

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No.

Resolution of the Monterey County Board of Supervisors:)
)
 Approving a request (PLN150731) by)
 Domain Corporation for the Modification)
 of Conditions to a previously approved)
 Combined Development Permit for the)
 Ferrini Ranch Subdivision (PLN040758))
 to delete Condition 77, which required the)
 payment of \$425,000.00 to study the)
 creation of a Community Services District.)
)

The Domain Corporation application (PLN150731) to modify a condition of approval of a previously approved Combined Development Permit (Ferrini Ranch/PLN040758) came on for public hearing before the Monterey County Board of Supervisors on January 26, 2016 and February 23, 2016. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

FINDINGS

- 1. FINDING** **PROJECT DESCRIPTION** - The application is to modify the conditions of approval of the previously approved Combined Development Permit for the Ferrini Ranch Subdivision (PLN040758) to delete Condition 77.
- EVIDENCE:** (a) The applicant (Domain Corporation) submitted an application to the County on September 21, 2015 to delete Condition 77 from the adopted conditions of approval for the approved Combined Development Permit for Ferrini Ranch.
- (b) The property is located on parcels fronting on and southerly of Highway 68 between River Road and San Benancio Road encompassing two areas separated by Toro Regional Park. (Assessor’s Parcel Numbers: 161-011-009, 161-011-030, 161-011-039, 161-011-057, 161-011-058, 161-011-078, and 161-011-084; 161-031-016, and 161-031-017), Toro Area Plan.
- (c) On December 16, 2014, the Board of Supervisors certified an FEIR, adopted CEQA findings and a statement of overriding considerations, approved the Combined Development Permit consisting of a Vesting Tentative Map to create 185 residential lots, Use Permit for the removal of 921 trees, and Use Permit to allow development on slopes in excess of 30 percent, and adopted a Condition Compliance and Mitigation Monitoring and Reporting Plan. (Resolution Nos. 14-370 and 14-371.) The Combined Development Permit was approved subject to conditions of approval, including Condition 77, which were set forth in the “Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan” attached to and incorporated into the resolution approving the Combined Development Permit

(Resolution No. 14-371).

- (d) Condition 77 required that “prior to recordation of the first final map, the applicant shall submit \$425,000.00 to the County of Monterey to be held in a separate fund to pay for studies for the formation of a Toro Area Community Services District (CSD) which would include the project, and would participate in the Monterey Regional Water Pollution Control Agency’s (MRWPCA) wastewater recycling programs. The funds shall be used solely for the formation of the CSD.”
- (e) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed amendment found in Project Files PLN040758 and PLN150731; Board of Supervisors’ Resolution Nos. 14-370 and 14-371.

2. FINDING:

PROCESS- The request for the modification of conditions to delete Condition 77 has been processed in accordance with Section 21.76.120 of Title 21 (non-coastal zoning ordinance) of the Monterey County Code for amendments to Combined Development Permits and Section 19.08.010 of Title 19 (non-coastal subdivision ordinance) of the Monterey County Code for modifications of conditions to an approved tentative map.

EVIDENCE:

- (a) A request for modification of the conditions for the previously approved Combined Development Permit for Ferrini Ranch (PLN040758) was submitted by the Domain Corporation (applicant) on September 21, 2015.
- (b) The Planning Commission considered this request at a noticed public hearing on November 18, 2015. The Planning Commission considered the evidence and recommended by a 5-4 vote that the Board of Supervisors approve the modification.
- (c) The Board of Supervisors conducted a duly noticed public hearing on January 26, 2016 to consider the request to remove condition 77. The Board of Supervisors approved a motion of intent to approve the modification request with a 3-2 vote and continued the hearing on the item to February 23, 2016 to allow an appropriate resolution to be prepared.
- (d) Per section 19.08.010 of the Monterey County Code, the decision on the request is confined to the proposed modification of the condition, and the remainder of the Combined Development Permit remains in effect and unchanged. The modification of the conditions of approval does not affect or result in any changes to the original project description or proposal with the exception that condition 77 is removed.
- (e) All conditions of approval from PLN040758 remain in full effect, with the exception of Condition 77, resulting in a total of 137 conditions in the modified Condition Compliance and Mitigation Monitoring Reporting Plan. No additional conditions have been incorporated into the modified Condition Compliance and Mitigation Monitoring and Reporting Plan for the Ferrini Ranch Application. This action to remove condition 77 includes the requirement that the applicant indemnify the County.

3. FINDING: **CONSISTENCY** – The Modification of the conditions to an approved Combined Development Permit to delete Condition 77 is consistent with Monterey County Code Section 21.76.120 for modifications to Combined Development Permits and Section 19.08.010 for modifications of conditions to an approved tentative map.

- EVIDENCE:**
- (a) As part of the EIR analysis and consideration of the Combined Development Permit, the California Utility Service (CUS) would provide sewer service for the project and treat wastewater at the existing CUS sewer treatment facility located on Reservation Road.
 - (b) During the Board of Supervisors’ public hearing on December 16, 2014, Condition 77 was added to require the applicant to fund a feasibility study for the formation of a Community Services District to transport sewage from the local treatment plant to the regional treatment plant in Marina. The condition was intended to study the feasibility of directing the sewage from a larger area, which includes but is not limited to the project area, to the regional treatment plant which provides recycled water to farmers along the coast reducing demand on groundwater.
 - (c) Modification of the adopted Condition Compliance and Mitigation Monitoring and Reporting Plan removes Condition 77. Condition 77 required the applicant to submit \$425,000 to the County of Monterey to fund studies for the formation of a Toro Area Community Services District (CSD).
 - (d) The removal of condition 77 is consistent with the requirements of Section 19.08.010.A of the Monterey County Code, as the final map has not been filed for record; no lots, units or building sites will be added or deleted; the modification is consistent with the General Plan and Toro Area Plan; the modification will not result in any violation of Monterey County Code; and there will be no new significant adverse environmental affect from the modification.
 - (e) Section 19.08.010.C of Monterey County Code requires the appropriate decision making body to confine its consideration and action to only the proposed modified conditions.
 - (f) The removal of Condition 77 does not result in any change to the project description, tentative map, or environmental review conducted for the Combined Development Permit (PLN040758).
 - (g) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed amendment found in Project Files PLN040758 and PLN150731.

4. FINDING: **REASONS FOR REMOVAL OF CONDITION.** Legitimate policy reasons exist to support deletion of Condition 77 from the Combined Development Permit for Ferrini Ranch.

- EVIDENCE:**
- (a) Subsequent to approval of the Combined Development Permit, the California Utilities Service filed a lawsuit against the County of Monterey challenging the inclusion of Condition 77 in the approval of the Combined Development Permit. Pursuant to a court-approved stipulation, the lawsuit was stayed in order to allow the applicant to apply to remove Condition 77 and to allow the County the opportunity to consider removal of the condition. Without conceding

any assertions in the lawsuit, removal of Condition 77 is intended to have the benefit to likely result in dismissal of the CUS lawsuit.

- (b) Independent of the litigation considerations, policy reasons justify removal of the condition. The condition is not necessary to mitigate impacts of the project. Rather, the condition was added at the tail end of the processing of the application to address policy concerns that extend beyond the scope of the project. (See Finding 3.) Condition 77 focused on studying creation of a CSD for the larger Toro Area Plan area, not just the project site. Formation of a CSD for the Toro Area is a separate and independent matter from the project that raises policy issues independent of the project. Because the condition was added after preparation of the FEIR, the Planning Commission hearings, and first Board of Supervisors' hearing, the condition did not receive the benefits of prior staff analysis or lengthy public scrutiny, all of which could help sharpen the focus and improve any such feasibility study that County may desire to conduct in the future in regard to formation of a CSD for the Toro Area.

5. FINDING:

CEQA – The Board of Supervisors has considered the Final Environmental Impact Report (FEIR) certified for the Ferrini Ranch application and finds that the deletion of Condition 77 does not require subsequent environmental review pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15162.

EVIDENCE: (a)

On December 16, 2014, the Board of Supervisors certified a Final Environmental Impact Report for the Combined Development Permit (Resolution 14-370.) The FEIR analyzed the impacts the project may have on the California Utilities Service system and found that the estimated wastewater generated by the project does not exceed capacity of the system. Based on the FEIR analysis, Condition 77 is not necessary, as there are existing utilities available that have been analyzed in the certified EIR that determined California Utilities Service has the capacity to serve the project without resulting in significant impacts. The feasibility study for formation of a Community Services District is not a mitigation measure proposed in the EIR but rather was added by the Board of Supervisors as a policy matter. Thus removal of Condition 77 does not result in any substantial change in the project that would require subsequent environmental review, nor are there substantial changes in circumstances or significant new information that would require subsequent environmental review. Condition 77 is not related to any environmental impacts or mitigation measures included in the certified FEIR, nor would the removal of Condition 77 affect the feasibility of the mitigation measures in the adopted Condition Compliance and Mitigation Monitoring and Reporting Plan.

- (b) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed amendment found in Project Files PLN040758 and PLN150731.

- (c) Final EIR prepared for the Ferrini Ranch subdivision
(SCH2005091055); Board of Supervisors' Resolution No. 14-370.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby:

Adopt a resolution to approve a request (PLN150731) by Domain Corporation for the Modification of Conditions to a previously approved Combined Development Permit for the Ferrini Ranch Subdivision (PLN040758) to delete Condition 77, which required the payment of \$425,000.00 to study the creation of a Community Services District, subject to the conditions of approval attached hereto as Attachment A.1.

PASSED AND ADOPTED on this 23rd of February, 2016, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book___ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy

Monterey County RMA Planning

DRAFT Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN150731

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

This Amendment (PLN150731) consists of: the Modification of Conditions to a previously approved Combined Development Permit for the Ferrini Ranch Subdivision (PLN040758) to delete Condition 77 which required payment of \$425,000.00 to study the creation of a Community Services District. The property is located 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 (Assessor's Parcel Number's 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, 161-011-084-000; 161-031-016-000, and 161-031-017-000), Toro Area Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

**Compliance or
Monitoring
Action to be Performed:**

The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (RMA - Planning)

**Compliance or
Monitoring
Action to be Performed:**

Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, or recordation of Certificates of Compliance, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to RMA-Planning.