

ATTACHMENT F
SETTLEMENT AGREEMENT
THE OPEN MONTEREY PROJECT

COPY

SETTLEMENT AGREEMENT

The Open Monterey Project v. Monterey County Board of Supervisors, County of Monterey
(Monterey County Case No. M109441)

This Settlement Agreement ("Agreement") by and among Petitioner The Open Monterey Project and Respondents Monterey County Board of Supervisors and County of Monterey (collectively, "County") (each a "Party" and collectively, the "Parties") is made effective on the date when all Parties have signed this Agreement ("Effective Date"). This Agreement is entered into by the Parties for the purpose of resolving the Case No. M109441 challenging the adoption by County of the 2010 Monterey County General Plan ("2010 General Plan") and certification of its associated environmental impact report ("EIR"), including a 2013 amendment to the 2010 General Plan and its associated Addendum No. 1 to the EIR.

RECITALS

- A. **WHEREAS**, The Open Monterey Project is a California nonprofit association under California law; and,
- B. **WHEREAS**, County is a public entity organized and existing under the laws of the State of California; and,
- C. **WHEREAS**, The Open Monterey Project filed a Petition for Writ of Mandate and Complaint in the State of California Superior Court, County of Monterey against County on November 24, 2010 (Case No. M109441) (the "Litigation") generally challenging the adoption by County of the 2010 General Plan and certification of its associated EIR; and,
- D. **WHEREAS**, The Open Monterey Project filed a supplemental petition to Case No. M109441 on March 21, 2013, generally challenging the adoption by County of an amendment to the 2010 General Plan and certification of its associated Addendum No. 1 to the EIR; and,
- E. **WHEREAS**, the Litigation is currently consolidated with the case *Landwatch Monterey County v. Monterey County Board of Supervisors* (Case No. M109434, filed November 24, 2010) also generally concerning the adoption of the 2010 General Plan and 2013 amendment, and certification of the EIR and Addendum No. 1 (collectively, the "Consolidated Actions"); and,
- F. **WHEREAS**, the Parties to the Consolidated Actions have, through a series of stipulations, extended time to prepare and file the administrative record; and the parties have recently stipulated to suspend the briefing schedule and vacate the hearing date in order to engage in settlement negotiations; and,

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- G. WHEREAS, the County and The Open Monterey Project have mutually agreed that settlement is the most efficient and practical way to resolve the Litigation, and now intend to settle the Litigation on the terms and conditions set forth in this Agreement; and,
- H. WHEREAS, the County and The Open Monterey Project have negotiated in good faith and agreed to the terms of this Settlement Agreement, including the terms as set forth below and those set forth in Exhibit A to this Settlement Agreement in final form and with strikethrough and underline text to show changes from 2010 General Plan policies as adopted by the County on October 26, 2010, and as amended on February 12, 2013, and the terms set forth in Exhibit B to this Settlement Agreement;

SETTLEMENT PROVISIONS

NOW, THEREFORE, in consideration of the promises and mutual benefits of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1.0 General Provisions.

- 1.1 No Admission of Liability. This settlement is entered into by the Parties without any admission of fault, failing or liability by any Party.
- 1.2 Recitals True and Correct. The above recitals are true and correct and are incorporated by reference as a part of this Agreement.
- 1.3 Mutual Consideration. The Parties' commitments to abide by terms of this Agreement is mutual consideration.
- 1.4 Term of Settlement. This settlement shall be operative from its Effective Date until such time as the Parties fulfill their mutual obligations described in this Agreement.

2.0 Disposition of Litigation.

- 2.1 Stay of Further Proceedings in Case No. M109441. The Parties shall promptly request that the Monterey County Superior Court stay all further proceedings in Case No. M109441 and, pursuant to Code of Civil Procedure Section 664.6, that the Court retain jurisdiction over this case for the purpose of enforcing the obligations of the Parties in this Agreement. County shall prepare the appropriate pleadings for approval and signature by the Parties and make the filing with the Court.
- 2.2 Conditional Settlement and Dismissal with Prejudice. The Open Monterey Project shall file a Notice of Conditional Settlement of Case No. M109441 in the Monterey

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County Superior Court immediately upon: (1) County's adoption no later than November 30, 2015 of the Agreed Amendments in Exhibit A; (2) County's preparation of a CEQA document containing the acknowledgments and recitations set forth in paragraph 1 of Exhibit B and its adoption of a resolution or ordinance containing the findings set forth in paragraph 1 of Exhibit B; and (3) expiration of a 45-day period from the County's posting of a Notice of Determination for the adoption of the Agreed Amendments without the filing of litigation by any party challenging the adoption of the Agreed Amendments or the findings set forth in paragraph 1 of Exhibit B, or, in the alternative, if such litigation is filed, entry of judgment in that litigation that is final for all purposes in favor of the County that upholds the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B (collectively, (1), (2) and (3) are the "Dismissal Conditions"). The Open Monterey Project shall not be required to dismiss Case No. M109441 in the Monterey County Superior Court unless all of the Dismissal Conditions occur.

The Notice of Conditional Settlement shall advise the court that dismissal is expected to be filed within 60 days upon satisfaction of the condition that the County pay attorney fees and costs of suit.

Upon satisfaction of the Dismissal Conditions and the County's obligation to pay all of the attorney fees and costs of suit set out in paragraph 2.3.1 pursuant to the payment schedule set out in paragraph 2.3.2, The Open Monterey Project shall promptly request that the court dismiss with prejudice Case No. M109441 in its entirety.

2.3 Attorney fees. County shall pay reasonable attorney fees and costs of suit to The Open Monterey Project

2.3.1 The Parties have determined that \$425,000 is a reasonable amount for attorney fees and costs. That amount shall be paid in accordance with the terms of this Agreement.

2.3.2 Attorney fees and costs shall be payable as follows:

- (a) County shall pay \$100,000 to the attorneys of record for The Open Monterey Project within 60 days of the execution of this Settlement Agreement by the parties.
- (b) If by the end of May 2015 the County has not adopted the Agreed Amendments and has not prepared and considered a CEQA document and adopted an ordinance or resolution in connection with the adoption of the Agreed Amendments each containing the acknowledgments, recitations, and findings

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set forth in paragraph 1 of Exhibit B, County shall pay to the attorneys of record for The Open Monterey Project an additional \$100,000 no later than June 30, 2015.

- (c) If the Dismissal Conditions occur by January 15, 2016, The Open Monterey Project shall file a Notice of Conditional Settlement pursuant to paragraph 2.2 and County shall pay to the attorneys of record for The Open Monterey Project the remaining balance of the \$425,000 attorney fees and costs within 60 days of that filing.
- (d) If the first and second Dismissal Conditions in paragraph 2.2 occur but the third condition does not occur because litigation is filed challenging the adoption of the Agreed Amendments or the findings set forth in paragraph 1 of Exhibit B, and if that litigation is resolved with an entry of judgment that is final for all purposes in favor of the County that upholds the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B, or, in the alternative, if The Open Monterey Project elects to dismiss Case No. M109441, then The Open Monterey Project shall file a Notice of Conditional Settlement pursuant to paragraph 2.2 and County shall pay to the attorneys of record for The Open Monterey Project the remaining balance of the \$425,000 attorney fees and costs within 60 days of that filing.

The Open Monterey Project shall not be obligated to return any payments received pursuant to the payment schedule above and does not waive its entitlement to any payments in the event that the Dismissal Conditions do not occur.

- 2.3.3 The attorney fees stated in 2.3.1 represent a compromise amount. The County acknowledges that The Open Monterey Project has asserted that its attorney fees significantly exceed this amount. Notwithstanding payment of the compromise attorney fees pursuant to this Agreement, The Open Monterey Project does not waive or reduce its claim for full attorney fees and costs in this matter in the event that The Open Monterey Project is not required to dismiss Case No. M109441 in the Monterey County Superior Court pursuant to paragraph 2.2.

3.0 Agreed Amendments and Other Actions.

- 3.1 County shall consider the amendments to the 2010 General Plan set out in Exhibit A (the "Agreed Amendments").

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- 3.1.1 The Agreed Amendments shall be processed in compliance with all applicable requirements in the California Public Resources Code, Government Code, Monterey County procedures and all other applicable laws for amending a general plan.
- 3.1.2 County shall consult with The Open Monterey Project in good faith regarding the preparation of necessary legislative actions and environmental review for consideration of the Agreed Amendments. The final form and language for all proposed legislative actions shall be determined by County. Notwithstanding, The Open Monterey Project shall have the right not to dismiss Case No. M109441 unless the Dismissal Conditions occur.
- 3.1.3 Environmental review for the Agreed Amendments shall be processed in compliance with CEQA.
- 3.1.4 It is the County's intent to consider the Agreed Amendments expeditiously and to take action by June 30, 2015. The County agrees to begin the process for considering the Agreed Amendments promptly following execution of this Agreement.
- 3.2 In addition to the adoption of the Agreed Amendments, County shall undertake and complete the actions set forth in Exhibit B (the "Other Actions").
- 3.3. Should any person or entity object to the Agreed Amendments or Other Actions or threaten to file litigation challenging the validity of the Agreed Amendments or Other Actions prior to the adoption of the Agreed Amendments, the Parties shall confer in good faith to determine effective responses to such objections and threats.
- 3.4 Should any person or entity file litigation, or should an administrative action be commenced by a federal or state administrative agency, challenging the validity of the Agreed Amendments or the Other Actions as may be adopted by the County pursuant to this Section 3, County shall use its best good faith efforts to defend against such litigation or administrative action. The Open Monterey Project may request intervention in such litigation or administrative action.

In the event of such litigation, The Open Monterey Project shall stipulate to hold Case No. M109441 in abeyance until such time as a final judgment is entered in superior court that does not uphold the validity of the Agreed Amendments and the findings set forth in paragraph 1 of Exhibit B.

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Should a final court or administrative order be entered nullifying or setting aside the adoption of the Agreed Amendments or the Other Actions, such act shall not constitute a default by any Party pursuant to this Agreement; however, the Parties shall confer in good faith to determine if different actions may be taken by County to implement the intent and purposes of this Agreement, including adopting General Plan amendments or taking other legislative or administrative action to effect the substance of the Agreed Amendments described in paragraph 3.1 and to implement the substance of the Other Actions. For example, if the Agreed Amendments are invalidated or set aside due to a judicial determination that the County failed to comply with CEQA in adopting them, the County shall consider readopting the amendments in compliance with CEQA.

4.0 Release of Claims.

4.1 Release by The Open Monterey Project. The Open Monterey Project intends and agrees that this Agreement shall, when fully implemented in accordance with the provisions hereof, be effective as a full and final accord and satisfaction and general release of and from all Released Claims, as described below. Upon occurrence of the Dismissal Conditions and the completion of the Other Actions, The Open Monterey Project shall be conclusively deemed to have released the County, and its respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors (the "Released Parties") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, demands, and causes of action, whether known, suspected, or unknown, at law or in equity, which The Open Monterey Project now has or as of the Effective Date of this Agreement has against the Released Parties, or any of them, arising from or relating to certification of the Final EIR for the 2010 Monterey County General Plan and approval of the 2010 Monterey County General Plan as adopted by the Board of Supervisors on October 26, 2010, as amended on February 12, 2013, and as may be amended pursuant to Section 3 of this Agreement, including without limitation, all costs and attorney fees incurred by the Releasing Parties in, or arising from, such actions (collectively, the "Released Claims"). The Open Monterey Project shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542") which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." This release does not extend

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to the right of each Party, including The Open Monterey Project, to institute legal action to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, as set forth in Section 5.8. This release does not extend to the right of The Open Monterey Project to institute an action at law or equity to set aside amendments to the County General Plan made subsequent to the Agreed Amendments or to set aside actions by the County to implement the County General Plan.

- 4.2 Understanding of Section 1542 Waiver. By executing this Agreement, The Open Monterey Project assumes the risk that it is unaware of the subject matter of this Agreement, or is otherwise mistaken as to relevant facts, and acknowledge that it may discover facts in addition to or different from those that they now know or believe to be true concerning the Released Claims and other matters contained in or concerning this Agreement. Subject to Section 2.3, each Party nevertheless agrees and intends this Agreement to be a complete release of the Released Claims, and to settle all disputes and differences relating to the Released Claims, known or unknown, suspected or unsuspected, that have existed, now exist, or may now exist between or among The Open Monterey Project and the Released Parties, unless as otherwise specifically set forth in this Agreement. Unless otherwise specifically set forth in this Agreement, The Open Monterey Project waives any and all rights it has or may have under California Civil Code Section 1542 and/or any successor section to it with respect to the Released Claims. The Open Monterey Project hereby acknowledges and represents that (a) it understands the significance and the consequences of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, lawsuits or liabilities that they may incur, both now and hereafter, from the waiver of said unknown claims, (b) it may discover facts different from, or in addition to, those facts that it now knows or believes to be true, and agrees that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding any such subsequent discovery of different or additional facts, (c) it has undertaken its own independent investigation of all of the facts relating to the matters being released herein and this Agreement, and in entering into this Agreement and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly set forth herein, and (d) this waiver is an essential and material term of this Agreement. Nevertheless, The Open Monterey Project intends by this Agreement, and with and upon the advice of its own independently selected counsel, to release fully, finally and forever all Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases set forth in this Agreement shall be and shall remain in effect as full and complete releases notwithstanding the discovery or existence of any

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such additional or different claims or facts relevant hereto, unless as otherwise specifically set forth in this Agreement.

5.0 Enforcement, Default and Remedies.

- 5.1 **Mutual Desire to Avoid Further Litigation and Jurisdiction to Enforce Settlement.** The Parties have entered this Agreement for the purpose of avoiding litigation. Enforcement of this Agreement is to be brought solely through the procedures set forth in this section, which are designed to avoid resorting to court enforcement in the first instance, and, if resort to court is necessary, to provide simple, straightforward and predictable relief.
- 5.2 **Court Retains Jurisdiction Over Settlement.** The Parties shall stipulate that the Monterey County Superior Court retain jurisdiction of this case for the purpose of enforcing the mutual promises of this Agreement.
- 5.3 **Default.** Failure by any Party to perform any obligation hereunder within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. The Parties agree that time is of the essence in the performance by The Open Monterey Project and the County of their respective obligations under Sections 2.0 and 3.0 hereof.
- 5.4 **Opportunity to Cure Alleged Default.** A Party alleging a Default shall give written notice of Default to the other Party specifying in reasonable detail the nature of the alleged Default and, where appropriate, the manner in which the alleged default satisfactorily may be cured; offer to meet and confer in a good faith effort to resolve the issue; and provide the other Party sixty (60) days to cure the alleged Default commencing at the time of receipt of the notice of a properly detailed written Default notice.
- 5.5 **Mediation.** If an alleged default in performance has not been cured during the 60-day period provided in Section 5.4, any Party may request that the dispute first be submitted to mediation prior to judicial enforcement. The Party requesting mediation will pay for the services of the mediator. If mediation is requested by any Party, all Parties shall make a good faith effort to first resolve through mediation any dispute about another Party's alleged default in performance. If the Parties cannot agree on the identity of the mediator, the judicial officer shall designate the mediator. The Parties will commence mediation within fifteen (15) days after notice of the mediation and designation of the mediator and shall conclude mediation within 45 days after commencement. Each Party shall bear its own fees and costs relating to the mediation.

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- 5.6 **Effect of Modification of County's Powers.** In addition to specific provisions of this Agreement, performance by the County hereunder shall not be deemed to be in Default if the County's powers are modified by state or federal legislation, or otherwise, in any way that precludes the County from performing its obligations under this Agreement as a matter of law, provided that the County did not instigate, promote, accommodate, encourage, request, or otherwise participate in the modification of the County's powers.
- 5.7 **Extraordinary Financial Situations.** The County's financial obligations under this Agreement, which include but are not limited to funding and carrying out environmental review, amending the general plan, undertaking the study pursuant to General Plan Policy PS-3.1 as amended, and paying attorney fees and costs under the terms of this Agreement, may be suspended in the extraordinary financial circumstances defined hereunder:
- 5.7.1 An extraordinary financial situation has been formally declared by the Board of Supervisors such that performing its obligations under this Agreement would necessarily result in a violation of the financial covenants the County has made to its creditors and lienholders in return for the extension of credit in the form of bonds, loans, letters of credit and other forms of financing necessary to maintain the County's overall financial stability.
- 5.7.2 "Extraordinary financial situation" as used in this Section means circumstances that include, but are not limited to, the type of financial circumstances that County may experience in a formally declared state of fiscal emergency following natural disasters such as a major earthquake or fire; or other extraordinary events.
- 5.7.3 Upon the conclusion of these extraordinary circumstances, the County will promptly resume performance of its financial obligations under this Agreement. The County shall pay interest on the unpaid amounts of attorney fees and costs. The interest shall be at the legal rate, and shall run from the date on which the payment was due under this Agreement.
- 5.8 **Institution of Legal Action.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, after expiration of the cure period provided in Section 5.4, any Party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default. The rights and obligations of any non-breaching Party shall not be affected by the institution of a legal action alleging breach against another Party. In the event of any action to enforce this Agreement, whether by judicial or non-judicial

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means, the prevailing party shall be entitled to recover from the other party its attorney fees, expenses, and any related court costs. Nothing in this Agreement shall bar The Open Monterey Project from instituting an action at law or equity to set aside amendments to the County General Plan made subsequent to the Agreed Amendments or to set aside actions taken by the County to implement its General Plan.

- 6.0 Representations and Warranties:** Each of the Parties represents, warrants, and agrees only as to itself as follows:
- 6.1 Each individual signing this Agreement on behalf of a Party represents and warrants that the individual has the right, power, legal capacity, and authority to do so, and that no further approval or consent of any person, officer, board of directors or other person or entity is necessary.
 - 6.2 Each Party has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement. Each Party has been fully advised by its attorneys with respect to its rights and obligations under this Agreement and understands those rights and obligations.
 - 6.3 No Party (nor any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney of or for any other Party) has made any statement or representation to the other Party regarding any fact such other Party relied upon in entering into this Agreement, and such other Party is not relying on any statement, representation or promise, written or oral, of any other Party (or of any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as otherwise expressly stated in this Agreement.
 - 6.4 Prior to the execution of this Agreement, each Party and each Party's legal counsel have made such investigation of the facts and inquiries each Party deemed necessary or desirable pertaining to this settlement, this Agreement and all the matters pertaining thereto.
 - 6.5 Each Party or responsible director, officer, member, manager, partner, trustee or attorney thereof has read this Agreement and understands the contents hereof. Each director, officer, member, manager, partner, trustee or attorney executing this Agreement on behalf of each Party is empowered to do so and thereby to bind such Party.

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- 6.6 Except as otherwise expressly represented, warranted or provided in this Agreement, each Party assumes the risks that (i) it may hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this Agreement, including, without limitation, unknown or unanticipated claims which, if known by such Party on the Effective Date may have materially affected such Party's decision to execute this Agreement, (ii) it may have mistakenly understood matters relevant to entering into this Agreement and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts in connection with the entering into of this Agreement. Notwithstanding any such unknown or unanticipated claims, misunderstandings, mistakes, negligent misrepresentations or negligent nondisclosures, each Party intends that this Agreement thereafter shall continue in full force and effect and shall not be subject to rejection or rescission for any reason, provided that such Party reserves all rights provided for in this Agreement.
- 6.7 Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of each Party to assume the risk that claims or facts now known or thought to be true may later be found to be different and to fully, finally and forever settle and release all of the Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters unless as otherwise specifically set forth in this Agreement, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto. This settlement shall not be subject to termination, rescission or modification by reason of any such change in claims or facts or knowledge of claims or facts.
- 6.8 Each Party shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.
- 6.9 Each Party acknowledges it has carefully read and fully understands all of the provisions of this Agreement and that such Party is entering into this Agreement voluntarily.
- 6.10 Each Party acknowledges that it is within the contemplation of each of the Parties to this Agreement that each of them may have claims for relief or causes of action for malicious prosecution or abuse of process in connection with the filing of claims for relief, causes of action, counterclaims, or cross-complaints in the Litigation and matters undertaken in connection therewith; and that it is the intention of the Parties

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to this Agreement to release any such claims, to deny that any malicious prosecution of actions or abuse of process has occurred, and to represent and agree that the filing of all claims for relief, causes of action, counterclaims, or cross-complaints in the foregoing Litigation were done pursuant to the advice of legal counsel and upon probable cause.

7.0 General Provisions.

- 7.1 **Governing Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of California.
- 7.2 **Construction.** This Agreement shall in all cases be construed according to its fair and plain meaning, and not strictly for or against any of the Parties. As used in this Agreement, the masculine or neuter gender and single or plural numbers shall be deemed to include the others wherever the context so indicates or requires. Nothing in this Agreement shall be deemed to restrict the County's land use authority or police power in any way with respect to future legislative, administrative or other actions by the County.
- 7.3 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein. All prior agreements or understandings, oral or written, are merged into this Agreement and are of no further force or effect.
- 7.4 **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.
- 7.5 **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, and when joined together, all counterparts shall constitute one agreement, which shall be binding on all of the Parties, even though all signatures may not be on one original or the same counterpart.
- 7.6 **Amendment.** This Agreement may only be modified or amended by a written amendment thereto executed by all of the Parties. The Parties acknowledge that, due to the long term nature of the proposed general plan amendments represented by the policies contained in Exhibit A, it may be necessary and/or appropriate at some time in the future, or from time to time, for the Parties to execute additional documentation

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to clarify and implement the provisions of this Agreement. Each Party agrees to cooperate in good faith to negotiate and enter into such various additional documentation as may be determined to be reasonably necessary and/or appropriate by the Parties. Modifications to the terms of this Agreement are permissible, so long as such actions are agreed to by all of the Parties.

- 7.7 No Admission. Neither the acceptance nor execution of this Agreement constitutes an admission of liability by any Party, nor shall it be construed as such.
- 7.8 Notice. Any notice, request, claim, demand or other communication required hereunder ("Notice") shall be in writing and shall only be effective upon delivery in person, by overnight courier with receipt requested, by facsimile transmission with confirmation of transmission or by registered or certified mail (postage pre-paid, return receipt requested) to the Party designated for receipt of the Notice upon such Party's actual receipt of the Notice.

To County:

Charles J. McKee, County Counsel and
Leslie J. Girard, Chief Assistant County Counsel
168 W. Alisal St.
Salinas, CA 93901
(831) 755-5045
(831) 755-5365 (facsimile)

To The Open Monterey Project:

Michael W. Stamp and
Molly Erickson
STAMP | ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
(831) 373-1214
(831) 373-0242 (facsimile)

- 7.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties or their respective successors and assigns, any rights or benefits under or by reason of this Agreement.

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- 7.10 No Waiver. The failure of any Party to enforce any of its rights arising by reason of any breach of covenant on the part of any other Party will not constitute a waiver of such breach. No custom or practice which exists or arises between or among the Parties in the course of administering this Agreement will be construed to waive any Party's rights to (1) insist upon the performance by any other Party of any covenant in this Agreement or (2) exercise any rights given it on the account of any breach of such covenant. A waiver of any particular breach will not be deemed to be a waiver of same or any other subsequent breach.
- 7.12 Exhibits. Exhibit A and Exhibit B, attached hereto, shall be incorporated in this Agreement as if set forth in full herein.
- 7.13 Headings. The descriptive headings used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
- 7.14 Cooperation. Each Party agrees to cooperate with the other in implementation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

~~MONTEREY COUNTY BOARD OF SUPERVISORS~~

~~Date: _____~~

~~By: _____~~

~~Louis C. Calcagno~~

~~Chair, Monterey County Board of Supervisors~~

~~APPROVED AS TO FORM~~

~~Date: _____~~

~~By: _____~~

~~Leslie J. Girard~~

~~Chief Assistant County Counsel~~

SIGNATURES ON NEXT PAGE

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COUNTY OF MONTEREY *et. al. et. al.*

Date: 1/12/15

By: *Louis P. Calcagno*
Louis P. Calcagno
Chair, Monterey County Board of Supervisors

APPROVED AS TO FORM

Date: 1/12/15

By: *Leslie J. Girard*
Leslie J. Girard
Chief Assistant County Counsel

THE OPEN MONTEREY PROJECT

Date: _____

By: _____
Gillian Taylor, authorized representative

APPROVED AS TO FORM

Date: _____

By: _____
Michael W. Stamp
STAMP | ERICKSON

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COUNTY OF MONTEREY

Date: _____

By: _____

Louis C. Calcagno
Chair, Monterey County Board of Supervisors

APPROVED AS TO FORM

Date: _____

By: _____

Leslie J. Girard
Chief Assistant County Counsel

THE OPEN MONTEREY PROJECT

Date: Jan. 8, 2015

By: Gillian Taylor

Gillian Taylor, authorized representative

APPROVED AS TO FORM

Date: January 8, 2015

By: Michael W. Stamp

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Exhibit A to Settlement Agreement
Agreed Amendments

Amend PS-3.1 as follows:

PS.3-1: Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. development within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following:

- 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
- 2) evaluates the total water demand for all existing uses and future uses designated in the General Plan EIR for the year 2030;
- 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
- 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary;

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- 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;
- 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to advance inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and
- 7) addresses such other matters as the Board of Supervisors determines are appropriate.

Within two months following the completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions. This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan. The rebuttable presumption shall apply only to uses consistent with the 2010 General Plan as amended through October 1, 2014.

Unless the public hearing required by this policy is commenced and concluded within two months following the presentation of the study to the Board of Supervisors, then effective 60 days following the presentation of the study to the Board of Supervisors there shall no longer be a rebuttable presumption of a long term sustainable water supply for development in Zone 2C. This means that the exception in subsection c shall no longer apply, unless otherwise required by law, and the rebuttable presumption shall apply only to projects for which the County has determined the

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application to be complete and so advised the applicant and for which a public hearing has been noticed.

Within fourteen days of the conclusion of the public hearing required by this policy, or if there is no regularly scheduled meeting of the Board of Supervisors in that fourteen day period, at the next regularly scheduled meeting, the Board of Supervisors shall adopt findings based on substantial evidence as to whether any of the conditions identified in subsections 6.i, ii, and iii (the “Conditions”) are likely to occur by 2030. Only if the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, may it find that there is a rebuttable presumption that a long-term sustainable water supply exists within Zone 2C through 2030 and make the discretionary decision to continue to except development within Zone 2C from the requirement under this Policy to provide proof, based on specific findings supported by evidence, that there is a long-term sustainable water supply. If the Board of Supervisors finds that any of the Conditions are likely to occur by 2030, new development within Zone 2C shall not be excepted from the requirement to provide proof of a long-term sustainable water supply, and there shall no longer be a presumption of a long-term sustainable water supply for development in Zone 2C except as required by law.

Unless the Board of Supervisors finds that none of the Conditions are likely to occur by 2030, the Board shall within nine months of the conclusion of the public hearing adopt, or find that other agencies have adopted, a program (“Program”) committing the County or those agencies to adopt measures that, based on substantial evidence, are sufficient to avoid and prevent by 2030 each of the Conditions that the Board of Supervisors has found are likely to occur by 2030. Unless, at the time of the adoption of the Program identified in the prior sentence, the Board of Supervisors finds based on substantial evidence that capital projects will be funded and constructed in order to avoid and prevent by 2030 each of the Conditions that are found by the Board likely to occur by 2030, the County shall adopt, or find that other agencies have adopted, other sufficient measures (“Other Measures”) as authorized by law to avoid and prevent all those conditions by 2030. As required and authorized by this General Plan and consistent with the intent and purposes of state law, including but not limited to the 2014 Sustainable Groundwater Management Act, the County shall take a

proactive role in planning for a long-term sustainable water supply in Zone 2C. As required by Policy PS-3.7, and as may be required after the first 5-year assessment of Zone 2C water conditions in 2015 pursuant to Policy PS-3.15, the County shall by March 31, 2016 initiate, pursue, and support the identification and necessary planning for strategies, water supply projects, water management efforts, and multiple agency agreements that may be implemented as part of the Program or Other Measures. The County shall initiate this planning effort by March 31, 2016 and pursue and support it until completion of the study required by this policy to ensure that, should it be necessary to adopt a Program or Other Measures in response to the findings required by this Policy, the County and/or other agencies shall be able to define and adopt the Program or Other Measures, and to conduct necessary environmental review at the programmatic level within one year of those findings.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors every five (5) years for Zone 2C that examines the degree to which a) total water demand for all uses predicted in the General Plan EIR for year 2030 will be reached; or b) groundwater elevations, the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.

Amend OS-3.5 (2) as follows:

OS-3.5

(2) Agricultural. ~~Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited except as follows:~~

a) Conversion of uncultivated land to cultivated land on slopes greater than 25% shall be prohibited, except as stated in subdivision b.

b) In the Agricultural and Winery Corridor Plan area (“AWCP”) and the Cachagua Plan area (“Cachagua”) only, conversion on slopes between 25% and 35% may be permitted pursuant to a use permit. In order to avoid the degradation of on-site and off-site natural resources, the use permit process shall:

1. Evaluate possible alternatives that better meet the goals and policies of the general plan.

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2. Identify and require an Agricultural Management Plan including development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques, incorporating the Best Management Practices developed pursuant to Policy OS-3.1 and the Program developed pursuant to Policy OS-3.9.
3. Minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health and safety.
4. Limit such conversion permits as follows:
 - a. Maximum of 100 acres per year for both the AWCP and Cachagua combined, with no rollover of unconverted acres,
 - b. Maximum of fifteen (15) acres per permit per year per applicant, and
 - c. Land must be contiguous to already cultivated land.
- c) Only lands cultivated and irrigated on slopes over 25% as of December 16, 2014 for which cultivation and irrigation were permitted or otherwise-allowed by law may continue to be so cultivated and irrigated.
- d) Conversion without a permit shall be considered a continuing public nuisance and may be enforced through a cause of action brought by any private party. The County retains and shall use its authority to enforce violations.
- e) The County shall annually prepare and release to the public a map showing all new cultivation of slopes over 25% in the County and, separately indicated, all new cultivation of slopes over 35%. The County map shall show all new cultivation that is identifiable from publicly available crop and land cover data, such as the USDA's National Agricultural Statistics Service Cropscape Cropland Data Layer. The map also shall identify all permitted conversions and delineate the boundaries of each conversion permit, by permit number.
- f) A ministerial permit process shall be developed by ordinance and implemented for conversion of lands that have not been cultivated for the previous 30 years on slopes (i) between 15 and 25 percent (15-25%) except land in the North County Area Plan and Cachagua Area Plan, and (ii) between 10 and 15 percent (10-15%) on highly erodible soils. The permit processes shall be designed to require that an erosion control plan be developed and implemented that assures slope stabilization and prevents

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drainage and flood hazards, and to prevent potentially significant impacts to wildlife corridors and linkages.

g) Conversion of slopes between 15% and 25% (15-25%) in the North County Area Plan and Cachagua Area Plan shall require a use permit and an Agricultural Management Plan.

h) The County shall retain existing requirements for an Agricultural Management Plan for each use permit for conversions as currently set forth in County Code section 21.66.030 (as of Oct. 26, 2010).

i) The County shall not approve permits pursuant to this policy OS-3.5(2) until the County has adopted ordinance(s) implementing OS-5.16, OS-5.22, and OS-5.24, Figure OS-1, a Program developed pursuant to OS-3.9, and conforming amendments to Zoning Code section 21.66.030.

Amend OS-3.1 as follows:

Best Management Practices (BMPs) to prevent and repair erosion damage and to prevent and remediate other effects of erosion such as sedimentation and water quality impacts, shall be established and enforced by the County.

Amend OS-3.9 as follows:

The County shall develop a Program to address the potential cumulative hydrologic impacts of the conversion of hillside rangeland areas slopes to cultivated croplands. The Program shall be designed to ~~avoid or minimize:~~

- a) avoid or minimize off-site soil erosion,
- b) avoid or minimize increased runoff, runoff-related stream stability impacts, and sedimentation impacts, and
- c) meet adopted water quality standards.

The County shall convene a committee comprised of county staff, technical experts (including staff of the Natural Resources Conservation Service), and stakeholders to develop the Program, including implementation recommendations. This program shall be adopted within five (5) years of adoption of the General Plan.

Amend OS-5.16 as follows:

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A biological study shall be required for any development project requiring a discretionary permit and in the vicinity of a wildlife corridor/linkage as illustrated in Figure OS-1 or having the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of an endangered, rare, or threatened species, or degrade a wildlife movement corridor/linkage. An ordinance establishing minimum standards for a biological study and biological surveys shall be enacted. A biological study shall include field reconnaissance performed at the appropriate time(s) of year. Based on the results of the biological study, corridor surveys may be necessary to identify, describe, and delineate the habitats, wildlife movement corridors or linkages, or species that potentially could be impacted. The ordinance shall specify when a corridor survey is required and the minimum requirements for a corridor survey. The ordinance shall include design guidelines for development within corridors and linkages, including but not limited to: standards for design, landscaping, lighting, site layout including structures, and fencing. Said ordinance shall be adopted within 12 months of the adoption of this policy. Feasible measures to reduce significant impacts to a less than significant level shall be adopted as conditions of approval.

Amend OS-5.24 as follows:

In order to preserve the functionality of existing wildlife corridors/linkages, and to promote and facilitate wildlife movement corridors/linkages, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, a corridor survey shall be required to identify the boundaries of the movement corridor or linkage with respect to the project site. The corridor survey shall include mitigation recommendations from the ordinance required to be adopted pursuant to Policy OS-5.16 to retain a corridor or linkage of adequate size and quality to preserve the continued free movement of all wildlife based on the needs of the species occupying the habitat and using the corridor or linkage. The County shall require the use of wildlife friendly fencing to the extent allowed by law. The County shall require discretionary projects to retain movement corridors of adequate size and habitat quality to allow for

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~~continued wildlife use based on the needs of the species occupying the habitat.~~ The County shall require that expansion of its roadways and public infrastructure projects provide movement opportunities for terrestrial wildlife and ensure that existing stream channels and riparian corridors continue to provide for wildlife movement and access.

Figure OS-1 shows the general location of some of the wildlife movement corridors/linkages in Monterey County. Figure OS-1 is illustrative only. The County shall engage a qualified wildlife consultant to make recommendations as to the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24, and the conservation strategy required by OS-5.21, with regard to wildlife corridor/linkage issues. The County shall use the wildlife consultant's map as the basis of Figure OS-1 of the General Plan. The County shall use the consultant's recommended protections as the primary basis of the implementing ordinances for OS-5.16, OS-5.22 and OS-5.24 and the conservation strategy required by OS-5.21, and the final ordinance language shall be the result of a collaborative process of the consultant and County staff.

Until the ordinance required by Policy OS-5.16 is adopted, if Figure OS-1 or a biological study discloses evidence that a wildlife corridor or linkage exists in the vicinity of a project, the corridor survey shall make recommendations for design based upon best practices related to the needs of the species occupying the habitat and species using the corridor or linkage, and the County's wildlife consultant shall review and research the application and make recommendations within the scopes of Policy OS-5.16 and this Policy OS-5.24, and such projects may only be approved if the contents of those recommendations are adopted as conditions of approval. Until Figure OS-1 is adopted, the County's wildlife consultant shall review and research each application and make recommendations. If the ordinance required by Policy OS-5.16 is not adopted within 12 months of adoption of this policy, no permits for projects requiring a corridor survey and mitigation recommendations shall be approved until the implementing ordinance is adopted.

This policy shall not apply retroactively to projects constructed legally.

Amend Agricultural Winery Corridor Plan as follows:

3.1 GENERAL REGULATIONS

The number of facilities allowed to be processed under this Plan shall be as follows:

- A. *Artisan Winery*: A maximum of 40 new artisan wineries as follows:
 - 1. River Road Segment; up to 24;
 - 2. Metz Road Segment; up to four (4); and
 - 3. Jolon Road Segment; up to 12.

- B. *Full-Scale Winery*: a maximum of 10 new full-scale wineries as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- C. *Winery Tasting Rooms*; a maximum of 10 new, stand-alone, facilities as follows:
 - 1. River Road Segment; up to five (5);
 - 2. Metz Road Segment; up to two (2); and
 - 3. Jolon Road Segment; up to three (3).

- D. ~~*Restaurant*. A total of three (3) new restaurants with no more than one restaurant per segment.~~

- E. *Delicatessen*. A total of five (5) new delicatessens on the same site as a winery with no more than three (3) delicatessens within the River Road Segment and no more than one (1) delicatessen within each of the remaining two segments.

- F. ~~*Inns*. A maximum of eight (8) new Inns as follows:~~
 - ~~1. River Road Segment; up to five (5);~~
 - ~~2. Metz Road Segment; one (1); and~~
 - ~~3. Jolon Road Segment; up to two (2).~~

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~~GE.~~ *Business Cluster.* One consolidated area may be identified for an overlay designation where a cluster of wine industry related businesses (bottle and cork production, label design, etc.) may develop. This business center should be located near an urban area with adequate facilities. A business cluster within the AWCP overlay area shall be considered consistent with the General Plan; however, a zoning change may be required to achieve the appropriate zoning designation. Site specific development would be subject to the standard County requirements and CEQA and not part of the ministerial review process created under this Plan.

~~HF.~~ *Visitor Centers.* Visitor centers that provide visitor information about the Corridor should be established within the vicinity of Highway 101/Arroyo Seco and/or near Highway 68.

3.2 ALLOWED USES

The following uses shall be allowed at facilities approved under the AWCP located within the designated corridor.

~~A.~~ *Winery Adjunct Uses.*

~~B.~~ *Industry-wide events.*

~~CB.~~ *Winery-Related Events up to 150 people at any one venue at any one time.*
Events include:

1. Advertised fund raising events.
2. Winemaker Dinners open to the general public.
3. Weddings.

~~DC.~~ *Private Winery Events* such as:

1. Company Holiday Party.
2. Employee-Related Private Parties (e.g. harvest celebration).

3.3 PERMITTED USES, MINISTERIAL PERMIT REQUIRED IN EACH CASE

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[No changes.]

3.4 PERMITTED USES, ADMINISTRATIVE PERMIT REQUIRED IN EACH CASE

This Section includes a list of uses that can be permitted with an Administrative Permit for properties within the designated Agricultural and Winery Corridor. These uses are subject to the General Regulations established in Section 3.1 and Development Standards established in Section 3.5 of this Agricultural and Winery Corridor Plan.

A. ~~Restaurant or Delicatessen~~; subject to the following criteria:

- ~~1. Located within five (5) miles from an urban limit line, community area, or rural center or within one (1) mile of an arterial or collector.~~
- ~~2. Parking shall be provided as required by Chapter 21.58, Monterey County Code.~~

B. ~~Inn, on-site with a winery facility~~; subject to the following criteria:

1. The Inn is clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.
2. Separate structure(s) shall be built expressly for an Inn.
3. Includes no more than ten (10) guest rooms, and a family does not need to be in permanent residence within the Inn facility.
4. Design shall use a consistent style for all buildings on the same lot.
5. Parking shall be provided as required similar to a bed and breakfast use.

C. ~~Inn, stand alone~~; subject to the following criteria:

- ~~1. The facility is located:~~
 - ~~a. more than 500 feet from a parcel on which any other Inn facility is located;~~
 - ~~b. no closer than 400 feet to any existing residence outside the ownership of the applicant.~~
- ~~2. Parking shall be provided as required similar to a bed and breakfast use.~~

DB. *Winery, Full-scale*, including tasting facilities and a catering kitchen as part of the winery. Events included as part of the permit for a full-scale winery shall not be subject to other permit requirements of Sections 3.3E or 3.6.

3.5 DEVELOPMENT STANDARDS

The following standards shall apply for approved uses within the Winery Corridor only:

A. *Parcel Size*. Minimum five (5) acres:

1. Creation through subdivision of ~~a five-acre lot or any one~~ lot smaller than the zoning minimum parcel size, but of a minimum size of five (5) acres (a “Small Lot”), is permissible provided:
 - a. ~~The remaining parcel still~~ All other parcels included as part of the subdivision conforms to the minimum parcel size of the underlying zoning district. In order to encourage utilization of existing substandard sized lots, An exception to subdivide lots (minimum 5 acres) from a legal non-conforming lot not meeting the minimum lot size for the land use designation (e.g. 10-acre lot with 40-acre minimum designation) may be allowed to subdivide one Small Lot from one legal non-conforming lot that is at least 10 acres in size but does not meet the minimum lot size for the zoning designation (e.g., a 20-acre lot in a 40-acre minimum designation could be divided to create one 5-acre lot and one 15-acre lot) based on substantial evidence that this action would:
 - 1) reduce the number of conforming agricultural lots from being subdivided because the parcel is located in an area where AWCP facilities would likely locate; and
 - 2) limit development in a manner to retain the rural character of the corridor. For purposes of this finding the rural character refers to parcels that conform to the minimum parcel size in the underlying zoning district and that contain agricultural uses.

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- b. Development of the Small HLot must be in conformance with aAllowableed Uases and Permitted Uses identified in this Agricultural and Winery Corridor Plan only, which will be memorialized by a recorded deed restriction on the Small Lot.
 - c. The total number of Small HLots created does not exceed 66 lots within the AWCP as adopted. In addition, the number of Small Lots created within each segment shall not exceed the number of wineries and/or tasting rooms allowed for that segment (Section 3.1 AWCP).
 - d. Where a Small Lot is created by subdivision under this Plan, all lots and parcels included as part of that subdivision shall be restricted from further subdivision of Small Lots as described in this section.
2. Subdivision of parcels under Williamson Act contract shall be in conformance with Williamson Act regulations.
 3. Creation of Small Lots through subdivision within the Corridor is permissible subject to the Subdivision Map Act and County Subdivision Ordinance.

Amend GLOSSARY as follows:

~~AGRICULTURAL LAND USES~~ means those uses of an agricultural nature that occur on farmlands designated as prime, of statewide importance, unique, or of local importance. ~~Agricultural land uses also include grazing and any other uses that occur on properties designated as agricultural on the General Plan and/or Area Plan land use map(s).~~

~~WINERY~~ means an agricultural processing plant used for the commercial purpose of processing grapes, other fruit products, or vegetables to produce wine or similar spirits. Processing includes crushing, fermenting, blending, aging, storage, bottling, warehousing, wine tasting facility, administrative office functions including wholesale and retail sales of associated wine and wine related items, and events. ~~Winery Adjunct Uses may also be considered as accessory to a winery when specifically requested and addressed as part of the discretionary permit application for the winery or as a subsequent permit application process.~~

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WINERY, ARTISAN [No change.]

WINERY, FULL-SCALE [No change.]

~~WINERY ADJUNCT USES means uses not considered an inherent part of a winery, but frequently associated with wineries and the agricultural tourism industry. Winery Adjunct Uses include, but are not limited to, restaurants, delicatessens, events, and concerts. Such uses may be considered as accessory to a Winery or Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery or as a subsequent permit application process.~~

WINERY CORRIDOR [No change.]

~~WINERY TASTING FACILITY means a bonded Winery Tasting Facility, also known as an "on or off winery premise," as provided by federal law under the jurisdiction of the Tax and Trade Bureau. A Winery Tasting Facility shall accommodate wine tasting, an administrative office, retail sales of associated wine and wine related items, events, warehousing, and storage. Winery Adjunct Uses may be considered as accessory to a Winery Tasting Facility when specifically requested and addressed as part of the discretionary permit application for the Winery Tasting Facility or as a subsequent permit application process.~~

Exhibit B to Settlement Agreement
Other Actions

1. County shall consider making findings in the resolutions or ordinances adopting the Agreed Amendments, and acknowledging and reciting in the addendum or subsequent EIR to the 2010 General Plan EIR prepared in support of the adoption of the Agreed Amendments, that the County's adoption and timely compliance with each Agreed Amendment is necessary mitigation that is required to avoid or minimize significant impacts caused by the 2010 General Plan or to render impacts caused by the 2010 General Plan less than a considerable contribution to a significant cumulative impact.
2. LandWatch Monterey County and The Open Monterey Project each shall be entitled to be represented on the technical advisory committee for the study undertaken to fulfill the requirements of General Plan Policy PS-3.1 through qualified consultant(s).
3. ~~To make the determination required by General Plan Policy PS-3.1.c.6.i as~~ to whether "total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded," the County shall determine whether the 2030 demand projected by the 2010 General Plan EIR is likely to be exceeded. In doing so, the County shall reassess the demand projections made in the 2010 General Plan EIR in light of any changes to or errors in the assumptions for baseline and future demand, including trends in land and water use. There shall be no presumption that the analysis in 2010 General Plan EIR was correct with respect to the 2030 demand projections.
4. The County shall require the following analyses to be included in the study undertaken in connection with implementation of General Plan Policy PS-3.1 and shall before April 1, 2015 ensure that the scope of work for its consultant(s) includes these analyses:
 - a. The study shall provide a quantitative assessment of climate change effects by using a basin characterization GIS Model approach (for example, <http://www.ecologicalprocesses.com/content/2/1/25>) that would use temperature, precipitation and other data from available global climate change models.

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b. The study shall reassess the 2030 demand projections made in the 2010 General Plan EIR, consistent with the mandate of Policy PS-3.1.

i. The County shall revise the language at pages B2, B4, B7, and B9 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to clarify that 2030 land use assumptions to be used as model input will not simply be taken from the 2030 General Plan or its EIR but will instead be based on a reassessment of land use assumptions.

ii. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the following determinations shall be made with respect to 2014 baseline data:

- A. urban population and per capita water use using the best available data;
- B. rural residential population and domestic per capita water use using the best available data;
- C. industrial and commercial water use using best available data; and
- D. agricultural irrigated acreage, crop types, rotations (number of crop cycles per year), fallowing, and water duty for crop types and rotations taking fallowing into account, all using the best available data.

iii. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the study shall determine projected changes through 2030 to each of the variables listed above based on current population projections, current trend analysis (especially regarding changes to agricultural acreage, cropping, and water duty), and existing regulatory constraints. Agricultural trend analysis should reconcile inconsistent or incomplete data sources (e.g., incomplete pumping records, inconsistent reports of irrigated acreage) if the study relies on such incomplete or inconsistent sources.

iv. In reassessing the General Plan EIR 2030 demand projections, and in developing 2030 land use assumptions for model input, the study shall

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consider recent land use mapping and demand estimate work completed by California Department of Water Resources on Monterey.

c.. The study shall develop and use a model that shall simulate the area, volume, and location of seawater intrusion over time using a 3-dimensional variable density groundwater flow and coastal seawater intrusion model such as SEAWAT or SWI2. The study and model shall at a minimum include the capability to evaluate the combined effect that increased groundwater pumpage and rising sea level would likely have on the location of the freshwater-seawater interface with time and to determine increases in seawater intrusion volume. The County shall revise the language applicable to Task 4 in Project 2 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to ensure this.

d. The study process shall provide that the technical advisory committee shall be involved in advising the Water Resources Agency in connection with the assessment and selection of modeling tools. The County shall ~~revise the language applicable to Task 4 and Task 10 in Project 2 of the July 3, 2014 scope of work for Brown and Caldwell, or shall otherwise provide a revised scope of work, to ensure this.~~

5. It is the intent of the parties that the process for the study to be undertaken pursuant to General Plan Policy PS-3.1 be an open and transparent public process to the maximum extent practicable. All data collected and used, and all documents gathered, to be used during the course of the study shall be available for public inspection except where such data or documents are required to remain confidential pursuant to federal, state, or local law, or contract (“Confidential Information”). All finalized deliverables to the County and to the Monterey County Water Resources Agency will be available for public inspection except where such deliverables contain Confidential Information, in which case such Confidential Information may be redacted or removed for purposes of public inspection. Documents made available during the course of the study to the stakeholders group and the Technical Advisory Committee shall be available for public inspection. The County shall retain, and require the Water Resources Agency to retain, all records of comments to and from Brown and Caldwell, and any subsequent and additional consultant engaged for the PS-3.1 study, regarding the

deliverables (as described in the Brown and Caldwell scope of work for Project 2) that are made before the deliverables are finalized. Such records of comments will be available upon request for public inspection once the deliverable has been finalized and delivered to the County. Any documents subject to the attorney-client privilege or the attorney work-product privilege shall remain exempt from public inspection.

6. No later than 90 days after the adoption of the Agreed Amendments, the County shall produce a County-wide baseline map, or other records or information as the parties may agree to, that shows cultivated cropland as of October 2010 as follows: (1) on slopes of 25 to 35%, and (2) on slopes over 35%. No later than 120 days after the adoption of the Agreed Amendments, the County shall produce maps as follows: (1) showing cultivated cropland on slopes of 25% to 35% as of October 2014; (2) showing cultivated cropland on slopes over 35% as of October 2014; (3) showing the new cultivated cropland on slopes of 25% to 35% as of October 2014 that was not cultivated as of October 2010; and (4) showing the new cultivated cropland on slopes over 35% as of October 2014 that was not cultivated as of October 2010. After that, no later than 60 days after data becomes available, the County shall annually produce maps showing cultivated land on slopes between 25% and 35% and, separately, on slopes over 35%, and showing changes from the prior year. The County shall indicate on the maps which specific new cultivation has received a permit from the County and delineate the boundaries of each conversion permit, by permit number. The intent is that these maps be reasonably useful and understandable to the lay person, and provide reasonably reliable information to assist the parties and the public in determining the current land uses and in identifying changes in land uses.
7. The County shall engage a qualified wildlife consultant to compile available data to make an illustrative map of wildlife corridors/linkages in the County. The County shall use the wildlife consultant's map as the primary basis of Figure OS-1, to be considered for inclusion in the General Plan at the same time as the proposed amendments set forth in Exhibit A.
8. The County has engaged a wildlife consultant acceptable to The Open Monterey Project and Landwatch Monterey County to perform the services

SETTLEMENT AGREEMENT – Exhibits A and B

~~Landwatch Monterey County v. County of Monterey~~ (Monterey County Case No. M109434)
The Open Monterey Project v. Monterey County Board of Supervisors, County of Monterey
(Monterey County Case No. M109441)

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discussed in this settlement agreement and Exhibits A and B to this settlement agreement, prior to full execution of the settlement agreement, and the County has confirmed that in a memorandum of understanding between the County, the consultant, The Open Monterey Project and Landwatch Monterey County. The County shall use that specific wildlife consultant unless the County terminates the consultant for good cause, in which case the County shall use a different wildlife corridor consultant acceptable to The Open Monterey Project and Landwatch Monterey County.

9. Applications for permits pursuant to AWCP section 3.3 shall be reviewed for completeness and compliance with County requirements by the County's head of current planning prior to approval of any such application. The head of current planning may designate qualified planners to act on behalf of the head of current planning when necessary.

10. To those who have requested notice of applications, including ministerial applications pursuant to AWCP section 3.3 and OS-3.5(2), the County shall ~~provide email notice at the time of application and at the time of approval,~~ and will either attach the application and approval, respectively, or will make the applications and approvals available without delay on a County website.

