

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 05/12/2009 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:



Resolution No. 2009/94

SUBJECT: LAND CONSERVATION CONTRACT NO. 08-0005 , AGRICULTURAL PRESERVE NO. 13-77, ASSESSOR'S PARCEL NO. 001-041-060 , JO ANN G. CASPAR, TRUSTEE CASPAR MARITAL TRUST DATED DECEMBER 15, 1986 (OWNER)

The Board of Supervisors of Contra Costa County RESOLVES that:

1. Parties. BY THIS CONTRACT, made and entered into May 12, 2009, Jo Ann G. Caspar, Trustee Caspar Marital Trust Dated December 15, 1986, hereinafter referred to as "Owner," and the County of Contra Costa, a political subdivision of the State of California, hereinafter referred to as "County," do mutually agree and promise as follows:
2. Property Description. Owner possesses certain real property located within the County, which property is presently devoted to agricultural and compatible uses and is particularly described in Exhibit A, attached hereto and made a part of this contract.
3. Purpose. Both Owner and County desire to limit the use of said property to agricultural uses and to compatible uses specified in this agreement in order to discourage premature and unnecessary conversion of such lands from agricultural uses, recognizing that such land has definite public value as open space and that the preservation of such land in agricultural production constitutes an important physical, social, aesthetics and economic asset to County to maintain the agricultural economy of County and the State of California.

Contact: John Osborne, 335-1207

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 12, 2009

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc: CAO, County Counsel, CA Dept. of Conservation, Assessor, Owner/Caspar, Department of Conservation & Development

4. Intent of Parties: Enforceable Restriction. Both Owner and County intend that the term, conditions and restrictions of this Contract be in accordance with the California Land Conservation Act of 1965, as amended, so as to be an enforceable restriction under the provisions of Division 1, Part 2, Chapter 3, Article 1.5 of the California Revenue and Taxation Code (Rev. & Tax Code § 421 et. seq.).

5. Intent of Parties: Effect on Property Value. It is the intent of the County and Owner that this Contract is conditioned upon the continued existence of legislation implementing Article XIII, § 8 of the California Constitution so the effect of the terms, conditions and restrictions of the Contract on property values for taxation purposes is substantially as favorable to Owner as the legislation existing on the last renewal date.

6. Governing Statutes and Ordinances. This Contract is made and entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code commencing with Section 51200). This Contract further is made pursuant to and subject to Contra Costa County Ordinance Code, Chapter 84-42 and Chapters 810-2 through 810-4, and Resolutions of the Contra Costa County Board of Supervisors Numbers 68-635 and 69-763.

7. Land Use Restrictions. During the term of this Contract or any renewals thereof, the above described land shall not be used for any purpose, other than the production of food and fiber and compatible uses as listed in Contra Costa County Ordinance Code Chapter 84-42, which is hereby incorporated by reference as if fully set forth herein; provided, however, that such additional agricultural or compatible uses as are set forth in Exhibit B, which is attached hereto and is hereby incorporated by reference, shall also be permitted subject to the terms and conditions set forth herein. In case of conflict or inconsistency between the uses allowed in this Contract and those specified in said zoning ordinance, the provisions of the Contract as set forth in Exhibit B shall prevail.

8. Modification of Restrictions. The Board of Supervisors of County may from time to time and during the term of this Contract or any extensions thereof, by amendment to Contra Costa County Ordinance Code Chapter 84-42, add to those uses listed in said ordinance. Such additional uses shall be limited to commercial agriculture and compatible uses and be subject to the density restrictions of Government Code § 51220.5. Said board shall not eliminate, without written consent of the Owner or his successors or assigns, a compatible use during the term of this Contract or any renewals thereof.

9. Term and Renewal. This Contract shall be effective commencing on the last day of May, 2009, and shall remain in effect for a period of ten (10) years therefrom.

This Contract shall be automatically renewed and its terms extended for a period of one (1) year on the last day of May of each succeeding year during the term hereof, unless notice of non-renewal is given in the manner provided by section 51245 of the Government Code. At all times during the continuance of this Contract, as from time to time renewed, there shall be a ten (10) year term of restriction unless notice of non-renewal is given in the manner provided by Section 51245 of the Government Code. Under no circumstances shall a notice of renewal be required of either party to effectuate the automatic renewal of this paragraph.

10. Cancellation. (a) Except as provided in Section 11, the provisions of this Contract whereby Owner agrees to restrict the use of the land described in Paragraph 2 may be canceled as to all or a portion of said land by mutual agreement of the County and Owner after a public hearing has been held in the manner provided by Section 51284 of the Government Code and upon a finding by the Board of Supervisors that such cancellation is not inconsistent with the purposes of the Land Conservation Act, or in the public interest, pursuant to Government Code Section 51282. It is understood by the parties that the existence of an opportunity for another use of said land shall not be sufficient reason for cancellation of the land use restrictions imposed herein and that the uneconomic character of the existing use will be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(b) Upon cancellation of said portions of this Contract, Owner shall pay to the County Treasurer, as deferred taxes, a cancellation fee in an amount equal to the greater of twelve and one-half (12 ½%) percent or the current fee provided by state law of the cancellation value of the property being released from the terms of this Contract. Said cancellation value shall be determined in accordance with the provisions of Government Code Section 51283 (a) and (b). Under no circumstances shall the payment of said cancellation fee be waived, deferred, or made subject to any contingency whatever.

(c) Final cancellation shall be effectuated in accordance with the provisions of Government Code Section 51283.4.

11. Cancellation Upon Substitution of New Restrictions. This Contract may be canceled by mutual agreement of County and Owner without payment of deferred taxes or public hearing if it is replaced by an enforceable restriction authorized by Article XIII, § 8 of the California Constitution.

12. Eminent Domain Proceedings. (a) In accordance with the provisions of Government Code Section 51295, incorporated by reference herein, upon the filing of any action in eminent domain for the condemnation of the fee title of the land or any portion thereof subject to this Contract or upon acquisition of such land in lieu of eminent domain by public agency for a public improvement, the provisions of this Contract shall be null and void as to the land so condemned or acquired.

(b) If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned as to all or a portion of the land subject to the Contract, the restrictions on land use set forth in this Contract shall, without further agreement of the parties

herein, be reinstated and the terms of this contract shall be in full force and effect, subject to the cancellation provisions of Government Code Section 51295.

13. Remedies for Breach of Contract. (a) In the event that Owner fails to comply with the terms and conditions of this Contract and the effect of said breach is to render the use of land or a substantial portion thereof unfit for agricultural use, thereby negating the purpose and effect of this Contract, Owner shall pay to the County a sum equal to One Hundred Per Cent (100%) of the equalized assessed value of the real property described in Exhibit A, as established by the County Assessor on the lien date next following the date of breach, as liquidated and agreed damages, it having been agreed that actual damages will be impractical and extremely difficult to ascertain and that said measure of damages is a reasonable measure of the harm which would result from such failure of compliance. If, after the date the Contract was initially entered into, the publicly announced county ratio of assessment to full cash value is changed, the percentage payment in this subdivision shall be changed so no greater percentage of full cash value will be paid than would have been paid had there been no change of ratio.

(b) It is understood that nothing herein contained shall constitute a waiver of any right which the County may now or in the future have to seek specific performance of this Contract or other injunctive relief. The enforcement provisions of the Contra Costa County zoning ordinance shall also apply if the land which is the subject of this contract is used for purposes other than those provided in Ordinance Code Chapter 84-42 or this Contract.

14. Effect of Division of Property. Owner agrees that division of the property described in Exhibit A into two (2) or more parcels, whether by sale, gift, by operation of law or by any other means, upon a finding by the Board of Supervisors that said division is detrimental to the ultimate preservation of said property for exclusive agricultural use, be construed by the County as notice of non-renewal by the property owner as provided in Section 9 of this Contract.

15. New Contracts Upon Division. In the event the land under this Contract is divided, a Contract identical to the Contract then covering the original parcel shall be executed by Owner on each parcel created by the division at the time of the division. Any agency making an order of division or the County which has jurisdiction shall require, as a condition of the approval of the division, the execution of the Contracts provided for in this section, provided, however, that failure of Owner to execute Contracts upon division shall not affect the obligations of the heirs, successors and assigns of Owner as established in Section 16.

16. Contract to Run with Land. The within Contract shall run with the land described herein, and upon division, to all parcels created therefrom, and shall be binding upon the heirs, successors, and assigns of the Owner.

17. Consideration. Owner shall not receive any payment from County in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of the within Contract is the substantial public benefit to be derived therefrom and the advantage which will accrue to Owner as a result of the effect on the method of determining the assessed value of land described herein and any reduction therein due to the imposition of the limitations on its use contained herein.

18. Income and Expense Information. The Owner shall annually furnish the County Assessor with such information as the Assessor may require to determine the valuation of the Owner's land.

19. Effect of Removing Preserve or Zoning Classification. Removal of any land under this Contract from an agricultural preserve or removing the agricultural preserve zoning classification thereof shall be the equivalent of notice of non-renewal by the County for purposes of Section 422 of the Revenue and Taxation Code.

ATTEST: COUNTY OF CONTRA COSTA

By: _____ Chair, Board of Supervisors

DAVID TWA, County Administrator and Clerk of the Board of Supervisors

By: _____ Deputy Clerk

OWNER

By: _____ Jo Ann G. Caspar, Trustee Caspar Marital Trust Dated December 15, 1986

We the undersigned trust deed or other encumbrance holders do hereby agree to and agree to be bound by the above-imposed restrictions.

FLCA American Agcredit, FLCA

Approved as to Form:

Silvano B. Marchesi, County Counsel

By: _____ Deputy County Counsel

NOTE: All signatures for Owner must be acknowledged.

CONTRA COSTA COUNTY LAND CONSERVATION CONTRACT NO. AP08-0005

EXHIBIT A

PROPERTY DESCRIPTION

Pursuant to Paragraph 2 of the Land Conservation Contract to which this exhibit is attached, the land described below is designated as the subject of said Contract. Said land is described as follows: That real property located in the County of Contra Costa, State of California, more particularly described as follows:

PARCEL ONE:

Lot 6 of Subdivision 7535, filed March 26, 2003, 10 Map Book 452 at Page 26, Contra Costa County Records.

PARCEL TWO:

A 30-foot wide non-exclusive access easement, as an appurtenance to parcel one, being a portion of the north half of Section 36 and a portion of the south half of section 25, both of Township 1 South, Range 3 East, Mt. Diablo Base and Meridian, lying 15 feet on each side of the following described center line.

Commencing at the northeast corner of Section 36 thence leaving said point of commencement along the northerly line of said Section 36 north 89 degrees 07' 01" west, 20.00 feet to the point of beginning, thence leaving said point of beginning north 00 degree 07' 01" west, 2,416.78 feet, thence north 85 degrees 39' 56" west, 50.00 feet, thence north 89 degrees 07' 01" west, 1,963.60 feet, thence following a tangent curve to the left having a radius of 200.00 feet, through a central angle of 18 degrees 11' 42" for an arc length of 63.51 feet to a point of reverse curvature, thence following a tangent curve to the right having a radius of 200.00 feet through a central angle of 18 degrees 11' 42" for an arc length of 63.51 feet to a point tangent, thence tangent to the last course north 89 degrees 07' 01" west 689.46 feet to the point of termination of the herein-described easement, said point also lies on the westerly line of said Section 36, and is a distance of 16.99 feet from the northwest corner of said Section 36.

The sidelines of said 30-foot wide easement to be lengthened or shortened to extend to the westerly line of said Section 36.

PARCEL THREE:

A 30 foot emergency and utility access easement, as an appurtenance to parcel one, being a portion of the east one-half of Section 25, Township 1 South, Range 3 East, Mt. Diablo Base and Meridian, further described as follows:

Commencing at the southeast corner of said Section 25.

Thence leaving said point of commencement along the southerly line of said Section 25 north 89 degrees 07' 01" west, 20.00 feet to the point of beginning, said point of beginning being the southwesterly corner of the parcel map recorded October 29, 1991, Book 155 of Parcel Maps, Page 21, Contra Costa County Records.

Thence leaving said point of beginning and along the westerly boundary line of said parcel map, north 0 degree 51' 13" east, 106.91 feet, thence north 7 degrees 25' 24" west, 2,292.00 feet to the southwesterly corner of the parcel of land described in the deed to Standard Oil Company of California, a Delaware Corporation, recorded September 25, 1964, Book 4710, Page 204, official records.

Thence leaving said westerly boundary of said parcel map and along the westerly boundary line of said parcel (4710 or 204) and the northerly prolongation thereof north 0 degree 31' 20" east, 757.45 feet to a point on the southwesterly boundary line of Byron Highway as created in the deed to the Board of Supervisors of the County of Contra Costa, recorded May 4, 1887, Book 51 of Deeds, Page 348.

Thence following said southwesterly line north 51 degrees 14' 44" west, 38.02 feet, thence leaving said southwesterly line of said Byron Highway, south 0 degree 51' 20" west, 782.97 feet, thence south 7 degrees 25' 24" east, 2,292.00 feet, thence south 0 degree 51' 13" west, 104.72 feet to a point on said southerly line of said Section 25, thence following said southerly line south 89 degrees 07' 01" east, 30.00 feet to said point of beginning.

PARCEL FOUR:

A non-exclusive easement for private access and utilities, private irrigation and public utilities as shown on the map of Subdivision 7535, filed March 26, 2003 in Map Book 452 at Page 26.

A.P.N. 001-041-060

LAND CONSERVATION CONTRACT NO. 08-0005, AGRICULTURAL PRESERVE NO.13-77 ASSESSOR PARCEL NO.

EXHIBIT B

ALLOWABLE LAND USES

Pursuant to the provisions of Section 84-42.402 (2) of the Contra Costa County Ordinance Code and Paragraph 7 of the Land Conservation Contract, of which this exhibit is made a part, the land uses and structures described below are authorized without a land use permit subject to the terms and conditions set forth below. Said uses and structures shall be in conformance to those authorized by Section 84-42.402 (1) and Section 84-42.404 but shall be subject to Section 84-42.602 through Section 84-42.1402.404 of Chapter 84-42 of the County Ordinance Code.

1. Existing Non-conforming Structures

The following non-conforming structures are permitted subject to the provisions of County Ordinance Code Chapter 82-8:

None.

2. Existing Conforming Structures

None.

3. Proposed Structures

Single-family residence and 5,000 square foot agricultural building.

4. Existing Land Use

Field Crops.

5. Proposed Land Use

Field Crops.

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