



Monterey County

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Board Report

Legistar File Number: 16-039

January 26, 2016

Introduced: 1/7/2016

Version: 1

Current Status: Agenda Ready

Matter Type: General Agenda Item

Public hearing to:

- a. Consider a request (PLN150730) by Domain Corporation for Modification of Conditions to a previously approved Combined Development Permit for the Ferrini Ranch Subdivision (PLN040758) to delete Condition 77 which required payment of \$450,000.00 to study the creation of a Community Services District
- b. Provide direction to staff; and
- c. Continue the hearing to February 23, 2016 for final action.

(PLN150730, Domain Corporation, South Side of Highway 68 between San Benancio Road and River Road, Toro Area Plan; previously certified EIR)

PROJECT INFORMATION:

Planning File Number: PLN150730

Owner/Applicant: Domain Corporation

Project Location: Fronting on and southerly of State Highway 68, encompassing two areas separated by Toro Regional Park. The eastern portion is bound by River Road and the western portion is bound by San Benancio Road.

APNs: 161-011-019-000, 161-011-030-000, 161-011-039-000, 161-011-057-000, 161-011-058-000, 161-011-059-000, 161-011-078-000, 161-031-016-000, and 161-031-017-000

Agent: Lombardo & Associates (Tony Lombardo)

Plan Area: Toro Area Plan

Flagged and Staked: No

CEQA Action: Previously Certified FEIR (Board Resolution 14-370)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Consider a request (PLN150730) by Domain Corporation for Modification of Conditions to a previously approved Combined Development Permit for the Ferrini Ranch Subdivision (PLN040758) to delete Condition 77 which required payment of \$450,000.00 to study the creation of a Community Services District;
- b. Provide direction to staff; and
- c. Continue the hearing to February 23, 2016 for final action.

SUMMARY/DISCUSSION:

On December 16, 2014, the Board of Supervisors approved a Combined Development Permit (PLN040758) consisting of a Vesting Tentative Map to create 185 residential lots, a Use Permit for the removal of 921 trees, and a Use Permit to allow development on slopes in excess of 30 percent. The Board of Supervisors also certified a Final Environmental Impact Report and adopted CEQA findings and a Statement of Overriding Considerations for the Ferrini Ranch Subdivision project. (Resolution Nos. 14-370 and 14-371.)

During deliberation of the project at the public hearing, Supervisor Calcagno recommended an additional condition be added to the project. The condition requires that the applicant fund a feasibility study for the formation of a Community Services District (CSD) to transport sewage to the regional treatment plant in Marina, rather than being treated at the local treatment plant. The condition itself is focused on studying creation of a CSD for the larger Toro Area Plan areas, not just the project site. The objective of the condition is to put into motion a feasibility study regarding the formation of a new CSD to treat waste from the larger Toro area. The formation of a new CSD could result in existing customers being taken out of the service area covered by California Utilities Services (CUS). This additional condition was included in the Board of Supervisors Resolution (BOS Res. No. 14-371) approving the Combined Development Permit, as Condition 77 (See Attachment A).

Subsequent to project approval, the California Utilities Service (CUS) filed a lawsuit against the County of Monterey for including Condition 77 in the approval of the Combined Development permit. The lawsuit alleges that the County failed to perform required environmental analysis of Condition 77 in violation of CEQA. Pursuant to a Court-approved stipulation between the parties to the CUS lawsuit, the lawsuit has been stayed to allow the County of Monterey an opportunity to consider a request by applicant to modify the conditions of approval to remove Condition 77. If the Board of Supervisors does not remove Condition 77, the lawsuit will likely continue with briefing and a trial. If the Board of Supervisors removes Condition 77, the lawsuit will likely end, as that is the only relief being requested by CUS.

On September 21, 2015, the property owner, Domain Corporation, submitted a Request for Modification of Conditions to remove Condition 77. Section 19.08.010 of Title 19 (County's subdivision ordinance) of the Monterey County Code allows consideration of modifications of conditions to an approved tentative map. This section also requires the appropriate decision making body (Planning Commission and the Board of Supervisors) to confine its consideration and action to only the proposed modified condition.

On November 18, 2015, the Monterey County Planning Commission held a public hearing on the Modification Request. The Planning Commission, by a 5-4 vote, adopted a resolution recommending that the Board of Supervisors approve the deletion of Condition 77 from the

approved Combined Development Permit (PLN040758) (See Attachment B.)

The Board of Supervisors may, in its discretion, choose to retain Condition 77 or grant applicant's request to delete Condition 77. There are legitimate reasons to support either action, so the determination is fundamentally a policy call. As such, staff is presenting the request without a recommendation and is requesting the Board of Supervisors provide direction to staff and continue the hearing to a date certain whereupon staff would return with a draft resolution reflecting the Board's direction.

Staff is requesting the Board of Supervisors consider the policy implications, provide staff with desired direction, adopt a motion of intent identifying the desired course of action, and continue the hearing to February 23, 2016 to enable staff to prepare a resolution for the Board's consideration that reflects the motion of intent.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

Environmental Health Bureau
RMA-Planning

This project does not require referral to the Toro Land Use Advisory Committee per Board Resolution 15-043.

FINANCING:

Funding for staff time associated with this project is included in the FY 15-16 Adopted Budget for RMA-Planning.

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Approved by: Mike Novo, AICP, Director, RMA-Planning, ext. 5192

<mailto:> Carl P. Holm, AICP, Director Resource Management Agency, ext. 5103

This report was reviewed by John H. Ford, RMA-Services Manager.

All attachments are on file with the Clerk of the Board:

Attachment A Board of Supervisors Resolution 14-371.

Attachment B Planning Commission Resolution No. 15-050.

cc: Front Counter Copy; Planning Commission; Environmental Health Bureau; John H. Ford, RMA Services Manager; David J. R. Mack, Project Planner; Wendy Strimling, County Counsel, Michael Whilden, County Counsel, Domain Corporation, Owner; Anthony

Lombardo & Associates, Agent; The Open Monterey Project (Molly Erickson); Richard Rosenthal, Michael Weaver, LandWatch (Amy White); John H. Farrow; Planning File PLN150731