



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: P&D
Department No.: 053
For Agenda Of: 2/7/12
Placement: Departmental Agenda
Estimated Tme: 1 hour
Continued Item: NO
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Planning and Development
Glenn Russell, Ph.D., Director, P&D 568-2085
Contact Info: Dianne Black, Development Services Director 568-2086
SUBJECT: **Santa Barbara Ranch Inland Development Agreement Notice of Compliance**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: NA

Recommended Actions:

That the Board of Supervisors:

- a. Concerning the Inland Development Agreement for the Santa Barbara Ranch Project, receive a written request from SBHRC, Inc. (Attachment 1) for the County to provide SBRHC, Inc. with, pursuant to Section 8.04 of the Inland Development Agreement (Attachment 2), a Notice of Compliance; and
- b. Pursuant to Section 8.04 of the Inland Development Agreement, authorize and direct the Chair to execute and deliver to SBRHC, Inc. the attached Notice of Compliance (Attachment 3). That draft Notice of Compliance includes a statement that, since the determination of Inland Development Agreement rights in the Santa Barbara Ranch Project remains the subject of ongoing "quiet title" litigation in Santa Barbara Superior Court Case #1379764, between the original Developers and SBRHC, Inc., the County of Santa Barbara reasonably cannot at this time certify those respective rights within its Notice of Compliance.
- c. After considering the Final Environmental Impact Report (State Clearinghouse #2005011049) that the Board of Supervisors certified on October 21, 2008, determine pursuant to 14 CCR 15162(a) that no subsequent EIR or Negative Declaration is required for this project because: (1) no substantial changes are proposed in the project which will require major revisions of the 2008 Final EIR; (2) no substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the 2008 Final EIR; and (3) no new information of substantial importance concerning the project's significant effects or

mitigation measures, which was not known and could not have been known with the exercise of reasonable diligence at the time that the Final EIR was certified in 2008, has been received that requires a subsequent EIR or Negative Declaration.

Summary Text:

The Santa Barbara Ranch Project was approved by the Board of Supervisors on October 21 and December 9, 2008. Included in the Board's approval were two separate Development Agreements, one for the coastal portion of the project located on Santa Barbara Ranch ("Coastal Project") and one for the inland portion of the project ("Inland Project"). The Coastal Development Agreement was rescinded by the Board of Supervisors on November 3, 2009. The Inland Development Agreement remains effective. Section 12.08 of the Inland Development Agreement states that all provisions of the Inland Development Agreement are enforceable as equitable servitudes "running with the land".

On November 20, 2008, Naples Coalition, Environmental Defense Center and Surfrider Foundation filed their Verified Petition for Writ of Mandamus in Santa Barbara Superior Court Case #1304044, challenging County's approval of the Santa Barbara Ranch Project and County's certification of an Environmental Impact Report for the project. That Petition was replaced by a First Amended Verified Petition on January 20, 2009 and by a Second Amended Verified Petition on August 3, 2010. No hearing date has been set yet in that CEQA litigation.

During May 2010, First Bank foreclosed on part or all of the Inland Project property. Also during May 2010, First Bank transferred its interest in the Inland Project Site to SBRHC, Inc. ("SBRHC"), which appears to be an affiliated entity of First Bank.

On April 5, 2011, your Board heard a request from the First Bank to acknowledge that the Developer's performance under the Inland Development Agreement is extended throughout the period of *Naples Coalition* litigation, and to receive and file staff's compliance report for the Inland Development Agreement. That matter was heard and continued by your Board to May 17, 2011, where the matter was withdrawn from your agenda.

SBRHC, Inc. submitted a letter on January 3, 2012, requesting that the County: 1) issue a Notice of Compliance, pursuant to Section 8.04 of the Inland Development Agreement; and 2) consent to a proposed Transfer Agreement, pursuant to Section 8.02 of the Inland Development Agreement, from SBRHC, Inc. to CIP II/BR SBR, LLC, of the Inland Project and the Inland Development Agreement. The applicant proposed Notice of Compliance was amended by letters of January 19 and 23, 2012.

During discussions between SBRHC, Inc. and County Staff, County Staff recommended to SBRHC that, pursuant to Section 8.02(b) of the Inland Development Agreement, SBRHC provide proof of the proposed transferee's reputation and financial resources. Subsequently, on January 20, 2012 SBRHC verbally withdrew the part of its request concerning the Transfer Agreement and stated that they would resubmit the proposed Transfer Agreement later and with additional documentation. Written confirmation of the withdrawal was received on January 23, 2012. From a conversation with SBRHC and CIP II/BR SBR, LLC on January 25, 2012, staff now expects to receive a documentation package from CIP II/BR SBR, LLC in time to support the Board's consideration of the proposed Transfer Agreement on March 20, 2012.

Pursuant to Section 8.04 of the Inland Development, the County has 45 days from January 3, 2012 -- or February 17, 2012 -- to execute and deliver a Notice of Compliance to SBRHC. Otherwise, the Inland Development Agreement yields a conclusive presumption that the Inland Development Agreement remains in effect except as SBRHC represents it to have been modified.

Santa Barbara Superior Court Case #1379764 involves “quiet title” litigation about the determination of Inland Development Agreement rights, between SBRHC and, collectively: Vintage Communities, Inc.; Santa Barbara Ranch, LLC; Vintage Vineyards, LLC; Osgood Farms, LLC; Matthew K. Osgood; DLC Ranch, LLC and TW Family Farm, LLC. The attorney representing SBRHC’s litigation opponents in that “quiet title” litigation stated on January 23, 2012 that his clients cannot consent to the parts of the Notice of Compliance proposed by SBRHC through which the County would certify that SBRHC has all the rights of the Developer under the Inland Development Agreement. The Notice of Compliance that County staff attached for your Board’s action states that, because of that “quiet title” litigation, the County reasonably cannot at this time certify those respective rights in the Inland Development Agreement.

Analysis:

Notice of Compliance

The SBRHC, Inc.’s request for a Notice of Compliance derives from the provisions of the approved Inland Development Agreement (included as Attachment 2).

Section 8.04 of the Development Agreement states:

Notice of Compliance Generally. Within forty-five (45) days following any written request which Developer may make from time to time, County shall execute and deliver to Developer (or any party requested by Developer) a written “Notice of Compliance,” in recordable form, duly executed and acknowledged by County, which certifies that to the County’s knowledge:

- (a) This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications;
- (b) There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default.
- (c) Any other information reasonably requested by Developer. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the County that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer’s sole discretion, to record the Notice of Compliance.
- (d) The Director of Planning and Development is authorized to execute a Notice of Compliance. Developer shall pay County’s reasonable costs of providing a Notice of Compliance.

SBRHC, Inc. asserts that the time for the Developer’s performance under the Inland Development Agreement for Santa Barbara Ranch is automatically extended throughout the time of the *Naples Coalition* litigation. Section 10.06 of the Inland Development Agreement provides, in part, that:

“Litigation attacking the validity of this agreement or any of the Inland Project Approvals...shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be memorialized in writing.”

For purposes of Section 10.06 of the Inland Development Agreement, your Board may conclude that litigation attacking the Inland Development Agreement and Inland Project Approvals for the Santa

Barbara Ranch Project has been in place continuously since November 2008. Given Section 10.06 of the Inland Development Agreement, staff recommends that your Board certify within the Notice of Compliance that the Developer's performance under the Inland Development Agreement is extended until the conclusion of the *Naples Coalition* litigation.

Section 2.02 (a) of the Inland Development Agreement requires the Developer to:

- Within 60 days of the effective date of the Agreement, pay \$100,000 “to a non-profit conservation organization to initiate planning to enhance areas of natural, scenic, wildlife, biological, open space, and drainage corridors within Dos Pueblos Creek...shall use its best faith efforts to complete a Creek Restoration Plan within one (1) year after the Effective Date of this Agreement and the Developer shall offer all reasonable assistance to accomplish this outcome.”
- Within 1 year of the effective date of the Agreement, offer all reasonable assistance in completing a Creek Restoration Plan.
- Prior to commencement of Grading or construction of the Inland Project, pay \$300,000 to the non-profit to implement the Creek Restoration Plan.
- Within 3 years of the effective date of the Agreement, offer all reasonable assistance to implement the Creek Restoration Plan.

The Effective Date of the Inland Development Agreement is October 26, 2009. The Developer has provided \$100,000 to California Rangeland Trust to prepare the Creek Restoration Plan, and indicates that a draft plan has been prepared. While these actions of the Developer are not required if the timeframes for performance are extended, they demonstrate the intention of the Developer to comply with the provisions of the Inland Development Agreement.

The Draft Notice of Compliance prepared and submitted by SBRHC includes a statement that the Development Agreement is modified in three respects:

- “SBRHC, Inc. is and shall be the Developer as defined in the Inland Development Agreement;
- SBRHC, Inc. has and shall have all the rights of the Developer under the Inland Development Agreement; and,
- SBRHC, Inc. shall be obligated to perform the obligations of the Developer under the Inland Development Agreement, the Inland Project Approvals, and the Subsequent Inland Approvals, if any.”

Since the determination of Inland Development Agreement rights and obligations in the Santa Barbara Ranch Project remains the subject of ongoing litigation in Santa Barbara Superior Court Case #1379764, staff recommends that the Board of Supervisors not at this time certify within the Notice of Compliance those respective rights between SBRHC, Inc. and, collectively: Vintage Communities, Inc.; Santa Barbara Ranch, LLC; Vintage Vineyards, LLC; Osgood Farms, LLC; Matthew K. Osgood; DLC Ranch, LLC and TW Family Farm, LLC.

Fiscal and Facilities Impacts:

All costs associated with processing the Project are funded by the applicant, budgeted in the Permitting and Compliance Program of the Development Review, South Division on Page D- 314 of the adopted 2011-12 fiscal year budget.

Attachments:

1. Request from SBHRC, Inc. dated January 3, 2012, amended by letter dated January 19, 2012 and January 23, 2012
2. Inland Development Agreement executed October 21, 2008
3. Draft Notice of Compliance prepared by County Staff and County Counsel

Authored by:

Dianne Black