



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

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

**Department Name:** General Services  
**Department No.:** 012/063  
**For Agenda Of:** December 13, 2016  
**Placement:** Departmental  
**Estimated Tme:** 10 Minutes  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors  
**FROM:** General Services Department      Janette D. Pell, Director 560-1011  
Contact Info:      Skip Grey, General Services Assistant Director 568-3083  
**SUBJECT:** Receive and File Timeline of Events Regarding Anderson Conservation Easement  
(California Tiger Salamander Update); Fourth Supervisorial District

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:**

As to form: N/A

**Recommended Actions:**

That the Board of Supervisors:

- a) Receive and file the "Timeline of Significant Events" (Attachment 1) regarding the Anderson Purisima Hills Conservation Easement Project, resulting from two alleged "takes" of California Tiger Salamanders by the County in 2004 and 2005, at the County's Foster Road Campus in Santa Maria (Fourth District); and
- b) Determine that the proposed receipt and filing of the Timeline of Significant Events is not a "project" under the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15378 (b) (5); in that it is an administrative activity that will not result in direct or indirect physical changes in the environment.

**Summary Text:**

This item is being brought to the Board to provide an update on the Timeline of Significant Events regarding the Anderson Purisima Hills Conservation Easement Project. It is being presented to apprise the Board and the public of the history of events and decisions related to the 2007 notification by the United States Department of the Interior, that the County had engaged in two alleged "takes" of California Tiger Salamander ("CTS"), and a subsequent agreement between the County and the United States Fish and Wildlife Service ("USFWS"). The Timeline is being presented to the Board of

Supervisors at the request of the Board at the public hearing on May 21, 2013, (Departmental Item 3, Board File #13-00394) on a Resolution of Necessity to re-acquire a conservation easement as mitigation for the alleged takes; now that the litigation has successfully concluded with the re-acquisition of the conservation easement.

**Background:**

The County had two alleged “takes” of a California Tiger Salamander on the Foster Road Campus. In 2004 a dead CTS was found in a newly excavated ditch at the County Public Works Administration Building construction site near 548 West Foster Road, in Santa Maria (County Assessor Parcel Number 111-231-004). In 2005, the County allegedly engaged in ground disturbing activities while installing modular units south of the Public Works Administration Building site and the Animal Shelter site on the Foster Road Campus, without obtaining an incidental take permit or obtaining USFWS concurrence that the activities would not affect CTS or their habitat.

On October 24, 2007, USFWS notified the County that the County had engaged in two separate potential violations of the Federal Endangered Species Act (ESA), alleging two “takes” of CTS caused by County construction activities at the County’s Foster Road Campus, in Santa Maria. The first “take” was alleged to have been evidenced by the discovery of a dead CTS in a newly-excavated ditch at 548 West Foster Road, on the County Foster Road Campus, on September 13, 2004. The County had been trenching the area as part of the Foster Road Public Works Service Center Project.

The County’s former Capital Projects Manager was contacted on September 13, 2004, by the wildlife biologist hired by the County to monitor for CTS during excavation work at the project site. The consultant had allegedly found a dead CTS at the project site that morning at approximately 7:00 a.m. He took the CTS to the Santa Barbara Museum of Natural Science for verification. Upon verification, he reported his findings to USFWS. That first alleged violation was referred to the Department of the Interior’s Solicitor’s Office for enforcement.

The second alleged “take” was purportedly evidenced by ground disturbing activities conducted at the County’s Foster Road Campus in preparation for bringing two modular offices to the property to be used by the County’s Alcohol, Drug, and Mental Health Services Department (ADMHS). A “take” includes adverse modification of an endangered species’ habitat. It was alleged that those ground disturbing activities that occurred during the period from July to December of 2005 posed a risk of modification to CTS habitat and were not preceded by either a protocol survey or an application for an incidental take permit, as had been specifically requested by USFWS in 2004. USFWS alleged the County had prior knowledge of the existence of the CTS at the project site, and then, in fact, self-reported the violation in 2005. On November 28, 2005, County staff reported that second alleged “take” by a phone call to USFWS, which was followed by a December 8, 2005 County drafted report of the incident.

Both alleged “takes” were described in an October 24, 2007 letter from the United States Department of the Interior, Office of the Solicitor, to the County, inquiring as to whether the County would be interested in resolving the matter through negotiations. That letter is attached to this Board Letter as Attachment 2.

Violations of the ESA’s take prohibitions can be civil or criminal. Civil fines of up to \$25,000 per violation can be imposed by the Secretary of the Interior. Criminal enforcement is brought by the United States Department of Justice, who can impose criminal fines up to \$50,000, or imprisonment for up to one year.

In November 2007, the Board of Supervisors directed County staff to pursue settlement discussions with USFWS regarding the alleged violations. Settlement discussions involved the County’s potential purchase and preservation of CTS habitat. Without any admission of fault by the County, the County

and USFWS negotiated a Settlement Agreement, whereby the County would acquire a perpetual Conservation Easement over a certain portion of the property owned by Sonia Anderson, in the Lompoc area of the County, now known as the Anderson Purisima Hills Conservation Easement. The total easement area, consisting of approximately 16 acres, would eventually be transferred to a USFWS-approved third party for managing the area in perpetuity for CTS habitat. In return, USFWS would agree not to impose any civil or criminal penalties or seek further action against the County.

In July 2011, the County purchased the 16-acre Conservation Easement on the 160-acre Anderson property, located at 3200 Gypsy Canyon Road, in Lompoc (APNs 099-060-021, and 099-070-036), for a purchase price of \$240,000. Prior to acquisition of the property, it was discovered that the property was encumbered by three mortgages. In an attempt to mitigate the County's risk of foreclosure of the Conservation Easement by virtue of the senior liens against the property, the County's 2011 Agreement with the property owner required the owner to obtain subordination from the senior lien-holders within two years. The lien-holders refused to subordinate, the property owner defaulted on the mortgages, and a notice of foreclosure was filed for the property.

On May 22, 2013, the County filed a Complaint in Eminent Domain to re-acquire the 16-acre Conservation Easement property for public use purposes as a potential breeding pond for the CTS, to preserve and protect the CTS migratory activities, and for access to support restoration of the potential breeding pond identified on the property. A trial to determine the value of the easement concluded in February 2015, with a verdict of \$87,562 as the value of the easement. The Court issued the final order of condemnation in June 2016, effectively re-establishing the County as the owner of the Conservation Easement.

Pursuant to the terms of the agreement between the County and USFWS, the County is obligated to transfer title to the easement area to a USFWS-approved third party to manage the easement area in perpetuity. Upon transfer, the County will be required to provide an endowment in an amount estimated to be sufficient to fund the costs associated with maintenance of the easement area in perpetuity.

Now that the litigation has concluded and the County has clear title to the Conservation Easement, County staff is working with the Land Trust for Santa Barbara County, a USFWS-approved third party, regarding transfer of the Conservation Easement from the County to the Land Trust. The County will provide the endowment, and the Land Trust will maintain, manage and monitor the Conservation Easement in perpetuity. Staff will return to the Board of Supervisors in open session in the near future to approve and execute the transfer documents.

**Fiscal and Facilities Impacts:**

There will be no direct fiscal or facilities impacts caused by the receipt or filing of this "Timeline of Significant Events."

**Special Instructions:**

After Board action, please file the "Timeline of Significant Events" in the Clerk of the Board Files, and post the attached Notice of Exemption.

**Attachments:**

1. Timeline of Significant Events
2. October 24, 2007 letter from the United States Department of the Interior to the County
3. Notice of Exemption