

Stephen L. Vagnini  
Monterey County Recorder  
Recorded at the request of  
**Filer**

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7/17/2013  
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WHEN RECORDED MAIL TO:

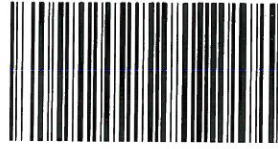
Clerk to the Board Office, 1<sup>st</sup> Floor

Monterey County Government Center

Salinas, CA 93901

DOCUMENT: **2013045179**

Titles: 1/ Pages: 12



Fees . . .  
Taxes . . .  
Other . . .  
AMT PAID \_\_\_\_\_

THIS SPACE FOR RECORDER'S USE ONLY

## Second Amendment to Land Conservation Contract No. 71-41

Charles F. Nichols and Judith A Nichols, as Trustees for the  
Nicholas Family Trust UTA  
PLN120376

**SECOND AMENDMENT TO LAND CONSERVATION CONTRACT No. 71-41**

**THIS CONTRACT** is made and entered into as of the date opposite the respective signatures by and between the **COUNTY OF MONTEREY**, a political subdivision of the State of California, hereinafter called "County" and **CHARLES F. NICHOLS and JUDITH A. NICHOLS, as Trustees of the NICHOLS FAMILY TRUST UTA dated January 17, 1991**, hereinafter called "Owner."

**WITNESSETH:**

**WHEREAS**, Owner possesses certain real property located within the County of Monterey, State of California, which is presently devoted to the production of food and fiber and is described in Exhibit "A" (hereafter, "the property") attached hereto and made a part hereof; and

**WHEREAS**, the property is located in an Agricultural Preserve (**AGP No. 71-41**) heretofore established by County by **Resolution No. 71-14-41** and subject to Land Conservation Contract No. 71-41, recorded on **February 26, 1971**, as **DOCUMENT G 05212**, at REEL 689, PAGE 677 and following, with the Monterey County Recorder's Office, and incorporated by this reference; and

**WHEREAS**, the boundaries of said AGP No. 71-41 were adjusted pursuant to an amendment of said Agricultural Preserve and Land Conservation Contract No. 71-41 approved by the Board of Supervisors on or about **February 1, 1994**, and made and entered into on **February 28, 1994**, and recorded as **DOCUMENT No. 08687**, at REEL 3061, PAGE 762 with the Monterey County Recorder's Office, and incorporated by this reference; and

**WHEREAS**, on **November 6, 2012**, pursuant to **Resolution No. 12-339 (PLN120376, Yanks Air Museum)** on file with the Clerk of the Board of Supervisors and incorporated by this reference, the Monterey County Board of Supervisors approved a **Lot Line Adjustment of Williamson Act lands** between two (2) legal lots of record of approximately 111.29 acres (Parcel A consisting of Assessor's Parcel Numbers 111-012-017-000 and 111-012-019-000) and 329.38 acres (Parcel B consisting of Assessor's Parcel Numbers 111-012-018-000 and 111-012-020-000) resulting in two (2) lots of 134.67 acres (Parcel 1 "Yanks Air Museum" and related mixed use development) and 306.00 acres (Parcel 2), respectively; and

**WHEREAS**, said Lot Line Adjustment resulted in the removal of 34 acres under Williamson Act AGP No. 71-41 and Land Conservation Contract No. 71-41 which included the removal of 11 acres of Williamson Act land from Parcel A (Assessor's Parcel Numbers 111-012-017-000 and 111-012-019-000) and the removal of 23 acres of Williamson Act land from Parcel B (Assessor's Parcel Numbers 111-012-018-000 and 111-012-020-000); and

**WHEREAS**, both Owner and County desire to limit the use of the property to agricultural and compatible uses;

**NOW, THEREFORE**, County and Owner agree as follows:

1 **CONTRACT SUBJECT TO CALIFORNIA LAND CONSERVATION ACT OF 1965, AS AMENDED.**

This contract is entered into pursuant to Chapter 7 (commencing with Section 51200) as Part 1, Division 1, Title 5 of the Government Code, which is known as the California Land Conservation Act of 1965, or as the Williamson Act. This contract is subject to all of the provisions of this act including any amendments thereto which may be enacted from time to time.

2. RESTRICTION ON USE OF PROPERTY.

During the term of this contract, and any and all renewals thereof, the property described in Exhibit A shall not be used by Owner, or Owner's successors in interest, for any purpose other than the production of food and fiber for commercial purposes and uses compatible thereto. A list of all such compatible uses is set forth in Exhibit B, attached hereto and by this reference incorporated herein. County, by uniform rule adopted by the Board of Supervisors of County, may from time to time during the term of this contract and all renewals thereof, add to the list of compatible uses which shall be uniform throughout the agricultural preserve in which the property in Exhibit A is located; provided, however, County may not during the term of this contract or any renewal thereof, without the prior written consent of Owner, remove any of the compatible uses for the subject property which are set forth in Exhibit B. The provisions of this contract and any uniform rule supplementing the list of compatible uses are not intended to limit or supersede the planning and zoning powers of County.

3. TERM OF CONTRACT.

This contract shall become effective on the date opposite the respective signatures and shall be recorded on or before the 31st day of December, in order to meet the January 1 property tax lien date and, shall remain in full force and effect for an initial term of twenty years. The initial term of twenty years shall be measured commencing as of the first day of January next succeeding the date of execution. Each succeeding first day of January shall be deemed to be the annual renewal date of this contract. This contract shall be automatically renewed on each succeeding January 1 and one additional year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in paragraph 4.

4. NOTICE OF NONRENEWAL.

(a) If either party desires in any year not to renew this contract, that party shall serve written notice of nonrenewal upon the other party in advance of the annual renewal date of this contract. Unless such written notice of nonrenewal is served by Owner at least 90 days prior to the renewal date, or by County at least 60 days prior to the renewal date, this contract shall be considered renewed as provided in paragraph 3 above.

(b) If either party serves written notice of nonrenewal in any year within the time limits of (a) above, this contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of this contract, as the case may be.

5. NO COMPENSATION.

Owner shall not receive any payment from County in consideration of the obligations imposed under this contract, it being recognized and agreed that the consideration for the execution of this contract is the substantial benefit to be derived therefrom, and the advantage that may accrue to Owner as a result of the effect upon the assessed value of the property on account of the restrictions on the use of the property contained herein.

6. SUCCESSORS IN INTEREST.

This contract and the restrictions imposed hereunder shall run with the property described in Exhibit A and shall be binding upon the heirs, executors, administrators, trustees, successors, and assigns of Owner. This contract shall also be transferred from County to any succeeding city or county acquiring jurisdiction over the property described in Exhibit A. On the completion of annexation proceedings by a city, that city shall succeed to all rights, duties and powers of the County under this contract for that portion of the property described in Exhibit A annexed to the city.



Nonetheless, each new Owner who succeeds to ownership of the aforesaid property shall be obliged to execute a new contract identical to or more restrictive than this contract in order to perfect his rights under the Land Conservation Act.

7. DIVISION OF LAND.

The property described in Exhibit A shall not be divided without the written approval of the County first had and obtained. This contract is divisible in the event the property described in Exhibit A is divided. Owner agrees to submit any proposed division to County for its approval and County, if it approves said division, shall, as a condition of its approval of the division, require the execution by Owner of contract identical to this contract on each parcel created by the division. Owner agrees to execute such contract. The division of land under contract within an agricultural preserve will not be approved unless it can be reasonably established that there will be no loss in the production of food and fiber within the agricultural preserve from said division.

8. EMINENT DOMAIN OR OTHER ACQUISITION.

(a) When any action in eminent domain for the condemnation of the fee title of any land described in Exhibit A is filed or when such land is acquired in lieu of eminent domain for a public improvement, as defined in Government Code Section 51290.5, by a public agency or person, or whenever there is any such action or acquisition by the federal government, or any person, instrumentality or agency acting under authority or power of the federal government, this contract becomes null and void as to the land actually being condemned or so acquired as of the date the action is filed or so acquired.

(b) Eminent domain or other acquisition proceedings shall be governed by the provisions of Article 6 (commencing with Government Code Section 51290 et seq). Notice of intent to consider land in agricultural preserve pursuant to this contract for condemnation or acquisition, shall be provided by the public agency, or person, or authorized agent, to the Director of Conservation and to the local governing body responsible for the administration of the preserve in accordance with Government Code Sections 51291 and 51291.5. The Director of Conservation shall provide a copy of any material received from the public agency, or person, or authorized agent, relating to the proposed acquisition, to the Secretary of Food and Agriculture in accordance with Section 51291(b). When land in an agricultural preserve pursuant to this contract is acquired by a public agency, the public agency shall notify the Director of Conservation within 10 working days in accordance with Government Code Section 51291(c).

(c) If after giving notice required under Government Code Sections 51291(b) and 51291 (c) and before the project is completed within the preserve, the public agency, person or agent proposes any significant change in the public improvement, it shall give notice of the changes to the Director and the local governing body responsible for administration of the preserve. Within 30 days thereafter, the Director or local governing body may forward to the public agency, person or agent their comments with respect to the effect of the change to the public improvement and the compliance of the changed public improvement with Article 6. Any action or proceeding regarding notices or findings required by Article 6 filed by the Director of Conservation or local governing body administering the preserve shall be governed by Government Code Section 51294 (Government Code Section 51291(e)).

9. CANCELLATION.

This contract may be canceled by the mutual agreement of the parties hereto in the manner provided in this paragraph. It is understood by the parties hereto that the existence of an opportunity for another use of the property shall not be sufficient reason for the cancellation of this contract. A potential alternative use of the property may be considered only if there is no proximate non-contracted land



suitable for the use to which it is proposed that this property be put. The parties further understand that the uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation of this contract, but may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(a) Upon the written request of Owner to cancel this contract, the Board of Supervisors of the County of Monterey may adopt a resolution consenting to such request. When Owner petitions the Board for tentative cancellation of this contract pursuant to Government Code Section 51281 et seq, and when the Board accepts the application as complete pursuant to Government Code Section 65943, the Board shall immediately mail notice to the Director of Conservation pursuant to Government Code Section 51284.1. The notice shall include a copy of the petition, this contract, a general description in text or diagram, of the land that is subject to the proposed cancellation, the deadline for submitting comments regarding the proposed cancellation (consistent with the Permit Streamlining Act commencing with Government Code Section 65920), but in no case less than 30 days prior to the scheduled action by the Board. The Director shall review the proposed cancellation and submit comments by the deadline specified by the Board. Any comments submitted shall advise the Board on the findings required by Section 51282 with respect to the proposed cancellation. Prior to acting on the proposed cancellation, the Board shall consider the comments by the Director of Conservation, if submitted (Government Code Section 51284.1).

(b) Prior to the adoption of a resolution consenting to the request of the landowner to cancel this contract, the Board of Supervisors of County shall hold a public hearing on the matter. Notice of the hearing shall be mailed to each and every owner of property under contract within the agricultural preserve in which the property described in Exhibit A is located, and shall be published pursuant to Government Code Section 6061. In addition, at least 10 working days prior to the hearing, a notice of hearing and a copy of the landowner's petition shall be mailed to the Director of Conservation pursuant to Government Code Section 51284. At the hearing, or prior thereto, the owner of any property in which this agricultural preserve is situated may protest such cancellation to the Board of Supervisors.

(c) The Board of Supervisors may adopt a resolution consenting to the request of Owner to cancel this contract only if they find: (1) The cancellation is consistent with the purposes of the California Land Conservation Act of 1965 as amended; and (2) the cancellation is in the public interest (Government Code Section 51282).

(d) Within 30 days of the tentative cancellation of this contract, the Board shall publish notice of its decision, including the date, time and place of the public hearing, a general explanation of the decision, the findings made pursuant to Government Code Section 51282, and a general description in text or by diagram, of the land under contract, as a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the County. In addition, within 30 days of the tentative cancellation of the contract, the Board shall deliver a copy of the published notice of the decision, as described above, to the Director of Conservation. The publication shall be for informal purposes only, and shall create no right, standing, or duty that would otherwise not exist with regard to cancellation proceedings (Government Code Section 51284).

#### 10. LIABILITY OF OWNER UPON CANCELLATION.

(a) Prior to any action by the Board of Supervisors giving tentative approval to the cancellation of this contract, the County Assessor shall, pursuant to Revenue and Taxation Code Section 401, determine the full cash value of the land as though it were free of the contractual restrictions imposed by this contract. The Assessor shall certify to the Board of Supervisors the cancellation valuation of the land for the purpose of determining the cancellation fee.

(b) The Board of Supervisors shall thereafter and prior to giving tentative approval to the cancellation of this contract determine and certify to the County Auditor the amount of the cancellation fee which the Owner must pay the County Treasurer as deferred taxes upon cancellation. That fee shall be an amount equal to 12 ½ percent of the cancellation valuation of the property.

(c) If the Board of Supervisors recommends that it is in the public interest to do so, and the Secretary of the Resources Agency so finds, the Board may waive any such payment or any portion thereof, or may make such payment or portion thereof, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the property and its economic return to Owner for a period of time not to exceed the unexpired term of the contract had it not been canceled, provided: (1) the cancellation is caused by an involuntary transfer or change in the use which may be made of the property and the property is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to Owner; and (2) the Board of Supervisors has determined it is in the best interests of the program to conserve agricultural land use that such payment be either deferred or is not required; and (3) the waiver or extension of time is approved by the Secretary of the Resources Agency pursuant to Government Code Section 51283.

(d) Owner shall make payment of the cancellation fee in full prior to the cancellation becoming effective.

#### 11. NOTICES.

All notices required or permitted by this contract shall be given in writing and may be mailed or delivered in person. If mailed, the address of Owner shall be the last known address on the assessment records of County, and County's address shall be In Care of Clerk of the Board of Supervisors, Government Center, 168 W. Alisal Street, First Floor, Salinas, California 93901, and deposit in the mail, postage prepaid, shall be deemed receipt thereof.

#### 12. COSTS OF LITIGATION.

In case County shall, without any fault on its part, be made a party to any litigation commenced by or against Owner, then Owner shall and will pay all costs and reasonable attorneys fees incurred by or imposed upon County by or in connection with such litigation, and Owner shall and will pay all costs and reasonable attorneys fees which may be incurred or paid by County in enforcing the covenants and agreements of this contract.

#### 13. ENFORCEMENT.

In the event of breach of this contract, including but not limited to: (1) incompatible use, or (2) failure of successors in interest to sign a contract similar to this one, or (3) failure to obtain the approval of the Board of Supervisors for a division of the land under contract, all the affected property under contract shall be reassessed at full cash value pursuant to Revenue and Taxation Code Section 110.1.

However, such reassessment for the period encompassed by the breach shall not terminate the contract. Reassessment shall be in addition to the other remedies available to the County including, but not limited to, an action to enforce the contract by specific enforcement or injunction under Government Code Section 51251.

If incompatible uses during the period of breach have diminished the ability of the property to contribute to the production of food and fiber on the lien date, the property shall be reassessed at full cash value.



The period of breach is the period commencing upon breach as set forth above, and ending upon cure of the breach. If the lien or assessment date falls within the period of the breach, all the property under this contract will be reassessed at full cash value pursuant to Revenue and Taxation Code Section 110.1.

**IN WITNESS WHEREOF** the parties have caused this contract to be executed by Owner on the date affixed next to the signature of each, and by County on the date affixed next to the signature of the Chair of the Board of Supervisors.

**COUNTY OF MONTEREY**

Dated: 7-16-2013

By: Fernando Armenta  
**FERNANDO AREMENTA**  
Chair, Board of Supervisors

**ACKNOWLEDGMENT**

State of California     )  
County of Monterey    )

On July 16, 2013, 2013, before me, Gail T. Borkowski  
Clerk of the Board of Supervisors, personally appeared Fernando Armenta, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are 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(s) on the instrument the person(s) or the entity upon behalf of which the person(s) 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.

**GAIL T. BORKOWSKI**  
Clerk of the Board of Supervisors of  
Monterey County, State of California  
By: Gail T. Borkowski

Legal Reference for Acknowledgment by County Official:  
Civil Code Sections 1181, 1184, 1185, 1188, 1189  
Code of Civil Procedure Section 2012

[COUNTY SEAL]:

**OWNER:**

**CHARLES F. NICHOLS and  
JUDITH A. NICHOLS, as Trustees of the  
NICHOLS FAMILY TRUST UTA  
dated January 17, 1991**

Dated: 6-23-2013

Charles F. Nichols

**CHARLES F. NICHOLS, TRUSTEE**

Dated: 6-23-2013

And by: Judith A. Nichols

**JUDITH A. NICHOLS, TRUSTEE**



STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

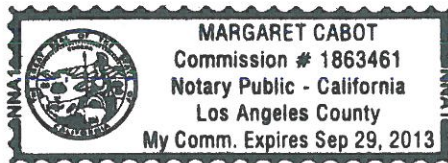
On June 23, 2013, before me, Margaret Cabot,  
Notary Public, personally appeared Charles F. Nichols, who proved to me on the  
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the within instrument 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(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

Margaret Cabot  
Notary Public

[SEAL]



STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

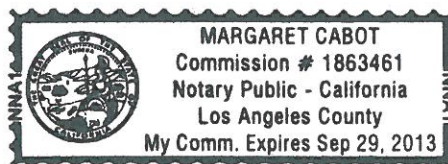
On June 23, 2013, before me, Margaret Cabot,  
Notary Public, personally appeared Judith A. Nichols, who proved to me on the  
basis of satisfactory evidence) to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/ signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) 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.

Margaret Cabot  
Notary Public

[SEAL]



**EXHIBIT A**

THAT PORTION OF PARCEL B, AS SHOWN ON THAT CERTAIN MAP FILED FOR RECORD JUNE 27, 2002 IN VOLUME 25 OF SURVEYS, AT PAGE 73, AND THAT PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN MAP FILED FOR RECORD APRIL 29, 1971 IN VOLUME 10 OF SURVEYS, AT PAGE 15, BOTH FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE MOST EASTERLY CORNER OF SAID PARCEL B;

THENCE ALONG THE SOUTHEASTERLY BOUNDARY OF SAID PARCEL B, SOUTH 63° 04' 13" WEST 3564.02 FEET TO A POINT ON A LINE PARALLEL TO AND 217.58 FEET NORTHEASTERLY OF THE SOUTHWESTERLY BOUNDARY OF SAID PARCEL B;

THENCE NORTHWESTERLY ALONG SAID PARALLEL LINE, NORTH 49° 13' 28" WEST 4755.81 FEET, MORE OR LESS, TO A POINT ON A LINE IN THE NORTHWESTERLY BOUNDARY OF SAID PARCEL A, LAST SAID LINE HAVING A BEARING OF NORTH 20° 57' 58" EAST;

THENCE EASTERLY ALONG THE NORTHWESTERLY AND NORTHEASTERLY BOUNDARY OF SAID PARCEL A, NORTH 20° 57' 58" EAST 75.25 FEET;

THENCE, NORTH 59° 32' 12" EAST 878.67 FEET;

THENCE, NORTH 82° 54' 28" EAST 472.51 FEET;

THENCE, NORTH 54° 46' 47" EAST 680.41 FEET TO A POINT ON A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 119.05 FEET;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 66° 46' 26" AN ARC DISTANCE OF 138.74 FEET;

THENCE, SOUTH 58° 26' 47" EAST 1216.16 FEET;

THENCE, SOUTH 70° 12' 20" EAST 602.02 FEET;

THENCE, SOUTH 81° 58' 51" EAST 1199.91 FEET;

THENCE, SOUTH 69° 10' 38" EAST 297.18 FEET;

THENCE, SOUTH 52° 25' 44" EAST 604.61 FEET;

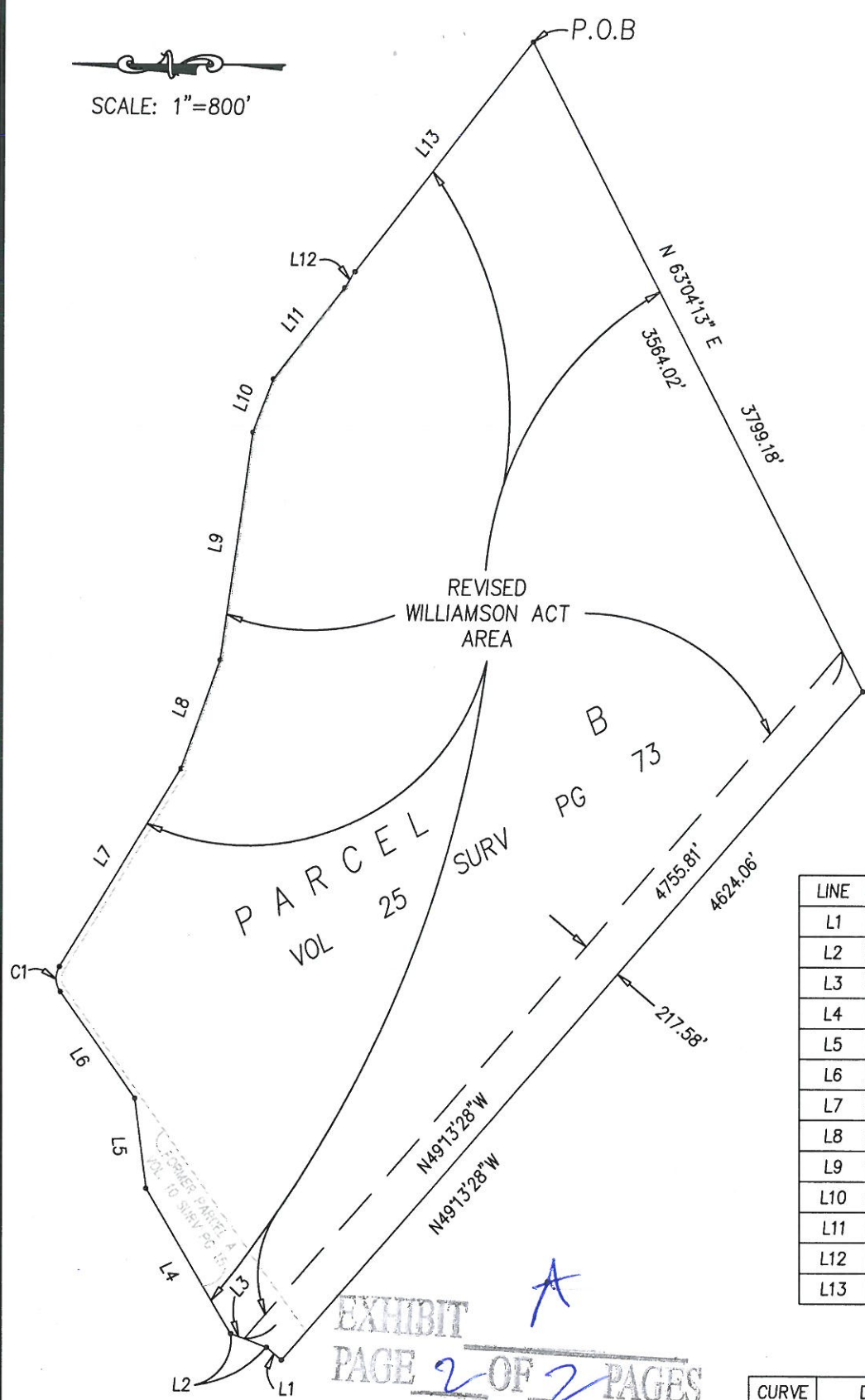
THENCE, SOUTH 58° 08' 33" EAST 100.45 FEET TO THE NORTHERLY TERMINUS OF THAT LINE IN THE NORTHEASTERLY BOUNDARY OF SAID PARCEL B, SAID LINE HAVING A BEARING OF SOUTH 52° 25' 44" EAST;

THENCE, SOUTH 52° 25' 44" EAST, 1521.22 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 306 ACRES, MORE OR LESS.

EXHIBIT <sup>A</sup>  
PAGE 1 OF 2 PAGES

SCALE: 1"=800'



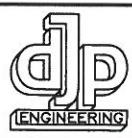
LINE TABLE

LINE	BEARING	DISTANCE
L1	N40°26'06"E	101.18'
L2	N20°57'58"E	198.97'
L3	N20°57'58"E	75.25'
L4	N59°32'12"E	878.67'
L5	N82°54'28"E	472.51'
L6	N54°46'47"E	680.41'
L7	N58°26'47"W	1216.16'
L8	N70°12'20"W	602.02'
L9	N81°58'51"W	1199.91'
L10	N69°10'38"W	297.18'
L11	N52°25'44"W	604.61'
L12	N58°08'33"W	100.45'
L13	N52°25'44"W	1521.22'

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH
C1	66°46'26"	119.05'	138.74'

EXHIBIT A  
PAGE 2 OF 2 PAGES



DJP ENGINEERING  
100 NORTH BARRANCA, SUITE 860  
WEST COVINA, CA 91791  
TEL 626-966-8200  
FAX 626-966-8255

EXHIBIT A  
REVISED WILLIAMSON ACT AREA

SCALE: 1"=800'      DATE: 10/18/12      JOB NO.: 09007      SHEET 1 OF 1



**EXHIBIT "B"**  
**LAND CONSERVATION CONTRACT**  
**COMPATIBLE USES**

The following is a list of land uses determined to be compatible with the agricultural use of the land subject to this agreement and planning and zoning restrictions:

1. The drying, packing or other processing of an agricultural commodity usually performed on the premises where it is produced.
2. Structures necessary and incidental to the agricultural use of the land.
3. Single family dwellings incidental to the agricultural use of the land for the residence of the owner, and the family of the owner. Single family dwellings incidental to the agricultural use of the land for the residence of the lessee of the land and the family of the lessee.
4. Dwelling for persons employed by owner or lessee and the family of employee or lessee incidental to the agricultural use of the land.
5. An aircraft landing strip incidental to the agricultural use of the land.
6. The erection, construction, alteration or maintenance of gas, electric, water or communication utility facilities.
7. The erection, construction, alteration or maintenance of radio, television or microwave antennas, transmitters and related facilities.
8. Public or private hunting of wildlife or fishing.
9. Public or private hunting clubs and accessory structures.
10. Public or private rifle and pistol practice range, trap or skeet field, archery range or other similar use.
11. Public or private riding or hiking trails.
12. Removal of natural materials.
13. Disposal site for oil field wastes, provided that any such use shall be made only in accordance with the use permit and other permits issued by the County of Monterey and the California Regional Water Quality Board and such other governmental authority as may have jurisdiction over this use. "Wastes received (discharged) at the site have been, and will continue to be, limited to petroleum and oil field wastes, such as muds, oily water, tank bottom wastes, and brine waters."

**END OF DOCUMENT**