



TOWN OF FAIRFAX

STAFF REPORT

October 6, 2021

TO: Mayor and Town Council

FROM: Jonathon Goldman, Interim Public Works Director
Linda Neal, Principal Planner
Janet Coleson, Town Attorney

SUBJECT: Adopt Resolution Accepting Land Donation from Pellolio Family and Authorizing Interim Town Manager to Execute Property Donation Agreement and Take Actions Necessary to Effectuate the Donation

RECOMMENDATION

Adopt the resolution.

BACKGROUND

The Town was approached by the Pellolio family representative with the land donation offer in February 2020. Staff had the Town Engineer do an initial assessment of the site for potential imminent hazards and then the donation offer was referred to the Fairfax Open Space Committee. The Fairfax Open Space Committee (FOSC) determined that the property had potentially significant open space traits and values at their May 25, 2021, meeting and referred the site to their Acquisition Subcommittee for a more in-depth assessment using criteria the Fairfax Town Council adopted on September 7, 2011 (Attachment A). The criteria were adopted to assist FOSC and the Town Council in prioritizing undeveloped lands in Fairfax that could/should be protected.

At the June FOSC meeting, after considering the finding of the FOSC Acquisition Committee that the property was a high priority for preservation, the Fairfax Open Space Committee voted unanimously to recommend that the Town Council authorize the acceptance of the property by the Town.

DISCUSSION

Considered by the FOSC before making their recommendation to the Town Council were the diversity of the site wildland and riparian habitat, the ownership of the adjacent property by the Town, the location of a stream corridor on the site, the proximity of the site contiguous to open space, the close proximity to known endangered Northern Spotted Owl nesting sites on Toyon Road, the fact that the site is within an area recognized by the ABAG executive board and by resolution of the Fairfax Town Council as a "Priority Conservation Area" under the "One Bay Area" program and the low cost to the Town of the property acquisition.

FISCAL IMPACT

Minimal. The costs to the Town will include legal costs to prepare required documents to facilitate the property transfer.

ATTACHMENTS

- A. Resolution
- B. Map of site location
- C. FOSC Property Information and Rating Sheet
- D. Property Donation Agreement

RESOLUTION 21-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ACCEPTING LAND DONATION FROM PELLOLIO FAMILY AND AUTHORIZING
INTERIM TOWN MANAGER TO EXECUTE PROPERTY DONATION AGREEMENT AND
TAKE ACTIONS NECESSARY TO EFFECTUATE THE DONATION**

WHEREAS, in February 2020 the Pellolio family approached the Town with an offer to donate a parcel of land known as APN 003-163-14; and

WHEREAS, Town staff has done an initial assessment of the site for potential imminent hazards, which did not turn up any concerns; and

WHEREAS, the Fairfax Open Space Committee has determined the property has potentially significant open space traits and values and is a high priority for preservation, and at its June meeting voted unanimously to recommend that the Town Council accept the property; and

WHEREAS, the Town Council desires to accept the land donation in accordance with the terms of a Property Donation Agreement prepared by the Town Counsel's office, and authorize the Interim Town Manager to execute the Property Donation Agreement and take any additional acts necessary to effectuate the donation as contemplated by this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Fairfax hereby:

1. Accepts the donation of APN 003-163-14 pursuant to the terms set forth in the Property Donation Agreement.
2. Authorizes the Interim Town Manager to execute the Property Donation Agreement.
3. Authorizes the Interim Town Manager to take any additional acts necessary to effectuate the donation in accordance with this Resolution and the Property Donation Agreement.

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 6th day of October 2021, by the following vote:

AYES:

NOES:

ABSENT:

Bruce Ackerman, Mayor

Attest: _____
Michele Gardner, Town Clerk

ATTACHMENT A



Criteria for Priority for Protecting Open Space Fairfax Open Space Committee

Adopted by Town Council: September 9, 2011

PROPERTY INFORMATION

Note: The "Property Information" in this section was predominantly provided by Town Planning staff with some supplementation by FOSC

Address: Vacant lot without address on the unimproved portion of lower Cypress Drive. The lot is 2 parcels to the northwest of the last developed parcel on lower lot (126 Cypress Drive and approximately 305 ft. away from last telephone pole on the right side of lower Cypress Dr. The property is near where the unimproved portion of lower Cypress Drive intersects with Madrone Rd. (Madrone trail marker).

Parcel No: Marin County APN 003-163-14

Owner/Agent Name and Contact Info:

Owner: Anselmo P. & Mayme R. Revocable Trust.

Contacts: Pete Pellolio (one of the heirs/Trust beneficiaries?, lives in Hawaii). 1-808-936-1105.
Karen Pellolia (one of the heirs/Trust beneficiaries?) (415) 453-5154

Size of the parcel: 5,652 sq. ft. (with the already Town owned parcel to the southeast the land would total 11,341 sq. ft.)

Zoning, including overlays and special protection areas (setbacks, ridgeline etc):
Residential Single-family RS 6 Zone (no overlay zones apply)

Potential development (houses/other residential or commercial units): potential development of 3 units (one single-family dwelling (SFD), one Junior Accessory Dwelling Unit (JADU) and 1 Accessory Dwelling Unit (ADU)

Preservation assistance available from non-town sources:

The offer by the family is an outright donation – no non-town owned sources of revenue required. The transactional costs to acquire may be borne by the Town and may include appraisal, title report, recordation of new ownership deed.

Parcel has potential for other public uses:

If acquired by the Town the parcel could be used with the adjacent parcel to the east to maintain an classic example of a riparian area. There is a creek running through the site and the vegetated

areas on either side of the creek have a thriving area of native species of trees and plants. Also see detailed information below.

Encumbrances, easements etc. affecting (if available, e.g through Title Report):

This information is not available at this time but since there are no surrounding developed sites at this time it is doubtful that any easements or other encumbrances exist. Water, sewer and power do not extend to the site.

Development Status:

Undeveloped – the Town Engineer who has viewed the site indicated that the site does have the potential for downed trees, creek bank sloughing, etc. which could require future Town maintenance should the Town accept the site donation. Since the property, and the one the Town already owns to the east, are over 305 feet from the nearest structure, the potential for these types of threats to damage privately built development is minimal.

PRIORITY RATING SHEET

Score: Assign 1-10 points for each of the follow categories

I. PROPERTY ATTRIBUTES

A. Natural Resources 9 [Score]

Notes: The property contains a stream that drains to San Anselmo Creek which supports a verdant and healthy riparian corridor and woodland habitat with large native trees, including oak, madrone and bay laurel and a diverse variety of other flora and fauna. The property is contiguous with other undeveloped lands connecting with protected open space lands to the west on which endangered species have been identified, including the Northern Spotted Owl. The Property is within an area that been recognized by the ABAG executive board and by resolution of the Town Council as a "Priority Conservation Area" under the "One Bay Area" program, due to its natural resources and recreational opportunities

B. Cultural Resources 4 [Score]

Notes: The property adds to a buffer or greenbelt between developed lands and undeveloped lands.

C. Recreational Opportunities 8 [Score]

Notes: The property and the contiguous properties are currently used and could continue to be used for passive outdoor recreation, including enjoyment of the natural beauty of the property and its environs and hiking along the partially developed and signed trail system which passes through the Property along various existing undeveloped rights-of-way and which extend in several directions and to the northwest lead to trails on Marin Open Space District lands. The Property is within an area that been recognized by the ABAG executive board and by resolution of the Town Council as a "Priority Conservation Area" under the "One Bay Area" program, due to its natural resources and recreational opportunities.

D. Connectivity 9 [Score]

Notes: The property is contiguous with open space and undeveloped lands that lead from the edge of developed Fairfax on its southwestern edge to open space lands extending all of the way to the coast and thus contribute to a potential wildlife corridor of importance. Further, the property will link, extend or infill existing protected areas and it is accessible to residents, by way of the existing trail which starts at the end of the improved lower Cypress Drive and extends along the undeveloped portion of that right-of-way.

Total Property Attributes Score 30 [Total Score]

II. ADDITIONAL CONSIDERATIONS

[Note: A particularly high or low score on one of these “Additional Considerations” would offset a high or low “Property Attributes” score]

E. Level of Threat 4 [Score]

Notes: Per the Director of Planning and Building Services: “Regarding whether the parcel is suitable for housing development, in just my opinion I do not believe so. It straddles an intermittent stream, is on very steep slopes on either side of the intermittent creek, would necessitate extension of a public right-of-way (minimum 20' paved width) with a fire apparatus turnaround at the end, would have to be developed on the far side of the creek from the right-of-way and therefore would require a very large bridge, would have to be built on drilled piers on a very steep slope (how you would get the piers drilled is anybody's guess), and would have to comply with a 'no-net-increase' in runoff from any improvements versus the current natural state. It may be possible that someone could somehow overcome all of these physical development constraints, but no single family residence would pencil out with respect to the massive cost of doing so”.

FOSC does not disagree that near-term development of a single family home on this one vacant lot is unlikely. However, this area of Town – along the now-undeveloped portions of upper and lower Cypress Drive, Madrone Road and Toyon Drive – currently remains undeveloped open space. Development of this entire area of Town in the future is certainly possible, should a developer acquire a large number of these now-vacant lots, and be able to spread the development costs over multiple homes on each of these vacant parcels.

F. Cost Related Issues 4 [Score]

Notes: Per Planning Staff: “the Town Engineer who has viewed the site indicated that the site does have the potential for downed trees, creek bank sloughing, etc. which could require future Town maintenance should the Town accept the site donation. Since the property, and the one the Town already owns to the east, are over 305 feet from the nearest structure, the potential for these types of threats to damage privately built development is minimal”.
On the other hand, since the property would be donated, so the cost to the Town of acquiring the property would be small, involving only minor transactional costs.

PRIORITY RATING – DESCRIPTION OF CRITERIA

I. PROPERTY ATTRIBUTES

A. Natural Resources

1. Parcel contains a creek or stream that drains to Fairfax or San Anselmo Creeks, provides a vegetated buffer in a riparian zone, provides a water retention area, or otherwise provides benefits to the watershed.
2. Parcel contains large specimen or old-growth trees, especially natives such as live oak, valley oak, alder, redwood, madrone or other native tree species.
3. Parcel provides a significant area of native plant community habitat area (mixed evergreen forest, riparian, northern coastal scrub, chaparral, oak woodland and oak savannah).
4. Parcel provides smaller, relatively undisturbed areas of native plant communities that are rare.
5. Parcel is *known* to contain plant or animal species listed as threatened, endangered, fully protected or of special concern under the state or federal endangered species acts.
6. Parcel includes potential habitat suitable for plant or animal species that are or may be located within the Fairfax Planning Area in the foreseeable future and that are listed as threatened, endangered, fully protected or of special concern under the state or federal endangered species acts.
7. Parcel contains prime agricultural lands or soils of local significance.
8. Parcel supports a wide diversity of native plant and animal species.

B. Cultural Resources

1. Parcel contains important historic artifacts or structure, or is itself an historic cultural site or native American site or resource.
2. Parcel currently used for agriculture or in farm ownership and/or part of larger block of agricultural land.
3. Parcel contains important scenic views or vistas or is located wholly or partially within Town Visually Distinctive Areas or is located wholly or partially within a Ridgeline Scenic Corridor as defined on Town Visual Resources Map No. 9.
4. Parcel contains a special place or a prime natural feature of the landscape that would likely be lost through development.
5. Parcel provides a buffer or greenbelt between developed and undeveloped lands.

C. Recreational Opportunities

1. Parcel provides existing or potential public access for passive recreational activities, such as hiking, biking, bird-watching, or picnicking.
2. Parcel provides a possible link to or significant spur of a Town, regional or State trail system.
3. Parcel contains part of an existing trail identified in the Town inventory or trails within and between open space lands in the Fairfax Planning Area.
4. Parcel contains the location of priority for a future Town, regional or State trail.
5. Parcel presents other appropriate recreational opportunities that are consistent with town open space plans and regulations.

D. Connectivity

1. Parcel is designated for prospective acquisition as open space in the Town “Inventory” of open space lands (see General Plan Open Space Element) or is designated as a priority for acquisition in other Town planning documents.
2. Parcel connects with other open space areas so as to provide a corridor or a segment of a corridor for wildlife
3. Parcel is important link in a planned open space corridor or greenbelt.
4. Parcel will link, extend or infill existing protected areas.
5. Parcel is accessible to residents.

II. ADDITIONAL CONSIDERATIONS

[High score would significantly increase acquisition priority;
low score would significantly decrease]

E. Level of Threat

1. Parcel is not protected by any existing adopted Town moratorium or other restriction on development.
2. There is no need for significant development of access road, utility connections etc. before developing site (i.e. existing infrastructure is already in place).
3. Parcel is a large parcel, which has been legally subdivided and has potential for multiple unit development.
4. Parcel has few or no significant constraints to development, such as poor soils and landslide potential, steep slopes, creek or stream, need to develop utility infrastructure or difficult access.
5. Applicable zoning of the parcel makes development or further subdivision likely or possible.
6. Development of the site, even for a single home, would likely cause extensive disturbance or habitat fragmentation in an important natural area.

F. Cost Related Issues

1. Parcel is relatively free of conditions that may pose risk of cost or liability to Town (potential for litter problems, stream erosion issues, hazardous materials and related issues – old dump site etc., fire clearance and maintenance costs, landslide threat to other properties, tree-fall liability).
2. Purchasing parcel would eliminate Town costs associated with addressing proposed development
3. Cost of acquiring is low in comparison to market value.
4. Substantial funding assistance is available through non-Town sources.
5. Entity other than the Town (nonprofit, Open Space District) is willing to own/manage.

DONATION AGREEMENT

THIS AGREEMENT (“Agreement”) is made this _____ day of _____, 2021 by and between the Town of Fairfax in Marin County, California, herein called “RECIPIENT,” and the owner of the property, Peter Anselmo Pellolio Jr. and the Pellolio Revocable Trust, et al, herein collectively called “DONOR.” The RECIPIENT and DONOR are sometimes individually referred to as “Party” and collectively as the “Parties.”

WHEREAS, DONOR is the owner of certain real property located in Marin County, and as more particularly described on Exhibit A attached hereto (the “Property”);

WHEREAS, RECIPIENT desires to acquire the Property for purposes of open space protection, passive recreational use, and wildlife and plant life conservation; and

NOW, THEREFORE, RECIPIENT and DONOR agree as follows:

1. Donation of Property. DONOR shall grant the Property to RECIPIENT and, in consideration of the donation to RECIPIENT, RECIPIENT shall accept the grant of the Property, or interest therein, upon the terms and conditions set forth in this Agreement. While no money shall change hands between the parties, DONOR shall receive the benefits of a donation to RECIPIENT, as well as transferring the obligations associated with the Property to RECIPIENT, and RECIPIENT is willing to accept such obligations in exchange for the Property.

2. Obligations of Donor.

2.1 Fee Interest. Upon acceptance by RECIPIENT, DONOR shall convey, assign, and transfer its fee interest in the Property to RECIPIENT, free and clear of all liens, encumbrances, easements, leases (recorded or unrecorded), bonds, assessments, and taxes except for (i) liens for non-delinquent property taxes and assessments, and (ii) those liens, encumbrances and easements which, in the sole discretion of RECIPIENT, are acceptable pursuant to Section 5.

2.2 Representations and Warranties of Donor. DONOR represents and warrants to RECIPIENT that as of the date of this Agreement and as of the Recordation Date as defined in Section 6.4 below:

2.2.1 Hazardous Substances. The Property is: (i) free from Hazardous Substances; (ii) contains no buried or partially buried storage tanks located on the Property; (iii) has not been used for the generation, storage or disposal of any Hazardous Substance and no Hazardous Substance has been spilled, disposed of, or stored on, under, or at the Property; and (iv) has never been used as a dump or landfill;

2.2.2 Compliance with Law. The Property is in material compliance with all applicable laws and Environmental Laws;

2.2.3 Leases. No leases, licenses, or other agreements allowing any third party rights to use the Property are or will be in force as of the Closing;

2.2.4 Litigation and Investigations. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property, and Donor has received no notice, warning, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any laws or Environmental Laws, or informing DONOR that the Property is subject to investigation or inquiry regarding the violation of any laws or Environmental Laws.

2.2.5 Condition of Property. There are no natural or artificial conditions upon the Property or any part of the Property that could result in a material and adverse change in the condition of the Property;

2.2.6 Access to the Property. There is vehicular access to the Property either directly through a public right of way or through a recorded easement; and

2.2.7 No Insolvency Proceedings. DONOR has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; (iv) suffered the attachment or other judicial seizure of substantially all of its assets; or (v) admitted in writing its inability to pay its debts as they come due.

2.2.8 No Other Agreements, Undertakings or Tenancies. DONOR will not enter into any agreements or undertake any new obligations prior to Recordation Date which will in any way burden, encumber or otherwise affect the Property without the prior written consent of the RECIPIENT.

2.2.9 Disclosure. DONOR has disclosed to RECIPIENT all information, records, and studies in DONOR's possession in connection with the Property, including any reports or studies concerning Hazardous Substances. All information that DONOR has delivered to RECIPIENT, either directly or through DONOR's agents, is accurate and DONOR has disclosed all material facts concerning the operation, development, or condition of the Property.

DONOR shall promptly notify RECIPIENT of any facts that would cause any of the representations contained in this Agreement to be untrue as of the Recordation Date. If RECIPIENT reasonably concludes that a fact materially and adversely affects the Property, RECIPIENT shall have the option to terminate this Agreement by delivering written notice to Donor and Title Officer.

2.3 Indemnity. DONOR agrees to indemnify RECIPIENT and agrees to defend and hold RECIPIENT harmless from all loss, cost, liability, expense, damage, or other injury, including without limitation attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by reason of, or in any manner resulting from, (i) the breach of any warranties and representations in Section 2.2, and (ii) all third-party claims for DONOR's intentional acts or willful misconduct related to the Property occurring prior to the Recordation Date.

2.4 Definitions.

2.4.1 “Environmental Laws” means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as defined subsequently in this Agreement), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) and the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 U.S.C.A. §§ 1801 et seq.]; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [7 U.S.C.A. §§ 136 et seq.]; the Clean Air Act (CAA) [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act (SDWA) [42 U.S.C.A. §§ 300f et seq.]; the Surface Mining Control and Reclamation Act of 1977 (SMCRA) [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or EPCRTKA) [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act of 1970 (OSHA) [29 U.S.C.A. §§ 655, 657]; the California laws regarding the underground storage of hazardous substances [H & S C §§ 25280 et seq.]; the Hazardous Substance Account Act [H & S C §§ 25300 et seq.]; the California laws regarding hazardous waste control [H & S C §§ 25100 et seq.]; the Safe Drinking Water and Toxic Enforcement Act of 1986 [H & S C §§ 25249.5 et seq.]; the Porter-Cologne Water Quality Control Act [Wat C §§ 13000 et seq.], and any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

2.4.2 “Hazardous Substances” includes without limitation:

(i) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminant” in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law;

(ii) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];

(iii) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(iv) Any material, waste, or substance that is: a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C.A. § 1321 or listed pursuant to 33 U.S.C.A. § 1317, a flammable explosive, or a radioactive material.

3. Feasibility Period.

3.1 During the period commencing on the date of this Agreement and terminating on a date which is sixty (60) days from the date of this Agreement (“Feasibility Period”), RECIPIENT may undertake at RECIPIENT’s expense an inspection of the Property. Said inspection may include: (i) a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Property; and (ii) a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property. Within ten (10) days following the full execution of this Agreement by both parties, DONOR shall deliver to RECIPIENT copies of all architectural plans, surveys, specifications, and other documents pertaining to the physical, geological, or environmental condition of the Property, if any, that are owned by or in the possession of DONOR.

3.2 If RECIPIENT’s environmental consultant requires additional time to determine the existence and extent of any Hazardous Substances on the Property, RECIPIENT shall have the right, exercisable by delivering written notice to Donor prior to the expiration of the Feasibility Period, to extend the Feasibility Period for up to an additional sixty (60) days to complete the testing.

3.3 If RECIPIENT disapproves of the results of the inspection and review or the results of any Phase I Environmental Report, RECIPIENT may elect, prior to the last day of the Feasibility Period (or any extension thereof), to terminate this Agreement by giving DONOR written notification prior to the last day of the Feasibility Period (or any extension thereof). If RECIPIENT fails to properly notify DONOR of the intent to terminate this Agreement, RECIPIENT shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

4. Access.

4.1 Access to the Property during the Feasibility Period shall be given to RECIPIENT, its agents, employees, or contractors during normal business hours upon at least one (1) business days’ notice to DONOR, at RECIPIENT’s own cost and risk, for any purposes, including, but not limited to, inspecting the Property, taking samples of the soil, and conducting an environmental audit (including an investigation of past and current uses of the Property). RECIPIENT shall indemnify and defend DONOR against and hold DONOR harmless from all losses, costs, damages, liabilities, and expenses, including, without limitation, reasonable attorney fees arising out of RECIPIENT’s entry onto the Property or any activity thereon by RECIPIENT or its agents, employees, or contractors prior to the Recordation Date except to the extent any such losses, costs, damages, liabilities, and expenses arise out of the gross negligence or willful acts of DONOR. Any entry onto the Property by RECIPIENT or its agents, employees, or contractors shall be at reasonable times. The provisions of this Section shall survive the Recordation Date.

Notwithstanding anything herein to the contrary, RECIPIENT and DONOR agree that RECIPIENT shall not incur any liability hereunder merely by the discovery of an “Existing Adverse Condition” (as defined below) regardless of whether such Existing Adverse Condition, once revealed, negatively impacts the value of the Property or otherwise causes DONOR to incur liabilities, costs or expenses. The term “Existing Adverse Condition” shall mean an adverse condition existing on or with respect to the Property that is discovered or revealed by RECIPIENT in the course of its Property inspection hereunder.

4.2 In addition to the provisions of Section 4.1, RECIPIENT and its agents, employees, or contractors shall have the right, from the date of this Agreement until the Recordation Date, to contact any federal, state, or local governmental authority or agency to investigate any matters relating to the Property. DONOR agrees to cooperate reasonably with RECIPIENT and its agents, employees, or contractors in the inspection of the Property and agrees to deliver to RECIPIENT all information in DONOR’s possession or control pertaining to the condition of the Property, including engineering and environmental reports, studies, tests, monitoring results, and related documentation.

5. Title.

5.1 Immediately following the execution of this Agreement by both Parties, RECIPIENT shall cause Title Officer to issue to RECIPIENT (with a copy to DONOR) a preliminary report for an ALTA Standard Policy of Title Insurance, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting DONOR’s title to the Property (“Preliminary Report”), together with copies of all documents relating to title exceptions referred to in the Preliminary Report.

5.2 Following the full execution of this Agreement by both Parties, RECIPIENT may cause a survey and/or an ALTA Survey of the Property to be prepared by a registered surveyor or professional engineer (“Survey”). DONOR agrees to deliver to RECIPIENT, promptly following the full execution and delivery of this Agreement, copies of any survey of the Property in the possession of DONOR.

5.3 RECIPIENT shall approve or disapprove, in writing to DONOR with a copy to Title Officer, each exception shown on the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that materially and adversely affects title to the Property or that violates any law, rule, or regulation reflected on the Survey (each an “Exception”) within twenty (20) business days following the receipt of the Preliminary Report or the Survey, whichever is later. RECIPIENT’s failure to object within the twenty (20) day period shall be deemed to be a disapproval of the Exceptions. The Exceptions approved by RECIPIENT hereunder shall be referred to as the “Approved Exceptions.”

5.4 If any Exception is disapproved or deemed disapproved (each a “Disapproved Exception”), DONOR shall have the right, but not the obligation, within thirty (30) days following expiration of the twenty (20) day period provided under Section 5.3 above, to cause each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may

be, of record, and in a form that is reasonably satisfactory to RECIPIENT and Title Officer, all at DONOR's sole cost and expense.

6. Closing and Recordation Date.

6.1 Title. Simultaneously with the Recordation Date, Title Officer shall issue an ALTA Standard Policy of Title Insurance (formerly referred to as a CLTA Title Policy) ("Title Policy") in the amount of \$ [REDACTED], subject only to (i) liens for real property taxes, bonds, and assessments not then due, and (ii) the Approved Exceptions.

6.2 Donor's Deposits. DONOR shall deposit with Title Officer on or prior to the Recordation Date a grant deed in the form attached hereto as Exhibit "B" executed and acknowledged by Donor, conveying to RECIPIENT good and marketable fee simple title to the Property, subject only to the Approved Exceptions ("Deed").

6.3 RECIPIENT's Deposits. RECIPIENT shall deposit with Title Officer on or prior to the Recordation Date an executed Certificate of Acceptance for the Deed.

6.4 Recordation Date. The conveyance of the Property to RECIPIENT and the closing of this transaction ("Closing") shall take place within one hundred twenty (120) days ("Recordation Date") following the execution of this Agreement.

6.5 Closing Instructions. On the Recordation Date (or any extension thereof), Title Officer shall do the following:

- (i) record the Deed (marked for return to RECIPIENT) with the Marin County Recorder;
- (ii) issue the Title Policy;
- (iii) If Title Officer is unable to simultaneously perform all of the instructions set forth above, Title Officer shall notify RECIPIENT and DONOR and retain all funds and documents pending receipt of further instructions jointly issued by RECIPIENT and DONOR.

6.6 Closing Costs and Prorations. RECIPIENT shall pay the following closing costs and prorations through the Recordation Date:

- (i) All governmental conveyancing fees and taxes due upon transfer of the Property, except that no documentary transfer tax will be payable with respect to this transaction, pursuant to Revenue and Taxation Code Section 11922;
- (ii) The recording charges in connection with recordation of the Deed;
- (iii) All charges in connection with issuance of the Title Policy in the amount of \$ [REDACTED];

(iv) All costs associated with any environmental reports, including the Phase I Environmental Site Assessment Report, and any further testing and reports which may be reasonably necessary as a result of such report;

(v) All charges related to any survey undertaken in connection with an ALTA Extended Policy of Title Insurance;

(vi) All charges in connection with removing any Disapproved Exceptions pursuant to Section 5.4 and to cure any defect in vesting in order to satisfy the condition set forth in Section 7(v).

(vii) All fees and charges levied by Title Officer.

6.7 Real Estate Taxes, Bonds, and Assessments. DONOR shall pay real property taxes to the Marin County Tax Assessor's office prior to the Recordation Date based on the most current real property tax bill available, including any additional property taxes that may be assessed after the Recordation Date, regardless of when notice of those taxes is received or who receives the notice. DONOR may seek reimbursement from the Marin County Tax Assessor's office for any property taxes that have been assessed for a period after the Recordation Date as RECIPIENT is a public agency exempt from payment of such taxes. RECIPIENT further agrees to cooperate with DONOR to provide any necessary information to the Assessor's office in connection with such request for refund. All installments of any bond or assessment that constitutes a lien on the Property at the Recordation Date shall be paid by DONOR.

6.8 Possession. Possession of the Property shall be delivered to RECIPIENT at the Recordation Date.

7. Acceptance. The acceptance of the Property by RECIPIENT and the Recordation Date (as defined in Section 6) are subject to the satisfaction of the following no later than the Recordation Date:

(i) RECIPIENT's approval of the condition of the Property as provided in Section 5 and title to the Property as provided in Section 6. In addition, DONOR shall remove any debris or trash from the Property prior to the Recordation Date;

(ii) The representations and warranties of DONOR set forth in Section 2.2 shall be true and accurate as of the Recordation Date;

(iii) DONOR's performance of all obligations under this Agreement;

(iv) No adverse material change shall have occurred with respect to the condition of the Property from the end of the Feasibility Period through the Recordation Date; and

(v) Title Officer being prepared to issue the Title Policy on the Recordation Date, subject only to the Approved Exceptions.

8. The performance by the RECIPIENT of its obligations under this Agreement shall relieve the RECIPIENT of any and all further obligations or claims on account of the acceptance of the offer of dedication.

9. This Agreement may be terminated by RECIPIENT upon three (3) days written notice to DONOR and Title Officer if the conditions to closing set forth in Section 7 have not been fulfilled on or before the Recordation Date. Upon termination by RECIPIENT pursuant to this Section 9, DONOR shall be responsible for all costs and expenses of Title Officer.

10. As used in this Agreement, notice includes but is not limited to the communication of any notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. All notices must be in writing. Notice is given either (i) when delivered in person to the person or company intended named below, or (ii) when sent via reputable overnight courier (such as Federal Express), addressed by name and addressed to the party or persons intended, as follows:

To RECIPIENT:

Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Attn: Public Works Division

To DONOR:

until such time as a party gives notice of the change of address in accordance with the terms of this section.

11. This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.

12. This Agreement is the result of negotiations between the Parties and is intended by the Parties to be a final expression of their understanding with respect to the matters herein contained. This Agreement supersedes any and all other prior agreements and understandings, oral or written, in connection therewith. No provision contained herein shall be construed against the RECIPIENT solely because it prepared this Agreement in its executed form.

13. DONOR, their assigns, and successors in interest shall be bound by all the terms and conditions contained in this Agreement, and all the parties thereto shall be jointly and severally liable thereunder.

14. This Agreement is not binding until executed by the Mayor of the Town of Fairfax as an appropriately designated representative of the Town Council, of the RECIPIENT.

15. Notwithstanding any other provision of this Agreement or any other agreement between any of the Parties hereto, once the Property is conveyed to and accepted by the RECIPIENT, the RECIPIENT shall have no obligation to return the Property to the DONOR under any circumstances, except in the sole and exclusive discretion of the RECIPIENT.

16. RECIPIENT agrees to cooperate with DONOR to acknowledge receipt of the donation of the Property by signing Internal Revenue Form 8283 (Non-Cash Charitable Contributions) before the Recordation Date and any other tax-related forms or documents reasonably requested by DONOR and to return any such forms to DONOR within thirty business (30) days after RECIPIENT's receipt of such forms from DONOR. Notwithstanding the foregoing, RECIPIENT makes no representation or warranty to DONOR regarding the tax attributes of this transaction, nor shall RECIPIENT endorse or otherwise acknowledge any valuation of the Property for tax purposes, it being understood that the DONOR has obtained its own appraisals and tax advice for such purposes.

17. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

[signature page follows]

SIGNATURE PAGE FOR THE DONATION AGREEMENT BETWEEN Peter Anselmo Pellolio Jr. and the Pellolio Revocable Trust, et al AND The Town of Fairfax in Marin County, California.

IN THE WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly-authorized representatives on the date and year set forth below.

DONOR:

RECIPIENT:

Date: _____

Date: _____

By:

By: _____

By:

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "B"
FORM OF GRANT DEED

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO**

Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Attn: Town Clerk

EXEMPT FROM RECORDING FEES PURSUANT
TO GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APNs: _____

Grant Deed

The undersigned Grantor(s) declare(s): _____ is exempt from property taxes.
(Rev & Tax Code 11922)

Documentary transfer tax is \$ ___-0-___.

- Computed on full value of property conveyed, or
 Computed on full value less value of liens and encumbrances remaining at time of sale.
 Unincorporated area City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

_____, a _____

hereby GRANT(S) to

_____, a _____

the following described real property in the City of _____, County of _____, State of
California:

SEE ATTACHED EXHIBIT A.

Dated: _____, 20___ _____, a _____

By: _____
_____ (Name)
_____ (Title)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____, Notary Public
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE

Pursuant to Section 27281 of the
California Government Code

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 20____, from _____, a _____, as Grantor thereunder, to _____, a _____, as Grantee thereunder, is hereby accepted by the undersigned officer on behalf of _____, pursuant to the authority conferred by Resolution No. _____, adopted by _____ on _____, 20____, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 20____ _____

By _____
_____(Name)
_____(Title)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____, Notary Public
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION