

Memorandum

To : The Conservancy
The Advisory Committee

Date: August 31, 2020

From :  Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Director

Subject: **Agenda Item 11: Consideration of resolution authorizing submission of an amicus brief in the case of *Sonoma Land Trust v. Thompson*.**

Staff Recommendation: That the Conservancy adopt the attached resolution recommending authorizing submission of an amicus brief in the case of *Sonoma Land Trust v. Thompson*.

Legislative Authority: Public Resources Code Sec. 33211.

Background: Sonoma Land Trust (“Trust”) is a non-profit organization that brought an action in the Sonoma County Superior Court to enforce the terms of a conservation easement against defendants Peter Thompson, Toni Thompson, and Henstooth Ranch, a limited liability company the Thompsons control (“Defendants”).

At all relevant times, the Trust held (and still holds) a conservation easement that protects and restricts activities on land owned by Defendants. The easement permanently protects the natural, open space, ecological, and scenic values of the property. To this end, the easement prohibits many activities, including building roads, cutting vegetation, grading or recontouring soils, dumping waste, altering drainage, and planting new vegetation.

Despite these restrictions, in 2014, Defendants relocated three mature oak trees from the easement property to an adjoining property. All three trees died as a result of the relocation attempt. To move the trees, Defendants built a haul road, which resulted in the removal of approximately twelve additional trees. Defendants also removed sediments dredged from a pond and reseeded disturbed areas with an unknown seed mix. The Court found that Defendants violated the easement on numerous occasions over the course of more than a year.

After a bench trial in 2018, the Court entered judgment in favor of the Trust. The Defendants subsequently filed an appeal of the trial court ruling.

Conservancy’s Interest in Filing Amicus Brief

In the appeal, Defendants make arguments that, if accepted by the Court of Appeal, could hamper the ability of easement holders to enforce the terms of conservation easements. Noting

the threat posed by such an outcome, Conservancy staff was approached by the Office of the Attorney General with a request to sign onto an amicus brief alongside other conservancies and state conservation agencies. The amicus brief would refute Defendants' arguments to the contrary while emphasizing the importance and vitality of conservation easements.

First, Defendants downplay the importance of conservation easements. The Legislature, in creating conservation easements as a vehicle for environmental protection, found and declared that "the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California." (Civil Code, Sec. 815.) The brief will put conservation easements in context and emphasize in a practical, concrete manner the public interest in the enforcement of their terms.

Second, Defendants argue that the existence of a utility easement over a portion of the conservation easement area excuses violations of the conservation easement, an argument which threatens the integrity of conservation easements generally. The amicus brief would provide support for the trial court's ruling that as a matter of law, the holder of a utility easement cannot excuse the violation of the terms of a conservation easement by another person or entity. The amicus brief also may also address peripheral issues raised by the Defendant to excuse violations of the conservation easement.

The Conservancy is authorized to hold conservation easements pursuant to Public Resources Code, Sec. 33203 and to make grants to other entities to acquire and hold such easements (Pub. Resources Code, Sec. 33204 and 33204.2). The Mountains Recreation and Conservation Authority (MRCA) currently holds conservation easements over large areas of sensitive habitat and protected areas. A ruling from the Court of Appeal undercutting the ability of easement holders, including the Conservancy and MRCA, to enforce the terms of these easements would be severely detrimental to the ability of the Conservancy to carry out its mission and objectives.

While staff feels that the arguments in the present case against the enforcement of the clear terms of conservation easements should fail as a matter of law, it is strongly recommended that the Conservancy authorize signing onto the proposed amicus brief that will be submitted to the Court of Appeal by the Office of the Attorney General.