has been filed. The cancellation is for land on which the Dry Creek Rancheria Tribe has filed for non-renewal of the Williamson Act contract (10-year phase out of the Williamson Act contract on the Dugan property began on January 1, 2009), and thus, the agricultural use on Dugan property is time limited.
4. The Dugan Property has extremely low agricultural value and, in fact, has not been used for agricultural purposes for at least a decade.
5. The cancellation (or rescission in lieu of cancellation) of the Williamson Act contract is not likely to result in the removal of lands adjacent to the Rescission property from agricultural use because the adjacent lands currently planted in vineyards (permanent crop) are compatible with neighboring non-contracted land uses. In addition, the cancellation (or rescission in lieu of cancellation) will not result in discontinuous patterns of urban development as the proposed alternative use is immediately adjacent to the Tribe's existing development.
6. There is not proximate non-contracted land which is both available and suitable for the intended use of facilitating a secondary, emergency access road to the Dry Creek Rancheria. The access road must be adjacent to and service the Tribe's existing reservation land to sufficiently address public safety concerns, and there appears to be no other land adjacent to the Dry Creek Rancheria, other than the Rescission property, that is either suitable or available for the proposed road. The emergency access road is highly desirable for the public safety and welfare of those people residing in the area and visitors to the Dry Creek Rancheria, including the River Rock Casino.

b. Agricultural Conservation Easement Findings. (Pub. Res. § 10200, et. seq.)

- (1) The proposed agricultural conservation easement is consistent with the criteria³ set forth in Section 10251 of the Public Resources Code.**

³ Public Resources Code § 10251: Applicants for an agricultural conservation easement or fee acquisition grant shall meet all of the following eligibility criteria:

(a) The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.

(b) The applicable city or county has a general plan that demonstrates a long-term commitment to agricultural land conservation. This commitment shall be reflected in the goals, objectives, policies, and implementation measures of the plan, as they relate to the area of the county or city where the easement acquisition is proposed.

(c) Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future.

Staff Analysis: Staff believes the proposed easement is consistent with the required criteria for the following reasons:

1. Historically, the land proposed for conservation has been used for commercial agricultural production. The land proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production because the land use and zoning designation will remain as Land Extensive Agriculture. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, since it is adjacent to State Highway 101 and close to the City of Petaluma. In addition, the surrounding parcel sizes and land uses will support long-term commercial agricultural production because historically the surround area has been used for dairies, livestock grazing, and hay production.
2. The County's General Plan demonstrates a long-term commitment to agricultural land conservation, in the area of the proposed easement, as reflected in the goals, objectives, policies, and implementation measures of the Land Extensive Agricultural land use category for the land proposed for conservation.
3. Without conservation, the land proposed for protection is likely to be converted to non-agricultural use in the foreseeable future because the Tribe has indicated a desire and willingness to develop the parcel with a gaming or other type of intensive development, as demonstrated by past applications to the Department of the Interior.

(2) The proposed agricultural conservation easement is evaluated (by the County) pursuant to the selection criteria ⁴ in Section 10252 of the Public

⁴ Public Resources Code § 10252: The Director of the Department of Conservation shall evaluate a proposal for a fee title or agricultural conservation easement acquisition grant based upon the overall value of the project, taking into consideration the goals and objectives for this program, and the extent to which the proposed project satisfies the following selection criteria:

(a) The quality of the agricultural land, based on land capability, farmland mapping and monitoring program definitions, productivity indices, and other soil, climate, and vegetative factors.

(b) The proposal meets multiple natural resource conservation objectives, including, but not limited to, wetland protection, wildlife habitat conservation, and scenic open-space preservation.

(c) The city or county demonstrates a long-term commitment to agricultural land conservation as demonstrated by the following:

(1) The general plan and related land use policies of the city or county.

(2) Policies of the local agency formation commission.

(3) California Environmental Quality Act policies and procedures.

(4) The existence of active local agricultural land conservancies or trusts.

(5) The use of an effective right-to-farm ordinance.

(6) Applied strategies for the economic support and enhancement of agricultural enterprise, including water policies, public education, marketing support, and consumer and recreational incentives.

(7) Other relevant policies and programs.

(d) If the land is in a county that participates in the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code), the land proposed for protection is within a county or city designated agricultural preserve.

(e) The land proposed for conservation is within two miles outside of the exterior boundary of the sphere of influence of a city as established by the local agency formation commission.

(f) The applicant demonstrates fiscal and technical capability to effectively carry out the proposal. Technical capability may be demonstrated by agricultural land conservation expertise on the governing board or staff of the applicant, or through partnership with an organization that has that expertise.

(g) The proposal demonstrates a coordinated approach among affected landowners, local governments, and nonprofit organizations. If other entities are affected, there is written support from those entities for the proposal and a willingness to cooperate. The support of neighboring landowners who are not involved in the proposal shall be considered.

(h) The conservation of the land supports long-term private stewardship and continued agricultural production in the region.

Resources Code, and particularly subdivisions (a),(c), (e), (f), and (h), and the Board makes the finding that the proposed easement will make a beneficial contribution to the conservation of agricultural land in the area.

Staff Analysis: With respect to the Public Resources Code § 10252, the Department of Conservation (DOC) has done an initial evaluation of the proposed conservation easement land and made a preliminary determination that the soil quality and other factors are favorable with respect to agricultural values of the property. In addition, the Conservation Easement has seasonal wetlands currently located along the Petaluma River and the potential for the expansion of such wetlands for mitigation banking purposes furthers the important conservation goal of wetland and habitat protection listed under item b of § 10252. Consistent with item 3 of § 10252, a Negative Declaration was prepared by PRMD and circulated to the State Clearinghouse providing for a 30-day review period. Public hearing notices were also mailed and posted in both project site areas providing a 30-day review period. In addition, consistent with item 4 above, the Sonoma County Agricultural Preserve and Open Space District will hold the easement in perpetuity. And finally, placing a permanent agricultural conservation easement on land nestled between Hwy 101 corridor and the Petaluma River would be a beneficial contribution in conserving agricultural land in the area between Sonoma and Marin Counties.

c. Additional Findings for Easement Exchange. (Gov. Code 51256)

- (1) The land proposed to be placed under an agricultural conservation easement is of equal size or larger than the land subject to the contract to be rescinded, and is equally or more suitable for agricultural use than the land subject to the contract to be rescinded. In determining the suitability of the land for agricultural use, the County shall consider the soil quality and water availability of the land, adjacent land uses, and any agricultural support infrastructure.**

Staff Analysis: Staff believes this finding can be met. The land proposed to be placed under an agricultural conservation easement is five times as large (90 acres) as the land proposed to be removed from contract (17 acres). The land proposed for an agricultural conservation easement historically has been used for commercial agriculture for hay production and grazing, and therefore demonstrated it is more suitable for agricultural use than the Rescission parcel (Dugan parcel) which currently is not being used for agriculture and has not been used for agricultural purposes for several years.

- (2) The value of the proposed agricultural conservation easement, as determined pursuant to Section 10260⁵ of the Public Resources Code, is**

(i) The proposal demonstrates an innovative approach to agricultural land conservation with a potential for wide application in the state.

(j) The amount of matching funds and in-kind services contributed by local governments and other sources toward the acquisition of the fee title or agricultural conservation easement, or both.

(k) The price of the proposed acquisition is cost-effective in comparison to the fair market value.

(l) Other relevant considerations established by the director.

⁵ Public Resources Code § 10260: (a) In determining the amount of funding to be provided for an agricultural conservation easement or fee acquisition grant, the department shall take reasonable steps to ensure that the total purchase price of the agricultural conservation easement or, in the case of a fee title acquisition, the total purchase price of the subject property does not exceed fair market value, taking into consideration the funding from all sources. The determination of fair market value shall be accomplished, as follows:

(1) An applicant shall select and retain an independent real estate appraiser to determine the value of the subject property, including any proposed agricultural conservation easement.

(2) The department shall review and consider an applicant's appraisal and may, at its sole discretion, require or obtain an additional appraisal.

(3) The easement value shall be calculated by determining the difference between the fair market value and the restricted value of

equal to or greater than 12.5 % of the cancellation valuation of the land subject to the contract to be rescinded, pursuant to subdivision (a) of Section 51283. ⁶ The easement value and the cancellation value shall be determined within 30 days before the approval of the County of an easement exchange agreement.

Staff Analysis: Staff believes this finding based on the Assessor determination, described in detail below in Issue # 4.

Issue # 4: Cancellation & Easement Valuation

Prior to a hearing by the Board for contract cancellation (rescission), the assessor must establish the cancellation value of the contracted land. The cancellation valuation is based on the current fair market value of the land as though it were free of the contractual restriction. The cancellation fee is computed at 12.5% of the cancellation value. The Assessor determined the cancellation value to be \$1,440,000 as of June 1, 2009, according to the appraisal prepared by staff appraiser, Michael Cleveland. The Assessor's appraisal is attached. 12.5% of the cancellation value is \$180,000. The value of the conservation easement must be equal to or greater than \$180,000.

The value of the agricultural land conservation easement is determined by an independent real estate appraiser (Public Resources Code § 10260). The value of the proposed easement must be equal to, or greater than, the cancellation fee required if the Williamson Act contract cancellation is approved. The value of the easement is determined by subtracting the agricultural use value (the restricted value) of the property to be placed under the easement from its unrestricted current fair market value. An independent appraiser, George Dutton, determined the easement's value to be \$675,000 as of May 29, 2009. A complete copy of Mr. Dutton's appraisal is attached to the staff report under Exhibit H .

Because the value of the easement, \$675,000 is well above \$180,000 (12.5% of the cancellation value), the requirement of Gov. Code 51256 (d) has been satisfied. Both appraisals will be less than 30 days old on June 16, 2009. However, if final approval by the Board takes longer than 30 days, the value determinations must be updated.

Issue # 5: Approval by the State

If the Board approves the easement exchange and executes the proposed agreement with the landowner, and issues a certificate of tentative cancellation, then a copy of the entire record before the Board shall be transmitted to the Secretary of Resources, with the executed agreement and certificate of tentative cancellation, for the Secretary's review and approval.

Under Government Code § 51256.1, no agreement entered into pursuant to Section 51256 shall take effect until it is approved by the Secretary of Resources. The Secretary may approve the agreement if he or she finds that the findings of the Board, as required by Sections 51256 and 51282, are supported by substantial evidence, and that the proposed agricultural conservation easement is consistent with

the property.

(b) The department may conditionally approve grant applications prior to completion of final appraisals, provided an acceptable appraisal and all other requirements of this division are met before any disbursement of grant funds.

(c) The department shall have final authority to determine the acceptability of an appraisal pursuant to this division.

⁶ Gov. Code § 51283: (a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee. At the same time, the assessor shall send a notice to the landowner and the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction and advise the parties, that upon their request, the assessor shall provide all information relevant to the valuation, excluding third-party information. If any information is confidential or otherwise protected from release, the department and the landowner shall hold it as confidential and return or destroy any protected information upon termination of all actions relating to valuation or cancellation of the contract on the property. The notice shall also advise the landowner and the department of the opportunity to request formal review from the assessor.

the eligibility criteria set forth in Section 10251 of the Public Resources Code and will make a beneficial contribution to the conservation of agricultural land in its area. The secretary shall not approve the agreement if an agricultural conservation easement has been purchased with funds from the Agricultural Land Stewardship Program Fund, established pursuant to Section 10230 of the Public Resources Code, on the same land proposed to be placed under an agricultural conservation easement pursuant to this section.

The state also reviews and verifies that the value of the easement is at least equal to 12.5% of the cancellation value, and will verify the adequacy of the appraisal that documented the value of the agricultural conservation easement.

Issue # 6: CEQA Compliance

On May 15, 2009 the Negative Declaration prepared by staff was circulated through the State Clearinghouse and public hearing notices were mailed to surrounding property owners and posted in the areas of both the Rescission parcel in Alexander Valley and Easement land in Petaluma. In addition, a public hearing noticed was published in the local newspaper (Press Democrat). The circulation through the State Clearinghouse and all noticing requirements as listed above provided for the 30-day review period required by State law.

STAFF RECOMMENDATION

Adopt the Negative Declaration, tentatively approving the request, and direct staff to forward the approval and petition onto the Department of Conservation for final review and approval.

FINDINGS FOR RECOMMENDED ACTION

- (1) That pursuant to Gov. Code § 51256, Gov. Code § 51282 findings for cancellation (rescission in lieu of cancellation) have been met because cancellation is in the public interest as:
 - Other public concerns, namely public safety concerns and the need for a secondary access road to the Tribe's reservation development, substantially outweigh the objectives of the Williamson Act; and
 - There is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land;
- (2) That pursuant to Gov. Code § 51256, the proposed easement is consistent with the purposes and certain requirements of Pub. Res. § 10200, et. seq., because:
 - The quality of the proposed easement's agricultural land, based on soil quality, productivity, and other factors, are favorable with respect to the agricultural values of the property. In addition, the Easement Land has seasonal wetlands currently located along the Petaluma River and the potential for the expansion of such wetlands for mitigation banking purposes which furthers the important conservation goal of wetland and habitat protection.
 - The proposed easement satisfies criteria under Public Resources Code § 10252 for conservation easements and the proposed easement will make a beneficial contribution to agricultural conservation in the area;
- (3) That pursuant to Gov. Code 51256(a), the proposed easement is consistent with Pub. Res. § 10251 criteria because:
 - The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production; the land is in an area that possesses the necessary market, infrastructure, and agricultural support services; and the surrounding parcel sizes and land uses will support long-term commercial agricultural production;

- The County's General Plan and related land use policies demonstrates a long-term commitment to agricultural land conservation, in the area of the proposed easement;
 - Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future;
- (4) That pursuant to Gov. Code 51256(b), the proposed easement will make a beneficial contribution to the conservation of agricultural land in its area because the permanent agricultural conservation easement's location on land nestled between the Highway 101 corridor and the Petaluma River, and the size and quality of the agricultural land, would be a beneficial contribution in conserving agricultural land in the area between Sonoma and Marin Counties.
- (5) That pursuant to Gov. Code 51256(c), the land proposed to be placed under the agricultural conservation easement is five times as large (90 acres) as the land proposed to be removed from contract (17 acres). The land proposed for an agricultural conservation easement historically has been used for commercial agriculture for hay production and grazing, and therefore demonstrated it is more suitable for agricultural use than the Rescission parcel (Dugan parcel) which currently is not being used for agriculture and has not been used for agricultural purposes for several years.
- (6) That pursuant to Gov. Code 51256(d) that the value of the proposed agricultural conservation easement (\$675,000) is equal or greater than \$180,000, which is 12.5% of the cancellation value (\$1,440,000) of the land subject to the contract to be rescinded.
- (7) Based upon the information contained in the Initial Study included in the project file, it has been determined that there will be no significant environmental effect resulting from this project and the project will be subject to Conditions of Approval. The Negative Declaration has been completed in compliance with CEQA State and County guidelines, and the information contained therein has been reviewed and considered.
- (8) The establishment, maintenance or operation of the use for which application is made will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area. The particular circumstances in this case are:
- a. The cancellation of the Williamson Act contract would facilitate the development of a secondary access road to the Dry Creek Rancheria, which has long been a critical concern of the County Sheriff and County Fire Chief.
 - b. The proposed Conservation Easement perpetually protects five times the land that was previously contracted, including a minimum of 20 acres of land to be perpetually used for agricultural purposes, more than the approximately 4 acres that could potentially be used for agriculture on the Dugan Rescission property.
 - c. The cancellation is for land on which the Dry Creek Rancheria Tribe has filed for non-renewal of the Williamson Act contract, and thus, the potential agricultural use on Dugan property is time limited (the ten-year phase out of the Williamson Act contract on the Dugan (Rescission) property began on January 1, 2009).
 - d. The Dugan (Rescission) Property has extremely low agricultural value and, in fact, has not been used for agricultural purposes for at least a decade.
 - e. The cancellation of the Williamson Act contract is not likely to result in the removal of adjacent lands from agricultural use because the adjacent land has been planted in vineyards (permanent crop) for several years, and the proposed use of the non-contracted land appears compatible with adjacent vineyard agricultural uses.

- f. There is not proximate non-contracted land which is both available and suitable for the intended use of facilitating a secondary, emergency access road to the Dry Creek Rancheria. For the public safety and welfare of those people residing in the area and visitors to the Dry Creek Rancheria, including the River Rock Casino, in the case of an emergency, a secondary, emergency access road is desirable.

LIST OF ATTACHMENTS

Draft Resolution

- EXHIBIT A: Draft Conditions of Approval
- EXHIBIT B: Petition application packet
- EXHIBIT C: Vicinity Maps
- EXHIBIT D: Aerial Maps
- EXHIBIT E: Land Use maps
- EXHIBIT F: Zoning maps
- EXHIBIT G: Assessors Office cancellation calculation
- EXHIBIT H: Updated Appraisal Report prepared by George Dutton, dated 5/29/2009
- EXHIBIT I: Cover page of Appraisal of Real Property Easement, prepared by George Dutton, on March 10, 2008 (received by PRMD on August 6, 2008)
- EXHIBIT J: Potential Agricultural Preserve Areas for Rescission Parcel
- EXHIBIT K: Rescission Parcel's Proposed Roadway
- EXHIBIT L: Proposed Conservation Easement - Petaluma Land
- EXHIBIT M: Proposed Dimensions of Conservation Easement Land
- EXHIBIT N: Existing Agricultural Areas on Petaluma property
- EXHIBIT O: Photos
- EXHIBIT P: Copy of recorded Notice of Non-Renewal for existing Williamson Act contract (OR#2008-077938)
- EXHIBIT Q: Grading permit (GRD08-0158) submitted to PRMD by the applicant
- EXHIBIT R: Department of Emergency Services letter, prepared by Vernon Losh II, Chief (currently retired), dated July 15, 2008

Separate Attachment for Board of Supervisors: Negative Declaration

On File with the Clerk of the Board: Appraisal of Real Property Easement, for Real Property located at: 4500 - 4555 Redwood Highway Petaluma - Sonoma County, prepared by George R. Dutton, State Certified General Appraiser (# AGO-26971), Dutton Appraisal Office, on March 10, 2008

June 16, 2009
PLP 08-0079 Traci Tesconi

RESOLUTION OF THE BOARD OF SUPERVISORS, COUNTY OF SONOMA,
STATE OF CALIFORNIA, ADOPTING A NEGATIVE DECLARATION AND
APPROVING TENTATIVE CANCELLATION (RESCISSION) OF TYPE I LAND
CONSERVATION CONTRACT OVER 17.8 ACRES (APN 140-260-003 -
"RESCISSION PARCEL") LOCATED AT 2970 HIGHWAY 128; HEALDSBURG IN
EXCHANGE FOR PROVIDING A PERMANENT AGRICULTURAL
CONSERVATION EASEMENT OVER A 90 ACRE PORTION OF TWO
PARCELS, (APN 019-330-010 (PTN) AND 019330-011(PTN) - "EASEMENT
LAND") LOCATED AT 4551 HIGHWAY 101 AND 455 OLD REDWOOD
HIGHWAY, PETALUMA

WHEREAS, Alexander Valley Venture, LLC, on behalf of Dry Creek Rancheria Band of Pomo Indians ("Applicant") filed a request with the Sonoma County Permit and Resource Management Department ("PRMD") for the rescission of an existing Type I Williamson Act contract (1-304-72; 2607/821); APN: 140-260-003; Zoning LIA (Land Intensive Agriculture) 20 acres per dwelling unit on 17.8 acres (Rescission Parcel") located at 2970 Highway 128, Healdsburg; Supervisorial District No. 4, in exchange for providing a permanent agricultural conservation easement for a 90 acre portion of two parcels, APNs: 019-330-010 and 019-330-001 located at 4551 Highway 101 and 4555 Old Redwood Highway, Petaluma ("Easement Land"); Supervisorial District No. 2; and

WHEREAS, Section 51280 et seq. of the California Government Code authorizes a county to cancel Land Conservation Contracts (a.k.a. Williamson Act Contracts), as to all or any part of the land subject to a contract; and

WHEREAS, Section 51256 of the California Government Code allows for the rescission of a Land Conservation Contract, in lieu of cancellation, in exchange for the simultaneous execution of an agricultural conservation easement over other land in the county, if certain requirements are met; and

WHEREAS, the Dry Creek Rancheria Band of Pomo Indians (the "Tribe") is the owner of a parcel identified as APN 140-260-003, (hereafter the "Rescission Parcel"), and located at 2970 Highway 128, Healdsburg, California, within established Agricultural Preserve 1-304, and restricted by an existing Type I Land Conservation Contract recorded on March 1, 1972 at Book 2607, Page 821, Official Records of Sonoma County (hereafter Type I Contract); and

WHEREAS, Alexander Valley Ventures, LLC ("Ventures LLC"), is the owner of land identified as APN 019-330-010 (ptn) and 019-330-011 (ptn), and located at 4551 Highway 101, Petaluma, California, and 4555 Old Redwood Hwy, Petaluma, California, (hereafter "Easement Land"); and

WHEREAS, previously the Tribe applied to the Department of the Interior, Bureau of Indian Affairs to have the Rescission Parcel placed into trust by federal government; and

WHEREAS, the federal government has or is expected to accept the Rescission Parcel into trust; and

WHEREAS, virtually no agricultural use has been made of the vacant Rescission Parcel for more

than ten years; and

WHEREAS, previously the Tribe served a Notice of Non-Renewal for the Type I Contract, pursuant to Government Code Section 51245; and

WHEREAS, the Tribe has proposed an alternative non-agricultural use of the Rescission Parcel, which is to construct a secondary emergency access road across the Rescission Parcel to service existing casino development on an adjacent parcel; and

WHEREAS, the Tribe desires the existing Type I Land Conservation Contract restricting the Rescission Parcel be immediately rescinded in lieu of cancellation to facilitate construction of the access road, which is not an allowed use under the existing Contract, in exchange for placement of an agricultural conservation easement over land located in Petaluma; and

WHEREAS, in June 2008 the Tribe filed its petition for an easement exchange pursuant to Government Code 51256 with the County; and

WHEREAS, in accordance with the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.), and CEQA Guidelines Section 15070, et seq., a Negative Declaration was prepared for the proposed project; and

WHEREAS, before approving rescission of the Contract in lieu of cancellation, the Board of Supervisors reviewed and considered information contained in the Negative Declaration, in the Tribe's petition, in and attached to the staff report prepared by the Permit Resource and Management Department, including information contained in the valuation appraisals submitted by the Assessor's Office for the "cancellation value" of the Rescission Parcel, and by independent appraiser George Dutton for the "easement value" of the proposed easement; and

WHEREAS, in accordance with the provisions of law, the Board held a public hearing on June 16, 2009, at which time evidence and staff's analysis was presented, and at which time all interested persons were given an opportunity to be heard; and

NOW THEREFORE BE IT RESOLVED that the Board finds that the above recitals are true and correct, and hereby makes the following findings required under Government Code § 51256, based on substantial evidence in the record before it with respect to the requested easement exchange:

FINDINGS:

- (1) That pursuant to Gov. Code § 51256, Gov. Code § 51282 findings for cancellation (rescission in lieu of cancellation) have been met because cancellation is in the public interest as:
 - Other public concerns, namely public safety concerns and the need for a secondary access road to the Tribe's reservation development, substantially outweigh the objectives of the Williamson Act; and
 - There is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land;
- (2) That pursuant to Gov. Code § 51256, the proposed easement is consistent with the purposes and certain requirements of Pub. Res. § 10200, et. seq., because:

- The Department of Conservation (DOC) has done an initial evaluation of the proposed Conservation Easement and has made a preliminary determination that the soil quality and other factors are favorable with respect to the agricultural values of the property. In addition, the fact that the Conservation Easement has seasonal wetlands currently located along the Petaluma River and the potential for the expansion of such wetlands for mitigation banking purposes furthers the important conservation goal of wetland and habitat protection.
 - The proposed easement satisfies criteria under Public Resources Code § 10252 for conservation easements and the proposed easement will make a beneficial contribution to agricultural conservation in the area;
- (3) That pursuant to Gov. Code 51256(a), the proposed easement is consistent with Pub. Res. § 10251 criteria because:
- The parcel proposed for conservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production; the land is in an area that possesses the necessary market, infrastructure, and agricultural support services; and the surrounding parcel sizes and land uses will support long-term commercial agricultural production;
 - The County's General Plan demonstrates a long-term commitment to agricultural land conservation, in the area of the proposed easement;
 - Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future;
- (4) That pursuant to Gov. Code 51256(b), the proposed easement will make a beneficial contribution to the conservation of agricultural land in its area because placing a permanent agricultural conservation easement on land nestled between Hwy 101 corridor and the Petaluma River would be a beneficial contribution in conserving agricultural land in the area between Sonoma and Marin Counties.
- (5) That pursuant to Gov. Code 51256(c), the land proposed to be placed under the agricultural conservation easement is five times as large (90 acres) as the land proposed to be removed from contract (17 acres). The land proposed for an agricultural conservation easement historically has been used for commercial agriculture for hay production and grazing, and therefore demonstrated it is more suitable for agricultural use than the Rescission parcel (Dugan parcel) which currently is not being used for agriculture and has not been used for agricultural purposes for several years. :
- (6) That pursuant to Gov. Code 51256(d) that the value of the proposed agricultural conservation easement (\$675,000) is equal or greater than \$180,000, which is 12.5% of the cancellation value (\$1440,000) of the land subject to the contract to be rescinded.
- (7) Based upon the information contained in the Initial Study included in the project file, it has been determined that there will be no significant environmental effect resulting from this project and the project will be subject to Conditions of Approval. The Negative Declaration has been completed in compliance with CEQA State and County guidelines, and the information contained therein has been reviewed and considered.

- (8) The establishment, maintenance or operation of the use for which application is made will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area. The particular circumstances in this case are:
- a. The cancellation of the Williamson Act contract would facilitate the development of a secondary access road to the Dry Creek Rancheria, which has long been a critical concern of the County Sheriff and County Fire Chief.
 - b. The proposed Conservation Easement perpetually protects five times the land that was previously contracted, including a minimum of 20 acres of land to be perpetually used for agricultural purposes, more than the approximately 4 acres that could potentially be used for agriculture on the Dugan Rescission property.
 - c. The cancellation is for land on which the Dry Creek Rancheria Tribe has filed for non-renewal of the Williamson Act contract, and thus, the potential agricultural use on Dugan property is time limited (the ten-year phase out of the Williamson Act contract on the Dugan (Rescission) property began on January 1, 2009).
 - d. The Dugan (Rescission) Property has extremely low agricultural value and, in fact, has not been used for agricultural purposes for at least a decade.
 - e. The cancellation of the Williamson Act contract is not likely to result in the removal of adjacent lands from agricultural use because the adjacent land has been planted in vineyards (permanent crop) for several years, and the proposed use of the non-contracted land appears compatible with adjacent vineyard agricultural uses.
 - f. There is not proximate non-contracted land which is both available and suitable for the intended use of facilitating a secondary, emergency access road to the Dry Creek Rancheria. For the public safety and welfare of those people residing in the area and visitors to the Dry Creek Rancheria, including the River Rock Casino, in the case of an emergency, a secondary, emergency access road is desirable.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby adopts the Negative Declaration and approved the Conditions of Approval; and

BE IT FURTHER RESOLVED that the Board of Supervisors hereby grants the requested tentative cancellation (rescission in lieu of cancellation) of an existing Type I Williamson Act contract (1-304-72; 2607/821); APN 140-260-003, in exchange for placement of a permanent agricultural conservation easement for a 90 acre portion of two parcels, APNs 019-330-010 and 019-330-011, subject to final review and approval by the State Department of Conservation, and subject to the Conditions of Approval in Exhibit "A", attached hereto; and

BE IT FURTHER RESOLVED that the Board of Supervisors hereby instructs PRMD staff to forward the tentative cancellation and approval of petition to the State Department of Conservation for its review and final approval; and

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes County Counsel to draft all documents necessary to effectuate the decision of the Board of Supervisors made herein; and

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the Chair of the Board of Supervisors to execute all documents necessary to effectuate the decision of the Board of Supervisors made herein; and

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the Clerk of the Board to record, at the direction of County Counsel, any document necessary to effectuate the decision of the Board of Supervisors made herein;

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other materials which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the Office of the Clerk of the Board, 575 Administration Drive, Suite 100-A, Santa Rosa, California, 95403.

SUPERVISORS VOTE:

Brown: Kerns: Zane: Carrillo: Kelley:

Ayes: Noes: Absent: Abstain:

SO ORDERED.

Background information is on file at:

County of Sonoma Board of Supervisors Office
575 Administration Drive, Room 100A
Santa Rosa, CA 95403

It can be viewed and/or copies requested during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Call (707) 565-2241 for more information.