

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 11/26/03
Department Name: County Counsel
Department No.: 013
Agenda Date: 12/9/03
Placement: Administrative
Estimate Time: N/A
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors
FROM: Shane Stark
County Counsel
STAFF Alan Seltzer
CONTACT: Chief Assistant County Counsel
SUBJECT: Dominion Road Ranch Memorandum of Understanding

Recommendation(s):

That the Board of Supervisors authorize execution of the Dominion Road Ranch Memorandum of Understanding (“MOU”), which stays litigation and provides a protocol to review proposals for development and creation of a mitigation bank for the California Tiger Salamander.

Alignment with Board Strategic Plan: This recommendation is primarily aligned with actions required by law or business necessity and to respond effectively to the needs of the community.

Executive Summary and Discussion:

Dominion Road Ranch LLC (“Dominion”) is the owner of sixteen parcels zoned for agriculture, each roughly twenty acres in size and in a contiguous block as shown on Attachment A. Portions of Dominion’s property abut a parcel owned by Unocal that the U.S. Fish and Wildlife Service (“Service”) has identified as a breeding and aestivation site for California Tiger Salamanders (“CTS”), a species listed as endangered under the federal Endangered Species Act.

Dominion applied for permits to grade an access road to its parcels. County staff refused to issue a grading permit that would allow the parcels to be developed for rural residential purposes without environmental review. County has taken the position that to grant the grading permit would facilitate construction that might adversely affect CTS and thus require preparation of an Environmental Impact Report under the California Environmental Quality Act. Dominion disputed these contentions and claimed that the County had a ministerial duty to issue a grading permit. The controversy has precipitated litigation in the Superior Court of Santa Barbara County, Dominion Road Ranch v. County of Santa Barbara, Civil No. 1091679, which is currently pending.

The proposed MOU (Attachment B) would hold the litigation in abeyance in order to explore whether residential development of some of the lots could occur without adversely impacting CTS and whether a workable mitigation bank on some or all of the Dominion and Unocal Property can be created. Creation of the mitigation bank would also require approval by the U.S. Fish & Wildlife Service (“Service”) and possibly approval by the California Department of Fish & Game (“Department”).

Special Instructions: Send copy of fully executed agreement to County Counsel.

Concurrence: P&D

Attachment A: Map

Attachment B: MOU

**MEMORANDUM OF UNDERSTANDING
BETWEEN
DOMINION ROAD RANCH, LLC
AND
THE COUNTY OF SANTA BARBARA**

This Memorandum of Understanding is entered into as of this 9th day of December 2003 by and between Dominion Road Ranch, LLC (“Dominion”) and The County of Santa Barbara (“County”).

Recitals

This Memorandum of Understanding is entered into upon the basis of the following facts, understandings and intentions of the parties:

1. Dominion is the owner of 16 legal lots (“Lots”), each roughly 20 acres in size, located in the Santa Maria region of County. Dominion holds Certificates of Compliance with respect to each of the Lots issued by County on September 9, 1993, with no conditions attached.

2. Portions of Dominion’s property abut a parcel owned by Unocal (the “Unocal Parcel”) that the U.S. Fish and Wildlife Service (“Service”) has identified as a breeding and aestivation site for California Tiger Salamanders (“CTS”), a species listed as endangered under the federal Endangered Species Act. The proximity of land believed by the Service to be a breeding site for CTS has led to a controversy that has the following facets, among others:

(a) County has refused to issue to Dominion a grading permit for an access road to the Lots that would allow them to be developed for low-density, rural residential purposes without environmental review. County has taken the position that to grant the grading permit would facilitate construction that might adversely affect CTS and thus require preparation of an Environmental Impact Report under the California Environmental Quality Act. Dominion

disputes these contentions and claims that County has a ministerial duty to issue the grading permit. The controversy has precipitated litigation in the Superior Court of Santa Barbara County, Dominion Road Ranch v. County of Santa Barbara, Civil No. 1091679 (the “Litigation”).

(b) Dominion and County have been exploring ways in which Dominion can proceed with sale of six of the Lots to persons who might apply for lawful, rural residential use under existing County General Plan and ordinances. Dominion also desires that County conduct studies to determine optimum use of the balance of the property that would yield an economic return in a manner compatible with CTS use (if possible), including the possibility of cooperating with Unocal to establish a mitigation bank.

3. Without waiving any rights, the parties desire to hold the Litigation in abeyance while they pursue these avenues that could produce a solution to the problem and result in a solution compatible with a recovery plan for CTS. Such a solution may benefit County as well by making available mitigation ground that could provide off-site mitigation credits for other projects that have CTS impacts.

NOW THEREFORE, IN CONSIDERATION of the foregoing, the parties agree as follows:

1. Protocol for Review of Dominion’s Proposal for Residential Development on Six Lots. Dominion shall propose to County restrictions to control residential development on lots 144, 145, 146, 147, 148 and 149:

(a) Dominion shall propose a set of restrictions to be implemented by recordation of a Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) that may include, among other things, the following:

(i) Setbacks along each boundary of the lot to provide a suitable corridor for CTS passage;

(ii) Limitation of “hardscape” i.e. concrete or asphalt driveways, patio areas, rooftops and other impervious surface to 1.5 acres or less on each Lot.

(iii) At least 20 percent of the surface area of the Lot to be placed and maintained in uses compatible with salamander use;

(iv) No fences or other obstructions that would prevent salamander passage;

(v) Circumscribing areas that would be attractive nuisances to CTS (such as swimming pools) with curb type barriers sufficient to keep them out;

(vi) A requirement that the building envelope on each lot be located in consultation with H.T. Harvey and Associates, (“Harvey”), Dominion’s biologists, who shall determine that the location selected is one less likely to cause interference with CTS use than other locations on the Lot; and

(vii) A requirement that a biologist be present when foundations and grading take place on the lot in conjunction with construction.

The restrictions adopted shall be supported by a report from Harvey to the effect that the restrictions, in aggregate will result in development not likely to “reduce the number or restrict the range” of CTS. (Guideline Section 15065).

(b) County shall respond to Dominion’s proposal by diligently reviewing the proposal in good faith, within twenty (20) days, in an effort to reach a determination that development subject to such constraints (that would be made conditions of any site permit and building permit) would qualify for categorical exemptions for issuance of such permits for residential development that is consistent with County’s General Plan and zoning ordinances. If County finds that it cannot make a determination that Dominion’s proposal qualifies for categorical exemptions, County shall diligently and in good faith propose to Dominion such changes, within the twenty (20) day time period, in its plan of restriction that might allow it to issue such categorical exemptions.

(c) If County is able to make the determination that it can issue categorical exemptions pursuant to Paragraph 1(b) above, it shall so notify Dominion and interested third parties (prospective purchasers, lenders, etc.) who make inquiry of County concerning the permitting status on the six lots. If County is not able to make such determination and the parties are unable to agree upon an alternative course that would achieve the objectives contemplated herein, this agreement shall terminate and the Litigation shall proceed.

2. Consideration of Balance of Property. If County can make a determination that it can issue categorical exemptions for the six lots referred to therein or the parties agree to an alternative course pursuant to Paragraph 1 above, Dominion may desire to apply for prospective use of the remaining lots. If Dominion applies for prospective use of the remaining lots, upon a

complete application, the County shall initiate an environmental review process to consider environmental impacts of prospective use of the remaining lots as follows:

(a) Possible alternative uses to be considered shall include, but not be limited to, the following:

(i) Creation of a mitigation bank for CTS on the balance of the lots;

(ii) Creation of a mitigation bank for CTS on the balance of the lots in combination with the Unocal property to the south;

(iii) Residential development on the balance of the lots under restrictions, including restrictions similar to those described in Paragraph 1 above; and

(iv) Continuation of agricultural activities consistent with those currently allowed under County's General Plan and zoning ordinance and currently in use on the Property.

If County determines, after conduct of an initial study, that an Environmental Impact Report is required, it shall diligently seek to focus the area of inquiry on specific subjects in order to shorten processing time consistent with all of the requirements of law.

(b) Recognizing that the "recovery team" established by the Service for CTS has decided that an area encompassing close to 350 acres is required to provide an optimum unit size for recovery of CTS and that the lots not subject to development pursuant to Paragraph 1 above plus the Unocal property represent an area approximately that size, Dominion shall diligently seek to enter into an agreement or joint arrangement with Unocal to pursue the mitigation bank concept. In this regard, Dominion has the ability to offer Unocal additional

water resources that may be required to sustain CTS breeding ponds and the services of a skilled biologist at Harvey to create the mitigation bank.

(c) County understands that Dominion may seek to sell the remaining lots during the course of the environmental analysis and attempt to create a mitigation bank to an organization that is in the mitigation banking business, subject to the terms and conditions and restrictions herein stated.

3. Management of Litigation. The expenditure of time and money in pursuit of the Litigation would not be fruitful so long as the proceedings described in Paragraphs 1 and 2 are in process and proceeding diligently. Therefore, the parties shall seek leave from the Court to hold the Litigation in abeyance. If it shall become necessary to dismiss the Litigation at the insistence of the Court by virtue of such delay, the Litigation shall be dismissed without prejudice under a tolling agreement so that neither party shall suffer prejudice as a result thereof. In any case, the Litigation shall be dismissed with prejudice upon issuance of site and building permits under categorical exemption for the six lots referred to in Paragraph 1 or an alternative plan agreed to by the parties.

4. Termination by County or Dominion. Dominion and County shall have the right to terminate this Agreement by giving thirty (30) days written notice to the other party of the termination of this Standstill Agreement. The Agreement shall terminate thirty (30) days after the giving of such notice.

5. General Cooperation. The parties agree to keep each other informed of communications with the Service and other interested parties that might have a bearing on their respective responsibilities hereunder.

6. Notices. All notices required to be given hereunder shall be given in writing and mailed, United States first class mail, postage prepaid and addressed to the parties in care of their respective counsel of record in the Lawsuit. In addition, notice may be given by facsimile transmission and shall be deemed effective upon receipt of the electronic acknowledgement of receipt so long as a written original of the facsimile transmission is mailed as provided above on the same day. The addresses for delivery of notices may be changed by written notice given as herein provided.

7. Filing Agreement With the Court. Promptly upon execution hereof, the parties shall provide a copy of this Agreement to the Court presiding over the Lawsuit. A copy of the Agreement may be filed in the Court file attached to a stipulation of the parties.

8. Successors and Assigns. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of Dominion.

9. Waiver of Damages. Dominion shall not be entitled to collect damages as alleged in its complaint for any losses accruing during the period of time between the execution and the termination of this Agreement.

10. Preparation Of Agreement: Attorney's Fees. Each party shall bear its own attorney's fees and other costs incurred to prepare and carry out the provisions of this Agreement.

11. Interpretation. The County cannot and does not prejudge or make any commitments regarding ultimate approval of applications and proposed ordinances, which shall be processed in accordance with applicable laws. Nothing herein shall be deemed to be a waiver

or infringement of the County's police power nor shall any part or all of this Agreement be construed on the part of the County as an obligation to grant any permits, entitlements or approvals.

12. Time. Time is of the essence of each and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

“COUNTY”
The County of Santa Barbara

“DOMINION”

By: _____
Chair, Board of Supervisors

By: _____
Its: Manager

Approved as to form:

County Counsel

Als/DRR/MOU12-9-03