

October 11, 2010

Sonoma County Board of Supervisors

Supervisor Valerie Brown, vbrown@sonoma-county.org

Supervisor Mike Kerns, mkerns@sonoma-county.org

Supervisor Shirlee Zane, szane@sonoma-county.org

Supervisor Paul Kelley, mkelley@sonoma-county.org

Supervisor Efren Carrillo, ecarrillo@sonoma-county.org

575 Administrative Drive, Room 100A
Santa Rosa, CA 95403

Re: Roblar Road Quarry/PRMD File No. PLP 03---94;
Barella Conservation Easement recorded May 21, 2004, as Document #
2004077489, Office of Official Records of Sonoma County

Dear Members of the Board of Supervisors:

Marin Agricultural Land Trust (MALT) was created in 1980 to preserve agricultural land in Marin County. MALT currently holds perpetual conservation easements on 66 farms and ranches totaling 41,892 acres. As an organization that uses conservation easements to carry out its land conservation mission, we depend, as do hundreds of nonprofit organizations and government agencies in the U.S., on the legal validity, durability, integrity, and enforceability of conservation easements.

We understand that the Sonoma Agricultural Preservation and Open Space District (the District) is considering "temporarily releasing" the referenced conservation easement it holds (the Barella Easement or Easement) over a 3-4 acre portion of the property (now owned by Wilson) to permit a haul road to serve a gravel mining operation on an adjoining property. We also understand that the proposed "temporary release" is purported to be justified by the addition of a new conservation easement on the adjoining gravel mining property.

MALT believes that this action is not only improper and contrary to the intent, and provisions of the Easement, but also, if taken, represents a serious threat to the integrity and enforceability of conservation easements generally and to public confidence in the integrity of conservation easements and the

public's trust in the commitment and ability of holders to enforce and defend them.

While there are a myriad of reasons the proposed "temporary release" is improper, among the most obvious are the following:

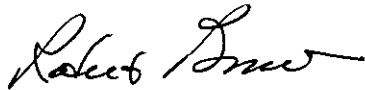
1. The Barella Easement is expressly perpetual, and is expressly granted pursuant to California Civil Code sections 815 to 816 which require conservation easements granted pursuant to this section to be perpetual in duration. The proposed haul road is patently inconsistent with the purposes and terms of the easement. To temporarily release the easement over even a small portion of the encumbered property to permit an activity clearly prohibited by the easement violates the perpetual nature of the easement.
2. The Barella easement encumbers a specific 757-acre property (the Barella-Wilson Property) as identified in the easement. The restrictions of the Easement apply exclusively to that property. Section 4 of the Easement provides: "This Agreement shall confine the uses of the Property to the uses which are described herein." The haul road is clearly inconsistent with the Easement. Modification of the Easement cannot be justified on the protection of other land, however worthy.
3. Public Resources Code Section 5540.5 is being cited as authority for the District to exchange a temporary release of the Easement over a portion of the Barell-Wilson property for a conservation easement on the adjoining gravel mining property. If the District owned the Barella-Wilson property or a partial interest in the property for park and/or open space purposes subject only to its own powers and authority, Section 5540.5 might give the District that authority. But Section 5540.5 does not supersede or obviate the conservation easement on the Barella Property. If that were the case, conservation easements would have little meaning in the hands of Districts, effective only until a District chose to make a "better deal" under Section 5540.5. That is not the intent or effect of Section 5540.5.
4. The Barella Easement was sold to the District, according to the easement, "at a price substantially less than its fair market value, to make a charitable contribution to the DISTRICT in support of the

DISTRICT'S efforts to preserve open space, scenic, agricultural and historic values of the Property, and DISTRICT acknowledges GRANTOR'S charitable intent." The Easement was apparently intended to constitute a qualified conservation contribution under the Internal Revenue Code. On its face, permitting the haul road over any portion of the Barella-Wilson property is inconsistent with the Easement. Federal regulations require that easement holders demonstrate a "commitment to the protection of conservation resources." A failure to uphold this commitment not only endangers the charitable contribution deduction of the grantor, but also could disqualify an agency from receiving qualified conservation easements as charitable gifts.

It seems obvious to us that temporarily allowing a use over even a small portion of a property that is patently inconsistent with the conservation easement protecting the property is a violation of the easement, is an abrogation of the holder's obligations and responsibilities, undermines public confidence in the holder's commitment to the protection of the encumbered property, and threatens the integrity of conservation easements as means of protecting land.

We respectfully urge the District to deny any use that is inconsistent with the intent, purposes and provisions of the Easement.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert Berner". The signature is fluid and cursive, with a prominent initial "R".

Robert Berner
Executive Director

Cc: MALT Board of Directors