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**BRENT P. COLLINSON, ATTORNEY AT LAW**

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**DATE:** 11/18/2014  
**TO:** BOARD OF DIRECTORS, TRUCKEE TAHOE AIRPORT DISTRICT  
**FROM:** BRENT P. COLLINSON  
**RE:** MARTIS CREEK ESTATES

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We are in the process of completing two different documents regarding our acquisition of a Conservation Easement in Martis Creek Estates. The first document, the most recent draft of the Purchase-Sale Agreement (“P-SA”) is attached. The second document, the most recent draft of the Conservation Easement (“CE”) is not attached since it is 45 pages long and we want to save at least a few trees. I can e-mail it to anyone that wants to review it or it can also be obtained from Kevin Smith. To stay in compliance with the Brown Act, the public can contact Kevin for an electronic copy and printed copies will also be available at the March Board meeting.

Perry Norris has advised us that the Land Trust must close escrow by May 1, so after review and discussion at the Board meeting, if appropriate, the Board should consider a Resolution to authorize staff to proceed with the final negotiations regarding the P-SA and the CE and to authorize the President to sign all documents necessary to complete the acquisition of the CE. If there are concerns that require further Board review, that further review and Resolution can be addressed at the April meeting and still permit us to meet the reported May 1 deadline.

Both of these documents were initially drafted by this office and then sent to the Land Trust for their review and comment. Their attorney, Jim Olmsted, made some minor revisions to them and returned them to us. Those are the documents being provided and discussed in this memo.

The P-SA is a relatively straightforward document. We are paying into escrow the amount previously approved by the Board at the January 27 Board meeting, \$1,800,000 in order to obtain a Conservation Easement from the Land Trust, who will be the owners of the property. Our payment will be used as part of the purchase price paid by the Land Trust to acquire fee simple title to the property. We have not yet seen a copy of the Land Trust’s contract to purchase the property and we do want to review that before finalizing the transaction.

The only item that is potentially unusual is that we are authorizing the release of our funds to assist in the Land Trust’s purchase of the property instead of waiting to authorize

the release of our funds until the Land Trust has already acquired the property. We believe that we have adequately protected against the theoretical danger of paying the money into escrow and not receiving the CE by providing for a single escrow in which our funds can only be released if the Escrow Company is in a position to immediately convey the CE to us upon the Land Trust acquiring title to the property.

The other items are the typical items: we are to receive, review and approve a Preliminary Title Report (although we will need to change the date of obtaining that Preliminary Report to after the current proposed date of March 15), the costs of escrow and equally split, attorneys fees to the prevailing party in the event of litigation, etc.

The other document, the CE, is more involved. As mentioned at the February Board meeting, I attempted to draft it by making it a mirror image of the CE for Waddle Ranch in that with Waddle Ranch, we own the property and the Land Trust holds the CE, whereas with Martis Creek Estates, the Land Trust will own the property and we will hold the CE.

However, there are some variations keeping it from being a true mirror image.

In the Waddle Ranch CE, the Land Trust, as holder of the CE, is responsible for maintaining any improvements it makes (trials, kiosks, etc.) whereas in the Martis Creek arrangement, the Land Trust, as owner of the property, is responsible for their improvements. We are entitled to construct roads (in an environmentally responsible manner) and we are responsible for the cost of constructing and maintaining the roads we build. We have included an avigation easement as part of the CE.

One item not specifically addressed at this time is whether we will allow the public to use our roads. Without specific language, the public probably would be allowed to use our roads if permitted by the owner (the Land Trust). However, under the terms of the Conservation Easement, motorized vehicles are not allowed on the property except for emergency response, property management and the like, so the public would only be walking or biking on our roads, which is probably next to impossible to prohibit.

One item to note regarding roads and improvements is the one change made by Mr. Olmsted to sections 3 and 4.6 of Exhibit 2 (the Land Trust's specified rights and obligations). We had drafted that the Land Trust had the *right* to maintain roads and Mr. Olmsted has added a provision that although they have the right, they do not have the *obligation* to maintain any roads already existing or that they may construct in the future. However, this is not really our concern as they are the owners of the property and would be liable for any claimed injuries or damages from their failure to properly maintain their property. Indeed, they are not even required to open the land for the public.

If they did keep the land closed to the public, our goal of providing open space for the public would be somewhat frustrated, but our primary purpose of acquiring the land—to prevent it from being developed due to its proximity to the airport and its location under

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an approach path, will be met by the restrictions in the CE preventing it from being developed.

In the Waddle Ranch CE, the State of California (Department of Fish and Game) was the party that could impose a prohibition on dogs being on the property; currently, dogs are to be leashed. Since the State is not involved in this transaction, either the District or the Land Trust can prohibit dogs if there is substantial and credible evidence that the presence of dogs is disruptive to members of the public or plants or wildlife on the property.

Again, if anyone desires to review the full CE, it is available electronically from Kevin or me and will also be available in printed form for the Board or the public. Obviously, if you have questions for me prior to the Board Meeting, please do not hesitate to contact me.

BPC