Friends of the Gualala River

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Dave Schiltgen
Permit and Resource Management Department
and
Planning Commissioners
Planning Commission Sonoma County
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Santa Rosa, CA 95401
707-543-3265

Dear Commissioners and PRMD Staff,

On Tuesday December 13th a Staff report from PRMD with the latest version of language for an ordinance to protect Sonoma County's forestlands from conversion was formally presented to the public and the Board of Supervisors.

The intent of the ordinance and the public outpouring of support has been to put protections in place to preserve the remaining timberlands and watersheds of Sonoma County from conversion and the multitude of potential environmental effects posed by this deforestation.

The provisions offered up by the Permit and Resource Management Staff unfortunately totally miss the mark of this intent. If the county truly regards commercial agriculture incompatible on lands determined to be timberlands then this ordinance is fundamentally flawed. As written it does not protect those lands from conversion. The provisions it does set forth are not scientifically based, not formulated using good baseline data, and not concerned with directing ag projects toward more appropriate areas. The ordinance guarantees an increase in unacceptable cumulative impacts to the Gualala River. Pronouncements from the Board of Supervisors that this proposed regulation is "…the most stringent regulation of conversions by any local government in the state." would be assuring if it prevented large conversions with deleterious effects.

The effectiveness of the proposed ordinance can be easily tested by using one of the pending development projects slated for the heart of one of the forests the ordinance is meant to protect. The proposed 19 thousand acre so-called "Preservation Ranch" development is headed by wealthy Napa based developers, guided by an ex-supervisor and funded by CALPERS, the state retirement fund. The proposed ordinance provisions will be easily met by a project of this size with thousands of steep, untillable forested acres to "trade" 2 to 1 for converting the desired ridgetop forests. Not permitting agricultural cultivation in timber production zoned (TP) parcels will pose no impediment as the developer is poised to apply for split zoning on parcels, taking just the forest to be converted out of the TP zoning. PRMD has resisted split zoning in the past citing direct costs and a paperwork blizzard. They now seem to have changed their tune.

Funded by the deep pockets of a state employee's retirement fund, the deferred taxes will be paid and the low hurdle jumped. After the proponents have met the swapping provision, the wording allows for

the public benefit requirement to be met by the mere setting up of the needed easements for these swapped acres. Again, this is an easy pass for a developer with cash on hand.

The stage is then set for approximately 2000 acres of deforestation and perhaps hundreds of additional developed acres of so far undisclosed parcels not needing forest clearing. These are slated to be sold to new buyers eager to try out winegrowing on isolated ridgetops in this presently wild forestland. Other parcels will undoubtedly wind up sold for “starter castle” houses with their own infrastructure needs including roads, utilities, and public services. This development will create snowballing development pressure on the remainder of the forest.

All of the project’s parcels are to be sold as the developer exits the investment. The developer claims that these forest conversions, zone splits, and parcel “improvements” are necessary to create the “engine” for restoring the remaining forest on the holding. It might be more logical and beneficial for the public trust resource to have a watershed scale, science based ordinance that turns back such a “destroy to restore” plan and keeps these acres in timber production. Real protections need to be inserted into the present language.

The Forest Practice Rules define “timberlands” as:

> 4526. Timberland. "Timberland" means land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees.

CDF has recently violated this definition by arbitrarily approving work for Preservation Ranch on TP land that was available and capable of growing commercial trees. The language in this ordinance leaves the door wide open for continuing CDF abuses of discretion in determining which land will be considered timberland. Secret determinations by CDF that facilitate illegal backroom conversion of land capable of growing commercial timber interfere with public oversight and should be discouraged rather than encouraged.

Partial protections from conversion are proposed for Site Class I & II timberland only if the land converted requires a conversion permit.To truly protect this timberland Section 26-10-010 (d)(1) should remove the words “if a timberland conversion is required” and simply read as follows:

“Section 26-10-010(d)(1) Agricultural cultivation shall not be permitted on Site Class I and II timberland.”

For the remaining timberland (96%) a broad exception is being made for any project that meets a criterion of "significant benefit" by following loosely defined guidelines that actually creates a discretionary county permit process that will be subject to CEQA. Encouraging the sacrifice of one-third of Class III and IV timberland in exchange for stocking timberland that should have been properly stocked when it was harvested in effect sets up an unscientific forestland mitigation banking scheme with no basis in watershed scale or landscape level geographic rationale. The exception provisions that allow for a plan of compensatory mitigation perverts the original intent of creating a protective ordinance and provides for a project-by-project, discretionary, board controlled "public overriding benefit" determination.

This is onerous as once a public body has issued a determination of a public overriding benefit from a project, further CEQA review (by CDF in this case) could be circumvented. It could mean any mitigation exceeding a 2:1 rehabilitation/elimination ratio is DEFINED in the ordinance as "public benefit", regardless of biological need, purpose, and adequacy. A subsequent finding of "overriding considerations" regarding the need to address a project's "significant and unmitigatable impacts" could set up a situation where another CEQA agency with standing could adopt this overriding consideration determination and declare CEQA compliance. This could allow projects to be approved with little or no real environmental or economic feasibility review or oversight based on, what it appears in effect, is a proposed discretionary permit process masquerading as a ministerial permit process.

In order to preserve the CEQA protections imbedded the CDF Timberland Conversion Permit (TCP) process, Section 26-88-160 (C) should be written to guarantee that the CDF TCP is approved and finalized before the County permit process begins.

The County permit process must not circumvent or eliminate the existing CDF discretionary TCP permit CEQA process that requires access for public review, comment and oversight.

The apparent need for a board of supervisors vote to take proposed conversion acres in TP out of TP zoning also makes this a discretionary permit process (thus CEQA regulated).

The vague language of the proposals creates more loopholes than protection. The proponents of small to large projects will easily be able to swap out their steep, untillable forested acres for the desired vineyard acres located on the limited level ridgetops scattered within their parcels. There are also no built in incentives for the project proponents to restore lands that could be upgraded through rehabilitation. They will naturally meet the 2 for 1 swap requirements using steep unusable acres that already meet stocking requirements. In fact, the language also states that those acres do not have to lie within the parcel and can be vaguely "located nearby". Again, there is no scientific system offered to plan the selection of this preservation or rehabilitation mitigation.

Reliance on the CDF Forest Practice Rules 891.5 definition of Stocking Standards is only designed to define minimum acceptable stocking of an area with commercial tree species after harvesting the existing timber. This stocking standard is designed to accommodate continued consideration of biological viability of the area harvested. No scientific evidence has been presented to prove that use of this standard will provide mitigation for complete loss and conversion of one third or more of any forested ecosystem. Any Stocking Standards used as mitigation should reflect a scientifically based response to elimination of forestland rather than traditional supplemental restocking of a depleted forest.

It is important that the county define the terms that are written into the conservation easements required by the ordinance. The property owner can receive large tax benefits, and the terms of the easement will determine the extent the developer is still allowed to continue logging or resource extraction in perpetuity.The "preservation or rehabilitation" of timber resources and wildlife habitat that is implied in the ordinance could be lost without careful wording of the easement. Also, the ordinance does not at this time address monitoring for compliance of the easement terms after the vineyards are developed.

Recent national and local press coverage has revealed that these easements can be ineffective as protections for forestlands. According to the Napa Valley Register on Sept 25, 2004 (See attached exhibit A) one recent controversial conservation easement entered into by Premier Pacific Properties and Golden State Land Conservancy (Exhibit B) allowed the easement to be lifted at any time as long the two parties agreed, despite an initial agreement to protect the land "in perpetuity". The agreement provided for very little oversight or monitoring of the land to make sure that changes that would reduce natural habitat were prevented. The easement only provided monitoring of the property "annually or less frequently," or at any time when GSLC can show reasonable cause.

The encouragement of conservation easements on large holdings of under stocked, unusable, steep canyon land that provides little if any true public benefit appears to be a well orchestrated attempt to raid public conservation funds and generate tax breaks that will subsidize the conversion of ridgetops in the Gualala River watershed from timber to agriculture.

Section 26-88-160(D)(2)(b)(2) states: "the preserved timberland shall be conserved for the protection of timber for commercial purposes through recordation of a perpetual protective easement dedicated to the county or a public agency or a qualified nonprofit organization approved by the county."

It is very important to include language in the ordinance that gives the county and the public oversight of the terms and protections included in the easements. The devil is in the details. Standards should also be better defined to list the qualifications expected of non-profit organizations for county approval. Friends of the Gualala River is available to assist the County in crafting standardized easement language.

Suggestions for Consideration:

- Conversion protection provided to Site Class I and II should be extended to the Site Class III lands to effect any real forest protection.
- The words "if a timberland conversion is required" should be removed from Section 26-12-010 subsection (d)(1)
- All "protected" timberland should be held to stocking standards that lead to upgrading the Site Classifications as defined in FPR Section 1060. Selection of lands to be preserved should be scientifically based on watershed scale analysis of need rather than convenience of the developer.
- Incentives need to be incorporated into any mitigation banking scheme to make it advantageous for a developer to select land that needs higher levels of investment to restore to health. These lands will be avoided for inclusion by a developer with stocked land to trade with the present language.
- Meeting a public benefit requirement needs a well defined set of guidelines for determining what constitutes "substantial" and "benefit". Loose easements on traded acres, limited public use of some portion of the land, token land easements with open space districts, unscientific and unsubstantiated claims of restoration are all examples of abuses of a process based on parameters subject to broad interpretation and political climate.
- Language should discourage any end runs around regulation intent by proponent rezoning to establish a residential development and avoid conversion applications.

- All approvals of conversions should be based on thorough watershed scale environmental review and restoration planning, not with a site based, inappropriate and weak site classification system as proposed. Acres to be traded for conversion should be chosen prioritized based on watershed scale data, county land use priorities and General Plan guidelines and goals. Specific language as to these priorities should be included to guide any discretionary determinations of public benefit.
- Standards for easements on banked land meant to be effective in perpetuity should be established and not be a variable from one submission to another.
- CEQA Initial Studies should be required by the county of conversions over 20 acres
- Sec 26-88-160 (D) needs to be clarified so that CDF has to complete the THP/TCP approval prior to any consideration and approval by the county permit process.
- A cost analysis of the projected infrastructure costs to the county and public funds for build out of the project should be a requirement of any application.

Issues that need Immediate Clarification:

(a) How would the ordinance work and NOT work with CEQA --esp. whether it would create classes of ministerial permit actions based on whether mitigation standards are met.

(b) Does the county expect to ORDINARILY apply CEQA Initial Studies and EIRs to conversions over 20 acres, regardless of timber class, because of cumulative impacts to water, stream and riparian habitats, growth-inducing impacts, habitat fragmentation, sedimentation, etc.

(c) What does "accommodation of public use" mean?

(d) How to you expect the county process to effect State TCPs?

(e) How does the County plan to define "significant overriding public benefit" in its attempt to formulate a "flexible" determination process?

(f)Will the Public Benefits described in Exhibit D be required to be supplied only by the acres/parcels to be converted or from other lands under ownership of the applicant in or out of the area? Will example 6) apply to legal and established parcels or those not established and recorded?

(g) Will acres traded for mitigation br truly “nearby” as required or be allowed to be on other parcels and ownerships?

We thank you for your consideration of these comments and hope that the resulting regulation will incorporate the needed additional protections for an effective ordinance to protect these threatened forests.

Respectfully,
John Holland
President
Friends of the Gualala River

EXHIBIT A

Napa Valley Register September 25, 2004

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http://www.napanews.com/templates/index.cfm?template=story_full&id=6FE7649
6-93CA-471F-9216-FF3EEA746A9F

Land trust's motivations questioned
Environmentalists wonder if 30-acre wildland near Napa is protected

Saturday, September 25, 2004

By GABE FRIEDMAN
Napa Valley Register Staff Writer

A self-described "landowner friendly" land trust, Golden State Land Conservancy, responsible for protecting a wildlife corridor in Napa is drawing scrutiny from environmental advocates, who say protections promised for a 30-acre wildlife corridor near vineyards offer very little protection at all.

The controversy over the wildlife area involves a conservation easement, a legally binding promise from a landowner that restricts property rights to ensure that the land won't be developed in ways harmful to wildlife and other natural features. In exchange, landowners get tax breaks and other concessions.

Such easements have been used to limit development on 2.5 million acres across the country, and the Land Trust of Napa County has more than 20,000 acres under such protections in the Napa Valley.

But the south Napa agreement entered into between Premier Pacific Properties and the Golden State Land Conservancy seems to offer less environmental protection than most conservation easements:

* The easement can be lifted at any time as long the two parties agree, despite an initial agreement to protect the land "in perpetuity."

* The agreement calls for very little oversight or monitoring of the land to make sure that changes that would reduce natural habitat are prevented.

* The group that agreed to be the steward of the land -- Golden State Land Conservancy (GSLC) -- is under fire from environmentalists around Northern California who say its agreements appear to be designed more to help developers escape costly environmental studies or regulatory processes than to protect open space.

Protecting land or money?

In November 2003, GSLC granted a conservation easement on 30 acres of oak grassland near the then-proposed 130-acre Soscol Bench vineyard -- now a vine-lined hill visible from the intersection of Highway 221 and Kaiser Road. The Napa County Planning Department first rejected the vineyard proposal, but approved it after the county was assured there would be a conservation easement on the site, which is farmed and owned by Napa-based Premier Pacific Vineyards.

Will Selleck, the county planner who worked on the project, said the county had just settled a lawsuit brought against it by the Sierra Club for failing to adequately review new vineyard projects.

The Soscol Bench Vineyard was one of the first large projects proposed after the Sierra Club settlement, Selleck said. Rather than go through the lengthy process of a full environmental impact review, the then-owner cut a deal with the local Sierra Club: The vineyard would receive an abbreviated environmental review, but the wildlife corridor would be preserved "in perpetuity" through a conservation easement, according to a signed contract between the Sierra Club and developer Silverado Premium Properties.

In exchange, the Sierra Club agreed not to sue or tie up the project's approval before county officials.

The easement drawn up between Premier Pacific and GSLC is not that ambitious, though. It states that the two parties can agree to end the easement at any time, and it seeks monitoring of the property "annually or less frequently," or at any time when GSLC can show reasonable cause.

In April, the Land Trust of Napa County, which is not affiliated with GSLC and was not involved with the deal, became concerned about the transaction.

It forwarded a copy of the agreement to Greg Hendrickson, a San Francisco-based land use attorney. In a written response, Hendrickson stated that the "intentions of the parties" involved in the deal are "highly suspect."

"I do not believe that the easement meets the very cursory definition of a conservation easement," Hendrickson wrote in the letter to the Land Trust of Napa County.

Different objectives

Representatives from the Napa chapter of the Sierra Club declined to comment.

Whitman Manley, a GSLC boardmember and an attorney with Sacramento's Remy, Thomas, Moose and Manley, defended his group, saying its policy is to work with landowners who might otherwise be reluctant to put a conservation easement on their property.

The GSLC is a land trust that has been "more flexible" about easement terms than other land trusts, he said. Manley defended the easement in Napa and others the group has forged, saying GSLC is doing its part to help preserve open space.

"Different land trusts have different objectives," Manley said. "I think this is a good thing.

"Sometimes, it's to satisfy conditions of (project) approval, sometimes it's for tax reasons, sometimes it's for family reasons," he said.

Manley pointed out that the GSLC is listed as a member of the Land Trust Alliance, a Washington D.C.-based organization that aims to help increase the power and momentum of the land conservation movement.

However, John Bernstein, director of conservation for the Land Trust Alliance, said that there isn't a formal accreditation process to join his organization. The 1,300 members have just made commitments and promises to abide by the Land Trust Alliance's standards.

"However, I did see the easement" in Napa, said Bernstein. "I would say there are a number of unusual and substandard features to it."

Bernstein specifically pointed to the loose monitoring requirements, an apparent lack of development restrictions and the clause that appears to make the easement terminable at will.

He added, "It has a lot of good standard boilerplate things in there, which make it look more conservation-oriented than it is. The problem is the language seems to be deliberately ambiguous."

Other land trusts, including those in Napa, Marin and Sonoma counties, employ between 9 and 11 people for such roles.

"I've looked at lots of land trusts and I've never seen one which is so clearly oriented toward the landowner's needs and not conservation values," said Jason Kibbey, director of Defense of Place, a San Francisco-based land trust watchdog. "It makes you wonder how seriously they take land conservation."

Connie Best, executive director of the Pacific Forest Trust, which conserves forests throughout the Northwest, said she finds GSLC's agreements "unusual."

"I'm unclear how they might be monitored or enforced," she said.

Land trust officials around Northern California said some aspects of the Golden State Land Conservancy -- including the fact that it has no paid staff to monitor or enforce the restrictions on its 24,000 acres of easements around California and the western U.S. -- raise questions.

In a brief telephone interview in mid-September, Bob Whitney, president and spokesman of the GSLC, said the criticism is coming from people who resent the "cost-efficient" competition that his organization brings to the land conservation movement.

Whitney said the GSLC does not need staff to monitor its approximately 24,000 acres of easements. Whitney said he stopped by and monitored Premier Pacific's Vineyard while here for a wedding earlier this year. He said the GSLC rigorously monitors its easements at least once a year.

Real protection?

Hendrickson, in his letter to the Land Trust of Napa County, said GSLC's conservation easement in south Napa provides little protection.

Regarding one requirement that GSLC be notified of any significant changes, Hendrickson wrote that the organization is "not empowered to do anything about that notice."

He adds that it would be up to the Sierra Club to take legal action against the GSLC if the conservation easement terms were broken.

Local, regional and national spokesmen for the Sierra Club declined comment.

San Francisco attorney Tom Lippe and Chris Malan, a former member of the executive committee of the Napa chapter of the Sierra Club who is now political co-chair of the regional chapter, both signed the settlement agreement with Silverado Premium Properties. They also declined to comment.

But land trust organizers around the state said monitoring conservation easements is the responsibility of local agencies that approve them.

"It's really incumbent on the agencies who are accepting the easements to really scrutinize the terms," said Best, of Pacific Forest Trust. "If they're not being well-drafted, then you have to ask why."

Hill, co-CEO of Premier Pacific Vineyards, said he hasn't heard from the Sierra Club and therefore assumed that the terms of the conservation easement were acceptable. He said he was unaware that land conservation officials had any issues with the conduct of the GSLC.

However, he noted that the Land Trust of Napa County had been offered the conservation easement initially, but that it had suggested terms which he found unacceptable.

"They wanted us to do things that went far beyond the terms of the agreement that had been negotiated" between Silverado Premium Properties and the Sierra Club," said Hill.

Hill added that the Land Trust of Napa County had suggested that it would cost roughly $80,000 to do the conservation easement, while the GSLC charged only $15,000.

John Hoffnagle, executive director of the Land Trust of Napa County, said the price was lower, but did not say how much.

While the easement is apparently the only one by the GSLC in Napa County, the GSLC prominently advertises itself as an organization operating here on its Web site. Its board also includes John Piña, of the Oakville-based Piña Vineyard Management company. He did not return calls seeking comment.

Bernstein said that in theory, conservation easements benefit the public. Instead of 1,000 acres of houses, for example, the public can look at 1,000 acres of open space or forest, and the accompanying richer ecosystem and other benefits. But he said it doesn't always work that way when conservation groups compete to offer developers the best deal.

"You don't want a competition of who can protect less," said Bernstein. "You want a competition of who can protect more, but that's not what's happening here."

EXHIBIT B

Golden State Land Conservancy

215 W. Standley Street, Suite 6, Ukiah, CA 95482

Officers and Board of Directors

- President, Bob Whitney
  Conservation, economic and environmental planner.

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- Secretary/Treasurer, Mark L. Ranft
  Attorney and counselor at law, ranch owner and former forester.

- Ernie Carpenter
  Conservationist, business consultant and former Sonoma County Supervisor.

- Whitman Manley
  Partner in law firm of Remy, Thomas & Moose & Manley, LLP, specializing in conservation and environmental law, co-author with law partners of Guide to the California Environmental Quality Act (CEQA).

- John Pina
  Co-owner of vineyard properties and a vineyard management business in Napa and Sonoma counties, and Past President of the Alexander Valley Association.