



# STAFF REPORT

**Agenda Item: 3C**

**Report To:** Open Space Advisory Committee

**Meeting Date:** August 19, 2019

**Staff Contact:** Ann Bollinger, Open Space Administrator

**Agenda Title:** For Possible Action: Discussion and possible action regarding the draft conservation easement for the property owned by the Old Woods Ranch LLC and to recommend to the Board of Supervisors regarding a grant application to the Forest Legacy Program for the purchase of a conservation easement on the same property.

**Staff Summary:** See below

**Agenda Action:** Formal Action/Motion

**Time Requested:** 15 minutes

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## **Proposed Motion**

I move to recommend to the Board of Supervisors approval of a grant application to the Forest Legacy Program for the purchase of a conservation easement on 130 acres owned by the Old Woods Ranch LLC, APNs 007-051-12 and 007-051-79.

## **Background/Issues & Analysis**

In anticipation of a grant submittal in Fall 2019 to the Forest Legacy Program, members and managers of the Old Woods Ranch LLC have been diligently working on acceptable terms and conditions of the conservation easement (see attached). Additionally, family representatives have remained in close communication with staff and Nevada Division of Forestry to discuss various items, and Vice Chair Welch has met with the family to walk potential trail alignments.

Committee members should note that many of the terms and conditions in the draft conservation easement are quite similar to the conservation easement for Horsecreek Ranch. The draft conservation easement is being provided at this time for review and discussion. A few items remain under discussion and the final document is not required until funding has been awarded.

## **Financial Information**

Is there a fiscal impact?  Yes  No

If yes, account name/number: There is not a fiscal impact associated with the current agenda discussion.

Is it currently budgeted?  Yes  No

Explanation of Fiscal Impact: The Quality of Life – Open Space / Land Acquisition account has been accruing funds in anticipation of the purchase of a conservation easement on these properties.

DEED OF AGRICULTURAL CONSERVATION EASEMENT

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT (the Easement) is made by the Old Woods Ranch LLC (OWC LLC) to the city of Carson City, Nevada (Carson City).

WITNESS THAT:

WHEREAS, OWR LLC is the owner in fee simple of that certain real property in Carson City, Nevada, comprising Carson City Assessor's Parcel Numbers 007-051-12 (80 acre) and 007-051-79 (50 acre) 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 OWR LLC, the people of Carson City, and the people of the State of Nevada; and

WHEREAS, the Old Woods Ranch has been continually managed as a pasture since the 1860's, representing a land use that has not changed in over 150 years. This historic piece of Carson City dates back to the Comstock era further protecting the cultural history of the area. The OWR lie in a traditional vegetative zone between shrub uplands and mixed conifer forest creating an area of high species diversity referred to as an ecotone. These zones provide a wide variety of habitats for wildlife. The property features a riparian meadow, aspen stands, upland shrub communities and a mixed conifer forest. The Property is located in critical habitat for mule deer, black bear, mountain lion, bobcat, bald eagle, western gray squirrel, and sooty sage grouse. This area also provides critical winter range and migration paths. The Property's hillside location and scenic impacts to adjacent state highway and long panoramic views to/from Carson Valley. The Property offers watershed protection and contributes to water quality values. There is one perennial stream flowing directly and several perennial streams which gradually flow onto the Property. The spreading of water over the meadow allows for the maintenance of a productive meadow and contributes to the regional aquifer system. The Property plays an important role in maintaining water quality in Clear Creek – an important watershed for Carson City. The nearby Kings Canyon Road served as a local route for the Old Lincoln Highway. This route was never paved. Kings Canyon Road remains open for motorized and non-motorized recreation. In short, OWR is a unique and stunningly beautiful property, one of very few left like it in the Sierras. The project preserves unfragmented wildlife habitat and critical wildlife corridors, protects scenic resources, and retains historical pastureland.

WHEREAS, OWR LLC and Carson City intend that the Property be maintained in agricultural production by the maintenance of the agricultural values thereof 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, OWR LLC 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 OWR LLC 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 State Department of Agriculture, Forest Legacy Grant and Carson City Open Space ?? to acquire the conservation easement, third party enforcement rights, as defined Section 6 and 7, following are being granted to the State of Nevada as authorized by NRS 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 11.390 to 111.440, OWR LLC does hereby voluntarily grant to Carson City an Agricultural Conservation Easement in gross in perpetuity over all 80 acres (+/-) of Parcel #007-051-12 and over all 50 acres (+/-) of Parcel #007-051-79 (for a total of 130(+/-) 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 the 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 Property Values”.) No identification of new

Protected Values which would obligate OWR LLC 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 the Easement. Such entry shall be permitted upon prior notice to OWR LLC, and shall be made in a manner that will not unreasonably interfere with OWR LLC'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 OWR LLC's discretion to employ choices of farm and ranch uses and management practices, including the development of water and energy supplies for use on OWR LLC's property so long as those uses and practices are consistent with the purpose of this Easement.
  - d. Subject to OWR LLC'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 OWR LLC, 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. OWR LLC 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 OWR LLC and another shall be placed and remain on file with 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 OWR LLC’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. OWR LLC 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 OWR LLC may result in an evolution of agricultural uses of the Property, provided such uses are consistent with this Easement.
5. **Reserved Rights.** OWR LLC 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 OWR LLC 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 OWR LLC 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 OWR LLC is in violation of the terms of this Easement or that a violation is threatened, Carson City shall give written notice to OWR LLC 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 OWR LLC 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 OWR LLC's sole expense and said Party concurs with Carson City's assessment of the need for preemptive action, and further provided that OWR LLC is notified in advance of such intention to embark on corrective action. In such a case, Carson City shall nominate the qualified expert and OWR LLC 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 OWR LLC 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 OWR LLC, 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 OWR LLC's violation of the terms of this Easement, shall be borne by OWR LLC, amounts not to exceed the sum received for the original procurement of this Easement. If OWR LLC prevails in any action to enforce the terms of this Easement, OWR LLC's costs of suit, including, without limitation, attorneys' fees, shall be borne by Carson City, up to the amount paid by Carson City to OWR LLC.

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 OWR LLC 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 OWR LLC 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 OWR LLC on a timely basis, shall not subject OWR LLC 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 OWR LLC's Control. Nothing contained in this Easement shall be construed to entitle Carson City to bring any action against OWR LLC for any injury to or change in the Property resulting from causes beyond OWR LLC'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 OWR LLC 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 OWR LLC; 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. OWR LLC retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. OWR LLC 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 OWR LLC'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. OWR LLC 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 OWR LLC'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 OWR LLC'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. OWR LLC agrees that, apart from those approved uses outlined in Exhibit B below, OWR LLC shall not exercise the Development Rights from Parcels 1 #007-051-12 and Parcel 2 #007-051-79 nor transfer them or utilize them on other property or properties.
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 OWR LLC 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 . . . (to be filled

in) 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 OWR LLC 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. OWR LLC acknowledges that the Property currently consists of two separate Assessor's parcels: (APNs 007-051-12, 007-051-79) which under existing law and regulations might be sold or conveyed. However, it is agreed that the sale or conveyance of one or more parcels separated from or made apart from Parcel 1 (007-051-12) or Parcel 2 (007-051-79) is inconsistent with the purpose of this Easement. Nevertheless, OWR LLC 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 OWR LLC 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, OWR LLC hereby grants Carson City a "Right of First Refusal" to purchase any or all of the three parcels known collectively as Old Woods Ranch prior to a public sale of the same, subject to the following conditions: OWR LLC may sell any part of Old Woods Ranch to friends or family without a public listing for sale of the property and without Carson City's involvement. Should OWR LLC 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 OWR LLC'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 OWR LLC'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 OWR LLC without additional benefit. OWR LLC 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, OWR LLC 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 (to be determined) 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, OWR LLC 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 OWR LLC'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 OWR LLC 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 OWR LLC, 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 OWR LLC 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 OWR LLC 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 OWR LLC's title in any respect.
- (f) Joint Obligation. The obligations imposed by this Easement upon OWR LLC 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. OWR LLC agrees that reference to this Easement will be made in any subsequent deed or other legal instrument by means of which OWR LLC 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, OWR LLC has executed this Deed of Agricultural Conservation Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2020

## Permitted Uses and Practices Exhibit B

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

1. 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 agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description; and the processing, storage, and sale, including direct 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 of any surface or subsurface waters, and that all uses and activities are consistent with applicable laws.
  
2. 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 agricultural and ranching work 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 reasonably necessary to the agricultural and/or approved residential uses of the Easement Property, shall be permitted, provided that OWR LLC 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. OWR LLC shall provide Carson City written notice of OWR LLC’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 commencement thereof. Additional fencing and corrals, water courses and water storage facilities, and private communications and/or renewable energy facilities deemed by OWR LLC 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, watercourses/storage facilities or other improvements and facilities, whether existing at the date herof or constructed subsequently pursuant to the provisions of this section, OWR LLC 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, OWR LLC may improve/modernize ranching operation facilities barns, corrals, storage facilities, fencing in the designated "Barn/Corral" area within a 1.5-acre area. The barn improvements may include a Ranch-Hand bunk room and toilet facility. Additionally, agricultural access roads and/or driveways may be constructed, consistent with applicable laws and building codes, by OWR LLC without the need for Carson City's consent. Furthermore, OWR LLC 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 and the sole discretion of the OWR LLC.
- d) Residential Use. New primary residential construction is permitted on the 80-acre parcel so long as such construction takes place in a single, concise building envelope and the new single-family residence does not exceed 3500 square feet of ground coverage with three-accessory outbuildings/garage and contained within one-acre. Furthermore, no new construction shall occur on the 80-acre parcel in the area designated as "Meadow" in the original Baseline Report.
- e) Recreation Camp Area. OWR LLC reserves the right to improve and utilize existing campground area located on the 50-acre parcel total area not to exceed 4-acres. New recreational construction may include rustic guesthouse with up to 4 sleeper cabins totaling no greater than 5000 square feet of ground coverage; toilet/shower outbuilding; storage building; bar-b-que and fire-pit area; rustic tent sites; rustic RV sites. Provided that the creation, alteration or enlargement of the area shall not damage, impair or interfere with the Protected Values and that all improvements shall be developed in accordance with applicable laws.
- f) Historic structure. OWR LLC retains the right to restore and preserve original structure on the 50-acre parcel. Recognizing the historic and scenic nature of this structure, Carson City hereby agrees that should OWR LLC, at the company's sole discretion, undertake rebuild, reconstruct, improve, the cabin in effort to protect, preserve and maintain for future generations, that this effort shall NOT preclude OWR LLC from building one new residential home or improve existing camp area and construction of guesthouse.

### 3. 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, **wells** 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.

4. 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.
5. Predator Control. To control predatory and problem animals by the use of selective control techniques.
6. Recreational Uses. To utilize the Property for recreational or educational purposes, (including, inter alia, without limitation, hiking, **camping**, skiing, horseback riding, hunting, fishing) that require no surface alteration or other development of the land.

## **Prohibited Uses and Practices**

### **Exhibit C**

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.
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 as allowed by Exhibit B.
4. **Subdivision.** The division, subdivision, or de facto subdivision of Parcel 1, #007-051-12 and Parcel 2, #007-051-79 prohibited provided, however, that a lease of a portion of the Property for agricultural use shall not be prohibited by this section. OWR LLC 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 through the exchange as measured by acreage or appraised value.
5. **Motorized Vehicles.** The use of motorized vehicles except by OWR LLC or others with OWR LLC'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 associated 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 OWR LLC 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, present personal injury and property damage, and to allow construction or repair of residential, recreational, or agricultural facilities (i.e. meadow maintenance). OWR LLC may continue to partner with and renew Forest Stewardship Program with the Nevada Department of Forestry and any similar programs with similar organizations. OWR LLC 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, recreational, 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, recreational, and residential purposes, and or of historical/antique value in accordance with applicable law.
8. **Soil Degradation.** Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant soil 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. OWR LLC reserves the right to drill wells as needed on the property.
10. **Surface alteration or Excavation.** Any alteration of 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.