



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: 3/20/12
Placement: Departmental Agenda
Estimated Tme: 30 minutes
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
Consideration of Consent to Transfer Agreement**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: NA

Recommended Actions:

That the Board of Supervisors:

1. Receive and file a written request from SBRHC, Inc. for the County to consent to a proposed Transfer Agreement, between SBRHC, Inc. and CIP II/BR SBR, LLC, of respective interests, rights and obligations under the Inland Development Agreement, Inland Project Approvals and Subsequent Inland Approvals for the Santa Barbara Ranch Project;

AND EITHER:

2. Pursuant to Section 8.02 of the Inland Development Agreement for the Santa Barbara Ranch Project (Attachment 4), authorize the Chair of the Board to execute the attached written Consent to Transfer Agreement. (That Consent to Transfer Agreement includes a statement that since the determination of Inland Development Agreement rights and obligations remains the subject of ongoing "quiet title" litigation in Santa Barbara Superior Court Case No. 1379764, between the Original Developers and SBHRC, Inc., the County reasonably cannot at this time certify those respective rights); and,
3. 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 the County cannot determine on the basis of substantial evidence in light of the whole record that:

(1) substantial changes are proposed in the project which will require major revisions of the 2008 Final EIR; (2) 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; or (3) 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.

OR:

4. Determine that the County cannot reasonably and presently consent to the proposed Transfer Agreement because the proposed Transferee has not provided adequate evidence of its own financial resources to be able to perform the obligations proposed to be assumed.

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.

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.

On February 7, 2012 the Board of Supervisors approved and authorized the Chair to execute and deliver to SBRHC, Inc. a Notice of Compliance pursuant to Section 8.04 of the Inland Development Agreement.

SBRHC, Inc. submitted a letter on February 13, 2012 (Attachment 1) requesting that the County consent to a proposed Transfer Agreement pursuant to Section 8.02 of the Inland Development Agreement. CrossHarbor also submitted a letter dated February 13, 2012 (Attachment 2) providing information about the prospective buyer, CIP II/BR SBR LLC and a supplemental letter dated March 8, 2012.

Pursuant to Section 8.02 of the Inland Development, the County has 45 days from February 13, 2012 -- or March 29, 2012 -- to respond or the County's approval of the transfer is assumed.

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. On February 14, 2012, SBRHC, Inc served County of Santa Barbara with SBRHC's First Amended Complaint in this litigation, which now includes County of Santa Barbara as a defendant for the "declaratory relief" and "quiet title" causes of action.

Analysis:

As to the County's authority to give or refuse consent to the proposed Transfer Agreement, Section 8.02 of the Inland Development Agreement states:

The County may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in County's reasonable opinion be able to perform the obligations proposed to be assumed by such transferee.

CIP II/BR SBR LLC is a Delaware limited liability company owned by CrossHarbor Institutional Partners II, L.P., BondRok Partners, LLC and Preserve Communities, Inc. CrossHarbor's February 13, 2012 letter provides information about the reputation of the three owners of CIP II/BR SBR LLC, including summaries of the management teams and complex projects undertaken by of each of the three companies who own CIP II/BR SBR, LLC. The financial statement of CIP II, owned by CrossHarbor, and the partner providing the majority of capital for the Santa Barbara Ranch project, is attached to the letter. CIP II is capitalized with approximately \$425,000,000 of discretionary capital commitments from institutional investors and a \$125,000,000 subscription secured line of credit. Further, paragraph 5 of the March 8, 2012 CrossHarbor letter indicates that CIP II would make \$300,000 available to the Transferee so that is could perform the obligations of the Developer under the Inland Development Agreement upon County's consent and closing of the acquisition of the property.

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.

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 if the Board of Supervisors decides to consent to the proposed Transfer Agreement that the Board of Supervisors specify in the Consent to Transfer Agreement that the County:

- a. Reasonably cannot at this time certify those respective rights and obligations; but
- b. Consents to SBRHC Inc's proposed transfer to CIP II/BR SBR, LLC of whatever interests, rights and obligations that SBRHC Inc. has under the Inland Development Agreement, Inland Project Approvals and the Subsequent Inland Project Approvals.

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 February 13, 2012.
2. Letters from CrossHarbor dated February 13, 2012 and March 8, 2012.
3. Excerpt of Inland Development Agreement, Section 8.02.
4. Draft Notice of Consent to Transfer Agreement prepared by County Staff and County Counsel.

Authored by:

Dianne Black