LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

April 5, 2013

County of Santa Barbara
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

By hand delivery and by email to
sbcob@co.santa-barbara.ca.us

RE: Naples Coalition Appeal of the Schulte/Dos Pueblos Lot Line Adjustment Project, 10LLA-00000-00003

Dear Chair Carbajal and Members of the Board of Supervisors,

This office represents the Naples Coalition in this matter. This letter supplements our letter of November 19, 2012, appealing the Schulte/Dos Pueblos Lot Line Adjustment Project ("LLA Project") to your Board. The LLA Project would adjust the boundaries of two lots that were subject to the Board's 2008 approval of the Santa Barbara Ranch Project (SBR Project), a 71-unit luxury residential development on the eastern Gaviota Coast. Pursuant to the SBR Project, over 147 acres of the 360-acre "Lot 2" would be subdivided into 23 largely urban-density lots ranging in size from 3.67 acres to 21.30 acres, introducing intensive luxury residential development in the midst of what are currently active agricultural lands.[1] Additionally pursuant to the SBR Project, the entire 360-acre Parcel 2 would be removed from Williamson Act contract, and the "remainder" that is not subdivided for residential development would be placed in an Agricultural Conservation Easement ("ACE") to provide substitute protections for the remaining, residual agricultural resources while other contracted lands would be subject to the ACE and a new replacement Williamson Act contract.

The Planning Commission's November 7, 2012 approval of the LLA Project was premised on the assumption that "the lot line adjustment is independent from the Santa Barbara Ranch Project" (October 17, 2012 Staff Report, p. 3). While we disagree with that assumption (as stated in our multiple submittals to the Planning Commission), even assuming that the two Projects are independent, that does not allow the County to disregard evidence related to the SBR Project that is relevant to the LLA in making required Findings of Approval. The Planning Commission's Findings, including findings required because the subject lots are currently protected with a Williamson Act Contract, impermissibly disregard relevant facts and are not supported by substantial evidence, and accordingly are insufficient for the Board to sustain an approval of this LLA Project.

[1] The Board letter twice refers to the Alt. 1 B project as involving "clustered residential development" on pages 2 and 3. The Santa Barbara Ranch EIR and the Board's Findings considered the Clustered Development Alternative, aka Alternative # 5, and rejected a clustered development alternative for a variety of reasons. Alt. 1 B involves a sprawling large lot residential subdivision on prime agricultural lands and should not and cannot, based on the evidence in the record, be characterized as clustered development.

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As discussed below, additional analysis is plainly required for the Board to sustain various required Findings of Approval. Accordingly we respectfully request that the Board grant our appeal, and direct Staff to undertake additional analysis of the important issues raised herein.

1. The Findings of Approval Are Legally Inadequate

To be legally adequate, administrative findings must be supported by substantial evidence in the record, and must "bridge the analytic gap between the raw evidence and ultimate decision or order". (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 514-515). When reviewing whether substantial evidence supports an agency's reasoning process, courts must look at the "whole record" and "consider all relevant evidence, including evidence detracting from the decision, a decision which involves some weighing to fairly estimate the worth of the evidence." (*Sierra Club v. California Coastal Com.* (1993) 12 Cal. App. 4th 602, 610). The Findings of Approval approved by the Planning Commission for this Project fail to meet these basic standards for adequacy, for the following reasons.

a. Findings Regarding Agricultural Resource Protection

Section 21-93 of the County's Subdivision Regulations and the Uniform Rules for Agricultural Preserves and Farmland Security Zones requires that the review authority make several findings respecting the adequacy of agricultural resource protections following the lot line adjustment. Specifically, the Board must find (among other things) that:

> 2. The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.
>
> 5. After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use.
>
> 6. The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

The Findings approved by the Planning Commission for the LLA Project impermissibly isolate evidence supporting the findings, and disregard other relevant evidence in the record.

The Planning Commission's findings include the following "support" for Finding 2 ("The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years"):

> The new Agricultural Preserve contract(s) would have an initial restriction on the adjusted boundaries of the resultant lots for a minimum of 10 years. Condition of Approval No. 2 requires the applicants to receive approval of and subsequently record replacement agricultural preserve contract(s) for 77-AP-014 concurrent with recordation of the requested lot line adjustment. Therefore, this finding can be made.

When the entire record is scrutinized however, it is evident that the replacement Agricultural Preserve contract(s) will not enforceably restrict the adjusted boundaries of the 360-acre parcel for a minimum of 10 years, because the Board has already approved the cancellation of the Agricultural Preserve contract applicable to these lands and replacement with an ACE covering a smaller, roughly 214 acre subset of the Lot 2[2]. The Board was able to sustain the findings for the easement exchange included in the SBR Project consistent with the County's Uniform Rules and the Williamson Act only because they found that the acreage[3] that would be removed from contract would be compensated for because "less productive land would be replaced by more acreage than is lost, and more significantly, net increase in land that is superior in soil quality" (Finding 1, Land Quality, SBR Project Findings p. 11, October 21, 2008). In other words, the ACE includes more land, and more productive land, than the 576 acres of land taken out of the Williamson Act Contract. The problem however, is that the SBR Project relied on lands beyond the scope of this LLA in reaching this finding. The LLA findings by contrast require that the Board focus on the particular parcels being adjusted. It is undisputed that if the Santa Barbara Ranch Project goes forward, over 147 acres of the 360-acre parcel will be developed for residential use and permanently lost for agricultural production. The ACE compensates for this loss elsewhere, but that is not relevant to the Board's consideration of this LLA. The Board lacks substantial evidence for concluding as required by Finding 2 that the replacement Agricultural Preserve contract will enforceably restrict the boundaries of the 360-acre parcel for at least 10 years, because during that period the SBR Project approvals may be effectuated, resulting in a drastically reduced area within the 360-acre parcel that is supposed to be preserved for agriculture in order to make the requisite Findings.

Finding 5 approved by the Planning Commission ("After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use") asserts various claims regarding the agricultural viability of each parcel, however as with the other findings, omits any reference to the SBR Project, or whether the parcels of land would be large enough to sustain their agricultural use if the approved project goes forward. As with Finding 2 above, this finding isolates particular evidence that supports the finding, disregarding other evidence indicating that "Lot

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[2] The Santa Barbara Ranch Project includes 23 residential lots on the 360-acre parcel, totaling 146.77 acres, as well as portions of two additional lots (*see* SBR Project Conditions of Approval, Table 2 (Development Parameters); *C.f.* Exhibit 2 (Lot Identification).)

[3] Project-wide, the Santa Barbara Ranch Project calls for the removal of 576 acres of land from Williamson Act Contract 77-AP-014, approximately 147 acres of which are lost from the 360-acre Lot 2 (*see* footnote 1, *supra*).

2" may not remain agriculturally viable. Discussed above, the Santa Barbara Ranch Project calls for the removal of 576 acres of land currently subject to Contract no. 77-AP-041, over 147 acres of which are within the 360 acre "Lot 2". The agricultural viability of the approximately 214-acre remainder was not assessed in the SBR Project EIR, or in the context of the LLA Project. The residential developer plans to put their lots on the least steep portions of a steep parcel, leaving the agricultural operations with very steep and marginal lands. Accordingly, it is unknown whether the submarginal soils and steep slopes of an isolated "Lot 2" can or will remain independently agriculturally viable and thus the Board lacks substantial evidence to support Finding 5.

The purported "evidence" of agricultural viability submitted as Attachment 9 to the Board's Staff Report is copies of four checks to SBRHC. The applicant is unable to produce a contract between themselves and the supposed cattle operator, and importantly, provides no evidence that the checks relate to the independent viability of the 360 acres of DPR's lands at issue. Logically, the checks are disconnected from the 360 acres, since the checks are made payable to SRBHC, and at this point, the lands in question are owned by DPR.

The applicant's agent argued that the EIR's discussion of agricultural viability provides evidence of the independent agricultural viability of the new 360 acre parcel, but in fact the FEIR states "[g]razing operations are not considered commercially viable in both the DPR and SBR properties." (FEIR p. 9.7-2.) The agent argued that the lands were in fact exceptionally productive for grazing since the EIR stated they could sustain the relatively high rate of 0.3 animal units per acre, but in fact the source of that number was the agent themselves, and the number included adjustment for "potential" productivity. (*Id.*)

Thus the evidence of independent agricultural viability of the 360-acre parcel is based on flimsy self-serving suppositions and is flatly refuted in the FEIR, upon which the Board is asked to rely in considering the DPR LLA project.

Additionally, the Comprehensive Plan Agricultural Element (on page 26) explains how reducing parcel sizes threatens the future of agriculture:

> In addition to the conversion of agricultural lands to urban uses, there is another phenomenon taking place which also threatens the future of agriculture. It is the division of agricultural parcels down to smaller parcel sizes. There are many factors which when taken together determine the economic viability of an agriculture operation. One very important factor is acreage which varies in the amount required depending on many of the other factors such as crop type, soil characteristics, etc. With many agricultural land divisions, although the land is not being converted to urban uses, it is broken up into pieces that are too small to be economically viable agricultural units. Once the economic viability of the land is lost, there is inherently increased pressure for further division of the property and ultimate conversion of the agricultural land to urban uses

Before splitting a large agriculturally viable lot into two smaller lots, it is critical that the evidence establish that no loss in agricultural viability results. The record in this case does not provide that evidence.

Finding 6 approved by the Planning Commission ("The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts") summarily concludes that the lot line adjustment will not compromise the agricultural productivity of either parcel in a vacuum, without considering or evaluating the inevitable effect of the approved SBR Project's incompatible luxury housing on the surrounding agricultural activities.

Land use conflicts between agriculture and new, non-agricultural land uses include conflicts resulting from normal agricultural practices, such as noise, dust, light and odors, and conflicts resulting from roaming pets, invasive exotic plants species and trespassing issues often associated with encroaching nonagricultural uses. (Agricultural Buffer Ordinance Negative Declaration[4], p. 4).

The County's Environmental Thresholds and Guidelines Manual explains:

> Adjacent land uses can play an important role in the continuing suitability and productivity of a property for agricultural uses. In general, being surrounded by agricultural or open space is conducive to continued agricultural use, while encroachment of urban uses may be problematic. However, applying points within the ranges should be based on specific circumstances and uses, recognizing that some urban uses are more compatible with agricultural, (e.g., industrial, public facilities), *while others conflict (e.g., residential)*. (emphasis added).

The Comprehensive Plan Agricultural Element (on page 26) explains how land use conflicts can accelerate the loss of agricultural lands:

> The growth of urban development into agricultural areas brings with it land use conflicts. As these land use conflicts arise, there is often pressure on local agencies to mediate the concerns through regulatory measures such as permit requirements and conditions on operations. Regulatory measures which are imposed can become costly for agriculturalists and may even interfere with the productivity of their operations. This contributes to the rate of agricultural conversions to other uses, resulting in a vicious cycle which accelerates the loss of agricultural lands.

[4] http://longrange.sbcountyplanning.org/programs/ag_buffer/AgBufferFinalNegMergedWithAttachments.pdf

A case study conducted in Marin County analyzing the impact of estate developments on agricultural lands.[5] The study found that high-value estate development on agricultural land drives property taxes and insurance, and concluded that: "[a]dding high value residential development [to agricultural land] drives up land ownership costs beyond what agricultural income can cover, usually by large orders of magnitude".

The extent to which residential development (much of it urban-density) on and surrounding the subject parcels will ultimately reduce agricultural viability of the remaining agricultural land must be disclosed and considered before the Board can support Finding 6.

Evidence regarding the contemplated use of Lot 2 following the effectuation of the SBR Project is relevant to Finding 6 because the LLA Project carves out the 360-acre lot from the larger agriculturally productive Lot A. Without the LLA, the agricultural productivity of Lot B would be unaffected by implementation of the SBR Project since no development is proposed in that area, and Lot A would likely remain agriculturally productive notwithstanding the loss of over 147 acres to residential use given its large size. Following the LLA however, effectuation of the SBR Project would result in Lot 2 bearing the brunt of the development pressures both via direct loss and through the introduction of residential uses in close proximity with agriculture, rendering the remaining 214 acres vulnerable to a precipitous decline in agricultural productivity (which, as discussed in the context of Finding 6 above, has never been analyzed as to that approximately 214 acre remainder). Record evidence does establish the likelihood, if not inevitability of incompatible land uses. Under these circumstances, substantial evidence does not support Finding 6.

2. Conclusion

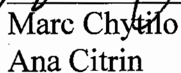
Significantly, the Board is under no obligation to approve this Project. Staff and the applicant assert that this project is independent from the SBR Project, and thus any applicable terms of the Inland Development Agreement do not apply. The Inland Development Agreement specifically exempts this type of project from the mandatory subsequent approvals that the development agreement otherwise binds the Board's discretion. Section 5.02 of the Inland Development Agreement provides: " 'Subsequent Inland Approvals' [that the Board is obligated to approve] shall not include an application for a new project that does not carry out or implement the Inland Project Approvals even if related to the Inland Project." Since the DPR LLA project is independent from the SBR approvals, the legal constraints imposed by the Inland Development Agreement do not apply and the Board may reject the requested lot line adjustment in the exercise of its discretion to protect an active and viable agricultural operation.

[5] Marin County Agricultural Economic Analysis Final Report (November 2003) available at: http://www.co.marin.ca.us/depts/cd/main/pdf/planning/Ag_Report_with_appendix.pdf

Based on the record before your Board, we believe there is insufficient evidence to support required findings of approval necessary for approval of the LLA Project, and accordingly we respectfully request that you to approve the appeal and deny the Application.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO



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