

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into as of the _____ day of January, 2006 (the "Effective Date") by the County of Santa Barbara and the Board of Supervisors of the County of Santa Barbara ("Respondents") and the CENTER FOR ENVIRONMENTAL EQUALITY, a California nonprofit corporation; SANTA BARBARA COUNTY CATTLEMEN'S ASSOCIATION, a California nonprofit corporation; and COALITION OF LABOR, AGRICULTURE AND BUSINESS, a California nonprofit corporation ("Appellants").

RECITALS

A. This MOU pertains to the claims made by Appellants in Santa Barbara County Superior Court, Cook Division, Case No. 01128385 in their VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF challenging County's adoption of the Oak Tree Protection and Regeneration Program (referred to herein as the "LAWSUIT").

B. On November 16, 2004, the Santa Barbara County Superior Court, the Hon. Zel Canter presiding, denied Appellants' petition and complaint, and entered judgment in favor of the Respondents. Appellants timely appealed the judgment to the Second District Court of Appeal, Division Six, 2nd Civil No. B180412 ("the APPEAL").

C. The parties hereto have entered into a Court-approved stipulation to stay the appeal as a result of the Board's July 26, 2005 decision to initiate an SEIR to analyze proposed amendments to Oak Tree Protection and Regeneration Program (the "Oak Tree Program"). The stipulation stays the appeal until 30 days after certification of the SEIR or County's decision not to proceed with the SEIR.

B. Appellants and Respondents now desire and intend to fully and finally resolve the LAWSUIT through dismissal of the Appeal as set forth in this MOU.

NOW, THEREFORE, the parties agree as follows:

1. DISMISSAL OF APPEAL. Appellants shall dismiss the APPEAL immediately upon the Santa Barbara County Board of Supervisors taking the two actions identified as items A and B in paragraph 2 below at a public hearing before the Board of Supervisors.

2. PUBLIC HEARING BEFORE THE BOARD OF SUPERVISORS. As a condition precedent for Appellants' dismissal of Appeal No. B180412, the Board shall:

A. Revise the amendments to the Oak Tree Program initiated July 26, 2005, by (i) substituting a provision that exempt oak trees (other than "pre-mitigation" trees) include not only those that are planted, but also naturally occurring seedlings or volunteers that are nurtured for purposes other than mitigation, in place of the initiated provision that Oak trees that began growing after January

1, 2005 are exempt from the Oak Tree Program; (ii) clarifying that EIR text does not have the authority of law and that the Management Plan Standards for Tiers 3 and 4 of the Deciduous Oaks Program and the Live Oak Program are for application to accomplish the regeneration of oak trees and do not protect oak habitats or other habitats; and, (iii) retaining previous Board direction to include "Program Clean-Up Items" and move the existing Grading Guidelines for Native Oak Tree Removal from Appendix A of the Grading Ordinance to a separate chapter of the County Code.

- B. Authorize and approve funding of an Agricultural Resources/Baseline Condition Study ("STUDY"), describing baseline conditions, threats, and impacts to agriculture that will be incorporated into an EIR for proposed revisions to the County's Grading Ordinance. The CEO and Agricultural Advisory Committee shall scope, prepare and direct the study for the County. Partial funding (\$100,000) may come immediately from money appropriated to the Agricultural Commissioner.

3. STUDY. The Agricultural Resources/Baseline Condition Study shall be completed by January 1, 2007, subject to delays occasioned by causes beyond the control of the County or reasonably required to make study revisions, and the County agrees that its promise to complete the STUDY is enforceable by Appellants by writ of mandate. In the event a petition for writ of mandate is filed by Appellants to compel completion of the study, that the provisions of Code of Civil Procedure section 1021.5 are applicable and the petitioner, if successful in any such action, shall be entitled to reasonable attorney fees and costs as determined by the Court.

4. RESERVATION OF POLICE POWER. The County retains authority over the content of the STUDY, and nothing in any agreement shall be deemed to be a waiver or infringement of the County's police power. This MOU does not create in the Appellants any approvals, entitlements, or rights to any exercise of the police power or legislative programs that may be considered. The County cannot and does not prejudice or make any commitments regarding ultimate approval of any legislation, which shall be processed and reviewed in accordance with all applicable ordinances, resolutions, policies and statutes. Any legislation that is informed by the STUDY will require complete and legally sufficient environmental analysis as well as compliance with all 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 MOU be construed on the part of the County as an obligation to grant any permits, entitlements or approvals or adopt any particular legislation.

5. COSTS AND ATTORNEY'S FEES. The parties hereto shall each pay their own attorney's fees, costs and expenses incurred in connection with the LAWSUIT, including the negotiation and preparation of this MOU.

6. GENERAL PROVISIONS. California law shall govern the construction and interpretation and enforcement of this agreement.

a. Captions. The captions of the sections of this agreement are for convenience and reference only, and shall not effect in any way the meaning or interpretation of this MOU.

b. Further Assurances. Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this agreement.

c. Entire Agreement. This writing constitutes the entire understanding of the parties as to the matter set forth herein. No modification of this agreement shall be valid or binding unless executed in writing by the parties and none of the parties shall be bound by any representations, warranties, provisions and statements as to the matter set forth herein unless such matters are specifically set forth.

d. Authority to Execute. The parties hereto warrant that this MOU has been duly authorized and approved by any and all necessary parties and the attorneys for the parties have authority to bind them to this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed as of the Effective Date.

REETZ, FOX & BARTLETT LLP

Date: _____

By: _____

Randall Fox
Attorneys for Appellants

STEPHEN SHANE STARK
COUNTY COUNSEL

Date: _____

By: _____

Alan Seltzer, Chief Assistant
Attorneys for Respondents