

**COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: Board of Supervisors

FROM: Glenn Russell, Ph.D., Director of Planning and Development

DATE: February 3, 2012

RE: Santa Barbara Ranch Notice of Compliance
February 7, 2012 Board of Supervisors Hearing – Item D #7.

Attached are four letters and an email received by staff after docketing the Board Agenda Letter regarding the Santa Barbara Ranch Development Agreement. These include:

January 30, 2012 letter from Deborah Rosenthal, Sheppard Mullin Richter & Hampton, LLC, representing SBRHC, Inc. to Lance Adair, Adair and Butler LLP, representing Vintage Communities, Inc., Santa Barbara Ranch, LLC, Vintage Vineyards, LLC, Osgood Farms, LLC, Matthew K. Osgood. DLC Ranch, LLC, TW Family Farm, LLC (the “Santa Barbara Ranch Entities).

January 30, 2012 email from Lance Adair to Deborah Rosenthal.

January 30, 2012 letter from Lance Adair to Glenn Russell.

January 31, 2012 letter from Deborah Rosenthal to Lance Adair.

February 1, 2012 letter from Lance Adair to Deborah Rosenthal.

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February 1, 2012

Via Email and Mail

Deborah Rosenthal, Esq.
Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626-1993

Re: Santa Barbara Ranch Inland Development Agreement

Dear Ms. Rosenthal:

This will serve as our response on behalf of the nine parties my firm represents to your letter of yesterday.

Your letters to date have ignored the fundamental underlying problem in this now public debate, which is that your client, SBRHC, Inc., is suing the nine clients my firm represents, including Mr. Osgood in his individual capacity. In addition to your client's substantial, unresolved claims for monetary damages, the issue your client is now presenting to the County is one of the very issues in that lawsuit. In that regard, my clients have participated and were participating in good faith mediations before a court-appointed mediator when SBRHC unexpectedly and unilaterally withdrew from that process just prior to Christmas. Perhaps not coincidentally, SBRHC began shortly thereafter to pursue a public debate of the issue of Developer status under the IDA.

With regard to the County potentially being brought into your client's lawsuit, it is disingenuous to suggest that my clients are somehow the cause of that concern. My clients are not attempting to involve the County in your lawsuit. Your client is. Your client is seeking a judgment against my clients in the lawsuit your client initiated that would adjudicate the County's rights and interests. My clients simply informed your client that they are not in a position to be litigating the County's interests in your lawsuit. My clients also vehemently disagree with your client's decision to file a lawsuit in the first instance.

In that regard, my clients' relationship with the County has existed for over a decade. That relationship has endured many challenging moments. Yet in all that time, my clients have never threatened to sue the County or attempted to draw the County into a lawsuit. They

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Deborah Rosenthal, Esq.
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certainly would not attempt to obtain a judgment affecting the County's interests in a lawsuit with a third party. In any event, as I have suggested in my recent correspondence, all parties would be better served by a negotiated resolution than by the current adversarial proceedings your client has initiated in two separate forums.

Also, for the record, the current exchange about "past statements" was initiated by you in your letter of January 23, which was not anticipated or provoked by my clients, and to which they reasonably felt compelled to respond. We agree with the proposition that the debate about what was said by whom and when is not a worthwhile debate. The record is what it is and speaks for itself. That being said, the position you attributed to Mr. Osgood in your letter of January 23 was not an accurate statement of his position (as is, in fact, revealed by a careful reading of the selected excerpts you have quoted in your letter of yesterday).

Finally, my clients remain willing to participate in further, good faith mediations and to negotiate a resolution of the full panoply of issues in the SBRHC lawsuit, none of which is individually complex. It is inappropriate, however, to expect the County of Santa Barbara to mediate the parties' dispute and we do not believe the County should be placed in that position.

As always, please do not hesitate to call me if you have any questions.

Very truly yours,



Lance A. Adair

LAA:vw

cc: Michael Ghizzoni, Esq.
Lol Sorensen, Esq.

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January 31, 2012

File Number: 0NJP-160949

VIA E-MAIL AND U.S. MAIL

Lance A. Adair, Esq.
Adair & Butler LLP
100 Pacifica, Suite 130
Irvine, CA 92618
E-Mail: ladair@adair-butler.com

Re: Santa Barbara Ranch Inland Development Agreement

Dear Mr. Adair:

We received your correspondence concerning the Notice of Compliance for the Inland Development Agreement ("IDA") by email last evening. Again, your email responds to statements in my cover letter to Glenn Russell, but does not state any substantive objections to the Notice of Compliance itself. Given that SBRHC has assumed all obligations under the IDA, stated its willingness to perform as the "Developer," and requested the County to confirm your clients' release, we are not aware of any outstanding issues under the IDA. We join you in asking why all questions about the current owner's "Developer" status were not resolved long ago.

After our last exchange of letters, I had hoped we could avoid the distraction of arguing about past statements, and concentrate on moving forward with the substantive business of the Notice of Compliance. However, your most recent correspondence continues to misstate the record and your clients' public positions. For the record, therefore, I am obliged to correct some of the statements in your letter of January 29, 2012 and your most recent email.

My letter of January 23, 2012 explained the need for the Notice of Compliance by reference to three assertions made by counsel for Mr. Osgood and related entities ("Osgood"). Specifically, the second paragraph states that "Counsel for [the] Osgood has publicly asserted that he remains the Developer under the DA...." At the February 1, 2011 Board of Supervisors hearing, Mr. Lamport appeared, in his words, "on behalf of Santa Barbara Ranch LLC and the other entities and individuals who are *the Developer* in the Development Agreement. ... Our position is that they [SBRHC] are not successor Developers to the Development Agreement." Similarly, in court, Osgood has "affirmatively allege[d] that all of [the Osgood entities] *remain* parties to the Inland Development Agreement and are identified therein as 'Developer.'" *Ver. Ans.* ¶ 19, l.14 (emphasis added).

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Lance A. Adair, Esq.
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The second paragraph further states: "Osgood argues that the County may contend its consent is required for any entity to succeed to Developer status under the DA." In court, Osgood affirmatively alleges that SBRHC

"has not invoked or completed the express and/or implied procedures set forth in the Inland Development Agreement for becoming the sole 'Developer' pursuant to that agreement; has not otherwise sought or obtained the consent or approval of the County of Santa Barbara to be accorded such status under the agreement; has not otherwise sought or obtained the agreement, consent or acceptance of its legal positions, as stated in the Complaint, from the County of Santa Barbara ...; and has not named such entities in its lawsuit or served them with a summons and complaint." *Ver. Ans.* ¶ 81.

The second paragraph also states: "Osgood has further argued that the County may contend he and his related entities remain liable for all obligations under the DA because they have not been formally released by resolution of the Board of Supervisors." In court, Osgood alleges that:

"the County of Santa Barbara, acting through its Board of Supervisors, may contend that [the Osgood entities], or some of them, remain obligated under the Inland Development Agreement ...; or may claim that [SBRHC] does not have the status and rights claimed by [SBRHC] in this action pursuant to those agreements. [The Osgood entities] further affirmatively allege that the Inland Development Agreement imposes substantial (and potentially unlimited) financial obligations upon the 'Developer' under said agreement, which obligations have not been, or may not have been, expressly assumed by [SBRHC] ..."

Finally, your most recent email states your clients "do not contend that the matter cannot be resolved unless the County is brought into the SBRHC lawsuit; it could just as well be resolved by negotiated agreement ..." In court, Osgood alleges that the County is an indispensable party, because "a declaration of rights and obligations cannot, in fact, lawfully be obtained without the presence of the County of Santa Barbara in the lawsuit." *Ver. Ans.* ¶ 80.

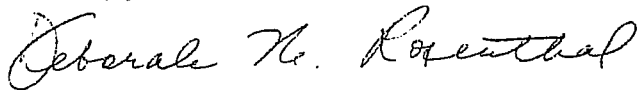
We can continue to split hairs about whether Mr. Lamport meant "sole" when he stated that his clients were "the" Developer, or whether your allegation that your clients may remain "obligated" is the same as our statement that they believe the County may contend they are "liable." We can quibble about whether it is unfair for SBRHC to point out that you have insisted on bringing the County into the lawsuit because, as you now assert, the County's involvement would not be needed if the dispute is settled without a court hearing. However, our disagreement about these statements is a side issue that does nothing to resolve your clients' claims to interests under the IDA for property they do not own.

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Lance A. Adair, Esq.
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SBRHC remains willing to address any comments on the substantive provisions of the Notice of Compliance with you and the County. As I have stated many times, we prefer to address these matters before the hearing rather than in front of the Board. We are available to consult or meet with you and County Staff at any time before the hearing on February 7, 2012.

Very truly yours,



Deborah M. Rosenthal, AICP
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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cc: Michael Ghizzoni, Esq.
Lol Sorenson, Esq.
Ms. Dianne Black
Mr. Norm Broyer

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January 30, 2012

Via Email and Mail

Mr. Glenn Russell
Planning and Development Director
County of Santa Barbara
105 E. Anapamu, 2nd Floor
Santa Barbara, CA 93101

Re: Santa Barbara Ranch Inland Development Agreement

Dear Mr. Russell:

We represent Vintage Communities, Inc.; Santa Barbara Ranch, LLC; Vintage Vineyards, LLC; Osgood Farms, LLC; Matthew K. Osgood; DLC Ranch, LLC; TW Family Farm, LLC (the "Santa Barbara Ranch Entities"), who are the named Developers under the Inland Development Agreement. We are in receipt of Deborah Rosenthal's January 23, 2012 letter to you on behalf of her client, SBRHC, Inc., the successor to foreclosing lender First Bank. For the record, neither Mr. Osgood nor any of the other parties my firm represents in the pending lawsuit initiated by SBRHC, Inc., have publicly made or are making the arguments attributed to Mr. Osgood in the letter. The purpose of this letter is to correct the misstatements contained in Ms. Rosenthal's letter.

The Santa Barbara Ranch Entities' position regarding the Inland Development Agreement is as follows:

1. The Santa Barbara Ranch Entities are the named Developers under the Inland Development Agreement.
2. Not all of the Santa Barbara Ranch Entities were parties to the loan agreement with the foreclosing lender, First Bank. To date, neither the borrower parties nor the non-borrower parties have transferred their interests as Developer to First Bank or SBRHC. Further, SBRHC is not the foreclosing lender and has never been the holder of a mortgage, deed of trust or other security interest.

ADAIR & BUTLER LLP

Mr. Glenn Russell
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3. When SBRHC acquired title to portions of Santa Barbara Ranch it became bound by the terms of the Inland Development Agreement, including Section 8.02, which governs how a party may assume the rights and obligations of a Developer. Absent some other agreement of the parties, including the County and the Santa Barbara Ranch Entities, Section 8.02(a) requires that, before the County can approve a transfer, SBRHC and the transferring Developer must enter into a Transfer Agreement regarding their respective interests.

4. Neither SBRHC nor its predecessor, First Bank, have entered into a Transfer Agreement with any of the Santa Barbara Ranch Entities.

5. The Transfer Agreement provisions exist not only for the benefit of the County, but for the benefit of the Santa Barbara Ranch Entities, in order to ensure that all of their interests are fully and fairly resolved in connection with a transfer.

6. Under the terms of the Inland Development Agreement, in the absence of a Transfer Agreement or some other agreement of the affected parties, including the County and the Santa Barbara Ranch Entities, the County is not in a position to approve a transfer.

As set forth in the pleadings in the pending litigation SBRHC initiated against the Santa Barbara Ranch Entities, the Santa Barbara Ranch Entities have a number of continuing interests relative to the Santa Barbara Ranch and ongoing, unresolved disputes with SBRHC regarding those interests. The Santa Barbara Ranch Entities have been participating in good faith in a mediation with SBRHC to resolve their disputes. However, to date, the parties have not achieved a settlement and have not entered into a Transfer Agreement or equivalent.

Very truly yours,



Lance A. Adair

LAA:vw

cc: Michael Ghizzoni, Esq.



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January 30, 2012

File Number: 0NJP-160949

VIA E-MAIL AND U.S. MAIL (ladair@adair-butler.com)

Lance A. Adair, Esq.
Adair & Butler LLP
100 Pacifica, Suite 130
Irvine, CA 92618

Re: Santa Barbara Ranch Inland Development Agreement

Dear Mr. Adair:

We are in receipt of your letter of this date concerning the pending request for a Notice of Compliance under Section 8.04 of the Santa Barbara Ranch Inland Development Agreement ("IDA"). The Notice of Compliance is intended to confirm that SBRHC, Inc. succeeded to the role of "Developer" under the IDA when it acquired ownership of all of the covered property. At the same time, the Notice of Compliance clarifies that all of original signatories are released from any potential liabilities under the for property they no longer own under the IDA.

The pending request for a Notice of Compliance is necessitated by your clients' refusal to acknowledge that the benefits and burdens of the IDA run with ownership of the property, as set forth in both State law and the IDA itself. Your letter continues to evade this issue. While it states what the Osgood entities do *not* contend, it fails to state what they *do* contend about the request to confirm they can never be held responsible for any costs or liabilities on property owned by a third party. It is hard to believe Mr. Osgood objects to confirmation of their release.

Your letter also suggests that Mr. Osgood has not taken the positions attributed to him in my letter to Mr. Glenn Russell on January 23, 2012, or that they are somehow the subject of a mediation privilege. This is an obvious attempt to divert attention from Mr. Osgood's continuing attempts to deny SBRHC the benefits of ownership under the IDA. In fact, all communications with the County must be public, and the statements in my letter are taken directly from the public testimony of Mr. Osgood's prior counsel to the Board of Supervisors and your signed pleading in Santa Barbara County Superior Court.

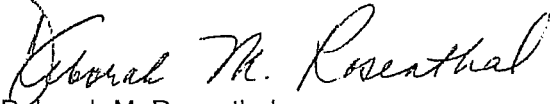
SBRHC disagrees with Mr. Osgood's contention that the County of Santa Barbara must be named as a party defendant for the pending lawsuit to be resolved. We remain convinced that there should be no dispute about the matters covered in the requested Notice of Compliance, and that they can be resolved at the administrative level. SBRHC renews our request that Mr. Osgood consent to its issuance.

SheppardMullin

Lance A. Adair, Esq.
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Page 2

If you have any questions or concerns, please contact me as soon as possible.

Very truly yours,



Deborah M. Rosenthal
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:3DMR1\404582895.1

cc: Michael Ghizzoni, Esq.
Lol Sorenson, Esq.
Ms. Dianne Black
Mr. Norm Broyer

Black, Dianne

From: ladair@adair-butler.com
Sent: Monday, January 30, 2012 6:26 PM
To: Deborah Rosenthal
Cc: Ghizzoni, Michael; 'lol@rsmediate.com'; Black, Dianne; Dillon, William
Subject: RE: SBR Inland Development Agreement

Dear Ms. Rosenthal:

Thank you for your letter, which just reached me via email. With all due respect, you are simply incorrect in your assertions regarding Mr. Lamport's prior statements before the Board of Supervisors. I have once again reviewed the transcript of Mr. Lamport's comments and he did not make the assertions you now attribute to him and to Mr. Osgood in your letters. In fact, contrary to your letter of this afternoon, Mr. Lamport specifically said, in reference to your client: "[T]hey do have rights under the development agreement as a *subsequent owner*, but . . . SBR LLC and the other developers are the parties in the development agreement and there has been no transfer of the obligations in the development agreement to anyone else."

Likewise, there is nothing anywhere stated in our pleading on file with the court which is inconsistent with the above or which in any way approximates the statements you have attributed to Mr. Osgood in your public correspondence of January 23. In that regard, I would be happy to provide copies of the hearing transcript and/or our answer in the SBRHC lawsuit to you or any of the recipients of this email.

Finally, contrary to the representation in your letter of this afternoon, my clients (including Mr. Osgood, who is only one of nine) do not contend that the matter cannot be resolved unless the County is brought into the SBRHC lawsuit; it could just as well be resolved by negotiated agreement, and we remain at a loss as to why the matter has not been resolved long before now.

As always, please do not hesitate to call me if you have any questions.

Very truly yours,

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-----Original Message-----

From: "Cathy Richardson" <CRichardson@sheppardmullin.com>
Sent: Monday, January 30, 2012 5:23pm
To: "'ladair@adair-butler.com'" <ladair@adair-butler.com>
Cc: "'mghizzoni@co.santa-barbara.ca.us'" <mghizzoni@co.santa-barbara.ca.us>, "'lol@rsmediate.com'" <lol@rsmediate.com>, "'Dianne@co.santa-barbara.ca.us'" <Dianne@co.santa-barbara.ca.us>, "'Norm Broyer'" <Norm.Broyer@fbol.com>, "'Dillon, William'" <Wdillon@co.santa-barbara.ca.us>, "Deborah Rosenthal" <DRosenthal@sheppardmullin.com>
Subject: SBR Inland Development Agreement

Dear Mr. Adair:

Please see attached letter of today's date relative to the Santa Barbara Ranch Inland Development Agreement. Should you have any questions or comments, please contact Deborah Rosenthal.

Thank you.

Cathy Richardson
Legal Secretary
714.424.8262 | direct
CRichardson@sheppardmullin.com

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