AGENDA ITEM: Discussion/direction regarding authorizing the Sierra Valley Resource Conservation District to review proposed conservation easements in Sierra County and make recommendations to the Board of Supervisors.

SUPPORTIVE DOCUMENTS ATTACHED: [ ] Memo [ ] Resolution [ ] Agreement [ ] Other

BACKGROUND INFORMATION:

FUNDING SOURCE: N/A
GENERAL FUND IMPACT: No General Fund Impact
OTHER FUND:
AMOUNT: $ N/A

ARE ADDITIONAL PERSONNEL REQUIRED?
[ ] Yes, --
[ ] No

IS THIS ITEM ALLOCATED IN THE BUDGET? [ ] Yes [ ] No

IS A BUDGET TRANSFER REQUIRED? [ ] Yes [ ] No

SPACE BELOW FOR CLERK’S USE

BOARD ACTION:
☐ Approved
☐ Approved as amended
☐ Adopted
☐ Adopted as amended
☐ Denied
☐ Other
☐ No Action Taken

☐ Set public hearing
   For: ____________________________
☐ Direction to: ____________________________
☐ Referred to: ____________________________
☐ Continued to: ____________________________
☐ Authorization given to: ____________________________

Resolution 2019- ______________
Agreement 2019- ______________
Ordinance ______________

Vote:
   Ayes: ____________________________
   Noes: ____________________________
   Abstain: ____________________________
   Absent: ____________________________
   ☐ By Consensus

COMMENTS:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

CLERK TO THE BOARD ____________________________  DATE ____________________________
August 16, 2019

sent via email: Heather Foster (hfoster@sierracounty.ca.gov)

Sierra County Board of Supervisors
P.O. Drawer D
Downieville, CA 95936

RE: Sierra County Oversight of Conservation Easement Transactions

Dear Sierra County Supervisors:

We represent the Feather River Land Trust (“Trust”), a nonprofit corporation whose organizational mission includes the protection, preservation, and restoration of natural, agricultural, and open-space lands in the Feather River watershed through the acquisition of fee title and conservation easements. For the purposes of this letter, we will assume that you are familiar with the general nature of conservation easements and the necessary attributes of such highly successful and widely used private transactions.

We understand that Sierra County was recently asked to adopt a resolution endorsing two prospective conservation easements to be held by the Trust and to be funded, in part, by the California Department of Conservation (CDOC). Such request was made pursuant to a CDOC policy that briefly required counties to approve resolutions endorsing easements that the CDOC was funding in their jurisdictions; however, that requirement has since been eliminated and only one conservation easement in Sierra County that was awarded funding in a previous fiscal year still requires such a resolution.

However, we have since learned that the County is now considering a proposal to interject the Sierra Valley Resource Conservation District and/or the County into the process by which all conservation easements are conveyed by an individual (or other private entity, e.g., an LLC) to the Trust or any other qualified holder of a conservation easement operating in the County. The Trust has asked us to comment on the legality of the County’s proposal.

The process of negotiating and conveying a conservation easement rarely involves the participation of any government entity, other than public agencies providing direct funding to the transaction. Although the law permitting the transfer of a partial interest in real property to a governmental agency or properly qualified nonprofit organization is a state statute (a so-called “enabling act,” California Civil Code sections 815-816), the negotiation and voluntary conveyance of such an interest in real estate is almost invariably unencumbered by governmental participation. In fact, at this time, although our firm works on these transactions with landowners and nonprofit clients around the nation, we know of no federal, state or local authority requiring—or more importantly, even allowing—California county oversight of private conservation easement transactions.
Conservation easement transactions involve a private negotiation and conveyance of a partial interest in real property. At times, the landowner is paid for the so-called development rights in the property; in other contexts, a landowner may be entitled to beneficial tax incentives if such rights are donated to a qualified nonprofit entity. If the County sought to interject itself into that private relationship, both parties—the landowner and the nonprofit entity—could arguably assert not only tortious interference claims, but also a regulatory taking of private property rights, among other possible challenges. We ask, would you feel confident asserting the County’s right to interfere with the private sale of a piece of property by one private landowner to another? If your answer to that question is no, then so too must your answer be no in the context of a conservation easement transaction.

Before even broaching the possibility of County involvement in these private real estate transactions, we strongly suggest that you ask County Counsel to investigate the County’s legal rights to do so. We believe that closer scrutiny of the legal basis for these transactions will confirm that Sierra County has no legal authority to insert itself in the middle of these standard real estate transactions.

Cordially,

Ellen A. Fred

cc: Shelton Douthit, Executive Director, Feather River Land Trust (via email: sdouthit@frlt.org)