Date: October 16, 2015

To: Mary Dodge, Sonoma County Agricultural Preservation and Open Space District

From: Tim Seufert, Managing Director, NBS
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Subject: Evaluation of Open Space Easement Annual Fee Assessment

The Sonoma County Agricultural Preservation and Open Space District (“District”) retained NBS to provide assistance in determining the methods available to establish charges to recover the administrative and annual monitoring costs for Open Space Easements (“OSE”) currently held by the District and for OSE received in the future. The purpose of this Memorandum is to summarize the options and NBS’ recommendations to the District.

Background: In order to become and remain accredited, the District is required to monitor any OSE in which they hold a partial interest. Currently, the District does not have a funding tool to pay the costs associated with the required monitoring. NBS was hired to make certain recommendations by reviewing legislation and revenue options available to assist in funding the OSE monitoring and administration.

Revenue Options: The revenue options available to recover the administrative and annual monitoring costs for OSE are discussed in brief below:

Landscape Maintenance District: A Landscape Maintenance District (“LMD”) can be formed pursuant to the Landscaping and Lighting Act of 1972 (“1972 Act”). The main improvements available for funding and financing through the 1972 Act include landscaping, lighting, ornamental structures, park and recreational improvements, and any facilities appurtenant to those improvements. There is a higher standard of benefit assignment and the formula distributing costs must be detailed and substantiated with a report prepared by a Professional Engineer. The proportionate special benefit derived by each parcel must be determined. Parcels within the boundaries of the LMD that are owned by a public entity are not exempt from assessment unless the District can show by “clear and convincing evidence” that the property in fact receives no special benefit.

Notices and ballots are mailed to the affected property owners. When tabulating, the ballots are weighted according to the proportional financial obligation of the affected property (which would be calculated as part of the formation process based on objective property characteristics excluding assessed value). If the ballots submitted in opposition to the assessment do not exceed the ballots submitted in favor, the LMD may be formed.
This type of assessment is not really a viable option, in accordance with the current language in the deeds and agreements. The purpose of the easements are to preserve and conserve the agricultural, scenic, and openness values of the easement area for the “benefit of public generally.” This specific mention of general benefit may prohibit the use of an assessment as it could be difficult to prove the required special benefit. In addition, there has been increased legal scrutiny on such benefit assessments which should be acknowledged.

**Community Facilities District:** A Community Facilities District (“CFD”) can be formed pursuant to the Mello-Roos Community Facilities Act of 1982 (“CFD Act”). Services that may be funded include police and fire protection services and flood, park and open space maintenance, road maintenance, and flood and storm control maintenance as well as capital projects that include infrastructure needs and facilities. There is great flexibility in both the geographic area to be levied and the formula by which to levy when using a CFD. A CFD may include non-contiguous geographic areas and there is no requirement that the special tax be apportioned on the basis of benefit to any property. Property owned by a public entity is often exempt from the CFD special tax.

The required voting process would be problematic, and the expense associated with the formation of the CFD and subsequent annexations of additional OSE may prohibit the use of a CFD for the administrative and annual monitoring of the OSE.

**Endowment:** An endowment can be a finite financial plan, often termed a wasting endowment, or it can be used in perpetuity as a non-wasting endowment. For example, an endowment can be established to fund the long-term management of an OSE. The endowment is an interest-bearing account in an amount sufficient to generate enough yearly income to fund the annual management of the OSE. Since only the interest is available for use and the principal is not withdrawn, the endowment is “non-wasting,” providing a perpetual source of funding for management of the OSE. The District currently has one such endowment in place.

The desire of the District is to utilize an ongoing funding mechanism, and so an Endowment is likely not the preferred alternative.

**User and/or Regulatory Fees:** A regulatory fee could be charged on a per transaction / regulatory activity basis to recover the costs of onboarding new properties as well as annual monitoring and inspection of the OSE. Fees must be supported by analysis that conforms with various State laws governing user and regulatory fees, such as Proposition 26, which stipulate that fees may not exceed the estimated and reasonable cost of providing the service for which the fee is charged. The District may need to perform a cost allocation plan and review its fully burdened hourly rates if such an analysis has not been recently performed.

Such a fee is the best option at this time, and this is our recommendation for further analysis and implementation.

**Conclusion:** NBS discussed the needs and funding options with the District, and reviewed the most relevant options. After these discussions, it appears the most viable option would be the implementation of a User and/or Regulatory fee. Once the fee is implemented, the District, as desired, would be able to place the fee on the annual Sonoma County tax roll. NBS can work with the District to establish such a fee, which would be Phase 2 of the project. We will contact you to discuss this next Phase.