

County of Sonoma

Clerk of the Board Use Only
Meeting Date
____/____/____

Agenda Item

Agenda Item No:

Summary Report

Department: Sonoma County Agricultural Preservation and Open Space District

() 4/5 Vote
Required

Contact:
Andrea Mackenzie

Phone:
(707)565-7360

Board Date:
4/7/2009

Deadline for Board Action:

AGENDA SHORT TITLE:

Property: Conservation Easement Interpretation

REQUESTED BOARD ACTION:

Adopt resolution confirming that the Conservation Easement precludes issuance of Certificates of Compliance

CURRENT YEAR FINANCIAL IMPACT

EXPENDITURES

SOURCE OF ADDITIONAL FUNDS REQUESTED

Estimated Cost	\$	000.00	Contingencies \$	000.00
			(Fund Name:)	
Amount Budgeted	\$	000.00	Unanticipated Revenue	\$ 000.00
			(Sources:)	
Other Avail. Approp.			Other Transfer(s)	\$ 000.00
(Explain below)		0.00	Total Source of Funds:	\$ 0.00
Additional Requested:	\$			

Explanation (if required):

Prior Board Action(s) ; In 1993, the Board of Directors approved and executed a Conservation Easement over the property.

Alternatives - Results of Non-Approval:

Background:

In 1993, the District purchased a Conservation Easement over a large dairy farm [REDACTED]. The property is located on Spring Hill Road in the Chileno Valley, located southwest of Petaluma. The property is approximately 560 acres in size and currently consists of two legal parcels.

The stated purpose of the Conservation Easement is “to preserve the open space, natural, scenic and agricultural values of the Property” and to restrict the use of the Property to (a) extensive agriculture, (b) existing residences, and (c) management and conservation of natural resources. (See Attachment A: Conservation Easement.) Although the dairy is not currently in operation, a local dairyman leases the property for grazing and silage.

The [REDACTED] have submitted an application to PRMD for six certificates of compliance on the Property, by which they seek to resurrect six historic parcels ranging in size from the smallest at 17 acres to the largest at 195 acres. District staff has determined that issuance of the requested certificates of compliance is precluded by the terms of the Conservation Easement. PRMD staff has declined to issue the certificates at this time, deferring to the District’s determination. The [REDACTED] have challenged staff’s determination and the matter is now brought to the Board of Directors for final interpretation.

This matter has previously been discussed by the Board in closed session pursuant to Government Code § 54956.9 (b). Counsel for the [REDACTED] has requested that the Board’s decision be memorialized in a written resolution.

Staff recommends that the Board reaffirm that the [REDACTED] Conservation Easement precludes issuance of the requested certificate of compliance for the following reasons:

1. Purchase of Development Rights.

Prior to the District’s purchase of the Conservation Easement, the [REDACTED]’s property had five development rights. Using public funds, the District purchased three of those development rights. After recordation of the Easement, the property owner retained just two development rights. (See Attachment B: 1993 Staff Report, and Attachment C: Appraisal pages 36 and 37.) Those two remaining rights are reflected in the two existing legal parcels on the property. The record indicates and staff believes that, at the time of the purchase of the Easement, all parties understood and intended that the property would remain two, and only two, legal parcels.

Attachments:

- A – Conservation Easement Deed and Agreement
- B – 1993 Staff Report to Board
- C – Appraisal Excerpt (pps. 36-37)
- D – Rescission letter
- E – Proposed Resolution

On File With Clerk:

CLERK OF THE BOARD USE ONLY

Board Action (If other than "Requested")

Vote:

Background continued (p. 2):

2. Prohibition Against Division of the Property.

The Conservation Easement prohibits the “division, subdivision, or de facto subdivision of the Property . . .” (Attachment A: Conservation Easement.) This standard language is found in more than fifty of the District’s conservation easements purchased and recorded prior to 2000. The language is also found in many Open Space Easements conveyed to the District in connection with County land development approvals.

The “Property” is defined under the Easement as the entirety of the [REDACTED] 560 acre farm. The Easement does not define “division, subdivision, or de facto subdivision.” The Merriam Webster Dictionary defines “division” as “something that divides, separates or marks off.” Similarly, the courts have held that “land is ‘subdivided’ when one unit is separated from the contiguous units surrounding it.” (*Lakeview Meadows Ranch v. County of Santa Clara* (1994) 27 Cal.App.4th 593, 598.) Recordation of certificates of compliance would separate title to each certificate parcel, and thus carve the property into smaller components.

Counsel for the [REDACTED] has argued that the requested certificates of compliance would simply recognize existing historic parcels on the property, and thus would not constitute a new division of the land. The Easement, however, defines “the Property” as the whole of the 560 acres. “The Property” would thus be “divided” if historic parcels were resurrected, placed into separate title and sold into separate ownership.

3. Value of the Property for Extensive Agriculture.

Counsel for the [REDACTED] has argued that because the Easement limits development of the property, there is no harm in the issuance of one or more certificates of compliance. Although the issuance of a certificate would not alter the land use restrictions on the property, it could affect the continued viability of the current agricultural use of the land.

The Easement expressly prohibits the “impairment of the protected values . . .” (Attachment A: Conservation Easement.) One of the stated purposes of the Easement is to preserve the Property’s use for “non-intensive (extensive) agriculture.” Indeed, the value of the [REDACTED] property for conservation was tied to its size and prime location in the Petaluma dairy belt. (Attachment B: 1993 Staff Report.) The viability of extensive agriculture, particularly a dairy operation, depends upon the continued unified ownership of a large acreage. To carve the property into small parcels could significantly reduce its value for extensive agriculture.

There has been a suggestion that perhaps a single certificate of compliance could be issued for a sixty-five acre portion on the west side of the property for development of a wetland mitigation bank. Although the loss of sixty-five acres may not be significant in light of the large size of the farm, the sixty-five acres proposed for development of the mitigation bank appears to be among the most fertile soil on the property and thus could detrimentally impact the continued use of the farm for silage.

4. Rescinded Staff Letter.

On January 31, 2006, then District Stewardship Coordinator, Dino Bonos sent a letter to the [REDACTED] responding to a request for a single certificate of compliance for a sixty-five acre lot on the west side of the property. Unfortunately, the letter was based upon a misunderstanding of the facts. The letter recognized that the District had purchased all but two development rights on the property, but failed to recognize that there were already two legal parcels on the Property. The letter was formally rescinded by letter dated October 15, 2007 (See Attachment D).

Background continued (p. 3):

Staff Recommendation

The General Manager recommends that the Board of Directors confirm that the terms and conditions of the Conservation Easement preclude the issuance of the requested certificates of compliance on the [REDACTED] Property. A proposed resolution is attached.

Background information is on file at:

County of Sonoma Board of Supervisors Office
575 Administration Drive, Room 100A
Santa Rosa, CA 9540

It can be viewed and/or copies requested during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Call (707) 565-2241 for more information.