

**CONSENT IN LIEU OF
ORGANIZATIONAL MEETING OF DIRECTORS
CAPAY VALLEY AGRARIAN COMMONS**

Pursuant to California's Nonprofit Public Benefit Corporation Law (Corps Code §5110 and following), the undersigned, being all of the directors of Capay Valley Agrarian Commons, a nonprofit public benefit corporation, hereinafter the "Corporation"), by this instrument and in lieu of the organizational meeting of directors of the Corporation, hereby consent to the adoption of the following resolutions:

I.

RATIFICATION OF PRE-INCORPORATION ACTIVITIES

RESOLVED: That the actions previously taken by the Incorporator in the name, or for the benefit, of this Corporation, are approved, ratified, and confirmed as the actions of this Corporation:

II.

ELECTION OF OFFICERS

RESOLVED: That the following persons are hereby elected to serve as officers of the Corporation until their successors are elected and qualified:

President: Gwenaël Engelskirchen, whose address is:
P.O. Box 82
Guinda, CA 95637

Vice President: Tim Mueller, whose address is:
P.O. Box 51
Brooks, CA 95606

Secretary: Kendra Johnson, whose address is:
12876 River Road
Guerneville, CA 95446

Treasurer: Ian McSweeney, whose address is:
22 Buxton School Road
Weare, NH 03281

III.

TAX EXEMPT STATUS

RESOLVED: That the Corporation shall apply for recognition as an organization exempt from federal income taxation under Section 501(c)(2) of the Internal Revenue Code of 1986, as amended, as part of a group exemption filed by Agrarian Land Trust, its central organization, on behalf of the Corporation and other nonprofit Section 501(c)(2) title-holding corporations affiliated with Agrarian Land Trust;

RESOLVED FURTHER: That the officers of the Corporation are hereby authorized and directed to coordinate with Agrarian Land Trust in its application with the Internal Revenue Service for a Group Tax Exemption on behalf of the Corporation and other nonprofit Section 501(c)(2) title-holding corporations affiliated with Agrarian Land Trust, including but limited to the provision of such information determined necessary by Agrarian Land Trust for such application, to ensure this Corporation will obtain tax exempt status under Section 501(c)(2) of the Internal Revenue Code.

IV.

ADOPTION OF BYLAWS

RESOLVED: That the Bylaws attached as Exhibit A is approved and adopted as the Bylaws of the Corporation; and

RESOLVED FURTHER: That the incorporating attorney, Cameron Rhudy, is directed to detach the Bylaws referred to above, sign and date them certifying that the bylaws were adopted, and file it with the Corporation's records.

V.

DESIGNATION OF CORPORATION ADDRESS

RESOLVED: That the initial physical address and mailing address of the Corporation is as follows:

Address: 1428 Franklin Street
 Oakland, CA 94612

VI.

LICENSES, PERMITS, ETC.

RESOLVED: That officers of the Corporation, or any of them, are authorized and directed to apply for and obtain in the name of the Corporation all licenses, permits, and authorizations required under any laws or regulations affecting the operations of the Corporation and to take all other steps necessary for the Corporation to comply with all federal, state, and municipal tax laws and applicable federal and state worker's compensation and industrial insurance laws.

Date Signed: 07 / 17 / 2020



Gwenaël Engelskirchen, Director

Date Signed: 07 / 08 / 2020



Kendra Johnson, Director

Date Signed: 07 / 15 / 2020



Ian McSweeney, Director

Date Signed: 10 / 12 / 2020



Tim Mueller, Director

Date Signed: 07 / 12 / 2020



Paul Muller, Director

Date Signed: 07 / 08 / 2020



Thomas Nelson, Director

Exhibit A

Bylaws

{attached}

CAPAY VALLEY AGRARIAN COMMONS BYLAWS

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ARTICLE 1: NAME AND PURPOSE

- A. **Name.** The name of this organization shall be Capay Valley Agrarian Commons, hereinafter referred to as the “Commons.”
- B. **Purpose.** The purpose of the Commons shall be to own and preserve ecologically significant agricultural land and agrarian community real estate and property assets (hereinafter “Agricultural Land” or “Land”) as a title holding corporation exempt from federal income tax under IRC 501(c)(2). All income collected from the leasing and rental of such Agricultural Land, sale of any infrastructure owned by the Commons on such land, and all other funds collected by the Commons, less expenses, shall be turned over to Agrarian Land Trust (EIN# 47-5508054), a California nonprofit public benefit corporation qualifying as exempt under IRC 501(c)(3).

ARTICLE 2: ADVISORY MEMBERSHIP

Section 1: Classes of Members

The Commons shall have the following classes of advisory members (hereafter “Members”):

- a. The Lessee Members, who shall all be persons, corporations, or other entities (and the employees of such entities) who lease Agricultural Land from the Commons.
- b. The Community Members, who shall be any non-leasing person who is resident of a town located within California’s Capay Valley, or a customer of a Capay Valley farm who resides within 150 miles of the town of Capay, California, who has committed to actively furthering the purposes of Agrarian Land Trust and the Commons, and who has been accepted as a member by the Commons following a letter of interest submitted by the individual pursuing membership.
- c. General/Support Member, who shall be a non-leasing and non-resident who is committed, experienced, and aligned with the purposes of Agrarian Land Trust and the Commons, in ways which may include, but are not limited to providing legal, accounting, fundraising, marketing, donation, investment, and education support, and who has been accepted as a member by the Commons following a letter of interest, submitted by the individual pursuing membership, and accompanied by payment of dues for a general/support membership (or financial contribution to the Commons if no general/support membership dues schedule has yet been approved by the Board of Directors).

- d. Additional classes of members, the manner of election or appointment of each class of members, and the qualifications and rights of each class of members may be established by amendment to these Bylaws, so long as such amendments are not inconsistent with the Nonprofit Public Benefit Corporation Law or the Common's Articles of Incorporation, as amended.

Section 2: Members Are Non-Voting and Advisory Only

The intention of membership is to provide a voice to lessees, farm workers, Commons supporters, and the larger community in the actions and activities of the Commons, while maximizing inclusivity and transparency. Members may advise the Commons as to matters brought to them for advice by the Commons and pertaining to their classes of membership, but do not have voting rights in the Commons. In accordance with Section 5332(a) of the California Corporations Code, advisory members of the Capay Valley Agrarian Commons are not "members" as that term is defined in Section 5056 of the California Corporations Code.

Section 3: Dues

The Board of Directors may require dues to be paid by Members of the Commons. The dues need not be equal for each class of Members. The decision to require dues and the initial amount of dues must be approved by the Board of Directors and, in the case of Lessee Member membership dues, Lessee Members should be consulted before the Board of Directors approves the dues schedule.

Section 4: Manner of Acting

Except as provided below, the Membership constitutes one body acting as a whole by way of consensus on those matters referred to it by the Board of Directors. The Board of Directors may seek advice from a specific class of members or less than the Membership as a whole with regard to the following:

- Advice related to the selection of Lessee Member Representatives, pursuant to Article 3, Section 3, by the Leasing Members
- Advice related to the Lessee Member membership dues schedule, by the Lessee Members
- Advice related to any other matter, as determined by the Board of Directors

ARTICLE 3: BOARD OF DIRECTORS

Section 1: Number

The Capay Valley Agrarian Commons Board of Directors (“Board” or “Board of Directors”) will have no less than six (6) and no more than eighteen (18) Directors, as designated by resolution of the Board from time to time.

Section 2: Qualification

Directors shall be individuals who have reached the age of majority and shall have such other qualifications as the Board of Directors may prescribe by resolution or amendment of these Bylaws.

Section 3: Composition

Two-thirds ($\frac{2}{3}$) of the total Board shall be designated by Agrarian Land Trust and one-third ($\frac{1}{3}$) of the total Board shall be elected by the Board. Agrarian Land Trust and the Board shall select Directors from within the Members of the Commons, at such time as there are Members of the Commons and Lessee Members of the Commons, so that at least one third ($\frac{1}{3}$) of the total Board is composed of Lessee Members of the Commons, a majority of the total Board is composed of Community Members or Lessee Members of the Commons, and no more than two (2) of the total Board are General/Support Members. In addition, Agrarian Land Trust shall ensure that at least two (2) Directors are also Agrarian Land Trust Directors. The Board shall prioritize community stakeholders, and racial and economic diversity in alignment with Agrarian Trust’s Statement on Racial and Economic Equity.

Section 4: Compensation

Directors shall not receive compensation for their services as such, although the reasonable expenses for attendance at meetings of the Board of Directors or otherwise directly incident to their duties as Directors may be paid or reimbursed by the Commons. Directors shall not be disqualified from receiving reasonable compensation for services rendered to or for the benefit of the Commons in any other capacity.

Section 5: Nomination of Directors

Prior to each annual Board Meeting, a Nominating Committee of the Board shall establish how many Directors will need to be elected to the Board, after consideration of vacancies, the number of Directors to be appointed by Agrarian Land Trust, Board composition requirements, and objectives of diverse constituencies. Any Board Member can nominate a candidate to the slate of nominees.

For all regular elections, Member Representative Directors shall be nominated as follows:

a. Lessee Member Representatives.

- i. All Directors may nominate Lessee Member Representatives to the Board. These nominations must either be submitted in writing to the Secretary of the Commons at least ten (10) days prior to the Annual Meeting of the Board, or be made from the floor at such a Meeting. The Secretary of the Commons or staff of the Commons is responsible for soliciting nominations from the Board of Directors at least twenty (20) days prior to the Annual Meeting of the Board.
- ii. In making such nominations, the Board shall select actual Lessees to the extent that they are available to serve on the Board of Directors. Otherwise the Board shall select representation by a proxy who can reasonably be expected to represent the typical interests and concerns of Lessees.

b. Community Member Representatives.

- i. All Directors may nominate Community Member Representatives to the Board. These nominations must either be submitted in writing to the Secretary of the Commons at least ten (10) days prior to the Annual Meeting of the Board, or be made from the floor at the Annual Meeting. The Secretary of the Commons or staff of the Commons is responsible for soliciting nominations from the Board of Directors at least twenty (20) days prior to the Annual Meeting of the Board.
- ii. If the number of nominations for Community Member Representative is less than the number of Community Member Representative seats to be filled, the Board of Directors shall nominate enough candidates so that the total number of candidates is sufficient to fill the number of seats to be filled.

c. General/Support Member Representatives

- i. All Directors may nominate General/Support Member Representatives to the Board. These nominations must either be submitted in writing to the Secretary of the Commons at least ten (10) days prior to the Annual Meeting of the Board, or be made from the floor at the Annual Meeting. The

Secretary of the Commons or staff of the Commons is responsible for soliciting nominations from the Board of Directors at least twenty (20) days prior to the Annual Meeting of the Board.

- ii. If the number of nominations for General/Support Representatives is less than two (2) nominees, the maximum allowable on the Board, the Board of Directors may nominate additional candidates to fill General/Support Member seats, or choose Community Member Representatives instead.
- d. **Notice of Nominations.** A list of all persons nominated in all three of the Member Representative categories, together with a listing of the persons to be appointed by Agrarian Land Trust, shall be included with the notice of the Board Meeting where elections will occur.

Section 6: Election of Directors

Directors shall be elected by the Directors present and voting at the Annual Meeting of the Board, a quorum being assembled, in accordance with the following procedures and specific to the one-third ($\frac{1}{3}$) composition, as defined in Section 3.

- a. A separate vote shall be taken for each of the three categories of elected Board Representatives. A non-officer shall collect the votes using secret ballot procedures if in-person and ensuring anonymity if voting takes place online.

A Board Nominating Committee shall be responsible for nominating a slate of prospective Directors representing the Commons' diverse constituency. In addition, any Board Member can nominate a candidate to the slate of nominees. In each of the three categories, positions shall be filled by those candidates receiving the largest numbers of votes in the category even if such numbers constitute less than a majority of the total votes cast in the category.

Section 7: Vacancies

- A. If any elected Director vacates their term or is removed from the Board, the remaining Directors (they may constitute less than a quorum) may elect a person to fill the vacancy from the same class as the vacating Director, or may, by unanimous agreement, decide to leave the position vacant until the next Board Meeting, except as provided in Section 7(D) of this article.
- B. Any person elected to fill a vacancy on the Board of Directors must be one who can be reasonably expected to represent the interests of the constituents and Agrarian

Land Trust mission of diversity in the category (Lessee, Community, General/Support) in which the vacancy occurs.

- C. Replacement Directors elected by the Board shall serve out the remaining term of the person who has vacated the position.
- D. If any Director designated by Agrarian Land Trust vacates their term or is removed from the Board, the Board of Agrarian Land Trust shall, within thirty days from the date on which they shall have vacated that office, appoint a replacement representative to fill the vacancy.

Section 8: Terms of Directors

- A. **Terms of First Directors.** After the election of Directors, each elected and designated Director shall be assigned, by mutual agreement or by lot, to a three-year or four-year term. Roughly half of the Directors shall be assigned a three-year term and the other half shall be assigned a four-year term.
- B. **Terms of Successor Directors.** Except as otherwise provided in these bylaws, each Director shall serve a full term of three years.
- C. **Re-election.** No elected Representative shall serve as a Director for more than three consecutive elected terms, unless extended on a case-by-case basis by the Board of Directors. After a year's absence from the Board, however, a person who has served three consecutive terms may return to the Board, if re-elected, and may serve up to three consecutive elected terms.

Section 9: Resignation

- A. Any Director may resign at any time by giving written notice to the President, or in the case of the President's resignation, by written notice to the Vice President. Unless otherwise specified, such resignation shall be effective upon the receipt of notice by the President.
- B. A Director shall be considered to have given notice of resignation and his, her, or their position shall be declared vacant by the Board of Directors if he, she, or they fails to attend three regular meetings of the Board in a calendar year, with the exception of emergency meetings, unless good cause for absence and continuing interest in participation on the Board are recognized by the Board.

Section 10: Removal of Directors

The Board of Directors may declare vacant the office of a Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Section 5230 and following of the California Nonprofit Public Benefit Corporation Law.

The Board of Directors, by majority vote of the Directors then in office who meet the required qualifications to be a Director, may declare vacant the office of any Director who fails or ceases to meet any required qualification that was in effect at the beginning of that Director's current term of office.

A Director may be removed without cause by a majority of the Directors then in office. Removal of an Agrarian Land Trust Representative from the Board of Directors shall also require a majority vote by the Board of Agrarian Trust.

Section 11: Duties of the Board of Directors

The business and affairs of the Commons shall be conducted under the direction of, and the control and disposal of the Common's properties and funds shall be vested in, its Board of Directors, except as otherwise provided in the Nonprofit Public Benefit Corporation Law or the Commons' Articles of Incorporation. Agrarian Land Trust Representatives may provide support, under the direction of the Board of Directors and in consultation with members, to ensure Board responsibilities are completed. In carrying out its duties, the Board shall:

- a. Approve a written Annual Report to the Membership, and make this report available to all Members. This report shall include a summary of the Commons' activities during the previous year, the Commons' most recent financial reports, and a list of all real estate held by the Commons. This report shall be provided to Agrarian Land Trust as requested and at least annually.
- b. Adopt an annual operating budget prior to the beginning of each fiscal year and act upon requested expenditures not included in the budget.
- c. Communicate and report to Agrarian Land Trust quarterly, or as needed, an up-to-date Commons Agricultural Land file, which may include deeds, surveys, leases, conservation easements, farm practice certifications and/or farm or ranch

management plans, forest management plans, soil quality tests, and more as requested or as needed for management of Agrarian Commons.

- d. Carry out data collection, assessments, evaluation, and related activities to support soil and ecosystem regeneration and carbon sequestration capacity, as necessary to conserve and maintain the property held by the Commons.
- e. Select all officers of the Commons.
- f. Supervise the activities of all officers, agents, and committees of the Commons in the performance of their assigned duties and investigate any possible conflicts of interest within the Commons.
- g. Hire, supervise, and evaluate employees, and adopt and implement personnel policies pertaining to such activities.
- h. Provide for the deposit of funds in accordance with these Bylaws.
- i. Determine by whom and in what manner deeds, leases, contracts, checks, drafts, endorsements, notes and other instruments shall be signed on behalf of the Commons.
- j. Acquire such parcels of land, with or without buildings and other improvements, through donation, purchase, transfer from Agrarian Land Trust, or otherwise, as the Board shall determine that it is useful and prudent to acquire in furtherance of the purposes of the Commons.
- k. Collaboratively decide how to steward and nourish land, ecology, and community including supporting soil regeneration, carbon sequestration, ecosystem diversification, and food production, as necessary to conserve and maintain the property held by the Commons.
- l. Convey the right to use Agricultural Land, through leases or other limited conveyances, in accordance with these Bylaws, Good Faith Agreement, and with the primary goal of racial and economic equity, secure and affordable tenure based on agricultural enterprise viability, and lease tenure equity buildings mechanisms.
- m. Convey ownership of housing, agricultural buildings, and other improvements on the Common's Agricultural Land to qualified lessees, as possible, through a ground lease.
- n. Convey residential and/or agricultural housing, buildings, and other improvements on the Common's Agricultural Land to qualified renters or buyers, aligned with and connected to leaseholder agriculture and agrarian enterprises.

- o. Exercise, as appropriate, the Common's option to repurchase (or arrange for the resale of) improvements on the Common's Agricultural Land.
- p. Ensure the sound management of the Common's finances to invest and steward soil and ecosystem health and farm viability, and in accordance with the Good Faith Agreement and federal and state regulations.
- q. Ensure that all income collected from holding title to Agricultural Land, less expenses, is turned over to Agrarian Land Trust, in accordance with IRC regulations.
- r. Own Agricultural Land as a Commons, keeping land outside of market transfers and mortgage debt. Specifically, the Commons is prohibited from selling Commons land and restricted from acquiring mortgage-based debt.
- s. Prudently delegate the performance of these duties to agents or staff.
- t. Ensure communication with, and accountability to, the larger community.

Section 12: Powers of the Board of Directors

In addition to the power to carry out the duties enumerated above, the Board of Directors shall have the power to:

- a. Appoint and discharge advisors and consultants.
- b. Create such committees as are necessary or desirable to further the purposes of the Commons. Any member of the Commons may be appointed to any committee and a committee must include at least two (2) or more Directors. No committee may take action on behalf of the Commons except as authorized by the Board of Directors.
- c. Call special meetings of the Membership.
- d. Approve the borrowing, lending, and investing of money as necessary to further the purposes of the Commons.
- e. Exercise all other powers necessary to conduct the affairs and further the purposes of the Commons in accordance with the Articles of Incorporation and these Bylaws.

Section 13: Limitation on the Powers of the Board of Directors

An action taken by the Board on any motion for the sale of land, the amendment of the Articles of Incorporation or these Bylaws, the establishment or alteration of the “resale formula,” or the dissolution of the Commons, shall not become effective unless and until such action is approved by the Board of Agrarian Land Trust.

ARTICLE 4: BOARD OF DIRECTORS MEETINGS

Section 1: Annual and Regular Meetings

The Directors shall meet, without notice, immediately after the annual meeting of the members. Thereafter during the year, the Board shall meet no less often than twice per year, including the Annual Meeting of the Board during which election of Directors occurs, and in addition to the Annual Meeting of the Membership, at such times and places as the Board may establish.

Section 2: Notice of Meetings and Waiver of Notice

Except as provided below for emergency meetings, written notice of a Board meeting shall be mailed to all Directors at his, her, or their address shown on the records of the Commons at least [seven days] prior to the meeting, or shall be delivered in person or emailed at least [five days] prior to the meeting. The Board of Directors and Membership may establish alternative communication protocols in the event mail or email is not adequate to communicate with the Board of Directors and Members. Notice of every meeting shall include an agenda for the meeting.

Any Director may waive any notice required by these Bylaws. Any Director who has not received notice of a Board meeting but has attended that meeting shall be considered to have waived notice of that meeting, unless he, she, or they requests that his, her, or their protest be recorded in the minutes of the meeting.

Section 3: Participation by Telephone

Directors [or any committee designated by the Board of Directors] may participate in a meeting of such Board of Directors [or committee] by means of a conference telephone or similar communications equipment by which means all persons participating in the

meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

Section 4: Special Meetings and Emergency Meetings

Special meetings may be called by the President or by any [three] Directors. Notice must be given as provided above, unless any three (3) Directors determine that the matter at hand constitutes an emergency. When so determined, an Emergency Meeting may be called with 24-hour notice. Notice of Emergency Meetings, including an announcement of the agenda, shall be given by telephone or in person to all Directors. At any Special or Emergency Meeting of the Board, only those matters included in the announced agenda may be acted upon unless all of the Directors are present at the meeting and unanimously agree to take action on other matters.

Section 5: Quorum

At any meeting of the Board, a quorum shall consist of a majority of the Board of Directors, provided that at least one representative from each of the three categories of representatives is present.

Section 6: Decision-Making

The Board shall attempt to reach unanimous agreement on all decisions, per its Consensus Policy and Procedures. In the event that unanimous agreement cannot be achieved, a decision may be made by a majority of the Directors present and voting, except as otherwise provided in these Bylaws.

Section 7: Actions by Unanimous Consent in Lieu of Meeting

Any corporate action required or permitted by the Articles of Incorporation or Bylaws, or by the laws of the state of California, to be taken at a meeting of the Directors of the Commons [or at a meeting of a committee of the Board of Directors] may be taken without a meeting if a consent, in the form of a record setting forth the action taken, shall be executed by all of the Directors [or all of the members of the committee], as the case may be, entitled to vote with respect to the subject matter. Such consent shall have the same force and effect as a unanimous vote, and may be described as such. Any such consent shall be inserted in the minutes book as if it were the minutes of a meeting of the Board of Directors.

ARTICLE 5: OFFICERS

Section 1: Designation

The officers of the Commons shall be: President, Vice President, Secretary, and Treasurer. Any two or more offices may be held by the same person, except that the person holding the office of the Secretary or the office of the Treasurer can not concurrently hold the office of President.

Section 2: Election

The officers of the Commons shall be elected by a majority vote of the Board, from among themselves, at the Annual Meeting of the Board. Any vacancies occurring in any of these offices shall be filled by the Board for the unexpired term.

Section 3: Tenure

The officers shall hold office until the next Annual Meeting of the Board after their election, unless, before such time, they resign or are removed from their offices, or unless they resign or are removed from the Board of Directors. Any officer who ceases to be a member of the Board of Directors shall thereby cease to be an officer.

Section 4: Removal from Office

The officers shall serve at the pleasure of the Board of Directors and may be removed from office at any time by an affirmative vote of two thirds of the entire Board of Directors.

Section 5: Duties of the President

The President shall:

- a. Preside at all meetings of the Board of Directors and the Membership when able to do so.
- b. Consult with the other officers and the committees of the Commons regarding the fulfillment of their duties.

- c. Ensure that an agenda is prepared for every meeting of the Membership and the Board of Directors.
- d. Call special meetings of the Membership or Board of Directors when petitioned to do so in accordance with these Bylaws.
- e. Carry out the duties assigned to the President regarding the removal of a Director.
- f. Perform such other duties as the Board of Directors may assign.

Section 6: Duties of the Vice President

The Vice President shall:

- a. Perform all duties of the President in the event that the President is absent or unable to perform these duties.
- b. Perform those duties assigned to the President regarding the resignation or removal of a Director when the President is disqualified from performing these duties.
- c. Ensure that up-to-date copies of these Bylaws (incorporating any duly approved amendments) are maintained by the Commons; answer all questions from the Board regarding these Bylaws; and ensure that all actions of the Membership and Board of Directors comply with these Bylaws.
- d. Ensure that any and all committees established by the Board of Directors are constituted as the Board has directed and meet as necessary and appropriate.
- e. Perform such other duties as the Board of Directors may assign.

Section 7: Duties of the Secretary

The Secretary shall:

- a. Ensure that a list of all Members and their mailing and email addresses are maintained by the Commons.
- b. Ensure that proper notice of all meetings of the Membership and the Board of Directors is given.
- c. Ensure that motions and votes in meetings of the Board are accurately represented to those present and are accurately recorded in the minutes.
- d. Ensure that minutes of all meetings of the Membership and the Board of Directors are recorded and kept on permanent record.
- e. Ensure that all deeds, title papers, leases, and other documents establishing the Common's interest in Agricultural Land and rights in particular matters are systematically and securely maintained.
- f. Perform such other duties as the Board of Directors may assign.

Section 8: Duties of the Treasurer

The Treasurer shall oversee the finances of the Commons. Specifically, the Treasurer shall:

- a. Ensure that the financial records of the Commons are maintained in accordance with sound accounting practices.
- b. Ensure that funds of the Commons are deposited in the name of the Commons in accordance with these Bylaws.
- c. Ensure that all money owed to the Commons is duly collected and that all gifts of money or Agricultural Land to the Commons are duly received.
- d. Ensure the proper disbursement of all income, less expenses, to Agrarian Land Trust.
- e. Ensure that accurate financial reports (including balance sheets and revenue and expense statements) are prepared and presented to the Board every six months of each fiscal year.
- f. Ensure that such reports and returns as may be required by various government agencies are prepared and filed in a timely manner.
- g. Ensure that an annual operating budget is prepared and presented to the Board for its approval prior to the beginning of each fiscal year.

ARTICLE 6: MAINTENANCE OF LAND

Section 1: Encumbrance of Land

The decision to mortgage or otherwise encumber Agricultural Land owned by the Commons shall require the approval of the Board of Directors, the unanimous consent of any parties to whom such land is leased, and allowable by Agrarian Land Trust bylaws, and approved by Agrarian Land Trust Board, and shall not exceed 20% of the equity in land. Any such encumbrance shall be subordinated to any leases relating to such land. Allowable exceptions include: conservation or affirmative easements, Agrarian Land Trust Option and/or Right to Recovery, and other similar and aligned encumbrances that enhance the mission and intent of Agrarian Land Trust and the Commons.

Section 2: Transferring Land

If Capay Valley Agrarian Commons should dissolve as a corporation for any reason, or cease to engage in carrying out the purposes set forth in its Articles of Incorporation, all of

its properties shall be transferred to Agrarian Land Trust. Provided, however, that if Agrarian Land Trust has dissolved as a corporation prior to the dissolution of the Commons, such properties shall be transferred to the nonprofit fund, foundation, or corporation designated by Agrarian Land Trust which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under IRC 501(c)(3).

Provided further that if such organization has also dissolved or is unable to steward the Common's properties, the Commons shall make every reasonable effort to (in order of priority):

- Transfer to the people who have been stewarding the land as an Agrarian Commons, especially if those people are indigenous or people of color.
- Transfer to an indigenous community located near each parcel, regardless of whether such community is federally recognized.
- Transfer to a people of color-led land-based organization.
- Transfer to a land-based organization near the location of each parcel.
- Transfer to a land-based organization that has adequate funding, knowledge, resources, and demonstrated commitment to manage the land as a commons.
- Transfer to a land-based organization that is highly democratic.

Notwithstanding the above, a parcel of land may be sold on the open market when it is not a viable or integral component of agriculture, agrarian, community, and/or ecological health and viability of the whole Commons pursuant to a resolution adopted by an affirmative vote by at least two-thirds ($\frac{2}{3}$) of the entire Board of Directors and with the approval of the Board of Agrarian Land Trust and agreement to waive the Option, Right to Recover, or other similar deed encumbrance rights held by Agrarian Land Trust.

If any of the Common's land is to be sold on the open market, any lessees of the Commons on that land shall have a first right to purchase the land at its current appraised value. Any and all sales are subject to existing leases, and subsequent buyers are bound by existing leases at the time of sale.

ARTICLE 7: AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

The Articles of Incorporation may be amended and these Bylaws may be amended or may be repealed and new Bylaws adopted only by:

- a. An affirmative vote by two-thirds ($\frac{2}{3}$) of the entire Board of Directors at any regular or special Board meeting, provided that written or email notice of such meeting has set forth the proposed amendment or replacement, with appropriate explanations thereof; and
- b. Approval by the Board of Agrarian Land Trust;

Provided, however, that the Board of Directors shall amend the Articles of Incorporation or Bylaws if directed by Agrarian Land Trust in order to maintain the Common's recognition as a 501(c)(2) title holding organization.

ARTICLE 8: DISSOLUTION

A decision to dissolve the Commons and to distribute the Common's assets in a particular manner in accordance with the Articles of Incorporation shall require:

- a. An affirmative vote by two-thirds ($\frac{2}{3}$) of the entire Board of Directors at any regular or special Board meeting, provided that written or email notice of such meeting has included a full description of a proposed plan of dissolution; and
- b. Approval by the Board of Agrarian Land Trust.

If the Commons should dissolve for any reason, all of the Agricultural Land, business, assets, and income of the Commons remaining after payment of all debts and liabilities of the Commons shall be distributed in accordance with Article 6, Section 2 above.

ARTICLE 9: MISCELLANEOUS PROVISIONS

- A. **Fiscal Year.** The fiscal year of the Commons shall begin on January 1 of each year, and shall end on December 31 of each year.
- B. **Office.** The principal office of the Commons shall be located at its principal place of business or such other place as the Board of Directors may designate. The Commons may have such other offices, either within or outside the State of California, as the Board of Directors may designate or as the business of the Commons may require from time to time.
- C. **Deposit of Funds.** All funds of the Commons not otherwise employed shall be deposited in such banks, trust companies, or other reliable depositories as the Board of Directors from time to time may determine, with a preference for credit unions and other cooperative financial institutions.

- D. **Checks, etc.** All checks, drafts, endorsements, notes and evidences of indebtedness of the Commons shall be signed by such officers or agents of the Commons and in such manner as the Board of Directors from time to time may determine. Endorsements for deposits to the credit of the Commons shall be made in such manner as the Board of Directors from time to time may determine.
- E. **Loans.** No loans or advances shall be contracted on behalf of the Commons, and no note or other evidence of indebtedness shall be issued in its name, except as authorized by the Board of Directors. Any such authorization shall relate to specific transactions.
- F. **Contracts.** Any officer or agent of the Commons specifically authorized by the Board of Directors may, on behalf of the Commons, enter into those contracts or execute and deliver those instruments that are specifically authorized by the Board of Directors. Without the express and specific authorization of the Board of Directors, no officer or other agent of the Commons may enter into any contract or execute and deliver any instrument in the name of the Commons.
- G. **Indemnification.** Any person (and/or the heirs, executors and administrators of such person) made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he, she, or they is or was a Director or Officer of the Commons shall be indemnified by the Commons against any and all liability and the reasonable expenses, including attorney's fees and disbursements, incurred by him, her, or their (or his, her, or their heirs, executors, or administrators) in connection with the defense or settlement of such action, suit, or proceeding, or in connection with any appearance therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or Officer is liable for negligence or misconduct in the performance of his, her, or their duties.
- H. **Books and Records.** The Commons shall keep the following records at its registered office or its principal office in the State of California
- a. Current copies of its Articles of Incorporation and Bylaws, as amended;
 - b. Correct and adequate records of accounts and finances;
 - c. A record of officers' and Directors' names and addresses;
 - d. Minutes of the proceedings of its Members and Board of Directors, and any minutes that may be maintained by committees having any of the authority of the Board of Directors;
 - e. Copies of such documents as may be required by law to be made publicly available, including copies of its application for recognition of tax-exempt status on Form 1024 and copies of its Form 990; and
 - f. Such other records as may be necessary or advisable, including but not limited to: property tax invoices and payment, annual monitoring report, building/property/site assessment and plan, conservation easement monitoring reports, and soil and ecosystem data.

Such records shall be made available in any manner and by any means as required by law, as applicable. All books and records of the Commons shall be open at any reasonable time to inspection by any Director.

- I. **Loans to Directors and Officers Prohibited.** No loans or advances shall be made by the Commons to any of its Directors or officers.
- J. **Taxes, Fees, Insurance, Endowments.** The Commons shall keep current property taxes and fees, maintain insurance on all real estate and assets, and maintain land and building endowment funds. If Agrarian Land Trust is maintaining endowments for the Commons, then the Commons shall fund maintenance of land and buildings with such endowments.

Adopted on: (DATE) 10/12/2020; Cameron Rhudy, Incorporating Attorney

Cameron Rhudy

Amended on: (DATE)

Amended on: (DATE)

Amended on: (DATE)

TITLE	Consent of Directors in Lieu of a Meeting
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IP: 216.93.207.103



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