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A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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Agenda Item 10(a)  
SMMC  
8/28/17

WRITER'S DIRECT LINE

OUR FILE NUMBER

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jrubens@smrh.com

GRV-43836

September 21, 1999

Laurie C. Collins, Esq.  
Staff Counsel  
Santa Monica Mountains Conservancy  
Streisand Center for Conservancy Studies  
3750 Ramirez Canyon Road  
Malibu, California 90265

Re: Rescission, Waiver and Consent Agreement

Dear Laurie:

Enclosed for the Conservancy's records is a fully-executed original of the Rescission, Waiver and Consent Agreement.

Very truly yours,



Jack H. Rubens

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

LA:LRELETGRV70067686.1

Enclosure

cc: Mr. John E. Boething (w/o encl.)

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## RESCISSION, WAIVER AND CONSENT AGREEMENT

This Rescission, Waiver and Consent Agreement ("Agreement"), dated as of August 26, 1999, is entered into by and between the SANTA MONICA MOUNTAINS CONSERVANCY, an agency of the State of California (the "Conservancy"), and BOETHING TREELAND FARMS, INC., a California corporation ("Boething"), with reference to the following facts:

### RECITALS

A. Boething operates a nursery on approximately 32 acres of property located at 23475 Long Valley Road in Woodland Hills, California, as generally shown on Exhibit "A" attached hereto (the "Boething Property"). The California Department of Transportation ("Caltrans") owns an irregular-shaped 2.49-acre parcel located adjacent to the Boething Property at the northwest corner of Valley Circle Boulevard and Long Valley Road, as more particularly shown on Exhibit "A" attached hereto (the "Caltrans Property").

B. The Caltrans Property consists of two distinct parcels. The southerly portion of the Caltrans Property includes approximately 1.34 acres and is commonly known as the "Mitigation Parcel", as more particularly shown on Exhibit "A". The northerly portion of the Caltrans Property includes approximately 1.15 acres and is commonly known as the "Excess Parcel", as more particularly shown on Exhibit "A".

C. In connection with the reconstruction of the Valley Circle Boulevard/Mulholland Drive Interchange (the "Interchange"), Caltrans and the California Department of Fish and Game ("CDFG") entered into that certain Streambed Alteration Agreement 5-386-92 (the "Streambed Alteration Agreement") dated August 21, 1992. Pursuant to Condition No. 5 in the Streambed Alteration Agreement, Caltrans was required to provide 0.92 acres of riparian habitat to mitigate the permanent loss of 0.23 acres of riparian habitat resulting from the reconstruction of the Interchange. Caltrans has agreed to satisfy that requirement by revegetating the Mitigation Parcel and transferring ownership thereof to the designated agent of CDFG.

D. Caltrans has previously designated the Excess Parcel as excess land and has commenced its internal process for the sale of the Excess Parcel.

E. On November 21, 1994, the Conservancy adopted Resolution No. 94-111 ("Resolution 94-111"), pursuant to which the Conservancy agreed to accept ownership of the Mitigation Parcel from Caltrans. On March 17, 1997, the Conservancy considered a request by Boething to rescind Resolution 94-111 and waive any right of first refusal it possessed to acquire all or any portion of the Caltrans Property. On that date, the Conservancy elected to continue its consideration of Boething's request. In a letter dated September 10, 1998 and addressed to several parties, Joseph Edmiston ("Edmiston"), the Executive Director of the Conservancy, stated that the Conservancy had given notice to Caltrans of its intent to acquire the Caltrans Property. In a subsequent letter dated September 28, 1998 from Edmiston to Tony Harris, the then District Director of Caltrans, District 7, the Conservancy clarified that (i) the Conservancy fully understood that the Caltrans Property does not include the slope areas adjacent to Valley Circle Boulevard and Long Valley Road that will be relinquished to the City of Los Angeles for streets and an equestrian trail, (ii) the Conservancy intended to acquire the Excess Parcel pursuant to its right of first refusal set forth in Section 33207(b) of the California Public Resources Code and (iii) the Conservancy reaffirmed its willingness to accept the Mitigation Parcel in accordance with Resolution 94-111.

F. The Conservancy desires to rescind Resolution 94-111, waive any and all rights the Conservancy may have to acquire all or any portion of the Caltrans Property and consent to the transfer of the Caltrans Property to Boething, all in accordance with, and subject to the terms and conditions set forth in, this Agreement. Boething desires to compensate the Conservancy for the Conservancy's relinquishment of all of its rights with respect to the Caltrans Property in accordance with, and subject to the terms and conditions set forth in, this Agreement.

G. The Conservancy desires to assign to the Mountains Recreation and Conservation Authority, a joint exercise of powers entity established pursuant to California Government Code Section 6500 et seq. ("MRCA"), all of its rights and benefits under Section 2, below.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Conservancy and Boething hereby agree as follows:

## AGREEMENT

1. Rescission, Waiver and Consent. Upon and subject to the terms and conditions set forth in this Agreement, the Conservancy hereby agrees to (a) rescind

Resolution 94-111, (b) waive and release any and all rights which the Conservancy ever had, now has or may have in the future to acquire ownership of all or any portion of the Caltrans Property, including without limitation any existing or future right by the Conservancy to acquire all or any portion of the Caltrans Property pursuant to Section 33207 of the California Public Resources Code, any other provision in the Santa Monica Mountains Conservancy Act (California Public Resources Code §§ 33000 et seq.), or any other federal, state or local law, ordinance, rule, regulation, policy or order (collectively, "Laws"), and (c) consent to any sale of the Excess Parcel and transfer of the Mitigation Parcel to Boething or any related or affiliated individual or entity ("Boething Party").

2. Consideration by Boething. Upon and subject to the terms and conditions set forth in this Agreement, Boething hereby agrees as follows:

2.1 Monetary Payment. On or before the date on which Caltrans transfers fee title to the Excess Parcel and Mitigation Parcel to Boething and/or a Boething Party (the "Parcels Transfer Date"), Boething shall pay to the Conservancy the sum of Twenty-Five Thousand and No/100ths Dollars (\$25,000.00) (the "Boething Payment").

2.2 Plant Materials. For a period of five (5) years following the Parcels Transfer Date, Boething shall provide to the Conservancy trees and other plant materials with an aggregate wholesale catalog value of not more than Fifteen Thousand and No/100ths Dollars (\$15,000.00) for use on Conservancy improvement and restoration projects (collectively, the "Plant Materials"). The Conservancy shall have the right to request Plant Materials at any time during such five (5)-year period in increments of not less than One Thousand and No/100ths Dollars (\$1,000.00). The dollar value of any requested Plant Materials shall be based on Boething's wholesale catalog value of such Plant Materials on the applicable date of request. Boething shall deliver the requested Plant Materials at no charge to the Conservancy, provided that (a) the delivery location is in Los Angeles or Ventura County and (b) the wholesale catalog value of such Plant Materials is not less than Three Thousand and No/100ths Dollars (\$3,000.00).

3. Escrow. In the event that Caltrans agrees to sell the Excess Parcel and transfer ownership of the Mitigation Parcel to Boething (and/or a Boething Party), it is anticipated that Caltrans and Boething (and/or the applicable Boething Party) will open an escrow (the "Escrow") in connection with such sale and transfer. Prior to the closing of the Escrow (the "Closing"), (a) the Conservancy shall deliver into the Escrow (i) a true and complete copy of a resolution, in the form attached hereto as Exhibit "B", duly adopted by the Conservancy and so certified by the Executive Director of the Conservancy (the "Conservancy Resolution"), pursuant to which the

Conservancy grants the rescission and consent described in Section 1, above, and authorizes the Executive Director of the Conservancy to prepare and sign the Conservancy Waiver Letter (as defined below), and (ii) two (2) duplicate originals of a letter (the "Conservancy Waiver Letter") from the Executive Director of the Conservancy to Boething and Treeland, in the form attached hereto as Exhibit "C", duly approved by the Conservancy pursuant to the Conservancy Resolution, pursuant to which the Conservancy grants the waiver described in Section 1, above, and (b) Boething shall deliver into the Escrow the Boething Payment. The Conservancy and Boething hereby agree to execute such additional instructions not inconsistent with this Agreement as may be reasonably required by the escrow company through which the Escrow is established (the "Escrow Holder"). Prior to the Closing, Boething and the Conservancy shall instruct Escrow Holder that, following the Closing, Escrow Holder shall (i) deliver a true and complete copy of the Conservancy Resolution to Boething, (ii) deliver the duplicate originals of the Conservancy Waiver Letter to Boething and Caltrans, respectively, and (iii) deliver the Boething Payment to the Conservancy to their respective addresses and in the manner requested by Boething and the Conservancy, respectively.

4. Conservancy Conditions. The following shall constitute conditions to the obligations of the Conservancy under this Agreement:

4.1 Performance. Boething shall have timely performed all of its covenants and obligations under this Agreement required to be performed and complied with by Boething on or before the Closing.

4.2 Delivery of Boething Payment. On or before the Closing, Boething shall have deposited into Escrow the Boething Payment.

4.3 Excess Parcel Restriction. Prior to the Closing, the Conservancy shall have received reasonably satisfactory evidence that the construction of any buildings on the Excess Parcel will be prohibited as of the Closing.

4.4 Pedestrian/Equestrian Trail Easement. Prior to the Closing, the Conservancy shall have received reasonably satisfactory evidence that Boething with the applicable Boething Party has granted an easement to the City of Los Angeles as necessary to provide the land necessary to complete an equestrian/pedestrian trail from the entrance to the City of Hidden Hills to Valley Circle Boulevard, and that such easement will be recorded at the Closing.

4.5 Approval or Waiver of Conditions. In the event of the nonsatisfaction of any of the conditions contained in Sections 4.1 through 4.4, above, the Conservancy shall have the right to terminate this Agreement by written notice to

Boething, provided that, if such conditions are subsequently satisfied prior to the exercise of such termination right, the Conservancy shall have no further right to terminate this Agreement pursuant to this Section 4.5.

5. Boething Conditions. The following shall constitute conditions to the obligations of Boething under this Agreement:

5.1 Performance. The Conservancy shall have timely performed all of its covenants and obligations under this Agreement required to be performed and complied with by the Conservancy on or before the Closing.

5.2 Delivery of Conservancy Resolution and Waiver. The Conservancy shall have delivered into Escrow a true and complete copy of the Conservancy Resolution and the original Conservancy Waiver.

5.3 Transfer of Mitigation and Excess Parcels. Caltrans shall have recorded, or caused to be recorded, a deed or deeds transferring fee title to the Excess Parcel and Mitigation Parcel to Boething or a Boething Party, on terms and conditions acceptable to Boething in its sole and absolute discretion.

5.4 Approval or Waiver of Conditions. In the event of the nonsatisfaction of any of the conditions contained in Sections 5.1 through 5.3, above, Boething shall have the right to terminate this Agreement by written notice to the Conservancy, provided that, if such conditions are subsequently satisfied prior to the exercise of such termination right, Boething shall have no further right to terminate this Agreement pursuant to this Section 5.4.

6. Enforcement. Each party hereto shall have all of its rights and remedies at law and in equity with respect to any violation of any of the provisions of this Agreement by the other party. Without limiting the generality of the foregoing, (a) Boething shall have the right to seek specific performance of the Conservancy's obligations under this Agreement and (b) MRCA shall have the right, as assignee of the Conservancy with respect to the rights and benefits under Section 2, above, to exercise all of its rights and remedies at law and in equity with respect to Boething's breach of its obligations under Section 2, above. The parties' rights and remedies hereunder shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which either party hereto might otherwise have by virtue of a default of the other under this Agreement, and the exercise of one such right or remedy by such party shall not impair such party's standing to exercise any other right or remedy.

7. Miscellaneous.

7.1 Notices. All approvals, disapprovals, demands and/or notices, requests, demands and other communications given, or required to be given under this Agreement, shall be in writing, duly addressed to the parties as follows:

If to Conservancy: Santa Monica Mountains Conservancy  
Streisand Center for Conservancy Studies  
5750 Ramirez Canyon Road  
Malibu, California 90265  
Attention: Mr. Joseph T. Edmiston,  
Executive Director  
Fax No.: (310) 589-3207

with a copy to: Santa Monica Mountains Conservancy  
Streisand Center for Conservancy Studies  
5750 Ramirez Canyon Road  
Malibu, California 90265  
Attention: Laurie C. Collins, Esq.,  
Staff Counsel  
Fax No.: (310) 589-3207

If to Boething: Boething Treeland Farms, Inc.  
23475 Long Valley Road  
Woodland Hills, California 91367  
Attention: Mr. John E. Boething,  
President  
Fax No.: (818) 592-4972

with a copy to: Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 48th Floor  
Los Angeles, California 90071  
Attention: Jack H. Rubens, Esq.  
Fax No.: (213) 620-1398

Any notices properly addressed, sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after they are deposited in the United States mail, postage prepaid. Notices shall be deemed delivered and received at the time delivered if properly addressed and delivered to the addresses set forth in this Section during normal business hours or personally delivered to the person to whose attention they are addressed or sent by confirmed telecopy to a party's regular business telecopier during regular business

hours. Notice sent by any other manner shall be effective upon actual receipt of the addressee. Any party may change its address for purposes of this Section by giving notice to the other party as provided in this Section.

7.2 Integration. This Agreement constitutes the entire agreement of the parties and supersedes all prior and contemporaneous negotiations, understandings and agreements of the parties with respect to the subject matter hereof.

7.3 No Third Party Benefitted. This Agreement is not intended, nor shall it be construed to create, any third-party beneficiary rights in any person or entity.

7.4 Successors and Assigns. The Conservancy shall have the right to assign to MRCA all of its rights and benefits under Section 2, above, provided that MRCA assumes all such benefits in writing and the Conservancy provides a copy of such fully-executed assignment and assumption to Boething prior to the Closing. The Conservancy shall have no right to assign any of its rights or obligations under this Agreement, except as provided in the preceding sentence. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

7.5 Amendment; Modification. No change or modification of the terms or provisions of this Agreement shall be deemed valid unless in writing and signed by both parties.

7.6 Further Assurances. Each party hereto shall execute, acknowledge and deliver to each other party all documents, and shall take all actions, reasonably required by such other party from time to time to confirm or effect the matter set forth herein, or otherwise to carry out the purposes of this Agreement.

7.7 Time of Essence. Time is of the essence with respect to the performance of each of the covenants, conditions and agreements contained in this Agreement.

7.8 Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of California.

7.9 Waiver. No waiver of any breach or default shall be construed as a continuing waiver of any provision or as a waiver of any other or subsequent breach of any provision contained in this Agreement.



7.10 Headings. The headings of Sections of this Agreement have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of this Agreement.

7.11 Attorneys' Fees. In the event of any action or proceeding to enforce or construe any of the provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover, in addition to such other relief as may be granted, its reasonable costs and expenses, including without limitation reasonable attorneys' fees and court costs, whether or not taxable, as awarded by a court of competent jurisdiction.

7.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

7.13 Incorporation of Exhibits. The Exhibits hereto are all deemed incorporated by reference into the body of this Agreement as though set forth in full.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

"Conservancy":

SANTA MONICA MOUNTAINS  
CONSERVANCY, an agency of the State of  
California

By 

Joseph T. Edmiston,  
Executive Director

"Boething":

BOETHING TREELAND FARMS, INC.,  
a California corporation

By 

John E. Boething,  
President

EXHIBIT "A"

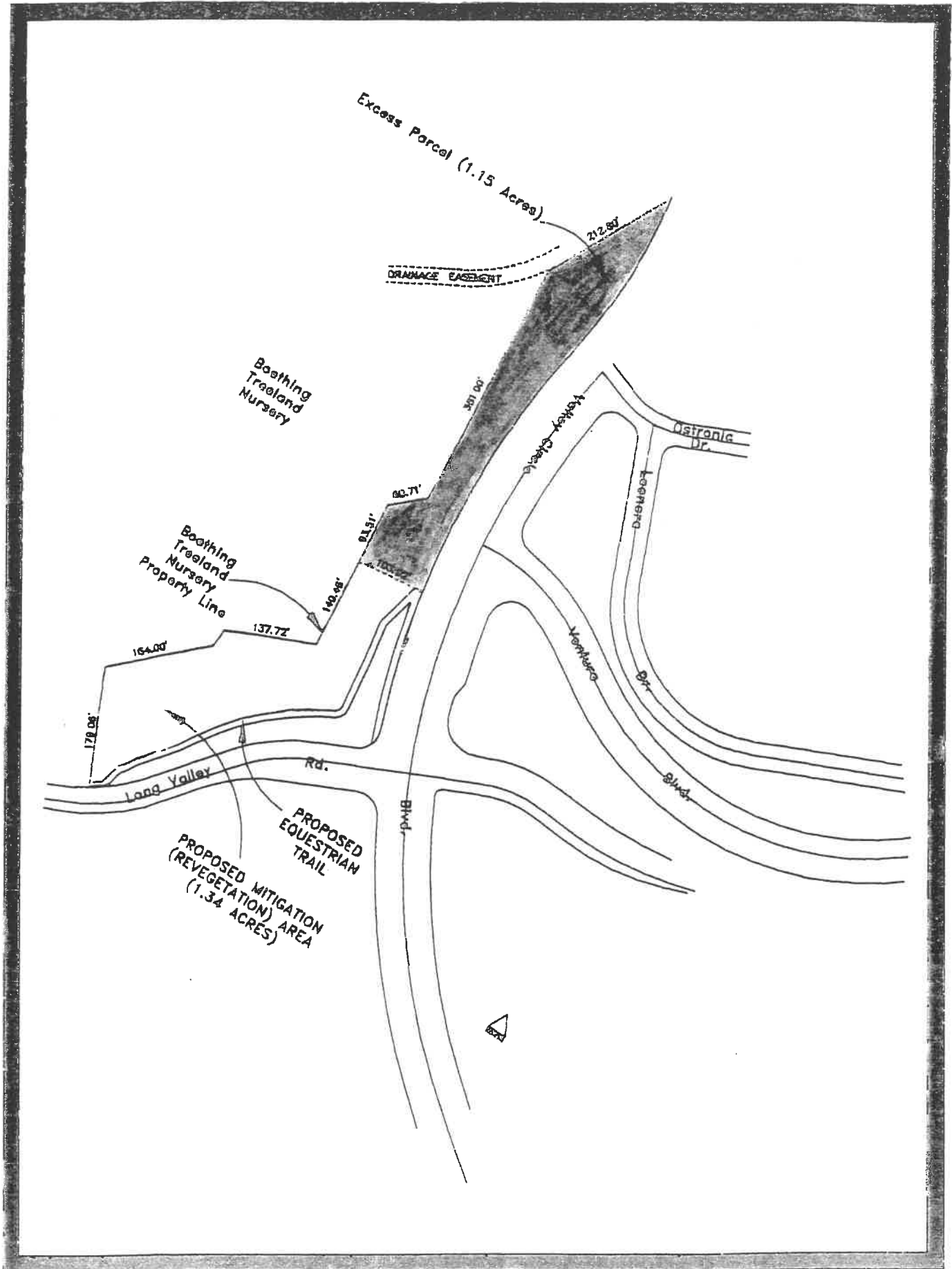


EXHIBIT "B"

CONSERVANCY RESOLUTION

August 26, 1999; Agenda Item No. 21

Resolution No. 99-95

RESOLUTION OF THE SANTA MONICA MOUNTAINS CONSERVANCY AUTHORIZING  
(1) AN AGREEMENT WITH BOETHING TREELAND FARMS, INC. REGARDING  
CALTRANS PARCELS; (2) RESCINDING RESOLUTION NO. 94-111 AND  
WAIVING ALL RIGHTS TO ACQUIRE THE CALTRANS PARCELS UPON  
CONDITION THAT CALTRANS PARCELS ARE SOLD TO BOETHING  
TREELAND FARMS; AND (3) AUTHORIZING THE MOUNTAINS  
RECREATION AND CONSERVATION AUTHORITY TO  
BE THE CONSERVANCY'S DESIGNEE UNDER SAID  
AGREEMENT, CITY OF LOS ANGELES

WHEREAS, The Conservancy previously adopted Resolution No. 94-111 to exercise its first right of refusal pursuant to Section 33207(b) of the Public Resources Code to acquire Caltrans property located at the northwest corner of Long Valley Road and Valley Circle Boulevard (Caltrans Parcels), the northerly parcel being commonly known as the "Excess Parcel" and the southerly parcel being commonly known as the "Mitigation Parcel"; and

WHEREAS, The California Department of Fish and Game (CDFG) required Caltrans to revegetate and subsequently transfer ownership of Mitigation Parcel to its designee, subject to the recordation of a conservation easement in favor of CDFG; and

WHEREAS, The Conservancy also has the first right of refusal to acquire the Excess Parcel which Caltrans has designated as excess land; and

WHEREAS, An agreement (Boething Agreement) has been reached with Boething Treeland Farms, Inc. (Boething) pursuant to which the Conservancy agrees to rescind Resolution No. 94-111 and waive any rights it possesses to acquire ownership of the Caltrans Parcels upon the condition that Boething acquires ownership of both the Mitigation Parcel and Excess Parcel from Caltrans; and

WHEREAS, The Boething Agreement provides the Conservancy with compensation for other parkland purposes; and

WHEREAS, The staff report further describes the Caltrans Parcels and proposed actions; Now

*Therefore Be It Resolved*, That the Santa Monica Mountain Conservancy hereby:

1. FINDS that the proposed actions are consistent with the Santa Monica Mountains Comprehensive Plan.

2. FINDS that the proposed actions are categorically exempt from the provisions of the California Environmental Quality Act.
3. RESCINDS Resolution No. 94-111 upon the condition that Caltrans transfers ownership of both the Mitigation Parcel and Excess Parcel to Boething.
4. AUTHORIZES execution of the Boething Agreement.
5. WAIVES AND RELEASES any and all rights to acquire ownership of all or any portion of the Caltrans Parcels, which waiver and release is more specifically set forth in the Boething Agreement.
6. AUTHORIZES the Mountains Recreation and Conservation Authority to be the Conservancy's assignee of the rights and benefits set forth in Section 2 of the Boething Agreement.
7. ADOPTS the staff report and recommendation dated August 26, 1999.
8. AUTHORIZES the Executive Director to do any and all acts necessary to carry out this resolution.

*~ End of Resolution ~*

I HEREBY CERTIFY that the foregoing resolution was adopted at a regular meeting, duly noticed and held according to law, of the Santa Monica Mountains Conservancy held on the 26<sup>th</sup> day of August, 1999.

Dated: August \_\_\_\_, 1999

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Executive Director

EXHIBIT "C"

CONSERVANCY WAIVER LETTER

[ADD DATE]

Boething Treeland Farms, Inc.  
23475 Long Valley Road  
Woodland Hills, California 91367  
Attention: John Boething,  
President

California Department of Transportation  
120 South Spring Street, Room 400  
Los Angeles, California 90012  
Attention: Mr. Robert W. Sassaman,  
Acting District Director

Re: Caltrans Property at Northwest Corner of Long Valley  
Road and Valley Circle Boulevard - Waiver and Release

In previous correspondence to Caltrans, the Santa Monica Mountains Conservancy (the "Conservancy") advised Caltrans of the exercise of its right of first refusal pursuant to Section 33207(b) of the California Public Resources Code to acquire a parcel of excess land located at the northwest corner of Long Valley Road and Valley Circle Boulevard in Woodland Hills, which is commonly known as the "Excess Parcel" and is more particularly shown on Exhibit "A" attached hereto. The Conservancy may also have certain rights to acquire another parcel of land located at the northwesterly corner of Long Valley Road and Valley Circle Boulevard, which is commonly known as the "Mitigation Parcel" and is more particularly shown on Exhibit "A".

Notwithstanding any prior correspondence or statements by the Conservancy, the Conservancy hereby waives and releases any and all rights which the Conservancy ever had, now has or may have in the future to acquire ownership of all or any portion of the Excess Parcel or Mitigation Parcel, including without limitation any existing or future right by the Conservancy to acquire all or any portion of the Excess Parcel or Mitigation Parcel pursuant to Section 33207 of the California Public Resources Code, any other provision in the Santa Monica Mountains Conservancy Act

(California Public Resources Code §§ 33000 et seq.), or any other federal, state or local law, ordinance, rule, regulation, policy or order.

Sincerely,

SANTA MONICA MOUNTAINS CONSERVANCY

By \_\_\_\_\_  
Joseph T. Edmiston,  
Executive Director

LA:LRE\OTHER\GRV\70056699.2