

OPEN SPACE ADVISORY COMMITTEE STAFF REPORT

MEETING DATE: September 18, 2017

AGENDA ITEM NUMBER: 3D

STAFF: Ann Bollinger, Open Space Administrator

REQUEST: **For Possible Action:** To appoint the Chair or Vice-Chair to represent the Open Space Advisory Committee in negotiations on a potential conservation easement with the Old Woods Ranch LLC.

GENERAL DISCUSSION:

Summary: Carson City is seeking to purchase a conservation easement over the Old Woods Ranch, LLC property. As part of this process, the 2009 Horsecreek Ranch conservation easement purchase will be reviewed to determine which attributes and conditions remain important in consideration of this potential future transaction. Additionally, a person will be selected to act on behalf of the Open Space Committee during this transaction.

The Horsecreek Ranch, located 2.2 miles past the paved terminus at the west end of King Canyon Road, consists of a total of 201 acres. In 2009, Carson City purchased a conservation easement over 175 of the acres so the property can be used indefinitely for *“agricultural uses, by preserving and protecting in perpetuity its agricultural values, character, use and utility, and by preventing any use or condition of the Property that would significantly impair or interfere with its agricultural values, character, use or utility.”* The 26 acres that remain may be developed as two residential properties. The conservation easement was purchased with funding assistance from the State of Nevada Conservation and Resource Protection Grant Program, and cost \$1.1 million, or \$6,274 per acre. This dollar amount was approximately 50% of the unrestricted land value.

Similar to the restriction placed on the 175 acres of the Horsecreek Ranch, Carson City is also seeking to preserve the land over the Old Woods Ranch. This can be accomplished by purchasing a conservation easement over the property.

In addition to potential restrictions desired and required by Carson City, funding partners and programs also have restrictions on various land uses. A PowerPoint created by the Nevada Division of Forestry (NDF) and information on the Forest Legacy Program is included with this presentation to help explain the requirements.

A few examples of the program requirements include:

- At least 25% of the project cost must come from nonfederal sources.

- Noncompatible nonforest uses are uses of the land inconsistent with maintaining forest cover including, but not limited to, activities that result in extensive surface disturbance such as residential subdivisions, commercial development, and mining.
- Compatible nonforest uses are nonforest uses of the land that may be compatible with forest uses as part of an undeveloped landscape, including cultivated farmland, pasture, grassland, shrubland, open water, and wetlands. These nonforest uses should be less than 25 percent of the total area.

Staff has been working closely with the NDF because the Forest Legacy Program is one of the most suitable funding sources for a transaction with the Old Woods Ranch LLC and because of the lower match requirement compared to other programs. With guidance from Nevada Land Trust and support from the NDF, it is hoped that an application can be submitted in June 2018.

In order to keep the forward progress of discussions, staff is asking the Committee to appoint a representative to assist with negotiations.

RECOMMENDED ACTION: I move to appoint _____ to represent the Open Space Advisory Committee in negotiations on a potential conservation easement with the Old Woods Ranch LLC.

When Recorded Mail To:
William Michael Fagen 2005 Trust
William Michael Fagen, Trustee
15925 Caswell Lane
Reno NV 89511

Juan F. Guzman
Open Space Manager
Carson City Parks & Recreation Department
3303 Butti Way, Building #9
Carson City, NV 89701

DEED OF AGRICULTURAL CONSERVATION EASEMENT

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT (the "Easement") is made by The William Michael Fagen 2005 Trust, William Michael Fagen, Trustee ("Fagen"), to the city of Carson City, Nevada ("Carson City").

WITNESS THAT:

WHEREAS, Fagen is the owner in fee simple of that certain real property in Carson City, Nevada, comprising Carson City Assessor's Parcel Numbers **007-051-84 (Parcel 1), 007-051-83 (Parcel 2), and 007-051-82 (Parcel 3)**, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property possesses significant agricultural, historic, open space, and watershed protection values of great importance to Fagen, the people of Carson City, and the people of the State of Nevada; and

WHEREAS, the modern history of Horse Creek Ranch dates back at least to the mid-1800's when it served as a horse resting, watering, and exchange depot for pioneers traveling to California and the Pacific coast via the original Lincoln Highway, now more popularly known as King's Canyon Road, which forms the northern and western boundaries of the property for almost one mile. Certificated water rights and a still-in-use water flume ("Neal's Flume") similarly date back to this period. This water serves to infiltrate and replenish the City's watershed. In the winter the water is stored in the form of snow and the process of melting and infiltration also serves to replenish Carson City's water aquifer. From Kings Canyon Road looking south, one has a view unparalleled by any

other site in Carson City. The meadows of Horse Creek Ranch and the adjacent Schulz Ranch stretch out immediately below, then the Schneider and Ascuaga ranches are visible in the mid-range, and finally Heavenly Valley Peak and Job's Peak, as well as the rest of the Sierra Nevada's reach into the distance. The property has indigenous populations of bear, mountain lions, eagles, great owls, and many other species under human pressure. It contains the headwaters of the north branch of Clear Creek, as well as half a dozen pure mountain springs. In short, Horse Creek Ranch is a unique and stunningly beautiful property, one of very few left like it in the Sierras, and most worthy of conservation; and

WHEREAS, Fagen and Carson City intend that the Property be maintained in agricultural production by the maintenance of the agricultural values thereof and that the open space and scenic values of the Property be preserved by the continuation of the agricultural and ranching uses that have proven historically compatible with such values; and

WHEREAS, Carson City supports the protection and preservation of agricultural land uses, agricultural land, and open land through Objectives, Policies, and Implementation Programs as expressed in the Open Space Element of the Carson City Master Plan, including, *inter-alia*, the permanent protection of lands for agricultural uses by acquisition of perpetual agricultural conservation easements; and

WHEREAS, Fagen intends, as owner of the Property, to convey to Carson City the right to preserve and protect the agricultural, and to the extent consistent with agricultural values, the open space, historic, watershed protection, and scenic values of the Property in perpetuity; and

WHEREAS, Carson City intends, by acceptance of the grant made hereby, forever to honor the intentions of Fagen to preserve and protect the agricultural, open space, historic, watershed protection, and scenic values of the Property in perpetuity; and

WHEREAS, in consideration for funding provided by the State of Nevada to acquire the conservation easement, third party enforcement rights, as defined in Sections 6 and 7 following, are being granted to the State of Nevada as authorized by N.R.S. Section 111.410;

NOW, THEREFORE, for good and valuable consideration, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Nevada including, *inter-alia*, sections NRS 111.390 to 111.440, Fagen does hereby voluntarily grant to Carson City an Agricultural Conservation Easement in gross in perpetuity over all 121 acres (+/-) of Parcel 3, # 007-051-82, and over a portion representing 25.548 acres (+/-) of Parcel 1, # 007-051-83, and over a portion representing 28.785 acres (+/-) of Parcel 2, # 007-051-84 (for at total of 175.333 (+/-) acres

under agricultural conservation) of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purpose. It is the purpose of this Easement to enable the Property to remain in agricultural uses (as defined in Exhibit B, section 2), by preserving and protecting in perpetuity its agricultural values, character, use and utility, and by preventing any use or condition of the Property that would significantly impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation of the open space and scenic values of the Property is consistent with such use, it is within the purpose of this Easement to protect those values.

2. Affirmative Rights and Interests Conveyed. To accomplish the purpose of this Easement, the following rights and interests are conveyed to Carson City by this Easement:

(a) To identify, to preserve and to protect in perpetuity the agricultural values, character, use and utility, including the agricultural productivity, vegetation, soil and water quality, watershed protection, historic value, and the open space and scenic values of the Property. (The agricultural values, character, use and utility, watershed protection, historic value, and the open space and scenic values of the Property are hereinafter referred to collectively as "the Protected Values".) No identification of new Protected Values which would obligate Fagen in any way shall be made after the signing of this Agreement.

(b) To enter upon, inspect, observe, and study the Property for the purposes of: (i) identifying the current condition of, uses and practices thereon, and the baseline condition thereof; and (ii) monitoring the uses and practices to determine whether they are consistent with this Easement. Such entry shall be permitted upon prior notice to Fagen, and shall be made in a manner that will not unreasonably interfere with Fagen's use and quiet enjoyment of the Property, and shall not occur with undue frequency.

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent condition, activity or use. However, it is the intention of this Easement not to limit Fagen's discretion to employ his choices of farm and ranch uses and management practices, including the development of water and energy supplies for use on Fagen's property, so long as those uses and practices are consistent with the purpose of this Easement.

(d) Subject to Fagen's consent, to erect and maintain a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the Property is protected by Carson City. The wording of the information shall be determined by Carson City and approved

by Fagen, and shall clearly indicate that the Property is privately owned and NOT open to the public. Carson City shall be responsible for the costs of erecting and maintaining such sign or marker. Should it become apparent that any signage is a causal factor in inadvertently inviting trespass on the Property, then said signage shall be removed at Carson City's expense.

3. Uses and Practices. Fagen and Carson City intend that this Easement shall confine the uses of the Easement portions of the Property to agriculture, renewable energy production restricted to use on the Property and appurtenances, and residential use associated with the agricultural use of the Property, and the other uses which are described herein. Examples of uses and practices which are consistent with the purpose of this Easement and which are hereby expressly permitted, are set forth in Exhibit B, attached hereto and incorporated herein by this reference. Examples of uses and practices which are inconsistent with the purpose of this Easement, and which are hereby expressly prohibited, are set forth in Exhibit C, attached hereto and incorporated herein by this reference. The uses and practices set forth in Exhibits B and C are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities, and to provide guidance in determining the consistency of other activities with the purpose of this Easement.

4. Baseline Data. In order to establish the present condition of the Protected Values, Carson City has examined the Property and prepared a report (the "Baseline Documentation Report," Exhibit D (attached hereto and incorporated herein by this reference) containing an inventory of the Property's relevant features and conditions, its improvements and its natural resources (the "Baseline Data"). A copy of the Baseline Documentation Report has been provided to Fagen, and another shall be placed and remain on file with Carson City. The Baseline Documentation Report has been signed by Fagen and Carson City, and thus acknowledged to represent accurately the condition of the Property at the date of the conveyance of this Easement. The parties intend that the Baseline Data shall be used by Carson City to monitor Fagen's future uses of the Property, condition thereof, and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Fagen and Carson City recognize that changes in economic conditions, changes due to climate change such as global warming, in energy supply and availability, in water supply and availability, in agricultural technologies, in accepted farm and ranch management practices, and in the situations of Fagen may result in an evolution of agricultural uses of the Property, provided such uses are consistent with this Easement.

5. Reserved Rights. Fagen reserves to himself, and to his personal representatives, heirs, successors, and assigns, all rights accruing from their

ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved: (i) all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the Property, provided that such water rights are used on the Property in a manner consistent with the purpose of this Easement and in accordance with applicable law; (ii) all right, title, and interest in subsurface oil, gas and minerals; provided that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, shall not damage, impair or endanger the Protected Values, shall be in accordance with applicable law, and shall be approved by Carson City prior to its execution; and (iii) all right title, and interest to the production of any renewable energy supplies of any type, subject to their use on the Property.

6. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Fagen agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to the American Arbitration Association for the appointment of a trained and impartial mediator with relevant experience in real estate and conservation easements. Mediation shall then proceed in accordance with the following guidelines:

(a) Purpose. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning issues in the dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the covenants, terms, conditions, or restrictions of this Easement.

(b) Participation. The mediator may meet with the parties and their counsel jointly or *ex parte*. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or

construed as an admission of a party.

(d) Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of the selection or appointment of a mediator or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in mutually agreeable resolution of the dispute.

(e) Costs. The cost of the mediator shall be borne equally by Fagen and Carson City; the parties shall bear their own expenses, including attorney's fees, individually.

7. Carson City's Remedies. If Carson City determines that Fagen is in violation of the terms of this Easement or that a violation is threatened, Carson City shall give written notice to Fagen of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use, condition or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Fagen fails to cure the violation within thirty (30) days after receipt of notice thereof from Carson City, conditions of weather and access permitting, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Carson City may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Protected Values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If Carson City believes that circumstances require immediate action to prevent or mitigate significant damage to the Protected Values, Carson City may pursue its remedies under this section without waiting for the period provided for cure to expire, provided that a qualified expert acceptable to both Parties is consulted at Fagen's sole expense and said Party concurs with Carson City's assessment of the need for preemptive action, and further provided that Fagen is notified in advance of such intention to embark on corrective action. In such a case, Carson City shall nominate the qualified expert and Fagen shall have no more than 48 hours after notification to approve said nominee or to nominate an alternative expert. Carson City's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Fagen agrees that Carson City's remedies at law for any violation of the terms of this Easement may be inadequate and that Carson City shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Carson City may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal

remedies. Carson City's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7.1 Costs of Enforcement. Any costs incurred by Carson City in enforcing the terms of this Easement against Fagen, including, should Carson City prevail in any action to enforce the terms of this Easement, costs of suit and attorneys' fees, and any costs of restoration necessitated by Fagen's violation of the terms of this Easement, shall be borne by Fagen, amounts not to exceed the sum received for the original procurement of this Easement. If Fagen prevails in any action to enforce the terms of this Easement, Fagen's costs of suit, including, without limitation, attorneys' fees, shall be borne by Carson City, up to the amount paid by Carson City to Fagen.

7.2 Carson City's Discretion. Any forbearance by Carson City to exercise its rights under this Easement in the event of any breach of any term of this Easement by Fagen shall not be deemed or construed to be a waiver by Carson City of such term or of any subsequent breach of the same or any other term of this Easement or of any of Carson City's rights under this Easement. No delay or omission by Carson City in the exercise of any right or remedy upon any breach by Fagen shall impair such right or remedy or be construed as a waiver. However, any condition of which Carson City is aware or should have been aware, and for which no notice of violation and demand for correction has been sent to Fagen on a timely basis, shall not subject Fagen to damages or costs in excess of those which would have been required should such a notice have been given by Carson City upon first learning of said violation.

7.3 Acts Beyond Fagen's Control. Nothing contained in this Easement shall be construed to entitle Carson City to bring any action against Fagen for any injury to or change in the Property resulting from causes beyond Fagen's control, or without his knowledge, including, without limitation, fire, flood, storm, drought, earth movement, trespass, climate change, or from any prudent action taken by Fagen under emergency conditions to prevent, abate, or mitigate significant injury to any person or to the Property resulting from such causes.

7.4 Third Party Enforcement Rights. Pursuant to NRS 111.410, in the event that the Carson City fails to enforce the terms and conditions of the Conservation Easement created by this Deed, as determined in the sole discretion of the State of Nevada, the State of Nevada shall have the same rights and obligations of enforcement as Carson City, and under the same terms and conditions, including the right of access to monitor compliance; provided, however, that the State of Nevada agrees that it shall not exercise the enforcement rights granted herein with respect to any act, conduct, or activity which:

- (a) was the subject of a prior enforcement action by Carson City,

regardless of the resolution of the enforcement action, whether by judgment of a court, order of an administrative body, or through compromise and a written settlement between Carson City and Fagen; or

(b) Carson City approved, or was deemed to have approved, pursuant to the terms and conditions of the Agricultural Conservation Easement.

In the event that Carson City attempts to terminate, transfer, or otherwise divest themselves of any rights, title, or interests of this Agricultural Conservation Easement without the prior consent of the State of Nevada and payment of consideration to the State then, at the option of the State, Carson City shall transfer Carson City's interest in this Easement to the State or another public agency or qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Agricultural Conservation Easement.

8. **Costs and Taxes.** Fagen retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Fagen shall pay any and all taxes, assessments, fees and charges levied by competent authority on the Property or on this Easement. However Carson City shall support Fagen's attempts to have the Property assessed in the lowest possible tax category that the property qualifies for under the Nevada Revised Statutes for the duration of this Easement. It is intended that this Easement constitute an enforceable restriction within the meaning of NRS 111.390 to 111.440, inclusive.

9. **Hold Harmless.** Fagen shall hold harmless, indemnify, and defend Carson City and its directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person excepting those persons representing Carson City or its subcontractors, or physical damage to any property, excepting property pertaining to those persons representing Carson City or its subcontractors, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties; and (b) the obligations specified in section 8.

9.1 **Carson City Not Operator.** Nothing in this Easement shall be construed as giving any right or ability to Carson City to exercise physical or managerial control of the day to day operations of the Property, of Fagen's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or any other federal, state, or local law or regulation making operators of property responsible for

remediation of contamination.

9.2 Notwithstanding Section 9.1 above, Carson City shall have the right, with Fagen's consent, to perform, at Carson City's sole expense, various remediation and/or prevention activities to control erosion (such as road repair and correcting stream bed headcuts), mitigate fire risk, or other such activities as may enhance the conservation values of the Easement and the Property.

10. Access. This easement does not convey to the general public the right to access any portion of the property. Carson City and the State of Nevada are granted limited access rights as described in section 2(b) and 7.4 of this Deed of Agricultural Conservation Easement.

11. Development Rights. The parties acknowledge that under currently applicable zoning regulations of Carson City the Property is so classified. "Conservation Reserve," and that upon receipt of required government approvals, the Property could be developed to a density of up to one single family residential dwelling unit ("the Development Rights") per 20 acres, and, with Carson City's approval, could potentially support greater density than that under a Planned Unit Development (PUD); further, that under certain circumstances the Development Rights may be transferred to and utilized on other property or properties. Fagen agrees that, apart from those approved uses outlined in Exhibit B below, he shall not exercise the Development Rights from **Parcel 3, # 007-51-82** nor transfer them or utilize them on other property or properties. **Parcels 1 and 2 # 007-051-84 and 007-051-83, respectively,** are not subject to the restrictions in this paragraph.

12. Recognition of Existing Easements and Encumbrances on the Property. Carson City agrees and recognizes the existence of recorded easements and other encumbrances upon the Property, as well as recorded easement reserves which may serve to provide physical access as well as water supply(s) to and from adjacent parcels. Carson City and Fagen agree that the existing recorded easements and easement reserves and other encumbrances upon the Property shall not be affected by the Easement and shall continue to be in full force and effect. The existing easements and encumbrances covered by this Paragraph are recorded on the original recorded parcel map 007-051-78 of 2005, the Land Division Map of February 2009 in Exhibit A and are further described in Exhibit E, which are attached hereto and incorporated herein by this reference. Consistent with the goals of this Easement, Carson City and Fagen further agree that said easements for roads and water may be realigned as necessary to improve safety, access, water flow, energy or communications supply, or to facilitate implementation of any other aspect of this Agreement.

13. A. Conveyance of Separate Parcels; Merger. Fagen acknowledges that the Property currently consists of three separate Assessor's parcels: **(APNs 007-051-82, 007-051-83, and 007-051-84)** which under existing law and

regulations might be sold or conveyed. Subject to all applicable land division and subdivision regulations, there shall be no restrictions on subdivision of **Parcels 1 and 2, 007-051-84 and 007-051-83, respectively**, due to this Easement, provided that any subdivision that involves the Easement shall carry this Easement in tact, in whole or in part, along with the new parcels. However, it is agreed that the sale or conveyance of one or more parcels separated from or made apart from **Parcel 3, # 007-051-82** is inconsistent with the purpose of this Easement. Nevertheless, Fagen may accomplish lot line adjustments with adjacent property owners in order to facilitate management or administration of the land, subject to the approval of Carson City which approval shall not unreasonably be denied. If Fagen receives less acreage than he relinquishes, then Carson City must approve, in its sole discretion, the lot line adjustment agreement.

B. Carson City's Right of First Refusal. As a part of this Agreement, Fagen hereby grants Carson City a "Right of First Refusal" to purchase any or all of the three parcels known collectively as Horsecreek Ranch prior to a public sale of the same, subject to the following conditions: Fagen may sell any part of Horsecreek Ranch to friends or family without a public listing for sale of the property and without Carson City's involvement. Should Fagen wish to list the property for sale with a realtor, he will first offer an "Exclusive Option to Purchase" of the said property to Carson City, the cost of said Option to be 5% of the Listing Price of the property. Carson City will have 45 days from Fagen's offer of Exclusive Option to Purchase in which to accept the offer of the Option and to disburse the 5% funding. Carson City will then have 75 days from the day the Option is executed by both Parties to close on the property and complete the transaction in full. Should Carson City proceed to satisfy on a timely basis all of the conditions of the agreement for sale of the property, including full funding within the 75 day escrow period, then the original 5% exercise price paid for the Option will be credited toward the final purchase price of the property. Should the property be appraised by an independent board certified MAI appraiser for the amount of Fagen's asking price, or should both Parties agree on a different price subsequently confirmed by such an independent appraisal, and should Carson City for any reason not complete the final sales transaction within the specified time period, then Carson City's Exclusive Option to Purchase will expire and it will forfeit the 5% option price to Fagen without additional benefit. Fagen maintains the right within these time periods of 45 days and 75 days, respectively, to offer the property for sale to any third party, known or unknown to him, via realtor or directly himself, for the purposes of taking secondary, "back up" offers, subject to and subordinate to Carson City's failure to perform at any stage of the process described above.

14. **Extinguishment.** If circumstances other than those caused by natural forces arise in the future such as to render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished,

whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Carson City shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Nevada law at the time, in accordance with Section 15.

15. Compensation. This Easement constitutes a real property interest immediately vested in Carson City. For the purpose of this Instrument, the parties stipulate that the Easement has an initial fair market value as determined by a self-contained appraisal conducted by a Nevada licensed appraiser qualified in conservation easements. For the purposes of this section, Fagen and Carson City agree that, for any future valuations of the Property and the Easement, the future value of the Easement shall be calculated at the same ratio as the value of the Easement to the value of the Property unencumbered by the Easement as determined by the appraisal conducted to determine the initial fair market value of the Easement and the Property. The initial ratio of the Easement is agreed by the Parties, based on professional appraisal, to be 52.3% of the value of the unencumbered Property.

16. Condemnation. Should all or part of the Property be taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by the Easement, Fagen and Carson City shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate values of Fagen's and Carson City's interests in the Easement portions of the Property as set forth in Section 15, unless otherwise provided by applicable law. All expenses incurred by Fagen and Carson City in such action shall be first paid out of the recovered proceeds. However, should Carson City, or any entity controlled by it, or any subsequent entity or assign which would have both condemnation rights and monetary or other recompense or benefit from such an act of condemnation, be the Authority to take the Property by eminent domain, then Carson City or the successor entity shall be entitled to recover only one-half of the value of Carson City's interest in the Easement portions of the Property in the eminent domain proceedings.

17. Assignment of Carson City's Interest. Carson City may assign its interest in this Easement only to a "qualified organization", within the meaning of section 170(h) of the Internal Revenue Code, as amended, or any successor provision, which is authorized to acquire and hold conservation easements under Nevada law, provided that all of Carson City's other obligations to Fagen, such as, but not limited to, appropriate tax assessment, shall remain in full effect.

18. Executory Limitation. If City shall cease to exist for any reason, or cease to be a qualified organization under section 170(h) of the Internal Revenue

Code, as amended, or cease to be authorized to acquire and hold conservation easements under Nevada law, then Carson City's rights and obligations under this Easement shall become immediately vested in a similarly qualified organization.

19. Amendment of Easement. This Easement may be amended only with the written consent of Fagen and Carson City. Any such amendment shall be consistent with the purposes of this Easement and with Carson City's easement amendment policies, and shall comply with section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section, and with NRS 111.390 to 111.440, inclusive, or any regulations promulgated there under. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement nor the rights of Carson City under the terms of this Easement. Should Carson City enter into a conservation easement with any adjacent property owners, then Carson City will negotiate in good faith to offer Fagen the same terms and conditions of any such easement via amendment to this Easement.

20. Applicable Law. All uses, practices, specific improvements, construction or other activities permitted under this Easement shall be in accordance with applicable law and any permits or approvals required thereby.

21. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Nevada.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the Nevada Revised Statutes, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Fagen's title in any respect.

(f) Joint Obligation. The obligations imposed by this Easement upon Fagen and Carson City shall be joint and several.

(g) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(h) Termination of Rights and Obligations. Except as provided for in Paragraph 16 above, a party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Future Conveyance. Fagen agrees that reference to this Easement will be made in any subsequent deed or other legal instrument by means of which Fagen conveys any interest in the Property (including but not limited to a leasehold interest).

(j) Not Governmental Approval. No provision of this Easement shall constitute governmental approval of any specific improvements, construction or other activities that may be permitted under this Easement.

(k) Limited Liability. Carson City will not waive and intends to assert available Nevada Revised Statutes Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any Carson City breach shall never exceed the amount of funds appropriated for payment under this Agreement.

IN WITNESS WHEREOF, Fagen has executed this Deed of Agricultural Conservation Easement this 9th day of March, 2009.

WILLIAM MICHAEL FAGEN, Trustee
Name on Title Report

By:

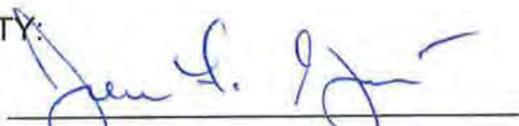

William Michael Fagen, Trustee for
The William Michael Fagen 2005 Trust

Accepted by
CARSON CITY:

By:

Print Name:

Title:


Juan F. Guzman
Open Space Manager

[Notarization of Fagen's and Carson City's signatures]

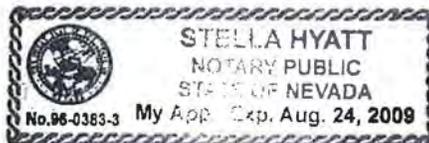
State of Nevada

County of Carson City

Signed and sworn to before me on March 9, 2009, by

William Michael Fagen and Juan F. Guzman.


Notary Public




WMF 
CC

EXHIBIT A

Land Division Map
Preliminary Land Division Map
Legal Descriptions

(Available Upon Request)

(pages 15-30)

EXHIBIT B
PERMITTED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are expressly permitted as set forth herein:

1. Residential Use. To reside on the Property. Consistent with all applicable zoning and building regulations, residential construction shall *not* be restricted on **Parcels 1 and 2, #s 007-051-84 and 007-051-83, respectively**. On **Parcel 3, # 007-051-82**, there are two existing structures, "cabins," attached by a wood deck, as well as one additional separate structure on the Property. These structures range in age from 30 to over 100 years old and are in various stages of disrepair. The sum total of ground covered by these existing structures is approximately 3500 square feet. New primary residential construction is permitted on **Parcel 3, # 007-051-82**, so long as such construction takes place in a single concise building envelope and the new single family residence does not exceed the existing ground coverage of the current structures on the Property, as measured above. Furthermore, no new construction shall occur on **Parcel 3, # 007-051-82** in the area designated as "Meadow" in the original Baseline Report attached hereto as Exhibit D and incorporated herein by this reference.

2. Agriculture. To engage in agricultural uses of the Property in accordance with sound, generally accepted agricultural practices, which may include innovative or experimental crops and/or techniques that do not threaten or degrade significant natural resources. For the purposes of this Easement "agricultural uses" shall be defined as: breeding, raising, pasturing, and grazing livestock of every nature and description for the production of food, fiber, or biomass; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description; and the processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the Property, provided that the on site processing, storage, and sale of any such crops or products that are not food, fiber, or biomass shall require the consent of Carson City; further provided, however, that such agricultural uses shall not result in significant soil degradation, significant pollution or degradation of any surface or subsurface waters, and that all uses and activities are consistent with applicable laws.

3. Improvements and Facilities.

(a) Maintenance and Repair of Existing Improvements and Facilities. To maintain, repair, and improve existing structures, housing, fences, corrals, roads, water courses, and other improvements and facilities anywhere on the Property.

(b) Construction of Additional Improvements and Facilities. Additional improvements and facilities accessory to the residential use of the Property, and additional structures, such as, *inter alia*, barns, sheds, and/or greenhouses, housing, roads, fences, water courses and tanks, communications and energy supply, and other improvements and facilities reasonably necessary to the agricultural and/or approved residential uses of the Easement Property, shall be permitted, provided that on Parcel 3, # 007-051-82, Fagen shall obtain the express written approval of Carson City for the construction of structure, housing, road, or other improvements and facilities, including the size, function, capacity and location, which consent should not be unreasonably withheld, and that such construction is made in accordance with applicable laws. Fagen shall provide Carson City written notice of Fagen's intention to undertake any such construction, together with information on its size, function, capacity and location, not less than forty-five (45) days prior to the commencement thereof. Except as permitted in Paragraph B.4 below, any new construction on Parcel 3, # 007-051-82, shall occur outside the area designated as "Meadow" in the original Baseline Report attached hereto. Additional fencing and corrals, water courses and water storage facilities, and private communications and/or renewable energy facilities deemed by Fagen to be reasonably necessary to residential, ranching and/or agricultural activities on the Property may be constructed without Carson City's consent.

(c) Replacement of Improvements and Facilities. In the event of destruction, deterioration or obsolescence of any accessory buildings, structures, housing, barns, fences, corrals, roads, water courses/storage facilities or other improvements and facilities, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this section, Fagen may replace the same with accessory buildings, structures, barns, housing, fences, corrals, roads, water courses/storage facilities, or other improvements and facilities of similar size, function, capacity and location. Additionally, agricultural access roads and/or driveways may be constructed, consistent with applicable laws and building codes, by Fagen without the need for Carson City's consent. Furthermore, Fagen has the right but not the obligation now and in the future to remove all or any part of any existing or new structure, accessory building, road, water course, improvement or facility on the Property at his sole discretion.

(d) Right to restore, preserve, improve, and utilize existing cabins. Recognizing the historic and scenic nature of the existing cabins on the property, some of which are over one hundred years old, and further recognizing that if prompt effort is not made to stop their continued deterioration they will soon become unsalvageable, and further recognizing that because of their age and current poor condition substantial sums will be required to restore them to a usable and maintainable condition, Carson City hereby agrees that should Fagen, at his sole discretion, undertake to move, restore, rebuild, reconstruct, renovate, improve, connect, combine, add or subtract from any or all of the cabins in an effort to protect, preserve, utilize and maintain them for future generations, that

this effort shall NOT preclude him from building one new home of no greater than 3500 square feet of ground coverage on Parcel 3, # 007-051-82, in an area of his choosing which must be OUTSIDE the area designated as "Meadow" on the Baseline Report attached hereto as Attachment D. Should Fagen exercise his right to build a single primary family residence in a permissible location on the property, upon the issuance of an occupancy permit for the single family residence, then the cabins will immediately revert to the classification, with full rights of use thereunder, of "Accessory Structure," as defined in **Section 18.03.010 of the Carson City Municipal Code**, definition as of June 19, 2008, which states:

"Accessory building" or "accessory structure" means a detached usual and customary building or structure associated with a permitted or conditional use, subordinate to the primary use on the same lot, including but not limited to storage, tool shop, children's playhouse, guest building, greenhouse, garage, swimming pools or similar structures 30 inches or more above ground. In calculating the size of an accessory structure, any space with a ceiling 7 feet 6 inches or higher shall be considered habitable space and used in determining total size. An accessory building connected to a main building by a roof, breezeway or other means which is not habitable space is considered an accessory structure attached to a primary building. Each structure must meet standard setback requirements.

Any such "accessory building" or "accessory structure" shall not count against Fagen's right of 3500 square feet of ground coverage for the primary residence as described elsewhere in this Agreement. Fagen and Carson City explicitly agree that inclusive in the above definition, ("including but not limited to"), the cabins may be used to house a ranch guard or caretaker at Fagen's determination.

4. Water Resources and Impoundments. To develop and maintain such water resources, of a size and in a manner consistent with the purpose of this Easement, including, but not limited to, creeks, springs, ponds, flumes, ditches, pipes, weirs, liners, pipes, conduits, culverts, holding tanks, and groundwater resources on the Property as are necessary or convenient for ranching, agricultural, irrigation, power generation, fire mitigation, and residential uses, provided that the creation, alteration or enlargement of any water impoundment shall not damage, impair or interfere with the Protected Values and that all such water resources shall be developed in accordance with applicable laws.

5. Agrichemicals. To use agrichemicals, including, but not limited to, fertilizers, pesticides, herbicides, and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable grazing, agricultural, and landscaping purposes. Such use shall be carefully circumscribed near surface water and during periods of high ground water, and in strict compliance with City, State, and Federal regulations.

6. Predator Control. To control predatory and problem animals by the use of selective control techniques.

7. Recreational Uses. To utilize the Property for recreational or educational purposes, (including, *inter alia*, without limitation, hiking, skiing, horseback riding, hunting and fishing) that require no surface alternation or other development of the land.

Exhibit C Prohibited Uses and Practices

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Easement and are expressly prohibited upon or within the areas covered by the Easement on the Property:

1. Impairment of Protected Values. The impairment of the Protected Values, except as otherwise provided herein.
2. Commercial or Industrial Use. The establishment and conduct of commercial or industrial uses or the construction, placing, or erection of any signs or billboards; provided, however, that neither ranching, agriculture, nor the production or processing of food and fiber products as contemplated by the provisions of Exhibit B, shall be considered prohibited commercial or industrial uses. Further provided, however, that Carson City shall have the right in its sole discretion to approve the establishment and conduct of non-agricultural commercial and industrial uses or activities which are compatible with the Protected Values of the Property and which are ancillary and subordinate to the agricultural uses of the Property. Notwithstanding the prohibition above on the placing or erecting of signs, Carson City, in its sole discretion, may also approve signs related to any such commercial or industrial uses approved by Carson City.
3. Construction. The construction, reconstruction, or replacement of structures, housing, roads, and other improvements and facilities except as provided in section 11 of this Easement and sections 1 and 3 of Exhibit B.
4. Subdivision. The division, subdivision, or de facto subdivision of Parcel 3, # 007-051-82, is prohibited provided, however, that a lease of a portion of the Property for agricultural use shall not be prohibited by this section. Subject to all applicable land division and subdivision regulations, there shall be no restrictions on subdivision of Parcel 1, # 007-051-84, and/or Parcel 2, #007-051-83, due to the Agricultural Conservation Easement provided that any subdivision that involves the Easement shall carry this Easement in tact, in whole or in part, along with the new parcels. Fagen may also by method of lot line adjustment or similar method, buy, sell or exchange a portion of the Property with adjacent landowner(s) so long as the portion of the Property sold continues in the same or similar easement protection and/or so long as the property acquired through exchange is greater than or equal to the Property ceded though the exchange as measured by acreage or appraised value.
5. Motorized Vehicles. The use of motorized vehicles, except by Fagen or others with Fagen's permission, and except for agricultural, ranching, residential,

recreational, educational, or other approved uses of the Property. Carson City acknowledges, recognizes and respects all existing vehicular (and other) easements associate with the Property existing as of the date of this Agreement. Any use of motorized vehicles off of roadways is prohibited except when necessary for agricultural and ranching purposes.

6. Tree Cutting. The harvesting or removal of trees; provided, however, that Fagen shall have the right to (i) cut or collect firewood for the heating of ranch and residential facilities on the Property; and (ii) cut or remove trees as reasonably necessary to control fire, insects and diseases, prevent personal injury and property damage, and to allow construction or repair of residential or agricultural facilities. Fagen may also develop and, with the express prior written approval of Carson City, implement a long-range plan for the growing and/or harvesting of trees in a manner that is consistent with the purpose of this Easement.

7. Dumping. The dumping or other disposal of wastes, refuse or debris on the Property, except for organic material generated by permitted agricultural and residential uses on the Property; provided that any such dumping or disposal of organic material shall be in accordance with applicable law and generally accepted agricultural management practices. No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, or hazardous waste shall be placed, stored, dumped, buried, or permitted to remain on the Property except as reasonably required for the use of the Property for agricultural and residential purposes, and in accordance with applicable law.

8. Soil Degradation. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant degradation of soil quality.

9. Water Quality Degradation. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant degradation of water quality.

10. Surface Alteration or Excavation. Any alteration of the general topography or natural drainage of the Property including, without limitation, the excavation or removal of soil, sand, rock, or gravel, except as may be required for uses on the Property incidental to agricultural and residential uses permitted herein, subject to the approval of Carson City, such approval will not be unreasonably withheld.

11. Fencing Restrictions. To facilitate the unencumbered movement of wildlife, no fences shall be constructed west or north of Neal's Flume to the point the flume passes under the road at the edge of the meadow. Continuing from that point, no fences shall be constructed north or west of a line 50 feet north of the access road descending from King's Canyon Road to a point 50 feet northeast of the adjacent creek, and continuing to a point 50 feet west of the hairpin turn on the access road, from there continuing parallel to and 50 feet northwest of the

access road to the boundary between Parcel 1, # 007-051-84, and Parcel 2, # 007-051-83. This is illustrated in Exhibit A, Conservation Easement Parcel 2. Exceptions to this restriction include limited fencing where necessary in order to protect section(s) of the flume from cave-in, to protect drinking water source(s) from contamination, to protect water-powered energy generation as allowed elsewhere in Exhibit B, or to protect any other point source water use from the flume or elsewhere on the property. This restriction shall not apply should excessive human trespass or excessive invasion of species dangerous to human existence occur, such as, *inter alia*, mountain lions or bears. Additionally, limited fencing shall be permitted in area(s) immediately surrounding any residential or agricultural construction on any of the three parcels for protection of humans and livestock.

Exhibit D

Baseline Condition Report

Horse Creek Ranch

Date: 8/29/06, updated 1/25/09

Property Owner – William Michael Fagen 2005 Trust

Introduction

This report provides a resource assessment and describes current operation of lands proposed for agricultural conservation easement purchase under the Carson City Open Space Program. The Baseline Condition Report will be used to document existing conditions of the property and provide an objective basis to insure that the natural resource values initially existing on the lands are maintained. Recommendations based on this report appear at the end of the document. The consultant suggests these issues be addressed as part of the conservation easement for the Horse Creek Ranch. Conservation Easements are recognized in the Open Space Element of the Carson City Master Plan on page 34 as a tool to save desired open space, specifically "working agricultural areas."

Ownership History

Per the 1872 Civil Adjudication of Clear Creek the property was originally owned by John Neal and for many years called the Woods ranch due to its proximity to the property owned by John Woods, the irrigated meadow immediately south owned by the Schulz family today. Later owners included the Winters family and more recently the Hutchinsons. Michael Fagen, the present owner, purchased the property approximately 10 years ago from the Hutchinsons.

Relationship of obtaining a conservation easement to the Open Space element of the Carson City Master Plan.

As detailed in the opening paragraph, a conservation easement purchase of the Horse Creek Ranch would save a "working agricultural area" listed as a Desired Open Space Area on page 30 of the Open Space Plan. Additionally a Conservation Easement will only require annual compliance checks, significantly reducing costs associated with actual ownership. Although the lands remain in private control, the conservation easement provides public benefit as detailed below.

Significance of the Conservation Easement in protecting (as applicable) floodplain function, wildlife habitat, aquifer recharge and irrigated open space.

Wildlife Habitat

This conservation easement would protect existing wildlife habitat both from a cover and foraging standpoint. Irrigated, uncultivated meadows typically contain large populations of Meadow Voles, which provide a year round food source for raptors, coyotes, bears, badgers, weasels and other predators. The mix of vegetative types – open meadows, sagebrush/bitterbrush uplands, manzanita/ceanothus south slopes and Jeffery Pine forests – provide diversity in cover and plant types that correspond to diversity in wildlife. The numerous southern exposures at this elevation also provide foraging areas during the winter for deer. Cows wintering on the adjacent Schulz property would attract Bald Eagles during the late winter/early spring calving season.

Aquifer Recharge

The Horse Creek Ranch per the attached "Summary of Ownership Clear Creek Decree of 1872" owns 6% of the total flow of Clear Creek. Annual mean discharge of Clear Creek (data 1948 – 2005) is 5.42 cubic feet per second. Six percent of this discharge would roughly equal 235 acre feet per year. The irrigation system on the ranch is a well designed, contour ditch system that distributes water from a pipeline running north/south to a series of small ditches spaced approximately 200 feet apart distributing the water across the meadow east to west. By placing the main water flow in a pipe, the erosion associated with running water down a 10 percent slope is eliminated and the contour ditches spread the water effectively across the meadow. This system not only maintains meadow production but through effective water spreading enhances aquifer recharge opportunity. Assuming slopes and direction of the groundwater mimics surface water flow, this recharge benefits the Carson City aquifer and/or reappears as groundwater discharge into Clear Creek further downstream. Maintaining this irrigation not only has wildlife benefit as described above, but also contributes to the water supply for the citizens of Carson City. A conservation easement for this property should require the maintenance and operation of this irrigation system due to its multiple benefits.

Irrigated Open Space

The 41 acre meadow, with its well designed irrigation system, (if maintained) will preserve irrigated open space, achieving one of the

principal goals of the Open Space Plan. Additionally the location of this irrigated meadow high up on the watershed provides a significant wildlife foraging area surrounded by undeveloped uplands with forested cover areas. This ranch represents one of the last irrigated pasture lands in Carson City. From a historical standpoint this area has been continually managed as a pasture since the 1860's, representing a land use that has not changed in over 130 years. Maintaining this site provides a historical example of Carson City area basically unchanged from the Comstock era.

General Description of the Operation.

Currently Mr. Fagen has an arrangement with the Schulz family that allows the grazing of the irrigated meadow by approximately 40 pair of cow/calves. The grazing is done during the summer season and the cows winter on the adjacent Schulz property. For the use of the pasture the Schulz family maintains the irrigation system and changes water as necessary. Forage species composition, meadow topography and isolation of the area imply that the best use of the pasture is livestock grazing as the land is marginal for hay production. Mr. Fagen and the Schulz family seek to maintain this current operation into the future. The current operation seems mutually beneficial to both parties. The only change anticipated is the possible restricted use of approximately 26 acre area – see attached map – excluded from the conservation easement that could be fenced or partially fenced if the zoning is exercised.

Irrigation System:

The contour open ditch system with water delivery through a pipe mainline has already been described. A hillside ditch, originating from the north fork of Clear Creek diversion structure, provides the source to the irrigation distribution system. Ditch water flows for approximately ½ mile into an enclosed re-enforced concrete box. The large box fills and then distributes water to the pipeline or by-pass. This box works as the sediment basin for the system. This system, particularly the conveyance ditch, needs to be actively maintained to insure an irrigation supply and prevent gully erosion associated with ditch bank failure. (See map) Jeff Schulz, who manages the water for the two properties, stated that the conveyance losses on this ditch were significant and consequently the ditch is not used during the minimum flow periods of north fork of Clear Creek. Riparian vegetation and aspen down gradient from this ditch does indicate some conveyance loss. This impacts late season (August – October) irrigation of the pasture area. Although the pasture does not receive full season irrigation, the area of meadow has been consistent for many years indicating a sustainable balance between water supply and meadow area, achieved under the current/improved irrigation system.

A significant portion of this ditch flows through property owned by the Schulz family. An easement agreement between the Schulz Family and Mr. Fagen has been formalized to provide access to the ditch by both parties to control irrigation flows.

Another spring discharging approximately 25 gallons per minute this June (see attached map) provides an additional irrigation source to this production unit. Currently the spring discharge point is fenced to protect it from grazing impacts and this protection needs to be maintained into the future.

Description of Vegetative Types within the property -

Irrigated Pasture - 41 acres

When the irrigation system was improved, approximately 10 years ago, an inter-seeding of the pasture area was implemented to improve the forage resource by planting orchard grass and tall fescue. The upper/better drained portion of the pasture (north end) contains these introduced species. Below this upper area the pasture species composition changes to more native species that are better adapted to wetter conditions. These species include several native types of sedge, red top, wire grass, creeping wild rye, owl clover, asters, false hellebore and yarrow. Species composition changes based on the local irrigation induced hydrology, with wetter areas occurring down gradient from the initial start of the contour ditch irrigation system. Based on recent vegetative inventories the pasture is in good condition. The grazing helps maintain plant vigor and utilization seems appropriate. Although pasture productivity is not uniform due to the slope and local pasture topography which impedes uniform distribution of water, the consultant would estimate the overall productivity to be approximately 3 animal unit months (AUMs) per acre. This implies that overall each acre would produce approximately 1.5 tons of grass per acre. Stocking rates for the pasture area should not exceed 150 AUMs based on this estimate.

Jeffery Pine Woodland - 67 acres –

The Horse Creek ranch occurs in transitional vegetative zones between shrub dominated foothills and tree dominated mid-elevational plant communities along the east slope. Consequently forested areas within the ranch property are most developed on north slopes and near riparian areas where more soil moisture is available. The Jeffery Pine forest type is characterized by second growth pines widely spaces and with larger trees assumed to be over 100 years old. (Assumption is based on initial

tree harvest of the site during the Comstock era.) Since this forest type occurs on this somewhat dry transitional zone between shrub dominance and tree dominance the tree growth is limited with the most mature trees not over sixty feet tall and diameters not exceeding two feet. The forest canopy is quite open with a shrub dominated understory including bitterbrush, sagebrush, sticky current and needle grasses. Due to low productivity and existing spacing, forestry improvement practices, like pre-commercial thinning, would not be justified unless related to fuel wood harvest. Commercial logging of this woodland should be restricted based on its low productivity and value as wildlife habitat.

Manzanita/Ceanothus Dominated uplands – 37 acres

The western and northern uplands surrounding the irrigated meadow are dominated by a fire induced shrub cover of manzanita and curleaf ceanothus. Sapling size Jeffery Pine occurs throughout this plant community possibly implying this community is transitional and these areas could eventually support a scattered pine forest. Due to the southern exposures and granitic soils this transition to forest is quite slow and in areas of shallow soils might never occur. Existing shrub density is related to exposure with the steeper south facing slopes having the least shrub cover. This habitat type provides cover and food sources (berries) for black bears and numerous rodents. This plant community is somewhat fire resistant and effectively reduces soil erosion from these steep uplands. In concave drainages with north exposures and in areas adjacent to riparian areas, bitter cherry occurs on this site.

Granitic Fans - 13 acres

Small areas of non-forested granitic fans occur just east and west of the irrigated pasture. These co-dominate bitterbrush/sagebrush sites are key areas for winter deer use. Currently they are included within the fenced pasture units and heavy utilization of the bitterbrush and perennial needlegrass is occurring. Fencing these areas from the pasture would better maintain them for winter deer habitat.

Riparian areas – 10 acres

Natural drainage channels with perennial stream flow/springs

The most easterly of the two north forks of Clear Creek runs through the western part of the property. The irrigation water source for the pasture is diverted from this stream – see map. The stream gradient is steep within a contained V shaped channel with very limited floodplain. Dominate riparian species are alder, several willow species, red dog wood and aspen/wood rose occur above the edge of the wetted perimeter of the

stream. In some depositional areas wetland herbaceous species – Sharp beaked sedge, and perennial wildflowers (columbine, Indian paint brush, tall larkspur, big lupine and others) - occur. The dense cover and water source associated with this riparian area provides a very important wildlife habitat, particularly for migrating songbirds and winter thermal cover. The area is in good ecological condition (with the exception of the road crossing that is off the property) and if left unmanaged will due just fine.

Irrigation induced riparian areas

The hillside conveyance ditch and the drainage channels within the pasture support less dense woody riparian vegetation of the same species as the natural channel. Alder is more dominate. Below the conveyance ditch small aspen grooves appear and are assumed to be partially supported by seepage from this ditch. With continued irrigation and managed grazing these areas will be maintained.

The irrigation drainage channels are basically gullies that have formed where flows – irrigation and snow melt/rain event flow - have concentrated. With one exception the bottoms of the channels seemed to have stabilized supporting mature alder and tree like black willow, indicating channel bottom stability. The sides of the channel where soil is exposed could use some stabilization treatment. A new active headcut is occurring at the very northern reach of the main channel. This should be stabilized as a condition of the conservation easement.

General description and location of existing structures including use and condition of the structures.

Three structures are located on the property. An old storage shed/cowboy shack associated with the corrals on the south-west side is in poor condition. The age is unknown but it was constructed entirely with square nails indicating pre 1900 construction. The other structures are a more modern small home/cabin surrounded by a deck. Adjacent to the house is an older large storage structure partially built with large granite blocks and modernized through the years. Neither structure has recently been occupied but both appear useable. _

Establishment of photo point monitoring sites that depict conservation values to visually document the values are maintained over time will be done in coordination with the landowner. These photo sites will need to be described in enough detail including compass bearings, permanently marked point and include recognizable features that would not change over time – mountain, large tree, fence line on property boundary. Photo points will be re-visited annually at the same general time of the year.

From this baseline inventory these photo points are suggested in order to monitor conservation benefits.

General description of photo point location.

A photo point located at the edge of the shrub dominated granitic fan and the irrigated meadow. – see map, photo point 1 –This would be used to monitor shrub invasion into the meadow area indicating irrigation problems.

The coordinates of this photo point are –

N 39 07' 48.6"

W 119 50' 10.9"

Approximate elevation is 6060 feet

A photo point located in bottom of the active stable drainage channel to the south east of the house to monitor side slope stability – see map photo point 2.

The coordinates of this photo point are –

N 39 07' 48.6

W 119 50' 10.7"

Approximate elevation is 5939 feet

A photo point located immediately east of the house in the active channel where rip-rap has been placed for stabilization – see map photo point 3

The coordinates for this photo point are –

N 39 07' 52.0"

W 119 50' 11.9"

Approximate elevation is 5968 feet

A photo point located at the most northern active headcut after required stabilization to monitor effectiveness. - see map photo point 4.

The coordinates for this photo point are –

N 39 07' 55.3"

W 119 50' 10.3"

Approximate elevation is 6000 feet

A photo point on the hillside conveyance ditch at a location where a previous washout has occurred to monitor ditch maintenance- see map photo point 5

The coordinates for this photo point are –

N 39 07' 55.61"

W 119 50' 28.9"

Approximate elevation is 6181 feet

A photo point from the Kings Canyon Road that would provide panoramic views of the ranch from a west to east perspective – see map photo points 6 and 7.

Coordinates for photo point 6 are –

N 39 07' 58.1"

W 119 50' 42.8"

Approximate elevation is 6744 feet

A panoramic photo point of the entire property from Kings Canyon Road to the south.

Photo Point 7 coordinates are –

N 39 08' 20.5"

W 119 50' 10.5"

Approximate elevation is 6500 feet

A photo point overlooking the meadow from the east to the west located near the property corner along the new road. – see map for photo point 8.

The coordinates for this photo point are –

N 39 07' 53.7"

W 119 50' 04.6"

Approximate elevation is 6032

Additionally, a 100 foot by 100 foot area (see map) should be permanently marked to monitor pasture condition. Every year, within the same week in August, a person trained in pasture plant species identification should develop a vegetative inventory of the monitoring site to determine vegetative trend and pasture condition. This annual inventory will be used to monitor not only pasture condition, but irrigation efficiency, vegetative response to drought and appropriate livestock utilization. See photo point 9.

The coordinates are:

N 38 08' 04"

W 119 50' 15.2"

Consultant Recommendations – Prior to finalization of the conservation easement the Consultant recommends that the following issues be addressed.

- **A conservation easement for this property should require the maintenance and operation of this irrigation system due to its multiple benefits.**
- **Water rights should be required to remain in the existing place of use and manner of use.**
- **Currently the spring discharge point – see map - is fenced to protect it from grazing impacts. This protection needs to be maintained into the future.**
- **The uncontrolled water source that occurs on the north-eastern portion of the property needs to be channeled to that portion of the pasture to enhance irrigation water distribution.**
- **Fencing the east-side granitic fan from pasture would better maintain that area for winter deer habitat. Although not a critical issue,**

Carson City and the landowner could consider constructing this fence.

- **Commercial logging of the woodland should be restricted based on its low productivity and value as wildlife habitat.**
- **A new active headcut is occurring at the very northern reach of the main channel. This should be stabilized as a condition of the conservation easement. The method of stabilization should be based on recommendations developed by Natural Resources Conservation Service or a licensed engineer.**
- **Stocking of the pasture should initially not exceed 150 animal unit months, but could be adjusted based upon pasture condition monitoring**
- **Some type of unobtrusive delineation needs to be established between the area of conservation easement and the parcel excluded from the easement.**

Report Developed by

Steve Walker
Walker & Associates
661 Genoa Lane
Minden, NV 89423

Exhibit D

Baseline Condition Report – photos

(Available Upon Request)

(pages 46A-46Q)

Exhibit E

Easements

Schulz/Fagen Access Road Easement Legal Description
William Michael Fagen 50' Road Easement Legal Description
William Michael Fagen Ditch Easement Legal Description

(Available Upon Request)

(pages 47-57)



Forest Legacy Program



Eligibility

- Participation in Forest Legacy is limited to private forest landowners. To qualify, landowners are required to prepare a multiple resource management plan as part of the conservation easement acquisition. The federal government may fund up to 75% of project costs, with at least 25% coming from private, State or local sources.
- FY2015 – 17 projects funded - \$53 million (range: \$225,000 - \$7 million)



Forest Stewardship Plans

(Multiple Resource Plan)

- Are prepared with the purpose of achieving long-term stewardship of forestland. Such plans identify landowner objectives and describe actions **to protect and manage soil, water, range, aesthetic quality, recreation, timber, and fish and wildlife resources, and other conservation values identified on the tract.** Plans are to be prepared by a professional resource manager. A Forest Stewardship Plan that meets the requirements of the Forest Stewardship Program or a multi-resource management plan is required for FLP qualification. The State Forester or equivalent, or their designee must approve the plan.



Forest Legacy Program (FLP) Project

- ***Is an individual or series of land or interest in land acquisition transaction(s).***

The transaction(s) can be on an individual tract or multiple tracts in a distinct geographical area. A FLP project relates to a single funding event in a given fiscal year. FLP projects can have a single parcel that can be completed at one closing or more than one parcel that can be completed in a succession of closings. If a successive FLP project is proposed on a parcel or in a distinct geographic area each transaction is treated as an independent unit in the project selection process and funding is not guaranteed.



Project Funds

- ***Project funds are those used to directly purchase lands or interests in land joining the FLP.***

Project funds may be expended by the State lead agency or the FS, as applicable, to cover transaction costs, including but not limited to: *appraisals and appraisal review, land surveys, closing costs, establishing baseline information, title work, purchase of title insurance, conservation easement drafting, and other real estate transaction expenses for those tracts.* When Federal funds are used to purchase real property, including conservation easements, appraisal and acquisition work procedures must meet Federal standards.



FLP Cost Share Requirements

- The maximum **Federal contribution may not exceed 75%** To assure program-wide cost share goals are met, each project budget must include **a minimum nonfederal contribution of 25%**. This nonfederal cost-share must meet Forest Legacy purposes. **It may consist of: (1) the value of land, or interest in land, dedicated to the FLP that is not paid for by the Federal government; (2) nonfederal costs associated with program implementation; and (3) other nonfederal costs associated with a grant or other agreement that meets FLP purpose.**



Acquisition of Lands of Interests in Lands

FLP acquisitions may be outright full fee purchases, or acquisition of development rights or other rights conveyed through a conservation easement. If any Federal funds are used in the acquisition of Forest Legacy tract the following shall apply:

1. **Federal appraisal standards must be met**, including appraisal review by a qualified Review Appraiser;
2. **The landowner must be informed in writing of the market value and that sale of the property is strictly voluntary;**
3. **The landowner must be notified in writing that the property will NOT be purchased if negotiations do not result in amicable agreement;**
4. **Federal payment to the landowner for lands or interests in not more than the market value as determined by an appraisal meeting Federal appraisal standards;**



Acquisition of Lands of Interests in Lands

Cont.

5. The title acquired must be free of encumbrances inconsistent with the purposes of the FLP. Title insurance may be secured for the full value of the encumbered property, but is not an alternative to an acceptable title; and

6. If relocation is involved the requirements in the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970 (PL 91-646 or 42 U.S.C. 4601) must be followed. The FS will be advised in advance of any acquisition involving relocation.

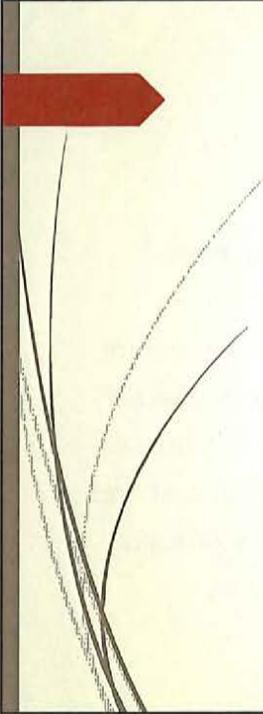
7. In the case of acquisition of interested in lands, the development of a Forest Stewardship Plan or multi-resource management plan that has been approved by the landowner and the State Forester or designee and Baseline Documentation Report shall be prepared prior to project closing (See Appendix J for sample content and references).



Nonforest Uses

Noncompatible –

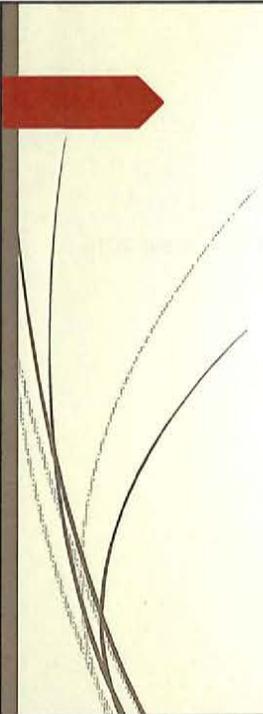
- Noncompatible nonforest uses are uses of the land inconsistent with maintaining forest cover including, but not limited to, **activities that result in extensive surface disturbance such as residential subdivisions, commercial development, and mining.**



Nonforest Uses

Compatible -

- Compatible nonforest uses are nonforest uses of the land that may be compatible with forest uses as part of an undeveloped landscape, **including cultivated farmland, pasture, grassland, shrubland, open water, and wetlands**. These nonforest uses should be less than 25 percent of the total area.



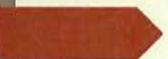
Compatible Nonforest Uses

- Compatible nonforest land uses (cultivated farmland, pasture, grassland, shrubland, open water, and wetlands) are desirable land uses in many FLAs. FLP funds should not be used for any property not meeting the State's definition of forested land in the AON, unless there is a written plan scheduling reforestation or afforestation. Programs to conserve farms, ranches and similar land uses may be used in conjunction with the FLP to protect properties where there are mixed forest and compatible nonforest uses.



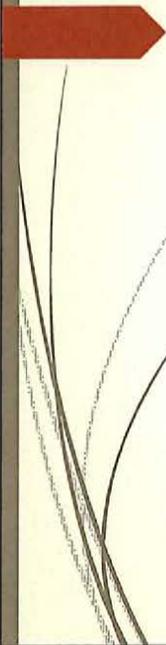
Reserved Areas

- **are designated areas where nonforest uses (e.g. house, barn, remote recreation camps, etc.) are or will be allowed**, but are inseparable from the land holding and do not have a detrimental effect on the conservation easement values. These areas shall be defined and described in the conservation easement and may be restricted in terms of their use, or provisions made through cost and time to cure and treatment. To the extent possible these areas of noncompliance should be excluded from the FLP project.



Our process to submit

- Propose project to NV Forest Stewardship Coordinating Committee – June 2016
- Project accepted & approved by NDF – July 2016
- Site visit by USFS representative – Janet Valle – July/August 2016
- Project brief due to Janet Valle – rough draft end of summer
 - final draft beginning of October
 - corrected submission due end of Nov.



State process to submit Forest Legacy projects

- Each state can submit up to 3 projects each year, not to exceed a total of \$10 million. Individual projects cannot exceed \$7 million.
- Be reviewed, evaluated & selected by State's Forest Stewardship Coordinating Committee & approved by state lead agency (NDF) – June/July
- Project briefs are entered into the Forest Legacy Information System – October
- A Regional project list is created - November
- National review of project briefs - December
- Submit national FLP project list to Congress - January