

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

San Benito County Resource Management Agency  
c/o Michael Kelly, Associate Planner  
2301 Technology Parkway  
Hollister, CA 95023

## DEED OF CONSERVATION EASEMENT

APN: 025-530-001

THIS DEED made this 20<sup>th</sup> day of August, 2021, by and between CARY ZINK ("**Landowner**"), his heirs, successors and assigns, and THE COUNTY OF SAN BENITO ("**Easement Holder**"), is for the purpose of protecting open space and preserving in perpetuity for its natural and ecological value, adjacent to Santa Ana Creek, and to serve as adequate biological mitigation for the larger Lemmon Acres subdivision approved in 1994 and the Lemmon Court Minor Subdivision (at 3030 Lemmon Court) approved in 2020.

### WHEREAS:

A. Landowner is the owner in fee of real property located in San Benito County, California, identified as APN 025-530-001, more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "**Property**"). "Property" shall be defined as the Proposed Conservation Easement on Parcels 1 and 2 as identified on the Parcel Map – Phase I, Book\_\_ of Parcel Maps, Page \_\_.

B. The protection of the natural, open space, and ecological features of the Property plays a part in the preservation of the ecological value along Santa Ana Creek and the surrounding area of San Benito County. San Benito County has recognized the importance of protecting natural, open spaces areas of ecological values in of San Benito County through the enactment and implementation of the Open Space Conservation and the Open Space and Wildlife Habitat Policies of the San Benito County General Plan. The San Benito County General Plan (2015) provides that its goals, among other things, are to conserve and enhance the natural resources in the County, and to preserve the diversity and extent of the County's native vegetation, wildlife and natural habitats for native plant and animal species.

C. Landowner and Easement Holder desire and intend to preserve and conserve for the public benefit in perpetuity the natural, open space, and ecological values of the Property

(collectively “**Conservation Values**”) by permitting only those land use patterns on the Property that will not interfere with or impair said values.

D. Landowner, as owner in fee of the Property and of the affirmative right to protect said Conservation Values, desires and intends to transfer the right to protect said values to the Easement Holder.

E. Easement Holder is the County of San Benito.

**NOW, THEREFORE**, in consideration of the facts recited above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to §§815 through and including §816 of the California Civil Code, Landowner hereby voluntarily grants and conveys to Easement Holder, its successors and assigns, a conservation easement in perpetuity over and upon the Property consisting of the rights hereinafter enumerated and on the terms and conditions set forth herein (hereinafter “**Conservation Easement**” or “Easement”). The Conservation Easement consists of a 1.45-acre area over and upon a portion of the Property identified as Habitat Conservation Area (“**HCA**”) as illustrated on the map attached as **Exhibit B** and incorporated herein by reference.

1) **PURPOSE.** It is the purpose of this Conservation Easement to assure that, except as set forth herein, the Property will be retained forever in its natural, and open space condition, with the intention to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Landowner intends that this Conservation Easement will confine the use of the Property to such activities that are consistent with the purpose of this Easement. Easement Holder agrees to honor and defend the intentions of Landowner to preserve and protect in perpetuity the Conservation Values of the Property in accordance with the terms and conditions herein. The area identified as “Open Space” on Parcel A in Lemmon Acres Tract No. 254 map dated December 2, 1997 created an open space easement which included the Property. Tentative Subdivision Map No. 90-38 Biotic Condition #5a<sup>ii</sup> referenced an open space easement as well at the time. This Conservation Easement is intended to replace the open space easement created in 1997. Therefore, the “open space easement” from 1997 is no longer enforceable, valid, or effective and this Conservation Easement is intended to replace that previous open space easement in its entirety

2) **RIGHTS OF EASEMENT HOLDER.** To carry out the purpose of the Conservation Easement, the rights conveyed to Easement Holder herein are:

- a) To identify, to preserve, and to protect in perpetuity the Conservation Values of the Property.
- b) To enter upon the Property at reasonable times to enforce the rights herein granted and to observe, study and make scientific observations of its natural elements, upon prior notice to Landowner, its heirs, successors or assigns, in a manner that will not unreasonably

interfere with the permitted use and quiet enjoyment of the Property by Landowner, its heirs, successors and assigns at the time of such entry.

- c) To enjoin any activity on, or use of, the Property which constitutes an actual or threatened degradation or impairment of the Conservation Values and, to enforce the restoration of such areas or features as may be damaged by such activities, and to otherwise monitor and enforce the terms of this Conservation Easement.
- d) To install and maintain signage or other appropriate markers, at Easement Holder's expense, in order to indicate the participation of the Easement Holder, and Easement Holder's public or private funding sources, if any, in the acquisition and management of this Conservation Easement; the location and design of said signage shall be submitted in advance to Landowner for approval, which approval shall not be unreasonably withheld.
- e) To install a public trail the conservation easement area, along Santa Ana Creek, for purposes of creating public access that extends beyond this property. Public access to the conservation easement area is only allowed if the Easement Holder, at their expense designs, develops, and maintains a public trail that extends beyond the easement area and connects to other public access facilities.
- f) Landowner hereby grants to Easement Holder all development rights (except as reserved herein) that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of transferring development credits or calculating permissible lot yield of the Property or any other property.

3) **BASELINE STUDY.** At or prior to the execution and recording hereof, a compilation of baseline natural, open space, ecological and man-made features shall be made by the Easement Holder. Such compilation shall include photographs and/or maps of the Property, depicting all existing improvements, designated areas for new improvements, and major natural, open space, and ecological features of the Property to be protected hereby. Failure to collect and compile all the information required hereby shall not affect the enforceability or validity of the other provisions of this Conservation Easement.

4) **BURDENS RUN WITH LAND; ASSIGNMENT.** The burdens of this Conservation Easement shall run with the Property and shall be enforceable in perpetuity by Easement Holder against Landowner and all future owners and tenants. The benefits to Easement Holder shall be in gross and assignable but only to a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. Landowner agrees that transfer by the Landowner of any interest in the Property shall be in accordance with the terms of Paragraph 13 entitled Subsequent Transfers.

5) **PROHIBITED USES AND RESTRICTIONS.** Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Landowner, Landowner's agents, and third parties are expressly prohibited:

- a) The use of the Property in any manner or the conduct of any activity which would degrade, impair, disrupt or interfere with the purpose of the Conservation Easement, the Conservation Values, or the predominantly natural character of the Property, except as otherwise expressly provided herein.
- b) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; chemical weed abatement activities; incompatible fire protection activities, except as needed for defensible space.
- c) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways.
- d) Agricultural activity of any kind.
- e) Recreational activities, including, but not limited to, horseback riding, biking, walking, except as expressly provided in paragraph 6(b).
- f) Commercial, industrial, residential, or institutional uses.
- g) The division, subdivision, de facto subdivision, or partition of the Property, including transfer of development rights, whether by physical, legal, or any other process, is prohibited. Notwithstanding that the Property may consist of more than one legal parcel, or that additional, separate legal parcels may exist within the Property that could otherwise be recognized by a certificate of compliance or similar process, Landowner agrees not to apply for or otherwise seek recognition of additional legal parcels within the Property, and will continue to maintain legal parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel.
- h) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, except as expressly provided in Paragraph 2(d), and 6(f).
- i) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.
- j) The introduction, planting, or dispersal of non-native or exotic plant or animal species.
- k) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.

- l) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except as expressly provided in Paragraph 6.
- m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as provided in Paragraph 6 or as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, (iii) prevention or treatment of disease.
- n) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except as provided in paragraph 6(d).
- o) Construction of fencing around the perimeter of the Property.
- p) Construction of roads within the Conservation Easement, except as expressly provided in paragraph 6(a)(4).
- q) Without the prior written consent of Easement Holder, which Easement Holder may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.

6) **LANDOWNER'S RESERVED RIGHTS; CONSISTENT USES.** Landowner reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Landowner's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement. Landowner and Easement Holder agree that the following uses and practices, although not an exhaustive recital thereof, are consistent with the parties' intentions and with this Conservation Easement; Landowner reserves the right to undertake and complete the following uses and practices:

- a) All new improvements shall be located and designed to avoid adverse impacts to the Conservation Values.
- i) All New Improvements shall be constructed, installed, maintained, repaired, and replaced in accordance with the following provisions, it being understood that, to the extent that any of the requirements set forth below conflict with the requirements of

the local governmental entity with jurisdiction over the site, the more stringent requirements shall apply:

- (1) Landowner shall indemnify, defend and hold Easement Holder harmless from any loss, claim, damage, or liability arising out of any failure of the New Improvements to comply with applicable law.
- (2) All New Improvements outside the Conservation Easement boundary shall be located so as to minimize adverse impacts on the Conservation Values. Prior to construction, Landowner shall consult with Easement Holder regarding the proposed design of the New Improvements. Easement Holder may request of landowner reasonable conditions on the design and location of the New Improvements to avoid adverse impacts to the Conservation Values.
- (3) All New Improvements outside the conservation easement boundary will be located at least 20 feet from the boundary of the Conservation Easement.
- (4) Vehicular access to and through the Conservation Easement Area shall follow roads existing as of the Conservation Easement recording date to the extent feasible. The location and construction of any new road or driveway necessary for the access through the Conservation Easement Area shall, to the extent practical and except as otherwise required by any applicable law, be subject to the following requirements: (i) the roadway shall be designed and maintained to avoid adverse impacts to Conservation Values, (ii) the alignment shall not follow any natural drainage swale, but shall follow existing grade whenever possible; (iii) the maximum slope shall not exceed 15%; and (iv) the width of any road or driveway shall be the minimum practicable to serve its intended purpose and meet regulatory requirements.
- (5) Any new septic tank or other sewer system shall be outside the Conservation Easement Area and be set back at least 300 feet from the high water line of any stream, natural drainage or other water body and designed, installed and maintained in such a manner as to prevent contamination and degradation of such waters.
- (6) No lighting will be allowed within the Conservation Easement Area, and lighting outside the Conservation Easement Area shall be designed and maintained to avoid impacts to wildlife.
- (7) Fencing along the perimeter of the Conservation Easement Area is not preferred, but is permitted, to the extent the fence is no closer than 20 feet from the Conservation Easement boundary allowed by application codes, and does not enclose the perimeter of the Conservation Easement
- (8) Landowner is permitted to cultivate landscape and garden plants outside the Conservation Easement Area for non-commercial personal enjoyment, use and

consumption provided that:

- (a) Such planting does not adversely impact the Conservation Values;
  - (b) Such planting and/or cultivation does not include species, or viable portions thereof, currently known to be or subsequently determined to be invasive or noxious in nature with regard to ecosystems within the region;
- (9) Composting for the purpose of supporting landscaping and cultivation outside the Conservation Easement Area is permitted. Composting location must be outside the Conservation Easement Area and must be sited at least 50' from the easement boundary.
- (10) Any New Improvements which are damaged or destroyed may be repaired or replaced with improvements which are of similar or ecologically superior design, size, function, location and materials and in a manner consistent with the protection of the Conservation Values, all subject to the terms and conditions of this Deed. In replacing such improvements, Landowner may consider, with Easement Holder's prior consent, relocating such improvement to better support the Conservation Values.
- b) Personal, non-commercial, recreational activities of the Landowner, provided such activities are consistent with the purposes of this Conservation Easement.
  - c) To salvage dead trees and dead wood on the Property for domestic use on the Property.
  - d) To develop and maintain a well necessary for domestic use and other permitted uses on the Property, in a manner consistent with the purposes and provisions of this Conservation Easement.
  - e) To maintain and repair existing roads, fences and other permitted improvements on the Property.
  - f) To restore natural habitat areas, remove non-native vegetation and install interpretive signage, pursuant to a restoration program supervised by a public resource management agency having jurisdiction or the easement holder.
  - g) To acknowledge and restrict third-party rights reflected in documents recorded in the Official Records of San Benito County at the time of recording of this Conservation Easement, which third-party rights are listed in **Exhibit C** attached and incorporated by reference.
  - h) In the event of the exercise of any of the rights reserved herein, which might have an adverse impact on the conservation interests sought to be protected hereby, or in a manner which involves any work or construction on the Property (other than routine maintenance and repair of the existing roadway), Landowner, his successors and assigns,

agree to advise Easement Holder in writing ten (10) days prior to filing applications for any necessary governmental permits and, in any event, to give thirty (30) days written notice prior to the exercise of any rights reserved herein and/or prior to the commencement of any such work or construction.

**7) TERMINATION AND COMPENSATION.**

- a) **Condemnation.** In the event that all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Landowner and Easement Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking; all expenses incurred by Landowner and Easement Holder in this action shall be paid out of the recovered proceeds. Easement Holder shall be entitled to compensation for the value of its interest in the Property, which value will be determined by MAI appraisal unless otherwise provided by California law then in effect.
- b) **Extinguishment.** If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by County approval or judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds or compensation to which Easement Holder shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined by an MAI appraisal, unless otherwise provided by California law then in effect. Easement Holder shall use all such proceeds in accordance with Easement Holder's mission, including without limitation the stewardship of conservation easements.

8) **AMENDMENT.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Landowner and Easement Holder are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Easement Holder under any applicable laws, including California Civil Code Section 815, et seq., or Section 170(h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of San Benito County, California.

9) **EASEMENT HOLDER'S REMEDIES.** If Easement Holder determines that Landowner is in violation of this Conservation Easement or that a violation is threatened, Easement Holder shall give written notice to Landowner thereof and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from a use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured. If Landowner fails to cure the violation within sixty (60) days after receipt of said notice, or where the violation cannot reasonably be cured within sixty (60) days, Easement Holder may bring an action at law or in equity in a court of competent

jurisdiction to enjoin the current or further violations and to enforce the terms of this Conservation Easement, ex parte as necessary, by temporary or permanent injunction, and by any other remedy available, and to require the restoration of the Property to the condition that existed prior to any such injury, to pay monetary amounts which, if not paid, could result in extinguishment, modification, non-enforcement or impairment of this Conservation Easement, and/or to recover any additional damages arising from the violation. Landowner agrees that the Easement Holder's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Easement Holder shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Easement Holder may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 et seq. are incorporated into this Conservation Easement by this reference, and this Conservation Easement shall include all of the rights and remedies set forth therein.

- a) **Damages**. Easement Holder shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of natural or environmental values. Without limiting Landowner's liability therefor, Easement Holder may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- b) **Emergency Enforcement**. If Easement Holder, or any other person or agency entitled to enforce this Easement, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Easement Holder, or said person or agency, may pursue its remedies under this paragraph without prior notice to Landowner or without waiting for the period provided for cure to expire.
- c) **Costs of Enforcement**. All costs and expenses incurred by Easement Holder in enforcing the terms of this Conservation Easement against Landowner, including, without limitation, costs of suit and attorneys' fees, and all costs of restoration required by Landowner's violation of this Conservation Easement shall be borne by Landowner. If Landowner prevails in any action to enforce the terms hereof, then each party shall bear its own costs.
- d) **Easement Holder's Discretion**. Enforcement of the terms of this Conservation Easement shall be at the discretion of Easement Holder, and any forbearance, delay or omission by Easement Holder to exercise its rights or remedies under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Landowner shall not impair future exercise of such right or remedy or be deemed or construed to be a waiver by Easement Holder of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Easement Holder's rights under this Conservation Easement.

- e) **Waiver of Certain Defenses.** Landowner hereby waives any and all defenses of laches, estoppel and/or prescription.
  - f) **Acts Beyond Landowner's Control.** Nothing contained in this Conservation Easement shall be construed to entitle Easement Holder to bring any action against Landowner for any injury to or change in the Property resulting from causes beyond Landowner's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from any such causes.
- 10) **ACCESS.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement, except as specified in paragraph 2(e).
- 11) **COSTS AND LIABILITIES.** Landowner retains all responsibilities and shall bear all costs and liabilities related to the ownership, operation, upkeep and maintenance of the Property. Landowner shall keep Easement Holder's interest in the Property free of any and all liens arising out of any work performed on or materials furnished to the Property, or obligations incurred by Landowner. Landowner shall pay in a timely manner all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Easement Holder with satisfactory evidence of payment upon request.
- 12) **INDEMNIFICATION.**
- a) Landowner shall hold harmless, indemnify, and defend Easement Holder and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them and hereby agrees to release, indemnify, protect, defend and hold Easement Holder harmless from and against all liabilities, penalties, costs, losses, orders, liens, penalties, damages, expenses, or causes of action, claims, demands, or judgments, including without limitation reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless solely due to the negligence or willful misconduct of the Easement Holder; (2) the obligations specified in Paragraphs 11 and 13; and (3) the existence or administration of this Easement. If the Easement Holder is required to indemnify a funding entity in order to secure funds to acquire this Conservation Easement, Landowner shall indemnify Easement Holder for that indemnification to the same extent as stated immediately above.
  - b) Easement Holder shall hold harmless, indemnify, and defend Landowner and Landowner's heirs, personal representatives, successors, and assigns and hereby agrees to release, indemnify, protect, defend and hold Landowner harmless from and against all liabilities, penalties, costs, losses, orders, liens, penalties, damages, expenses, or causes of action, claims, demands, or judgments, including without limitation reasonable attorney's

fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to Easement Holder's exercise of rights, regardless of cause, unless due to the negligence or willful misconduct of the Landowner.

13) **SUBSEQUENT TRANSFERS.**

- a) **Incorporate Easement Terms; Notice to Easement Holder.** Landowner agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which Landowner divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Landowner further agrees to give written notice to Easement Holder of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Landowner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- b) **Transfer Fee.** Any successor in interest of the Landowner, by acceptance of a deed, lease, or other document purporting to convey an interest in all or any portion of the Property, shall pay or cause to be paid a transfer fee of \$\_\_500.00\_\_ to the Easement Holder at the time of the transfer. This transfer fee shall help fund Easement Holder's efforts to uphold its duties and responsibilities under this Easement and/or to forward its charitable mission. In the event of non-payment of such transfer fee, the Easement Holder shall have the right to file a lien for such unpaid transfer fees which shall be a lien on the Property subordinate to this Conservation Easement and subordinate to the lien of any first mortgage on the Protected Property. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of California. Any transfer of the Property without consideration or transfer to a spouse, a lineal descendant, a spouse of a lineal descendant (collectively, "Immediate Family Members"), or to an entity at least 50% of the equity interest of which is owned by an Immediate Family Member or to a trust whose presumptive beneficiaries are the owner of the Property or an Immediate Family Member, or to a charitable organization which is tax exempt under 501(c)(3), shall be exempt from the transfer fee.

14) **REPRESENTATIONS AND WARRANTIES.**

- a) **Hazardous Materials.**
  - i) The Landowner represents and warrants that to the best of Landowner's knowledge the Property (including, without limitation, any associated air, soil, groundwater, and surface water) has no conditions that individually or in the aggregate: (1) constitute a present threat to human health, safety, welfare, or the environment; (2) violate any Environmental Law, as that term is defined below; (3) exceed any applicable or relevant and appropriate cleanup standard; or (4) could reasonably be expected to cause any person to incur environmental investigation, removal, remediation, maintenance, abatement, or other cleanup costs. The Landowner represents and

warrants that to the best of Landowner's knowledge there are no underground tanks located on the Property. The Landowner represents and warrants that the Landowner shall comply with all Environmental Laws in using the Property and that the Landowner shall keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials as defined below.

- ii) The term "**Hazardous Materials**" includes, without limitation, any of the following wastes, materials, chemicals, or other substances (whether in the form of liquids, solids, or gases, and whether or not airborne) which are ignitable, reactive, corrosive, toxic, or radioactive, or which are deemed to be pollutants, contaminants, or hazardous or toxic substances under or pursuant to, or which are to any extent regulated by or under or form the basis of liability under any statute, regulation, rule, ordinance, order, or requirement concerning such wastes, materials, chemicals, or other substances (in each case, an "**Environmental Law**"), including, but not limited to, petroleum-based products and any material containing or producing any polychlorinated biphenyl, dioxin, or asbestos, as well as any biocide, herbicide, insecticide, or other agrichemical, at any level that may (a) constitute a present or potential threat to human health, safety, welfare, or the environment, (b) exceed any applicable or relevant and appropriate cleanup standard, or (c) cause any person to incur any investigation, removal, remediation, maintenance, abatement, or other cleanup expense; it being understood that such Environmental Laws include, but are not limited to: CERCLA, as defined above; the Hazardous Materials Transportation Act (49 USC Sections 6901 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Sections 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Sections 25300 et seq.); and any rule, regulation, or other promulgation adopted under any of the foregoing laws.
  - iii) Notwithstanding any other provision of this Conservation Easement to the contrary, nothing in this Conservation Easement shall be construed such that it creates in or gives to the Easement Holder: (1) the obligations or liabilities of an "owner" or "operator" as those words are defined and used in Environmental Laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 et seq.) ("CERCLA"); (2) the obligations or liabilities of a person described in 42 USC Section 9607(a)(3); (3) the obligations of a responsible person under any applicable Environmental Law; (4) any obligation to investigate or remediate any Hazardous Materials associated with the Property; or (5) any control over the Landowner's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property. Except as otherwise specifically provided herein, the Landowner waives any rights and remedies it may have against the Easement Holder under any Environmental Law.
- b) **State of Title; Authority.** The Landowner represents and warrants that the Landowner has good and sufficient title to the Property and that the Landowner has full right and

authority to grant and execute this Conservation Easement.

- c) **Compliance with Laws.** The Landowner represents and warrants that the Landowner has not received notice of and has no knowledge of any material violation of any federal, state, county, or other governmental or quasi-governmental statute, ordinance, rule, regulation, law, or administrative or judicial order with respect to the Property.
- d) **No Litigation.** The Landowner represents and warrants that there is no action, suit, or proceeding that is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

15) **NOTICES.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Landowner: Cary Zink  
3030 Lemmon Court  
Hollister, CA 95023

To Easement Holder: The County of San Benito (Resource Management Agency)  
2301 Technology Parkway  
Hollister, CA 95023

With a copy to:  
San Benito County Counsel  
481 Fourth St. 2<sup>nd</sup> Floor  
Hollister, CA 9502

or to such other address as either party from time to time shall designate by written notice to the other. The County may designate that this Conservation Easement be offered to another easement holder, as defined herein.

16) **RECORDATION.** Easement Holder shall record this instrument in timely fashion in the Official Records of San Benito County, California, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement. Further, the Easement Holder is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement and the Landowner agrees to execute any such instruments upon request.

17) **LIENS; SUBORDINATION.** Except as otherwise provided by law, Landowner shall insure that the Conservation Easement is maintained priority to all liens, occupancies, tenancies and/or leases on the Property. If required by the Easement Holder, Landowner shall obtain a

written subordination agreement from any lien holders, tenants or lessees in a form approved by Easement Holder. No provision of this Conservation Easement should be construed as impairing the ability of the Landowner to use the Property as collateral for borrowing, provided that any mortgage or lien arising from such a borrowing must, at all times, be subordinated to the Conservation Easement as set forth herein.

18) **GENERAL PROVISIONS.**

- a) **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California.
- b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of California Civil Code Section 815 and 816. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c) **Severability.** If any provision of this Conservation Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions and applications hereof shall remain valid and shall not be affected thereby.
- d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties. There is no other agreement, oral or in writing.
- e) **Joint Obligation.** The obligations imposed by this Easement upon Landowner shall be joint and several.
- f) **Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns in perpetuity.
- g) **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**TO HAVE AND TO HOLD** unto Easement Holder, its successors, and assigns forever.

**IN WITNESS WHEREOF** Landowner and Easement Holder have set their hands on dates set forth below.

[Signatures on following page]

LANDOWNER: CARY ZINK

By [Signature]

Name: Cary Zink

Title: Landowner

Date: 8/20/2021

EASEMENT HOLDER: THE COUNTY  
OF SAN BENITO, a public agency

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to legal form:  
BARBARA THOMPSON, County Counsel

By: \_\_\_\_\_  
Joel Ellinwood, Assistant County  
Counsel

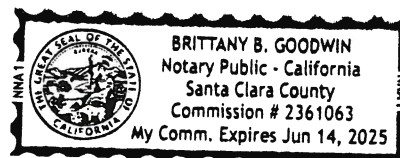
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Santa Clara ) ss.

On August 20, 2021, before me, Brittany B. Goodwin, a Notary Public, personally appeared Cary John Zink, who proved to me on the basis of satisfactory evidence to be the person ~~whose name is~~ subscribed to the within instrument and acknowledged to me that he ~~she~~ executed the same in his ~~her~~ authorized capacity ~~(ies)~~, and that by his ~~her~~ signature ~~on the instrument the person~~, or the entity upon behalf of which the person ~~acted~~, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]



Deed of Conservation  
Easement

APN 025-530-001

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Santa Clara )

) ss.

On August 20, 2021, before me, Brittany B. Goodwin, a Notary Public, personally appeared Cary John Zink, who proved to me on the basis of satisfactory evidence to be the person ~~whose name is~~ subscribed to the within instrument and acknowledged to me that he ~~she~~ ~~they~~ executed the same in his/her/their authorized capacity ~~(ies)~~, and that by ~~his/her/their~~ signature ~~on the instrument the person~~, or the entity upon behalf of which the person ~~acted~~, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Brittany B. Goodwin

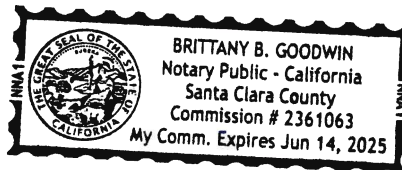
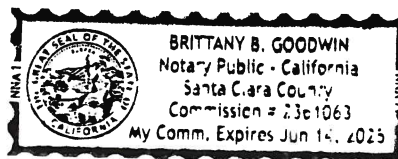


Exhibit A

Legal Description of Property

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 025-530-001**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SAN BENITO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL A OF LEMMON ACRES TRACT NO. 254, FILED FOR RECORD DECEMBER 7, 1997, IN BOOK 12 OF MAPS, AT PAGE 28, SAN BENITO COUNTY RECORDS.

Exhibit B

Legal Description/Survey/Map of Conservation Easement Area

## CONSERVATION EASEMENT

BEING A PORTION of that certain Parcel A as is shown on the map of Tract No. 254, Lemmon Acres, recorded December 7, 1997 in Book 12 of Maps, page 28, San Benito County Records, bounded and more particularly described as follows:

BEGINNING AT the northeasterly corner of said Parcel A and running along the easterly line thereof South 7°34'54" West, 267.33 feet to a point; thence leaving said easterly line and running along the following courses:

North 87°50'58" West, 166.21 feet;

thence North 8°52'51" West, 131.23 feet;

thence North 29°56'45" West, 34.16 feet;

thence North 46°39'00" West, 67.04 feet;

thence North 21°36'40" West, 17.50 feet;


thence North 62°23'52" West, 20.71 feet;

thence North 71°47'13" West, 31.36 feet;

thence North 12°00'52" West, 36.35 feet to a point in the northerly line of said Parcel A;

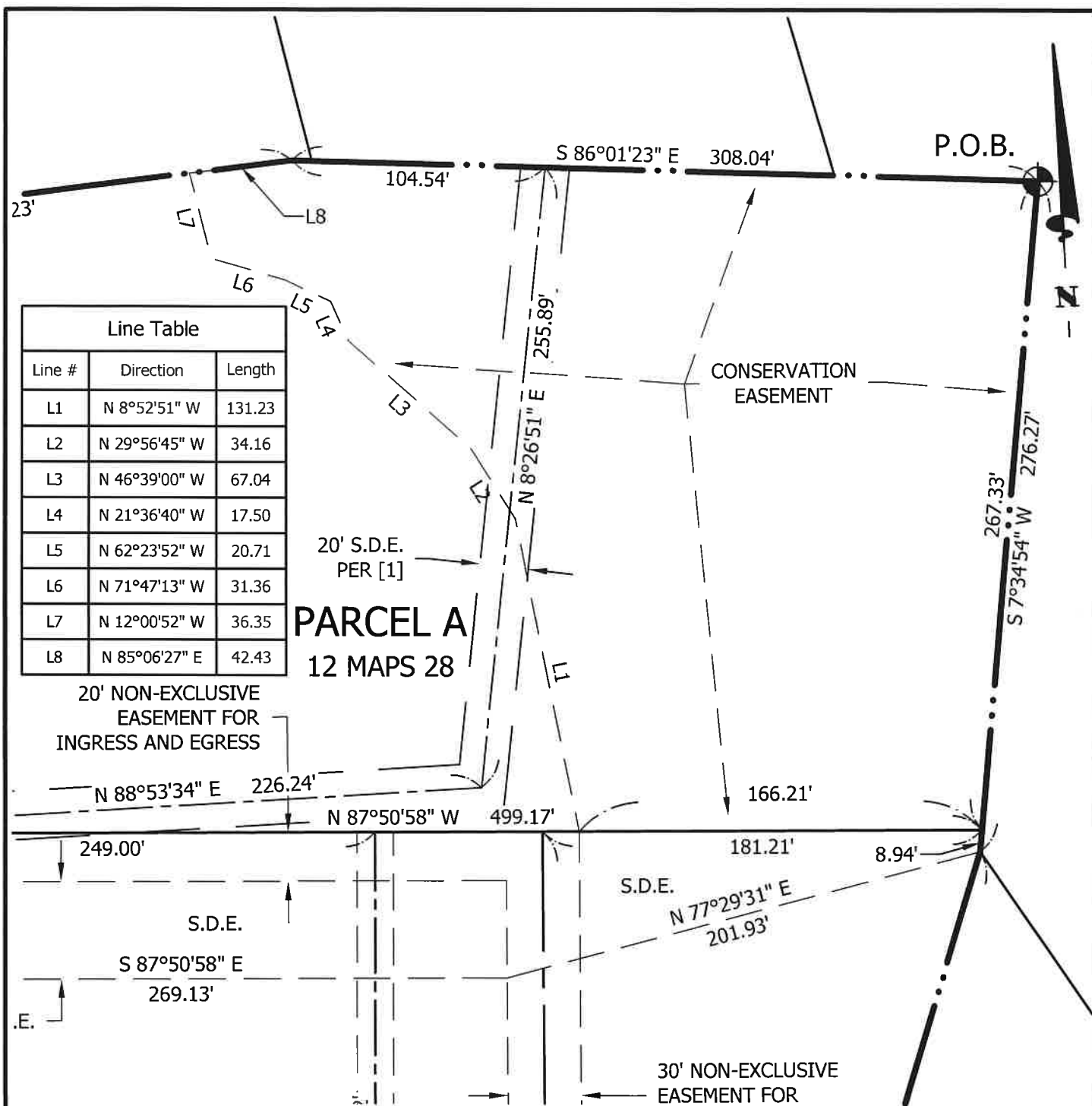
thence along said northerly line North 85°06'27" East, 42.43 feet to an angle point in said

northerly line; thence South 86°01'23" East, 308.04 feet to the POINT OF BEGINNING.

  
Kenneth J. Weatherly  
PLS 6875 exp. 09/30/2022

  
Date





# EXHIBIT MAP

## CONSERVATION EASEMENT

NOVEMBER 2021

SCALE 1" = 60'

SAN BENITO ENGINEERING & SURVEYING, INC.

502 MONTEREY STREET

HOLLISTER, CA 95023

831-637-2763

## Exhibit C

### Third Party Rights and Restrictions

Third Party, for purposes of this Exhibit, is the landowner, heirs, successors, and assigns of the newly create Lot 2 of the Phase I Final Parcel Map or Lot 3 of the Phase II Final Parcel Map, whichever is recorded in the official records of San Benito County. If Final Parcel Map 3 (Phase II) is recorded, it will supersede Lot 2 of Final Parcel Phase I. The Third Party as all the rights and privileges to use their property within the laws of the State of California and San Benito County, with the following exceptions:

- 1) Comply with provisions 5(a), (b), (c), (e), (i), (j), and (o) of the Conservation Easement as an adjacent or adjoining property owner to the Conservation Easement Area;
- 2) A fence and other structures are allowed near the Conservation Easement, as long as they are setback a minimum of 20 feet from the Conservation Easement boundary and this setback shall be included on any Final Parcel Map to be recorded. The rights and restrictions contained herein shall be referenced and noted on any Final Parcel Map related to the 3030 Lemmon Court Minor Subdivision.